



Public School Capital Outlay Oversight Task Force

**2012
ANNUAL REPORT**

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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 schools, and later joined by parents in the Gallup-McKinley County and Grants-Cibola County public schools, 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 to 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 task force 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 2012 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 tenth year of implementation. While this report focuses primarily on the work of the task force during the 2012 interim, the following background information 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

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) 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 *Zuni* lawsuit 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 Public School Capital Outlay Task Force'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 "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, 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.

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 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.

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 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).

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 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, 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 and the New Mexico School for the Deaf 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 a 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.

During the 2006 interim, the task force heard testimony about the continuing statewide implementation of the FIMS 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 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 (commonly known as 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 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 determined that:

1. the school district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act;
2. the state share for existing grants under the act is 70 percent or greater;
3. the district's voters have approved a total school property tax rate of at least nine mills over the past three years;
4. at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and
5. for the next four years, because any local resources of the school district will be spent as the local match for projects, the school district will have no available resources from the state to exceed statewide adequacy standards.

The vetoed legislation would have equaled an amount from 10 to 25 percent of the original project cost and would have been funded through a five-year reversion of 20 percent of all unreserved, undesignated reverting balances to a public school facility opportunity fund; and by "shaving" three percent of all special legislative appropriations and depositing the proceeds into the fund. In his veto message, the governor requested further study of the funding sources and selection process.

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 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. They included measures (1) to repeal the current statutory requirement for bonding of subcontractors; (2) to allow for out-of-cycle transfer of charter school chartering authority from the local district to the state or vice versa, if appropriate; and (3) to amend the Public School Insurance Authority Act to provide for limited coverage in certain circumstances such as the community use of a public school building.

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 SFC/SB 378 (Laws 2009, Chapter 258):

- 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 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.

In response to testimony heard during the 2008 interim regarding difficulties with implementation of the Public School Lease Purchase Act, the task force endorsed a measure (Laws 2009, Chapter 132) that amended the legislation passed in 2007 including the following:

- amendments to public school general obligation bond statutes to eliminate general obligation bond proceeds as a source of funding for lease-purchase agreements;
- amendments to the Public School Lease Purchase Act to:
 - ▶ extend the lease-purchase time to 30 years;
 - ▶ limit the interest to the amount determined by the Public Securities Act;
 - ▶ allow a school district to require the owner to pay the current market value in excess of the outstanding principal due at the time of termination;
 - ▶ allow property acquired in a lease-purchase to be considered public property;
 - ▶ require a local school board to comply with the Open Meetings Act when it enters into a lease-purchase agreement; and
 - ▶ require a local school board to include the tax revenue needed by a charter school if the charter school's charter has been renewed at least once.

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 add the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf 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).

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).

The 2010 interim addressed several issues, including, but not limited to:

- Albuquerque Public Schools's (APS) Capital Master Plan and APS's current policy regarding charter school facilities;
- the geographic information system, developed by PSFA in collaboration with the University of New Mexico's Earth Data Analysis center as the result of legislation endorsed by the PSCOOTF for the 2009 session;
- progress on the implementation of PSFA's FIMS and on equipment inventories and school district preventative maintenance plans;
- monitoring the implementation of the standards-based capital outlay program to ensure continued success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there;
- the adequacy of the current permanent revenue streams;
- the effect of the current economy on the revenues to fund the current round of PSCOC grants and capital outlay funding resources and requirements for charter schools; and
- Public School Facility Authority (PSFA) audit reports on state sources of funding.

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 ("two-mill levy" or "SB 9"). Representatives from charter schools and from the Public Education Department (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 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.

For the past 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 working 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 wording changes in the New Mexico Administrative Code to modify proposal submission requirements and the resident preference; and
- Process changes for the PSFA: (1) develop a standardization template for submission of requests for proposals for construction, with detailed instructions; (2) develop a web-based training module for contractors and subcontractors; and (3) develop a process for web-based training for evaluation of committee members and require members to acknowledge completing it.

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

- HB 113 (Laws 2011, Chapter 11), in which the Public School Capital Improvements Act (SB 9) and the Public School Buildings Act (HB 33) were amended to require charter schools to report anticipated and actual expenditure of distributions made

pursuant to those acts; and

- HB 283 (Laws 2011, Chapter 69), 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 provides 18 months for charter schools to achieve this rating. The bill also exempts a school district leasing facilities to a charter school from State Board of Finance approval and 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.

The 2011 interim addressed several issues, including:

- special schools, including availability of grants and conditions for their eligibility for Public School Capital Outlay Act grants as well as the development of adequacy standards and inclusion of special schools in the standards-based process;
- amending the Procurement Code to clarify the use of "best and final offer";
- charter school facility issues, including the Charter School Capital Outlay Fund; and
- allowing mill levy proceeds to be used to meet local match requirements for Public School Capital Outlay Act grants.

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 New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (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. Bills endorsed by the PSCOOTF in 2012 included legislation to:

- amend the Public School Capital Outlay Act to repeal the 2012 repeal of the Charter School Capital Outlay Fund and repeal the language regarding reversion of unencumbered balances in the fund;

- amend the Public School Capital Outlay Act to make the NMSBVI and the NMSD eligible to participate in the Public School Capital Outlay Act standards-based process and provide for funding sources for the two schools to meet local match requirements;
- amend the Public School Buildings Act to allow mill levy proceeds to be used to meet local match requirements for Public School Capital Outlay Act grants; and
- amend the Procurement Code to clarify the use of "best and final offer" as it relates to requests for proposals for construction, maintenance, services and repairs.

The work of the task force during the 2011 interim was assisted by a team of professional staff from the Legislative Council Service, the Legislative Education Study Committee, the Legislative Finance Committee, the Department of Finance and Administration, the Public Education Department and the PSFA. The task force expressed its appreciation for the assistance of the staff in furthering its work.

Work During The 2012 Interim

As the "direct descendant" of several task forces that were created in response to the 1998 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the PSCOOTF is 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 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.

State statute allows the task force to hold a maximum of four meetings during each interim in addition to one organizational meeting. Those meetings were held in Santa Fe on June 6, August 1, September 24, November 12 and December 12. The New Mexico Legislative Council also authorized the task force to hold two work group meetings if needed.

The task force began its tenth year of overseeing the implementation of the Public School Capital Outlay Act standards-based process with a brief review of task force-endorsed measures considered by the 2012 legislature.

One of the task force's policy recommendations was enacted by the 2012 legislature and signed by the governor. 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 state constitution, 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.

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.

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 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.

The task force discussed several issues at length, with some emphasis on those issues presented by the PSFA for consideration. The task force reviewed initial recommendations from

the PSFA and requested that the PSFA and PSCOOTF staff alter some recommendations, address certain concerns and do more in-depth analysis on some recommendations before presenting revised briefs to PSCOOTF subcommittees specializing in certain subject areas.

The task force created two work groups made up of task force members and representatives from the educational community appointed by the task force co-chairs, which met on October 16 and 17 to work on policy recommendations for the task force's consideration. The PSFA presented pertinent issue briefs to the work groups, which then agreed upon a number of recommendations, that, at the direction of the co-chairs, were presented to the task force as draft legislation at the November 12 meeting.

At the November 12 meeting, members reviewed draft legislation and voiced support and concerns for various proposed bills. The members requested additional information from PSCOOTF staff and directed LCS staff to make certain changes to particular bills before bringing them back before the task force for endorsement. At the December 12 meeting, the PSCOOTF reviewed the revised draft legislation and voted to endorse specific bills.

The task force discussed the public school capital outlay funding formula at several meetings and eventually endorsed legislation to: (1) allow an annual distribution from the Public School Capital Outlay Fund 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; and (4) provide a separate appropriation from the PSCOF to increase availability of funding for deferred maintenance.

The task force and its subcommittees spent time at each meeting discussing the availability of facilities for charter schools to meet the statutory requirement that all charter schools be in public buildings by 2015, always a topic of concern, as well as other charter school facilities issues. As the result of extensive discussion by both the task force and its work groups, the task force endorsed two bills at its December 12 meeting dealing with charter school facility issues: (1) to amend the Public School Capital Outlay Act to reestablish the Charter School Capital Outlay Fund that was repealed July 1, 2012 and to reestablish criteria for grant awards from that fund; and (2) to 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.

Highlights of Recommendations and Proposed Legislation

The 2012 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.

PSCOOTF endorsements for the 2013 legislature included six bills that propose the following:

- 190441.4 allows the PSCOC to modify or not grant the automatic consumer price index adjustment from the lease-assistance program;
- 190926.1 makes an appropriation from the PSCOF to allow school districts and charter schools to address deferred-maintenance issues;
- 190444.6 allows the PSCOC to recommend suspension, nonrenewal or revocation of a charter based on the charter school's facility condition;
- 190439.5 provides flexibility to the PSCOC to determine local match waiver eligibility;
- 190747.2 reestablishes the Charter School Capital Outlay Fund that was repealed July 1, 2012 and reestablishes criteria for grant awards from that fund; and
- 190438.4 Defines "building system"; allows a specific distribution from the PSCOF for building systems repair, remodel or replacement; and provides guidelines for PSCOC determination of grant award recipients.

Appendix A

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEMBERSHIP, 2012 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2012 INTERIM MEMBERSHIP**

Representative Rick Miera, Task Force Co-Chair	House Education Committee Chair
Senator Cynthia Nava, Task Force Co-Chair	Senate Education Committee Chair
Senator Timothy Z. Jennings	Senate President Pro Tempore
Representative Ben Lujan	Speaker of the House
Representative Henry Kiki Saavedra	House Appropriations and Finance Chair
Senator John Arthur Smith	Senate Finance Committee Chair
Senator Vernon D. Asbill	Senate Minority Member
Senator Lynda M. Lovejoy	"Impact Aid" District Senator
Senator Sander Rue	Senate Minority Member
Representative Donald E. Bratton	House Minority Member
Representative Larry A. Larrañaga	House Minority Member
Representative W. Ken Martinez	"Impact Aid" District Representative
Rep. James Roger Madalena	Indian Affairs Committee Representative
Paul Aguilar/Antonio Ortiz	Designees, Secretary of Public Education
Tom Clifford	Secretary of Finance and Administration
Vacant	Superintendent, Non-Impact Aid School District
Vacant	Superintendent, Impact Aid School District
Kilino Marquez	Superintendent, Grants-Cibola County Schools
Leonard Haskie	Assistant Superintendent, Support Services, Gallup-McKinley County Schools
Carl Foster, Ph.D.	Retired Educator, Public Member with Expertise in Education and Finance
Cecilia Grimes	Retired Educator, Public Member with Experience in Education and Finance
Lisa Grover, Ph.D.	Consultant, Building Charter School Quality
Lilliemaë Ortiz	Public Member with Expertise in Education and Finance
Robbie Heyman	Bond Counsel, Public Member with Expertise in Education and Finance
Judy Rabon	Entrepreneur, Public Member, Alamogordo Public Schools

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2012 STATUTORY AUTHORITY AND DUTIES

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

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.

History: Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

Cross references. — For PL 874 funds, see 20 USCS § 7701 et seq.

Temporary provisions. — Laws 2010, ch. 104, § 5 provided that during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects, and shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

The 2008 amendment, effective May 14, 2008, in Subsection A, changed the number of members from twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

The 2007 amendment, effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10) of Subsection A to provide new legislative members representing PL 874 school districts.

The 2005 amendment, effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

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 2012 INTERIM WORK PLAN

**2012 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Membership

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Deputy Sec. Paul Aguilar
Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Sec. Tom Clifford
Dr. Carl Foster
Cecilia J. Grimes
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan

Rep. James Roger Madalena
Kilino Marquez
Rep. W. Ken Martinez
Lilliemae G. Ortiz
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
[Superintendent of Impact Aid District —
Appointed by New Mexico Legislative
Council and Governor]
[Superintendent of Non-Impact Aid District
— Appointed by New Mexico Legislative
Council and Governor]

Background

Created by Laws 2005, Chapter 274, Sections 10 and 11, the Public School Capital Outlay Oversight Task Force serves as the statutory entity overseeing 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. The task force consists of 25 members (or their respective designees), including the respective secretaries of public education and finance and administration; the speaker of the house of representatives; the president pro tempore of the senate; the respective chairs of the House Appropriations and Finance Committee, House Education Committee, Senate Finance Committee and Senate Education Committee; four minority party members, two from each house; a member of the Indian Affairs Committee, annually alternating between the senate and house; a member of the house and a member of the senate, each of whom represents a district that includes federal impact aid districts; seven public members, two appointed by the speaker, two appointed by the president pro tempore and three appointed by the governor; and three superintendents, two of whom must be from federal impact aid districts, appointed by the New Mexico Legislative Council in consultation with the governor.

Work Plan

Pursuant to statute, the task force will focus on the following activities:

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
2. examining existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

3. monitoring the overall progress of continuing to bring all public school facilities to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act, including an examination of the original intent of the establishment of the standards-based process and its evolution as it has been implemented;
4. monitoring the inclusion of the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired in the standards-based process, including, but not limited to, the unique constitutional nature of these schools and their historical nature; and
5. overseeing 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 continue to implement the statewide standards-based process for making grant awards.

In addition to carrying out its statutory responsibilities, the task force proposes to examine the following areas of concern during the 2012 interim:

1. charter school facilities, including automatic increases in the cost-of-living adjustment in lease assistance from the state; utilization of public school buildings and other public buildings to accommodate charter schools; charter schools and the use of lease-purchase agreements and defining facility needs and cost requirements prior to final approval of a charter; and sources of local share funding for state-chartered charter school standards-based projects;
2. fairness and appropriateness of lease agreements to address extreme variations in terms and conditions of individual leases;
3. facility requirements for "virtual schools";
4. modification and possible demolition of educational facilities with various "historic" designations and the relationship to adequacy standards;
5. examination of best practices; development of recommendations regarding the qualifications-based procurement process and construction manager at-risk statutes;
6. efficacy of the public school capital outlay funding formula;
7. school district maintenance effectiveness and its role in school building rankings of the Facilities Condition Index and the New Mexico Condition Index; and
8. provisions of the Public School Capital Outlay Act and the Public School Capital Improvements Act as necessary.

The task force will report the results of its analyses and oversight, together with any recommendations, to the governor and the legislature before the 2013 session.

**Public School Capital Outlay Oversight Task Force
2012 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 6	Santa Fe
August 1	Santa Fe
September 24	Santa Fe
October 16-17	Santa Fe
November 12	Santa Fe
PSCOOTF Work Group	
September (TBD)	Santa Fe
October (TBD)	Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2012 MEETING AGENDAS, MINUTES OF MEETINGS SUBCOMMITTEES AGENDAS, MINUTES AND RECOMMENDATIONS

Revised: June 5, 2012

**TENTATIVE AGENDA
for the
THIRTY-SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 6, 2012
Room 307, State Capitol
Santa Fe**

Wednesday, June 6

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Election of Co-Chairs**
- 9:10 a.m. **Brief Review of 2011 Task Force Work and Summary of 2012 Legislation**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
—Sharon Ball, Public School Capital Outlay Oversight Task Force Staff, LCS
- 9:30 a.m. **Public School Capital Outlay Council/Public School Facilities Authority
(PSFA) Annual Report**
—Robert Gorrell, Director, PSFA
—Tim Berry, Deputy Director, PSFA
—Martica Casias, Planning and Design Manager, PSFA
- 10:30 a.m. **Discussion of Work Plan and Possible Formation of Task Force
Subcommittees**
—Task Force Members and Staff
- 11:15 a.m. **Items for Future Agendas and Other Organizational Business**
—Task Force Members and Staff
- 12:00 noon **Adjourn**

**MINUTES
of the
THIRTY-SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**June 6, 2012
Santa Fe**

The thirty-sixth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on June 6, 2012 at 9:30 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Carl Foster
Cecilia Grimes
Leonard Haskie
Robbie Heyman
Rep. W. Ken Martinez
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent

Sen. Cynthia Nava, Co-Chair
Paul Aguilar
Rep. Donald E. Bratton
Tom Clifford
Lisa Grover
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Lilliemae G. Ortiz
Mike Phipps
Judy Rabon
Sen. John Arthur Smith

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Leslie Porter, Research Assistant, LCS
Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, June 6

Representative Miera welcomed the task force members. Noting the lack of a quorum, Representative Miera indicated that the election of co-chairs and approval of the work plan will

be delayed until a quorum is present. He suggested that he assume the role of co-chair unless an objection was voiced. There being none, Representative Miera assumed the role of co-chair.

Brief Review of 2011 Task Force Work and Summary of 2012 Legislation

Ms. Ball told the task force that questions had been raised regarding potential conflicts between HB 283 (Laws 2011, Chapter 69) and SB 446 (Laws 2011, Chapter 14), both of which were introduced in the 2011 regular session. HB 283 requires standards for certain charter school facilities and also requires approval before entering into a lease-purchase agreement for school facilities. SB 446 requires contracts between charter schools and the chartering authority and also establishes contract requirements. The bill also creates an evaluation process for charter schools. Ms. Ball assured the task force that both laws have been reviewed carefully by staff, and because the bills do not amend the same section of statute, they do not conflict.

Senate Bill 196

Ms. Ball explained that SB 196 (Laws 2012, Chapter 53) was one of three bills endorsed by the PSCOOTF for the 2012 session. The bill establishes adequacy standards for special schools, making New Mexico the first state in the nation to do so.

Representative Miera introduced members of the Public School Capital Outlay Council (PSCOC) in attendance and asked them if they wished to comment on the inclusion of the special constitutional schools in the standards-based process. He then asked Tom Rutherford, a registered lobbyist for the New Mexico School for the Blind and Visually Impaired, to comment on SB 196 and its effects on that school's capital outlay program. Mr. Rutherford told the task force that the standards are appropriate and have been working well.

House Bill 100

HB 100, introduced by Representative Ray Begaye, failed to pass. The bill would have delayed the repeal of the Charter School Capital Outlay Fund. Because the bill did not pass, the fund will sunset as of July 1, 2012.

Senate Bill 214

SB 214, introduced by Senator Asbill, would have made more consistent the language in the purchasing code that addresses competitive sealed proposals. The bill was never heard in committee because it failed to receive an executive message.

Representative Miera invited PSCOC members to address the task force regarding other issues related to the standards-based process. David Abbey, director, Legislative Finance Committee (LFC), suggested that the task force consider looking at how capital outlay funds are distributed to rural schools that have a high facility condition index but low bonding capacity. Frances Ramírez-Maestas, director, Legislative Education Study Committee (LESC), expressed a number of concerns, including the need to look at what criteria an institution must meet in order for the Public Education Department (PED) to assign it a school code, charter schools being eligible for the small school size adjustment and facility standards for virtual charter schools.

Ms. Ramírez-Maestas and Mr. Abbey answered questions from the task force regarding virtual charter schools. New Mexico currently has no regulations specifically applicable to virtual charter schools, so the schools are subject to the same regulations that apply to all charter schools. Several out-of-state contractors have submitted applications to establish virtual charter schools in New Mexico. Robert Gorrell, director, Public School Facilities Authority (PSFA), clarified that virtual charter schools will establish small facilities to provide resources for students. Task force members requested a list of virtual charter school applications. Task force members, as well as LFC and LESC staff, discussed a number of concerns, particularly about regulations and accountability for virtual charter schools in New Mexico.

PSCOC/PSFA Annual Report

Mr. Gorrell referred the task force to the PSCOC quarterly newsletter. The newsletter discusses the process and the outcome of developing adequacy standards for special schools, as is required by SB 196, which passed the 2012 legislature and was signed into law. He noted that the special schools worked very closely with the PSFA to establish adequacy standards that directly address their specific needs. He said that special schools in other states have shown interest in New Mexico's adequacy standards and may use the state as a model to develop their own. The newsletter also provides information regarding 2012 PSCOC project funding.

Mr. Gorrell directed the task force to a handout containing a list of pending applications for awards from the PSCOC. While schools are generally assessed as a full site rather than on a building-by-building basis, the PSCOC has decided temporarily to address each building separately on a special school site. Once facility conditions at the special schools have improved, the PSCOC will begin assessing the site as a whole. The total project cost of all of the applications currently under consideration is \$203 million. He noted that the PSCOC attempts to use just-in-time funding and continues to work hard to monitor and forecast when future funding will be needed. He noted that state statute gives the PSCOC the ability to allocate \$10 million for the 2012-2013 school year for roofing projects. Current applications exceed \$10 million, but application needs will be assessed and prioritized.

Mr. Gorrell described the development and implementation of the new Construction Information Management System (CIMS). The system allows schools to access information about their construction funds, pay vendors and exchange information as necessary. He explained that a Facilities Maintenance Assessment Report (FMAR) has been developed and is being utilized as funding allows. The FMAR allows management to oversee maintenance at all schools, while also allowing each school to utilize the system to track its own maintenance needs. Mr. Gorrell told the task force that in order to implement the FMAR statewide, the PSFA will require additional money and staff. In response to questions from the task force, Mr. Gorrell clarified that access to the CIMS is limited to a certain number of users due to limited budget resources.

Members of the task force discussed the possibility of using the FMAR as a measure in order to distribute incentives and consequences for schools and school districts depending on the status of their facility maintenance. Mr. Gorrell explained that the FMAR tool requires on-site inspection and feedback to school district boards and administrations. Site visits are necessary at

each school annually and generally take four to six hours per school to complete.

Members of the task force requested information regarding the status of Escalante High School, located in the Chama school district. Mr. Gorrell told the task force that the school's roof has been funded by the PSCOC and is in the process of being repaired after being poorly constructed, and it should be completed by the end of August 2012.

Mr. Gorrell also explained that HB 283 affects the way that applicant charter schools must identify facility needs. Guidelines and checklists regarding the implementation of the bill's provisions have been developed and are being deployed by the PSFA. He explained that PSFA staff members conduct assessments of charter schools and their proposed facilities, and they attempt to respond to charter school staff questions and concerns.

Mr. Gorrell said that the PSFA has also conducted a post-occupancy evaluation on recently completed school construction in order to collect information regarding design, construction and operation that can be applied to new projects. The evaluation includes a systematic review of classroom sizes, light, energy systems and other points of information. The information will be used to establish a library of best practices for school construction projects.

Mr. Gorrell referred members of the task force to a list of risks and opportunities the PSFA expects to encounter in fiscal year 2013. He said that because of the economic downturn, including a reduced budget and increased school facilities, the statewide FCI may begin to rise. Some schools do not have the appropriate staff to manage their physical plants and maintenance needs. Many large building systems are nearing the end of their lives, which increases the need for more maintenance and eventual replacement. Increased levels of reactive maintenance directly correlate to decreased levels of preventive maintenance. Mr. Gorrell emphasized the need to increase the number of PSFA staff members in order to keep up with the expanding work.

Discussion of Work Plan and Possible Formation of Task Force Subcommittees

Ms. Ball referred the task force to the proposed work plan. She noted that, in addition to its statutory duties to monitor the progress and effectiveness of programs administered under the Public School Capital Outlay Act and maintain adequate sources of long-term funding for public school capital outlay projects, the task force will consider issues related to charter schools and the standardization of lease requirements.

Members of the task force discussed the possibility that the funding formula may need to be adjusted in order to better serve rural schools. The task force also discussed the possible formation of two subcommittees: one to consider issues related to charter schools and another dedicated to considering adequacy and funding issues.

Items for Future Agendas and Other Organizational Business

Task force members discussed various future agenda items, including the need for more information and discussion regarding virtual charter schools. Representative Miera reminded members that any desired topics or items for future agendas may be submitted to Ms. Ball.

Adjournment

There being no further business before the task force, the thirty-sixth meeting of the PSCOOTF adjourned at 12:00 noon.

Revised: July 31, 2012

**TENTATIVE AGENDA
for the
THIRTY-SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 1, 2012
Room 322, State Capitol
Santa Fe**

Wednesday, August 1

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Public School Capital Outlay Council (PSCOC): A Look at Strategic Issues**
—David Abbey, Chair, PSCOC; Director, Legislative Finance Committee
- 10:15 a.m. **Approval of June 6, 2012 Meeting Minutes**
Election of Co-Chairs
- 10:20 a.m. **Public Education Department (PED) Report on Statutory and**
Administrative Code Definitions and Descriptions of Programs, Alternative
Schools and Charter Schools
—Julia Rosa Emslie, Director, Strategic Initiatives and Constituent Services
Division, PED
—Annjenette Torres, Director, Legislative Services, PED
- 12:00 noon **Lunch**
- 1:00 p.m. **Gallup-McKinley County Schools (GMCS) Facilities Utilization and Capital**
Outlay Master Plan
—Raymond Arsenault, Superintendent, GMCS
—Leonard Haskie, Assistant Superintendent of Support Operations, GMCS
- 2:00 p.m. **Review of the Zuni Lawsuit**
The Public School Capital Outlay Act: Comparison Between the 2003 and
2012 Versions
—Raúl E. Burciaga, Director, Legislative Council Service (LCS)
—Sharon Ball, Staff, LCS

- 3:00 p.m. **PSCOC 2012-2013 Standards-Based Capital Outlay and Roof Awards**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Tim Berry, Deputy Director, PSFA
- 4:30 p.m. **Discussion of Work Plan and Formation of Task Force Work Groups**
—Task Force Members and Staff
- 5:00 p.m. **Adjourn**

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

August 1, 2012
State Capitol, Room 322
Santa Fe

The thirty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on August 1, 2012 at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Rep. Donald E. Bratton
Dr. Carl Foster
Cecilia Grimes
Leonard Haskie
Robbie Heyman
Sen. Lynda M. Lovejoy
Rep. James Roger Madalena
Supt. Kilino Marquez
Rep. W. Ken Martinez
Sen. Howie C. Morales (Designee for Sen.
Timothy Z. Jennings)
Antonio Ortiz (Designee for Sec.-Designate
Hanna Skandera)
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Vernon D. Asbill
Sec. Tom Clifford
Dr. Lisa Grover
Rep. Larry A. Larrañaga
Rep. Ben Lujan
Lilliemae G. Ortiz
Judy Rabon
Sen. Sander Rue

Guest Legislator

Sen. Linda M. Lopez

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon S. Ball, Senior Researcher, LCS
Tom Pollard, Legislative Fiscal Analyst, LCS
Leslie Porter, Research Assistant, LCS
Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, August 1

Representative Miera welcomed the task force members and asked them and members of the audience to introduce themselves.

Public School Capital Outlay Council (PSCOC): A Look at Strategic Issues

David Abbey, chair of the PSCOC and director of the Legislative Finance Committee, directed task force members' attention to the handout accompanying his presentation. He pointed out that since the beginning of implementation of the public school capital outlay standards-based process in 2003, the PSCOC has made approximately \$1.5 billion in standards-based awards to school districts throughout the state and to qualifying charter and special schools. He explained that the Public School Capital Outlay Act authorizes the PSCOC to certify by resolution that proceeds of supplemental severance tax bonds (SSTBs) are needed for expenditures relating to public school capital outlay projects or for the state guarantee for the Public School Capital Improvements Act (also called SB 9). He explained that the average Facilities Condition Index (FCI), which is the cost of repair divided by the cost of replacement, is a key performance measure of public school building conditions and has improved 36.8 percentage points since 2003.

Mr. Abbey told the task force that in 2011, the PSCOC awarded \$78.7 million to 11 districts with an average weighted New Mexico Condition Index (wNMCI) of 63.17%. In 2012, the PSCOC awarded approximately \$121.5 million in standards-based awards. He explained that the wNMCI is the FCI with the New Mexico public school capital outlay adequacy standards applied.

Mr. Abbey said that he would discuss building conditions in two school districts, the Gallup-McKinley County School District (GMCS D) and the Gadsden Independent School District (GISD), which are illustrative of the program's successful implementation.

- **GMCS D:**
Seven of the Gallup-McKinley County schools were awarded funding in 2012: Juan de Onate Elementary School, Washington Elementary School, Church Rock Academy Elementary School, Thoreau Elementary School, Jefferson Elementary School, Lincoln Elementary School and Roosevelt Elementary School. These schools have an average FCI of 63.85%. The remaining 28 schools in Gallup have an average wNMCI of 15.07%. Only three schools in Gallup remain among the top 100 in the wNMCI rankings: Crownpoint High School, Ramah Elementary School and Red Rocks Elementary School.
- **GISD:**
Gadsden High School is the only standards-based project that the GISD currently has funded. Desert View Elementary School is the only GISD school that remains ranked in the top 100 wNMCI ranked schools. GISD's remaining 19 schools have an average

wNMCI of 14.67%.

Mr. Abbey discussed several observations with the task force.

- The funding needed for replacement and repair has greatly diminished because the FCI has been substantially lowered.
- According to Public School Facilities Authority (PSFA) staff, school districts and charter schools continue to experience persistent maintenance problems.
- The Public School Capital Outlay Act does not require districts to prioritize a district's lowest-ranked facilities (i.e., those with the greatest facility needs) when allocating its own locally generated funding.

Mr. Abbey also expressed particular concerns about the relatively small number of school districts that are not able, or find it difficult, to participate in the standards-based program, such as Capitan, Clayton, Floyd, Lovington, Reserve and Tatum. Several of these small-enrollment districts with plentiful land valuation must come up with 90% of any PSCOC award for which they qualify. Other concerns include low bonding capacity and strong voter resistance.

Mr. Abbey noted that the PSCOC has been discussing the possibility of recommending statutory amendments for PSCOOTF consideration that would shift funding from entire school projects to discrete buildings or systems using SSTBs for other public school capital outlay needs, such as buses and increased maintenance funding; reallocating funding for other critical needs; and, depending on standards-based needs, allowing more funding to flow to the Severance Tax Permanent Fund corpus.

Mr. Abbey then pointed out several problematic issues concerning charter school facilities. He said that facility capital needs are growing rapidly because of continued growth in the number of charter school authorizations. There are 14 new charter school applications for fiscal year (FY) 2014. Lease assistance for charter schools increased approximately 25% within the last fiscal year, from FY 2012 to FY 2013. He said it appears as if some charter schools may be paying excessive lease costs and are supplementing lease expenses with their state equalization guarantee funds. He noted that it appears that charter schools do not always take advantage of excess school district-owned space. He said that the PSCOC has considered the possibility that lease assistance funding provisions in statute discourage schools and property owners from negotiating lease terms. He also pointed out that lease assistance funding is adjusted automatically to account for changes in the Consumer Price Index each year, without taking rental market factors into account. He expressed concern that in some cases, charter schools are paying state SSTB funds to local districts so that charter schools can lease district-owned facilities.

Mr. Abbey suggested that state entities should consider reviewing the funding formula, decreasing allowable gross square footage in order to address pressure on operating budgets and lack of adequate maintenance, increasing the flexibility of the Public School Capital Outlay Act and addressing the abundance of small schools that increase the gross square footage across a district in order to qualify for small school size funding.

In response to questions from task force members, Mr. Abbey explained that many school districts have been experiencing increasing excess capacity. He suggested that allowing the PSCOC more discretion with award money, particularly regarding the amount of money paid per square foot, might be part of the solution. Mr. Abbey told the task force that the cost-of-living adjustment (COLA) is often greater than the increase in market value for leases. Requiring a COLA for leases sometimes leads to excess spending. Mr. Abbey stated that the date by which charter schools must move into district space may need to be pushed back later than the existing 2015 date. Mr. Abbey also suggested that the state consider putting a cap on the number of new charter schools.

In response to task force questions, Mr. Ortiz explained that state-chartered charter schools are required to get approval from the Public Education Department (PED). Charter school applicants submit applications to the Public Education Commission. If an application is denied, the applicant may appeal to the secretary of public education. The PED takes 2% of charter school funding in order to fund its Charter Schools Division. Mr. Abbey told the task force that in recent years, almost all charter school applications have been approved.

The task force discussed several areas of concern, including a need for increased and better science labs in the state; the form and function of a potential charter school subcommittee; the possibility of postponing the date by which all charter schools would be required to move into district space; conflicts of interest regarding lease reimbursement; franchise charter schools; and charter school lease payments to school districts.

In response to questions from task force members, Mr. Abbey clarified that Sandia Riverside Charter Elementary School makes lease payments to the pueblo. The Public School Capital Outlay Act was amended to name tribal governments as governments of public ownership. Mr. Abbey stressed the need for increased oversight on leases of school buildings. Mr. Abbey told the task force that it is likely that PSCOC awards will decline each year into the future.

Approval of Minutes

Upon a motion by Representative Saavedra, seconded by Representative Bratton, the minutes of the June 7, 2012 meeting of the PSCOOTF were approved.

PED Report on Statutory and Administrative Code Definitions and Descriptions of Programs, Alternative Schools and Charter Schools

Annjennette Torres, director, legislative services, PED, told the task force that a definition of the term "alternative school" does not exist in statute or in the New Mexico Administrative Code. However, based on nonregulatory guidance in the form of department memos and emails, the PED has established some basic criteria to define an alternative school:

- alternative schools report membership on the fortieth, eightieth and one hundredth twentieth day of school and at the end of the school year;
- they are rated for accountability;
- they have principals; and
- they issue diplomas.

In response to questions from task force members, Julia Rosa Emslie, director of the Strategic Initiatives Division of the PED, clarified that alternative schools do not qualify for the small school size adjustment. Alternative schools can be within an existing school district, in which case the district receives operational funding through the state equalization guarantee and distributes it to the alternative school. Ms. Emslie told the committee that alternative schools operate within law like traditional schools, but they differ in the curriculum and programs that are offered.

The task force discussed alternative and charter schools, charter school incentives and school program availability to alternative school students.

Election of Co-Chairs

Task force members voted unanimously to confirm the New Mexico Legislative Council's appointment of Representative Miera and Senator Nava to serve as co-chairs for the PSCOOTF for the 2012 interim.

PSCOC 2012-2013 Standards-Based Capital Outlay and Roof Awards

Robert Gorrell, director, PSFA, and Tim Berry, deputy director, PSFA, followed up on Mr. Abbey's discussion of the standards-based awards. The New Mexico School for the Deaf (NMSD) was awarded \$1.4 million for planning and design to address site infrastructure and deficiencies. The amount includes funding for an additional recreational field. In response to questions from members of the task force regarding the award to Santo Domingo Elementary School and Middle School, which is contingent upon a 50-year land lease, Mr. Gorrell stated that the PSCOC has met with tribal leaders and that progress has been made. If the lease is not negotiated by January 1, 2013, the award will be rescinded. In response to questions from the task force, Mr. Gorrell clarified that the NMSD and the New Mexico School for the Blind and Visually Impaired (NMSBVI) were awarded money under the deficiency correction program. The schools will likely receive standards-based awards for the 2013-2014 school year. Mr. Gorrell told the task force that the PSCOC will consider each individual building at the NMSD and the NMSBVI for five years, at which point the schools will be considered for awards at the campus level. This has been done to address serious deficiencies on each campus. In response to questions regarding the Alma d'Arte Charter High School, Mr. Gorrell explained that the actual ownership of the building is unclear.

In response to questions from task force members, Mr. Gorrell explained that schools must select roof contractors from a pool established by the PSCOC to conduct an assessment of roof conditions. Mesa Vista Middle School and High School's award is contingent on a roof consultant report. Task force members requested information regarding the Ben Lujan award. Mr. Gorrell explained that the award cannot be given out until a facility maintenance assessment report (FMAR) has been completed for each school district. In order for the PSFA to conduct the FMAR, additional funding and at least four additional full-time employees would be needed.

Mr. Gorrell updated the task force on the status of Escalante High School. Contractors for the new roof on Escalante High School substituted an agreed-upon material for a thinner

material that looked similar. The PSCOC has funded repair costs, and the new roof is almost completed. Ceilings in the school will be repaired before the school year begins. Mr. Gorrell explained that the PSFA has made a claim against the bonding company for the roof but that often, public entities do not complete lawsuits due to expenses. The PSFA is considering various policy options to avoid similar situations in the future.

GMCS D Facilities Utilization and Capital Outlay Master Plan

Mr. Haskie, assistant superintendent, support operations, GMCS D, told the task force that the GMCS D has worked to address facilities issues in the school district, including low utilization ratings that are generally between 30% and 50%. The GMCS D has been forced to fund many redundancies that could be addressed by consolidating schools. The GMCS D contemplated combining schools and building new schools as a result of recent PSCOC awards. Ray Arsenault, superintendent, GMCS D, told the task force that the district has created a master plan that involves the consolidation of several schools. Because of necessary budget cuts, the GMCS D made a request of the PED to close Tohatchi Middle School, Navajo Middle School and Crownpoint Middle School and to reorganize grade levels to accommodate in existing facilities the displacement of students as a result of the school closings. The PED denied the request.

Several members of the task force expressed concern about maintaining the integrity of the autonomy of local school boards when the PED has the ability to overrule local decisions. Members of the task force also discussed the importance of involving community members in important decisions such as school closings. Members also stressed the importance of educating the public on the benefits and consequences of decisions made by the school board.

Mr. Arsenault told the task force that the GMCS D is currently adjusting its facility master plan to account for recent developments. The GMCS D would still like to consider consolidating certain schools in order to increase efficiency of utilization and to maintain fiscal responsibility. The GMCS D intends to analyze various consolidation options carefully before moving forward. Because the PED denied the GMCS D consolidation, the district must make budget cuts to accommodate the PED's decision.

Task force members discussed the importance of communication between federal and state schools in the GMCS D. Without a dialogue between the various educational entities, much work and funding is redundant. The task force discussed challenges that are unique to the GMCS D, including the mobility of Native American children and the difficulties associated with planning when several entities are involved. The task force also discussed the benefits of variety and choice when selecting a school.

Review of the Zuni Lawsuit

Mr. Burciaga told the task force that all state constitutions have equal protection guarantee and educational clauses that require the state to provide educational services. Two models have emerged from school litigation: the equity model and the adequacy model. Mr. Burciaga stated that having equity is more complex than simply being equal. Adequacy requires a value judgment. In 1998, a study of the FCI determined that New Mexico school facility

deficiencies amounted to approximately \$2.5 billion. The court, in the *Zuni* lawsuit found that the state was in violation of Article 12, Section 1 of the Constitution of New Mexico, which states that "a uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state shall be established and maintained". In 2000, the *Zuni* lawsuit judge appointed a special master to determine if the state was meeting the constitutional adequacy requirements. In 2002, the judge accepted the report of the special master, which stated that the state is making a good-faith effort and has largely complied with the requirements of the court finding. SB 167, introduced in 2001, addressed adequacy concerns and provided for a regular revenue stream. Mr. Burciaga stated that in 2007, a law student named Lynn Carrillo Cruz wrote an article for the *New Mexico Law Review* that raised concerns about the choice of adequacy over equity and the implementation of the findings of the *Zuni* lawsuit.

Mr. Burciaga clarified that the *Zuni* lawsuit is ongoing because the court has issued no final order stating that the state is in compliance. Members of the task force discussed the ongoing *Zuni* lawsuit, the amount of money spent on school facilities since the *Zuni* lawsuit and charter schools.

The Public School Capital Outlay Act: Comparison Between the 2003 and 2012 Versions

Ms. Ball presented the task force with a handout illustrating the differences between the 2003 Public School Capital Outlay Act and the 2012 Public School Capital Outlay Act. The Public School Capital Outlay Act was amended in 2003 to address critical capital outlay needs that local school districts were unable to meet. In 2004, the legislature passed a measure that allowed the PSCOC to certify the need for SSTBs directly through a legislative appropriation. Ms. Ball told the task force that the PSCOC has also used SSTBs to provide funding for school districts to participate in a facility information management system by paying for the program and training.

Discussion of Work Plan and Formation of Task Force Work Groups

Ms. Ball discussed the possible formation of a subcommittee on capital outlay and another on charter schools. The task force discussed a variety of issues that might be covered by the subcommittees, as well as the possible number of meetings of each subcommittee and the desired end result. The task force discussed the possibility of having intensive one-day meetings for each work group during which the work group would agree on potential legislative policy changes and report them to the full task force at a later PSCOOTF meeting date.

The task force directed staff to organize potential meeting dates for subcommittees and report back to the task force at a later date.

Adjournment

There being no further business, the thirty-seventh meeting of the PSCOOTF adjourned at 3:21 p.m.

Revised: September 21, 2012

**TENTATIVE AGENDA
for the
THIRTY-EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**September 24, 2012
Room 322, State Capitol
Santa Fe**

Monday, September 24

- 9:00 a.m. **Call to Order**
 Welcome
 Introductions
- 9:05 a.m. **Approval of August 1, 2012 Meeting Minutes**
- 9:10 a.m. **Public School Capital Outlay Council (PSCOC) Strategic Issues for Public
School Capital Outlay Oversight Task Force (PSCOOTF) Consideration**
 —David Abbey, Chair, PSCOC; Director, Legislative Finance Committee
 —Robert Gorrell, Director, Public School Facilities Authority (PSFA)
- 10:10 a.m. **Charter School Facilities Issues***
 —Paul Aguilar, Deputy Secretary, Public Education Department (PED)
 —Kelly Callahan, Interim Director, Options for Parents, PED
 —Bruce Hegwer, Ed.D., Executive Director, New Mexico Coalition for Charter
 Schools (Invited)
 —Martica Casias, Planning and Design Manager, PSFA
 —John Valdez, Facility Master Planner, PSFA
- 12:10 p.m. **Lunch**
- 1:00 p.m. **Public School Capital Outlay Act Lease Assistance Program Costs***
 —Gerald Pertner, Financial Specialist, PSFA
 —Tim Berry, Deputy Director, PSFA
 —Sharon Ball, PSCOOTF Staff, Researcher III, Legislative Council Service
 (LCS)

**Because of similarities and sometimes duplication of the charter school facilities and lease-assistance issues, the presenters may address both issues during both presentations.*

- 2:30 p.m. **Public School Capital Outlay Act and Funding Formula Issues**
—Robert Gorrell, Director, PSFA
—Jeff Eaton, Chief Financial Officer, PSFA
—Sharon Ball, PSCOOTF Staff, Researcher III, LCS
- 3:30 p.m. **Discussion About and Formation of Task Force Work Groups**
—Representative Rick Miera and Senator Cynthia Nava, Co-Chairs, PSCOOTF
—Task Force Members and Staff
- 4:00 p.m. **Adjourn**

**MINUTES
of the
THIRTY-EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**September 24, 2012
Room 322, State Capitol
Santa Fe**

The thirty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on September 24, 2012 at 9:27 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Paul Aguilar (Designee for Sec.-Designate
Hanna Skandera)
Rep. Donald E. Bratton
Sec. Tom Clifford
Dr. Carl Foster
Cecilia J. Grimes
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
Antonio Ortiz (Designee for Sec.-Designate
Hanna Skandera)
Lilliemaë Ortiz
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Guest Legislator

Rep. Dennis J. Roch

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Tom Pollard, Legislative Fiscal Analyst, LCS
Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Absent

Sen. Vernon D. Asbill
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Judy Rabon
Sen. Sander Rue

Handouts

Handouts and other written testimony are in the meeting file.

Monday, September 24

Representative Miera welcomed the task force members.

Public School Capital Outlay Council (PSCOC) Strategic Issues for PSCOOTF Consideration

David Abbey, chair of the PSCOC and director of the Legislative Finance Committee, and Robert Gorrell, director of the Public School Facilities Authority (PSFA), briefly introduced some of the concepts that would be discussed in depth later in the meeting, including charter schools and the public school capital outlay funding formula, as well as policy options for possible task force consideration. Mr. Abbey presented a spreadsheet indicating which districts are available for a district waiver. Mr. Abbey told the task force that the Facilities Condition Index (FCI) has improved 36.8% since 2003. He noted that the Gallup-McKinley County School District has only three schools left in the top 100 average weighed New Mexico Condition Index (wNMCI) ranked schools and that the Gadsden Independent School District has only one.

Members of the task force discussed district waivers, local match concerns and square footage per student requirements and guidelines. Several members of the task force expressed concerns about expanding the use of capital outlay money.

Charter School Facilities Issues

Mr. Aguilar, deputy secretary of the Public Education Department (PED), told the task force that he has worked with the PSCOC for 10 years. He said that the capital outlay program has been an extraordinary success. He expressed concern that capital outlay dollars are being used for lease assistance rather than for construction purposes, particularly when the lease payments are going to private owners and foundations. He stressed the importance of helping to fund charter schools and assisting them in finding facilities that are conducive to student learning. He suggested that the statute requiring charter schools to reside in public buildings by 2015 should be clarified and offer penalties for those that do not comply.

Kelly Callahan, interim director of Options for Parents, PED, told the task force that the Charter Schools Division of the PED has a new application process as a result of provisions in SB 446 (Laws 2011, Chapter 14) and HB 283 (Laws 2011, Chapter 69). As a result of HB 283, charter school applicants have been asked to provide an abbreviated facilities master plan, which must be approved by the PSFA, prior to submission of the application. Ms. Callahan told the task force that this is difficult for applicants to do so early in the application process. Ms. Callahan reminded the task force that those charter schools that open before 2015 will not be required to be housed in public buildings until their renewal dates, five years after their application approval. Ms. Callahan also reminded the task force that the Charter School Capital Outlay Fund, which provided funding for charter school PSCOC matches, was repealed as of July 1, 2012 by SB 634 (Laws 2007, Chapter 214).

Bruce Hegwer, Ed.D., executive director of the New Mexico Coalition for Charter Schools, stated that last week, the Public Education Commission (PEC) reviewed 11 charter school applications, only one of which was recommended for approval. He stressed the need to review charter school issues such as facilities, small school size adjustments and the number of units generated for charter schools in the funding formula. He also stressed the need to get input from individuals involved in charter schools when the PSCOOTF discusses these issues.

John Valdez, facility master planner, PSFA, referred the task force to an issue brief created by the PSFA regarding charter school facilities. He explained that each year, the PEC and the school districts consider authorization of new charter schools. The significant charter school growth in the state creates several issues for the schools, the PSCOC and the PSFA. He told the task force that the PSFA has organized the brief around problems, including the need for experience and expertise in charter school planning; the lack of administrative procedures in place that would require districts to offer available space to charter schools; issues regarding charter school leases; and variations between charter schools and traditional schools. Mr. Valdez emphasized that PSFA staff estimate that they spend between 80 and 100 hours per charter school on plan review, facilities assessment, data entry and lease assistance. For the 2011-2012 school year, there were 96 charter schools operating in New Mexico, 52 of which were state-authorized and 44 that were district-authorized. For 2011-2012, certified 40-day enrollment numbers showed that charter school enrollment accounted for 5.1% of all public school students in New Mexico. Charter school gross square footage (GSF) for the same year accounted for 3% of all public school GSF. He reported that 24 of the 96 2011-2012 charter schools are located in public facilities, two are in lease-purchase situations and 14 lease their facilities from nonprofit organizations. Mr. Valdez reminded the task force that charter schools can waive certain facility requirements, such as gymnasiums and libraries, if they demonstrate an alternative method of delivery for the same services.

Mr. Valdez presented the following policy options to the task force for consideration.

1. Provide charter schools with increased facilities knowledge and experience.

This option would require the creation of support to help charter schools choose and manage safe facilities. The support could reside in the Charter Schools Division of the PED, the PSFA, the New Mexico Coalition for Charter Schools or a private contractor. Job duties of the support resource may include creating and maintaining a database of available spaces that a charter school might be able to occupy; reviewing capacity and utilization of traditional public schools to determine if space is available in existing educational facilities; acting as a liaison between public school districts and charter schools; and developing standardized lease and lease-purchase agreements.

2. Provide for better charter school facility planning.

This option would reinstate the Charter School Capital Outlay Fund, which provided charter schools with local match funding to hire planning consultants to prepare their facility master plans. Mr. Valdez noted that a cost-benefit analysis of this scenario has not been completed.

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

Mr. Valdez told the task force that currently, there is no relationship between entities that authorize charter schools and entities that provide financial responsibility for those schools. The implementation of this option would tie the authorizing body to the financial liability of capital facility costs for the schools that are authorized. The school district or the PEC would assume full responsibility for charter school facilities needs.

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

Mr. Valdez told the task force that some districts and schools have underutilized and vacant space that might be appropriate for charter school locations. Section 22-8B-4 NMSA 1978 requires that districts offer available space to charter schools. Mr. Valdez suggested that the PSCOC could make requirement with this statute a condition of a capital outlay award.

5. Assist charter schools in lease management.

Mr. Valdez told the task force that the current lease structure allows for a variety of leases that make it difficult to know if leases are fair and leads to a lack of transparency and uncertainty in the way that charter schools spend taxpayer money. Unstructured leases also often strain maintenance because responsibility for maintenance is often unclear.

6. Strengthen the "be in public facilities" language in the Public School Capital Outlay Act (PSCOA).

This option would clarify the language in Section 22-8B-4.2 NMSA 1978 to ensure that charter schools that continue to be housed in leased facilities after July 1, 2015 would not receive lease assistance as provided for in the PSCOA.

7. Develop capabilities to respond to innovations in charter, alternative and family school program delivery and facilities needs.

This option requires a statutory change to Section 22-8B-4 NMSA 1978 to allow for virtual charter schools to have more flexible facility requirements in order to best meet the needs of their student populations. Students would be allowed to take examinations with proctors in places such as other schools, places of worship or libraries.

Members of the task force and PSFA staff discussed and commented on funding issues; measures of maintenance effectiveness; district responsibilities; and disconnects between state-chartered charter schools and the school districts in which they are located. Some members of the task force expressed concern about requiring school districts to share available space with state-chartered charter schools. Members of the task force discussed the importance of mediation or dispute resolution between school districts and charter schools and possible ways to alleviate tension between them. Dr. Grover reminded the task force that SB 446 requires a dispute resolution clause to be in charter school contracts to address disputes between charter schools and the authorizer.

Martica Casias, planning and design manager, PSFA, clarified that the estimated time the PSFA spends on each charter school mostly consists of assessing sites chosen by the charter

school and producing reports that are given to the school and the PED. Members of the task force discussed the charter school approval process and the extent of the PSFA's involvement. Task force members also discussed positive and negative consequences of implementing standardized leases. The task force also discussed concerns about maintenance costs for schools, some of which were built for more students than are currently enrolled, as well as the importance of creating a resource that would indicate where district space is available for charter use.

PSCOA Lease Assistance Program Costs

Tim Berry, deputy director for the PSFA, referred the task force to a brief created by the PSFA regarding the PSCOC lease assistance program. He noted that some of the policy considerations regarding lease assistance were also discussed in the previous presentation. Mr. Berry told the task force that the lease assistance program was established in 2004 with a program cap of \$4 million. In 2005, the cost of the program was \$2 million, and in 2013, the cost will exceed \$13 million. Twenty-nine of the 98 lease assistance applicants are in public buildings and another 16 are owned by charter school nonprofits. The remaining 53 are privately owned facilities. Today, lease assistance does not have a cap. Mr. Berry identified some issues identified with the lease assistance program: program costs have increased over 20% per year; over 50% of the program funds are used to pay leases of privately owned facilities; there is a risk that the 2015 statutory deadline for charter schools to be in public buildings will be extended, which will extend the high cost of the program; the statutory allowance for school districts to receive lease payments from charter schools for underutilized space has been ineffective; the annual adjustment of the disbursement rate by the Consumer Price Index (CPI) may not be an appropriate adjustment for commercial property rents, which do not move in concert with consumer prices; there is generally insufficient facility knowledge and experience to support the effective acquisition and operation of facilities; and there are no state-issued standard lease documents suitable for public education providers available to school districts or charter schools, which result in a lack of consistency and transparency. Mr. Berry outlined various policy changes for task force consideration.

1. Set annual award maximums and remove the CPI adjustment.

This option would cap the amount of lease assistance awarded by the PSCOC each year. If the amount of applications exceeded the cap, the per MEM amount would be prorated for each award.

2. Create standardized leases.

This option would require that all charter schools and school districts that lease facilities use a standard lease form in order to ensure that certain issues, such as responsibility for maintenance, are addressed.

3. Create a standardized intergovernmental land lease for building or renewing school facilities.

This option would standardize intergovernmental leases in order to remove terms that are not in the best interest of the state and would clearly define the end of the lease or the intended use terms and conditions.

4. Make authorizing bodies that approve/renew charter schools responsible for acquiring and managing their facilities.

As mentioned in the previous presentation, this option would link financial liability for facility capital costs to the authorizing body.

Gerald Pertner, financial specialist for the PSFA, told the task force that the total award amount for the 2012-2013 school year is approximately \$11.7 million. These awards were issued to 51 state charters, 11 charter schools in the first year of operation, 24 charters that are located in public buildings and five schools that have lease-purchase agreements. Awards to nine schools have been amended to only first quarter assistance, pending justification for a lease cost above \$22.50 per square foot. Lease assistance awarded to the New Mexico Virtual Academy was deferred until the school validates the number of students physically present. If the PSCOC pays out the remaining lease assistance awards to the New Mexico Virtual Academy and the nine schools with amended awards, the total for the 2012-2013 school year will be over \$13 million.

In response to questions from task force members, Mr. Berry clarified that the CPI adjustment to lease awards is in statute, but whether the adjustment is mandatory or not is unclear. Task force members asked questions regarding specific awards, which were addressed by Mr. Gorrell and Mr. Berry. Task force members discussed conflicts of interest in leases; the member composition of the PSCOC; how the lease assistance per MEM amount is calculated; the state match for SB 9; and the cost of lease assistance per MEM. Some members of the task force noted that lease costs may be driven up if renovations are made to a building leased by a school because charter schools are limited to five-year leases. Several task force members discussed the importance of effectively implementing statutory requirements and noted that many solutions may already exist in statute but lack implementation.

PSCOA and Funding Formula Issues

Mr. Gorrell and Jeff Eaton, chief financial officer, PSFA, directed the task force to a brief prepared by the PSFA regarding the PSCOA policy and funding formula issues. They outlined certain funding formula issues: the PSCOC bases adequacy on the adopted adequacy standards and total allowed space that includes circulation and other tare with the Adequacy Planning Guide (APG); the total GSF per student figures of the APG may be too generous for small population schools; high population schools allow facility scale advantages; scale advantage frees local resources, which has led to some PSCOA projects being built above adequacy; small rural population districts have insufficient local matches in certain instances; and the PSCOC has statutory authority to determine if a district is "recalcitrant", but the word lacks definition by the PSCOA and the PSCOC. Mr. Gorrell outlined the following possible policy options for task force consideration:

1. Decrease APG GSF per student allowance for schools.

The presenters told the task force that the APG treats schools with large and small populations the same. By adjusting the APG GSF per student allowance, issues specific to large and small schools could be taken into account.

2. Decrease state share for districts with high population densities.

The presenters told the task force that the current state-local share formula does not use population density as a factor in calculating the state-local match, which is a concern because rural districts cannot use facility space as efficiently as districts that have densely populated areas. This policy option would take population density into consideration.

3. Adjust funding on projects with "above adequacy" spaces.

The presenters told the task force that \$180 million has been expended on PSCOC awards since 2004 to exceed the adequacy standard, which happens when a district chooses to use locally generated revenue to build larger facilities than what the state considers to be adequately sized. This policy option would reduce the state share participation by the same amount that a district builds above adequacy. The reduction would be triggered when a project cost above adequacy exceeds \$1 million.

4. Relax restrictions on eligibility for a waiver of the local match.

The PSCOA allows for a waiver of the local match requirement on standards-based capital outlay if a district meets certain requirements in order to give the PSCOC latitude to fund a project when a school district has made a good-faith effort evidenced by its bonded indebtedness. This policy would relax the requirements for the waiver in order to allow the PSCOC more discretion.

5. Strengthen the recalcitrant district language in the PSCOA.

This option would legislatively require that districts be considered recalcitrant by the PSCOC if they meet a specific set of criteria, including an FCI above 65%.

The task force discussed and asked questions about considering student population in the PSCOA funding formula; the condition of large and small schools; the benefits and challenges associated with lowering GSF per student; the formula used to determine the state match; and specific school districts that have experienced difficulty with the PSCOA funding formula, including Tatum, Capitan and Corona.

Discussion About and Formation of Task Force Work Groups

Representative Miera stated that issues outlined in the briefs are very complex and need much consideration. He asked task force members to notify Sharon Ball of the LCS if they wish to attend work group meetings on the funding formula or charter schools, or to recommend work group members that are not members of the task force. Mr. Burciaga told the task force that Ms. Ball will coordinate meeting dates and contact task force members.

Adjournment

There being no further business before the task force, the thirty-eighth meeting of the PSCOOTF adjourned at 3:51 p.m.

**TENTATIVE AGENDA
for the
THIRTY-NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**November 12, 2012
Room 322, State Capitol
Santa Fe**

Monday, November 12

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Welcome and Introductions**
- 9:10 a.m. **Draft Legislation**
 —Sharon Ball, Legislative Council Service
- 10:00 a.m. **Discussion of Work Group Recommendations for Legislation**
- 1:00 p.m. **Adjourn**

MINUTES
of the
THIRTY-NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

November 12, 2012
Room 322, State Capitol
Santa Fe

The thirty-ninth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on November 12, 2012 at 9:12 a.m. in Room 322 of the State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Tom Clifford
Dr. Carl Foster
Dr. Lisa Grover
Robbie G. Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Kilino Marquez
Antonio Ortiz (designee for Sec. Hannah Skandera)
Lilliema G. Ortiz
Sen. Sander Rue
Sen. John M. Sapien (designee for Sen. Timothy Z. Jennings)
Sen. John Arthur Smith

Absent

Sen. Vernon D. Asbill
Rep. Donald E. Bratton
Cecilia J. Grimes
Leonard Haskie
Rep. Ben Lujan
Rep. W. Ken Martinez
Judy Rabon
Rep. Henry "Kiki" Saavedra

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, November 12

Representative Miera welcomed task force and audience members to the meeting.

Approval of Minutes

Upon a motion by Representative Larrañaga, seconded by Dr. Foster, the task force voted unanimously to approve the minutes of the thirty-seventh and thirty-eighth meetings of the PSCOOTF.

Discussion of Draft Legislation

Sharon Ball, researcher for the LCS, presented the committee with draft legislation that was requested by the Public School Capital Outlay Act (PSCOA) Funding Formula Work Group and the Lease Assistance and Charter School Facilities Work Group. She reminded the committee that the legislation is meant to serve as a starting point for discussion and alteration, and that some of the presented legislation would need to be combined before the task force considers it for endorsement.

190438.2

Ms. Ball told the task force that this bill would allow the Public School Capital Outlay Council (PSCOC) to consider building systems, rather than entire buildings, when awarding capital outlay funding. She said that this practice would allow the PSCOC to address certain issues related to building systems, such as electrical distribution systems, plumbing systems and heating, ventilation and air conditioning systems, in order to extend the life of a school building. Robert Gorrell, director of the Public School Facilities Authority (PSFA), told the task force that there will likely be many schools that need to be replaced in coming years due to the fact that many of them were built around the same time. He said that by addressing certain building systems and extending the usefulness of some of those buildings, the PSCOC can stagger replacements in order to address the most deficient schools first.

Members of the task force discussed the proposed legislation and made suggestions for changes before task force endorsement is considered. Several task force members discussed the importance of specifically including technology systems in the bill. Mr. Gorrell answered questions about the process of implementation of the proposed legislation. Members of the task force discussed changing the legislation to create a separate fund specifically for systems maintenance. Members of the task force also considered tightening language in the proposed legislation in order to provide sufficient guidance to the PSCOC for administering the funds. Several members of the task force expressed concern over systems funding as a mechanism for avoiding replacement of school buildings that need to be replaced. Mr. Gorrell told the task force that building replacement would be determined by standards-based assessments, which would require that buildings be replaced when certain criteria are met. Mr. Gorrell explained that these standards would be established by PSCOC rule. Members of the task force suggested including a sunset date in the proposed legislation in order to evaluate the effectiveness of funding for building systems.

109439.3

Ms. Ball told the task force that this proposed legislation would give the PSCOC more discretion to determine when a school district should be eligible for a waiver of its required funding match. The bill would relax some waiver requirements that are currently in law and would also give the PSCOC more discretion in some cases when a local school district does not meet all of the waiver requirements. Mr. Gorrell told the task force that there are currently 11 school districts above 65 percent of the weighted New Mexico Condition Index (wNMCI) that have not been applying for PSCOC assistance because of their inability to come up with their local match.

Members of the task force expressed concern over relaxing requirements and giving the PSCOC more flexibility. Members suggested that the PSCOC should be given the power to decide when a district is eligible and that waiver requirements should be removed from statute. Some members discussed relaxing waiver requirements further while requiring local school districts to meet all requirements in order to be eligible for a waiver. Members of the task force requested that staff do additional analysis of potential changes in statute and the effect those changes would have on various school districts, particularly those above 65 percent of the wNMCI.

Task force members discussed including a population requirement, raising it from the number currently in statute. Members of the task force discussed at some length the state's responsibility to provide an adequate education for all students. In response to questions from task force members, Mr. Gorrell clarified that charter schools are also eligible for local match waivers.

190619.2

Ms. Ball told the task force that this legislation would require that a school district offer available school facilities to a charter school located geographically within the school district and would require that charter schools accept available facilities offered by a school district. School districts and charter schools that do not meet these requirements would be ineligible for PSCOA grants. Ms. Ball told the task force that current law requires that school districts offer available space to charter schools, but it does not offer any penalties for those that do not. The PSCOOTF Lease Assistance and Charter School Facilities Work Group directed Ms. Ball to draft legislation that would provide consequences when this requirement was unmet.

Members of the task force discussed whether the proposed consequences would be too severe. They also discussed potential issues in the event that a charter school is located within a certain geographic location within a school district but is offered space in a different location. Task members suggested that a charter school should be required only to accept space within its community rather than in the entire district, and only if the space is functional for its specific program goals. Members of the task force requested that staff look at best practices in other states and report back to the task force at a later date. Members also discussed the importance of allowing charter schools to occupy any state facilities with available space, not just available school buildings.

190444.3

Ms. Ball told the task force that this legislation would require that a chartering authority revoke the charter of a charter school whose facilities do not meet designated facilities standards within two years of occupancy or relocation. Ms. Ball clarified that charter schools are required by current statute to be in facilities that meet the average wNMCI within 18 months of opening or relocating. This bill amends the time frame to two years in order to better align with the school calendar and offers penalties for charter schools that do not meet the requirement.

Members of the task force discussed the differences between traditional school facilities requirements and charter school facilities requirements. Members of the task force noted that this same section of law was changed in recent years and suggested that perhaps more time is needed to assess the effectiveness of the changes. Members of the task force also discussed the importance of making facilities funding that is available to traditional schools available to charter schools. Some members of the task force opined that providing adequate facilities should be the responsibility of the charter school authorizer. Members of the task force suggested that rather than imposing penalties, perhaps more facilities assistance should be offered to charter schools.

190441.2

Ms. Ball told the task force that this legislation would remove the Consumer Price Index (CPI) adjustment from the PSCOC lease assistance program. Mr. Gorrell told the task force that the CPI adjustment has not kept pace with the market. In 2012, the PSCOC chose not to enforce the CPI increase for the lease assistance program, which it feels it has the authority to do because of ambiguities in current law. In previous meetings, members of the task force and of the work groups expressed concern about the PSCOC's decision and suggested that current statute be tightened or that the CPI requirement be removed.

Members of the task force expressed concern about removing the requirement entirely and suggested that perhaps the PSCOC should be given the authority to make adjustments as it sees fit, up to the amount of the CPI.

190440.2

Ms. Ball told the task force that this bill would temporarily increase the SB 9 funds. Proposed legislation would increase the guaranteed minimum in SB 9. Ms. Ball told the task force that the guarantee could also be increased or that the task force could choose to increase both the guarantee and the guaranteed minimum. Members of the task force requested that staff provide examples and analysis of each of the proposed increases at a later date. Members of the task force discussed how SB 9 funds are distributed to charter schools in various school districts. Task force members also discussed the importance of increasing SB 9 funds in order to assist the schools with technology and technology infrastructure in order to prepare for the coming changes in common core testing.

Representative Miera directed staff to prepare draft legislation and analysis of draft legislation per task force instructions throughout the meeting.

Adjournment

There being no further business before the committee, the thirty-ninth meeting of the PSCOOTF adjourned at 12:49 p.m.

**TENTATIVE AGENDA
for the
FORTIETH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 12, 2012
Room 322, State Capitol
Santa Fe**

Wednesday, December 12

- 9:00 a.m. **Call to Order**
 Welcome
 Introductions
- 9:05 a.m. **Approval of November 12, 2012 Meeting Minutes**
- 9:10 a.m. **Fiscal Year 2014 Revenue Projections**
 —Elisa Walker-Moran, Chief Economist, Legislative Finance Committee
- 10:00 a.m. **Discussion of Potential Endorsement of Legislation**
 —Task Force Members and Staff
- 1:00 p.m. **Adjourn**

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

**December 12, 2012
Room 322, State Capitol
Santa Fe**

The fortieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on December 12, 2012 at 9:20 a.m. in Room 322 of the State Capitol.

Present

Rep. Rick Miera, Co-Chair
Rep. Donald E. Bratton
Cecilia J. Grimes
Leonard Haskie
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. James Roger Madalena
Michael Marcelli (Designee for Secretary
Tom Clifford)
Kilino Marquez
Rep. W. Ken Martinez
Antonio Ortiz (Designee for Secretary
Hanna Skandera)
Lilliema G. Ortiz
Sen. Sander Rue

Absent

Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Carl Foster
Dr. Lisa Grover
Robbie G. Heyman
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Judy Rabon
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, December 12

Fiscal Year (FY) 2014 Revenue Projections

Peter van Moorsel, economist for the Legislative Finance Committee (LFC), told the task force that the Consensus Revenue Estimating Group, consisting of representatives of the LFC, the Department of Finance and Administration, the Taxation and Revenue Department and the Department of Transportation, met and reached consensus on revenue estimates that were presented at that meeting. He told the task force that the revenue estimate was revised upward by \$20 million from the August forecast, and the FY 2014 revenue estimate was revised upward by \$11 million from the August forecast. Mr. van Moorsel told the task force that the Consensus Revenue Estimating Group expects \$282 million in new money in FY 2014. FY 2014 new money is defined as FY 2014 projected revenue less FY 2013 recurring appropriations. Mr. van Moorsel discussed the overall economic forecast, revenue highlights, bonding, energy markets and the overall status of the general fund. Mr. van Moorsel outlined risks to the forecast. He told the task force that economic recovery has lost momentum but is still positive. The Patient Protection and Affordable Care Act will generate additional revenues with premiums that are subject to state cast. He discussed the negative impact of potential reductions in federal funding. Mr. van Moorsel outlined severance tax bond (STB) capacity forecasts for FY 2013, FY 2014 and FY 2015. Senior STB capacity is expected to be \$332.8 million in FY 2013, \$312.6 million in FY 2014 and \$306 million in FY 2015. Supplemental STB capacity is expected to be \$174.9 million in FY 2013, \$180.7 million in FY 2014 and \$191.9 million in FY 2015.

Members of the task force asked questions for clarification and discussed the financial forecast.

Approval of Minutes

Upon a motion by Representative Larrañaga, seconded by Senator Rue, the task force approved the minutes of the thirty-ninth meeting of the PSCOOTF without objection.

Discussion of Potential Endorsement of Legislation

Bill Draft #8: Temporarily increases the Public School Capital Improvements Act (SB 9) guarantee

Ms. Ball explained the bill draft. She referred the task force to tables from the Public Education Department illustrating several different scenarios for temporary increases to SB 9. Members of the task force discussed concerns regarding expanding the usage of SB 9 funds. Members suggested that the task force consider endorsing legislation for a specific appropriation of \$10 million from the Public School Capital Outlay Fund to be used for maintenance. Upon a motion by Representative Martinez, seconded by Representative Miera, the motion passed with three members voting in the negative.

Bill Draft #7: Reestablishes the Charter School Capital Outlay Fund that was repealed on July 1, 2012 and reestablishes criteria for grant awards from that fund

Ms. Ball explained the bill draft. She told the task force that a member had requested the bill after the previous PSCOOTF meeting. The bill would reestablish the Charter School Capital Outlay Fund. A \$4 million appropriation to the fund is included in the bill, but Ms. Ball clarified that the task force could alter or eliminate the appropriation. Ms. Ball told the task force that the draft legislation was modeled after the bill that was introduced and passed, as amended, in 2007. Members of the task force discussed changes to the language, the appropriate source of an appropriation to the fund and amendments to the 2007 bill. Members of the task force discussed the effect of SB 9 funds on charter schools' sources of capital outlay funding. The task force directed Ms. Ball to use language as it was repealed in statute, rather than the 2007 bill as it was introduced. The task force voted unanimously to endorse the repealed language, with some technical changes, after striking the appropriation.

Bill Draft #6: *Provides consequences for districts and charter schools that do not offer or accept available facilities*

Ms. Ball explained the bill draft. Members of the task force discussed imposing penalties on charter schools and districts, the penalties that would be imposed and the unintended consequences of those penalties. Many members expressed concern regarding the severity of the proposed penalties. Mr. Marcelli made a motion to endorse the legislation, seconded by Mr. Ortiz. By a vote of six in the negative and five in the affirmative, the motion failed.

Bill Draft #5: *Allows the Public School Capitol Outlay Council (PSCOC) to withhold lease-assistance payments to new or relocating charter schools that do not submit a plan to meet designated facilities standards within two years of occupancy or relocation*

Ms. Ball explained the bill draft. Robert Gorrell, director of the Public School Facilities Authority (PSFA), explained the process that is currently in place and the way in which the proposed bill would affect that process. Members of the task force discussed the penalties imposed in the bill and other policy options. Task force members discussed the effectiveness of allowing the PSCOC to recommend nonrenewal or revocation to the chartering authority, rather than withholding lease-assistance payments. Representative Martinez made a motion to endorse the bill with the 18-month time limit in the bill draft. The motion also proposed removing the PSCOC's ability to withhold lease-assistance payments and instead allowing the PSCOC to recommend nonrenewal or, in extreme cases, revocation to the chartering authority. The motion was seconded by Senator Lovejoy and passed with no objection.

Bill Draft #4: *Allows the PSCOC to make optional or adjust the automatic Consumer Price Index adjustment from the lease-assistance program — changes "shall" to "may"*

Ms. Ball explained the bill draft. Jeff Eaton, chief financial officer for the PSFA, explained that the statutory change would not change any current leases. The task force voted unanimously to endorse the legislation.

Bill Draft #3: *Provides more flexibility to the PSCOC to determine local match waiver eligibility*

Ms. Ball explained the bill draft. Members of the task force discussed the underlying problem that led to the bill and suggested various policy options to correct that problem. Members of the task force suggested allowing schools with a MEM under 800 to be eligible for a waiver, regardless of other current waiver requirements. The task force voted unanimously to endorse the bill with the MEM change.

Bill Draft #2: Defines "building system"; allows a specific distribution each year from FY 2014 through FY 2018 from the Public School Capital Outlay Fund for building systems repair, remodel or replacement; and provides guidelines for PSCOC determination of grant award recipients

Bill Draft #1: Defines "building system"; allows an annual distribution from the Public School Capital Outlay Fund for building systems repair, remodel or replacement; and provides guidelines for PSCOC determination of grant award recipients

Ms. Ball explained that bill draft #2 contains a specific time line and appropriation amount, while bill draft #1 is more ambiguous. Members of the task force discussed various policy options. Upon a motion by Representative Martinez, seconded by Representative Miera, the task force voted unanimously to endorse bill draft #2.

Adjournment

There being no further business before the task force, the fortieth meeting of the PSCOOTF adjourned at 2:33 p.m.

**Public School Capital Outlay Oversight Task Force
Policy and Funding Formula Issues Work Group**

TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE PUBLIC
SCHOOL CAPITAL OUTLAY ACT POLICY AND FUNDING FORMULA ISSUES
WORK GROUP

October 16, 2012
Room 322, State Capitol
Santa Fe

Tuesday, October 16

- 9:00 a.m. **Welcome and Introductions**
 —Representative Rick Miera and Senator Cynthia Nava, Co-Chairs, Public
 School Capital Outlay Oversight Task Force (PSCOOTF)
- 9:05 a.m. **Work Group Issues for Consideration**
 —Sharon Ball, Legislative Council Service
- 9:20 a.m. **Public School Capital Outlay Act Policy and Funding Formula Issue Brief**
 —Public School Facilities Authority Staff
- 11:00 a.m. **Work Group Discussion**
- 12:00 noon **Lunch**
- 1:00 p.m. **Discussion of Potential Legislation for PSCOOTF Endorsement**
 —Staff and Work Group
- 3:30 p.m. **Adjourn**

**MINUTES
of the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY ACT POLICY AND FUNDING FORMULA
ISSUES WORK GROUP
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 16, 2012
Room 322, State Capitol
Santa Fe**

The first meeting of the Public School Capital Outlay Act (PSCOA) Policy and Funding Formula Issues Work Group of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on October 16, 2012 at 9:15 a.m. in Room 322 of the State Capitol.

Attendees

Rep. Rick Miera, Co-Chair, PSCOOTF
Rep. Donald E. Bratton
Craig Cook
Shirley Crawford
Steve Crespin
Carl Foster
Cecilia Grimes
Lisa Grover
Joe Guillen
Leonard Haskie
Bruce Hegwer
Robbie Heyman
Rep. James Roger Madalena
Janet Peacock
Mike Puelle
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Karin Williams

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 16

Welcome and Introductions

Representative Miera welcomed the work group and members of the audience. Members of the work group, staff and audience introduced themselves.

Work Group Issues for Consideration

Ms. Ball briefly introduced issues for consideration by the work group and reminded the group that the anticipated outcome of the meeting would be to develop ideas for legislation to correct PSCOA policy and funding formula issues. She referred the work group to a handout created by the Public School Facilities Authority (PSFA) that outlines various policy considerations and possible actions. Policy considerations for the lease assistance program and leases include:

- setting an annual award maximum and removing the Consumer Price Index adjustment from statute;
- creating standardized leases; and
- standardizing intergovernmental land leases for buildings and renewing of land leases for school facilities.

PSCOA Policy and Funding Formula Issue Brief

Robert Gorrell, director of the PSFA, and Jeff Eaton, chief financial officer for the PSFA, referred the work group to a brief prepared by the PSFA regarding the PSCOA policy and funding formula issues. He outlined the following funding formula issues:

- the Public School Capital Outlay Council (PSCOC) bases adequacy on the adopted adequacy standards and total allowed space that includes circulation and other tare with the Adequacy Planning Guide (APG);
- the total gross square footage (GSF) per student figures of the APG may be too generous for small population schools;
- high-population schools allow facility scale advantages;
- scale advantage frees local resources, which has led to some PSCOA projects being built above adequacy;
- small rural population districts have an insufficient local match in certain instances; and
- the PSCOC has the statutory authority to determine that a district is "recalcitrant", but that word lacks definition by the PSCOA and the PSCOC.

Mr. Gorrell outlined possible policy options for task force consideration.

1. Decrease APG GSF per-student allowance for schools.

The presenters told the work group that the APG treats schools with large and small populations the same. By adjusting the APG GSF per-student allowance, issues specific to large and small schools could be taken into account.

2. Decrease state share for districts with high population densities.

The presenters told the work group that the current state-local share formula does not use population density as a factor in calculating the state-local match, which is a concern because rural districts cannot use facility space as efficiently as districts that have densely populated areas. This policy option would take population density into consideration.

3. Adjust funding on projects with "above adequacy" spaces.

The presenters told the work group that \$180 million has been expended on PSCOC awards since 2004 to exceed the adequacy standards, which happens when a school district chooses to use locally generated revenue to build larger facilities than what the state considers to be adequately sized. This policy option would reduce the state's funding share by the same amount that a district uses to build facilities above the adequacy standards. The reduction would be triggered when a project's cost exceeds adequacy by \$1 million.

4. Relax restrictions on eligibility for a waiver of a local match.

The PSCOA allows for a waiver of the local match requirement on standards-based capital outlay if a district meets certain requirements in order to give the PSCOC latitude to fund a project when a school district has made a good-faith effort evidenced by its bonded indebtedness. This policy would relax the requirements for the waiver in order to allow the PSCOC more discretion.

5. Strengthen the "recalcitrant" language in the PSCOA.

This option would legislatively require that districts be considered recalcitrant by the PSCOC if they meet a specific set of criteria, including a facilities condition index (FCI) above 65%.

Work Group Discussion

Members of the work group discussed the issue brief and the alternative policy options presented by the PSFA. The work group members also asked questions of the PSFA staff as well as the Legislative Finance Committee (LFC) and LCS staff, and they received answers. Representative Miera reminded the work group that the goal of its meeting was to address certain issues about the PSCOA funding formula and to discuss potential legislation to correct those issues. Mr. Gorrell noted that the GSF per student has increased in recent years, which has driven up the cost of maintenance. According to Mr. Gorrell, maintenance generally costs between \$6.00 and \$12.00 per square foot per year. Mr. Gorrell also discussed ways to decrease the GSF per student in order to reduce construction and maintenance costs, and he emphasized the PSFA's willingness to work with schools in order to come up with solutions on a school-by-school basis. Members of the work group discussed potential equity issues in cases where schools supplement PSCOC funds with local money in order to build above adequacy standards. Members of the work group discussed equity and adequacy issues as well as the constitutional mandate to establish and maintain "a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state".

Members of the work group discussed the following:

- recalcitrant districts; possible consequences, costs and benefits of challenging a recalcitrant district in court, as well as other legislative solutions;
- similar efforts in other states and the need to look into best practices for dealing with recalcitrant districts; and
- potential long-term solutions, such as requiring the PSCOC and the Public Education Department to work together in cases where the district has not met its obligation.

Members of the work group discussed requirements for a local match waiver and issues regarding schools that are unable to meet waiver requirements for various reasons. Mr. Gorrell told the committee that some schools that are unable to meet waiver requirements are far below adequacy standards. Work group members discussed possible changes to the requirements that would address this issue. The work group also considered changing language in statute in order to allow the PSCOC more flexibility regarding waivers. Mr. Eaton told the committee that because of rigid waiver requirements, schools in good condition are able to receive funding when some schools in bad condition are not. Members of the committee discussed emergency measures that are sometimes taken by the PSCOC in health and safety situations, even if a school is not eligible for local match waivers. Ms. Crawford, superintendent of Capitlan Municipal Schools (CMS), told the committee that the PSCOC has issued emergency funds to CMS, which CMS is in the process of paying back. She described several attempts to pass bond issues in the school district that have failed.

Members of the work group discussed the transition to online standards-based assessments and the need for better infrastructure in certain school districts. The work group members also discussed the possibility of temporarily increasing SB 9 money in order to provide for this infrastructure and to catch up on some maintenance concerns. Members discussed the various allowed uses of SB 9.

Discussion of Potential Legislation for PSCOOTF Endorsement

The members discussed various policy options, including PSCOC rule changes, such as requiring higher population densities in schools in order to encourage space efficiency. The members also discussed immediate statutory changes, such as:

- giving the PSCOC more discretion over local match waivers;
- removing the population requirement for local match eligibility in Section 22-24-5 NMSA 1978; and
- temporarily increasing SB 9 money for maintenance purposes.

Members of the work group also discussed long-term policy shifts to correct certain issues in the PSCOA funding formula.

Adjournment

There being no further business before the work group, the first meeting of the PSCOA Policy and Funding Formula Issues Work Group of the PSCOOTF for the 2012 interim adjourned at 2:45 p.m.

**Public School Capital Outlay Oversight Task
Force Lease Assistance and Charter School
Facilities Work Group**

Revised: October 15, 2012

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

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

Wednesday, October 17

- 9:00 a.m. **Welcome and Introductions**
—Representative Rick Miera and Senator Cynthia Nava, Co-Chair, Public School
Capital Outlay Oversight Task Force (PSCOOTF)
- 9:05 a.m. **Work Group Issues for Consideration**
—Sharon Ball, Legislative Council Service
- 9:20 a.m. **Review of Lease Assistance Program Issue Brief**
—Public School Facilities Authority (PSFA) Staff
- 10:30 a.m. **Work Group Discussion of Lease Assistance Program**
- 12:00 p.m. **Lunch**
- 1:00 p.m. **Review of Charter School Facilities Issue Brief**
—PSFA Staff
- 2:00 p.m. **Charter Schools Position Paper in Response to Issue Brief to the PSCOOTF**
—Patricia Matthews, Esquire, P. Matthews, LLC
- 2:30 p.m. **Work Group Discussion of Charter School Facilities Issues and Potential
Legislation**
- 4:00 p.m. **Adjourn**

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

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

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

Attendees

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

Staff

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

Guests

The guest list is in the meeting file.

Wednesday, October 17

Welcome and Introductions

Senator Nava welcomed the work group members and audience.

Work Group Issues for Consideration

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

Review of Lease Assistance Program Issue Brief

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

1. Set annual award maximums and remove the CPI adjustment.

This option would cap the amount of lease assistance awarded by the PSCOC each year. If the amount of applications exceeded the cap, the per MEM amount would be prorated for each award.

2. Create standardized leases.

The option would require that all charter schools and school districts that lease facilities use a standard lease form in order to ensure that certain issues, such as responsibility for maintenance, are addressed.

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

This option would standardize intergovernmental leases in order to disallow terms that are not in the best interest of the state and would clearly define the end of a lease or the intended use terms and conditions.

4. Make authorizing bodies that approve/renew charter schools responsible for acquiring and managing their facilities.

As mentioned in the previous presentation, this option would link financial liability for facilities capital costs to the authorizing body.

Work Group Discussion of Lease Assistance Program

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

maintenance. Work group members discussed eliminating a statutory requirement for an adjustment based on the Consumer Price Index for the lease assistance program. Work group members also discussed: various capital outlay mechanisms for public schools; lease-purchase options; and the Public School Capital Outlay Fund.

Review of Charter School Facilities Issue Brief

Mr. Gorrell referred the work group to an issue brief created by the PSFA regarding charter school facilities. He explained that each year the Public Education Commission (PEC) and the school districts consider authorization of new charter schools. The significant charter school growth in the state creates several issues for the schools, the PSCOC and the PSFA. He told the work group that the PSFA Charter School Working Group has organized the brief around problems recognized by the PSFA Charter School Working Group, including: need for experience and expertise in charter school planning; lack of administrative procedures in place that would require districts to offer available space to charter schools; issues regarding charter school leases; and variations between charter schools and traditional schools. For the 2011-2012 school year, there were 96 charter schools operating in New Mexico, 52 of them state-authorized and 44 district-authorized. For 2011-2012, certified 40-day enrollment numbers showed that charter school enrollment accounted for 5.1% of all public school students in New Mexico. The charter school GSF for the same year accounted for 3% of all public school GSF. Twenty-four of the 96 2011-2012 charter schools are located in public facilities, two are in lease-purchase situations and 14 lease their facilities from nonprofit organizations. Mr. Gorrell reminded the work group that charter schools can waive certain facility requirements, such as gyms and libraries, if they demonstrate an alternative method of delivery for the same services.

Mr. Gorrell presented policy options to the work group for consideration.

1. Provide charter schools with increased facilities knowledge and experience.

This option would require the creation of support to help charter schools choose and manage safe facilities. The support could reside in the Charter Schools Division of the Public Education Department (PED), the PSFA, the Charter School Coalition or a private contractor. Job duties of the resource may include creating and maintaining a database of available spaces that a charter school might be able to occupy, reviewing capacity and utilization of traditional public schools to determine if space is available in existing educational facilities, acting as a liaison between public school districts and charter schools and developing standardized lease and lease-purchase agreements.

2. Provide for better charter school facility planning.

This option would reinstate the Charter School Capital Outlay Fund, which provides charter schools with local match funding to hire planning consultants to prepare their facility master plan. Mr. Gorrell noted that a cost-benefit analysis of this scenario has not been completed.

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

Mr. Gorrell told the work group that currently there is no relationship between entities that authorize charter schools and financial responsibility for those schools. The

implementation of this option would tie the authorizing body to the financial liability of capital facility costs for the schools that are authorized. The school district or PEC would assume full responsibility for charter school facilities needs.

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

Mr. Gorrell told the work group that some districts and schools have unutilized and vacant space that might be appropriate for charter school locations. Section 22-8B-4 NMSA 1978 requires that districts offer available space to charter schools. Mr. Valdez suggested that the PSCOC could make requirement with this statute a condition of a capital outlay award.

5. Assist charter schools in lease management.

Mr. Gorrell told the work group that the current lease structure allows for a variety of leases that make it difficult to know if leases are fair and leads to a lack of transparency and uncertainty in the way that charter schools spend taxpayer money. Unstructured leases also often strain maintenance because responsibility for maintenance is often unclear.

6. Strengthen the "be in public facilities" language in the Public School Capital Outlay Act (PSCOA).

This option would clarify the language in Section 22-8B-4.2 NMSA 1978 to ensure that charter schools that continue to be housed in leased facilities after July 1, 2015 would not receive lease assistance as provided for in the PSCOA.

7. Develop capabilities to respond to innovations in charter, alternative and family school program delivery and facilities needs.

This option requires a statutory change to Section 22-8B-4 NMSA 1978 to allow for virtual charter schools to have more flexible facilities requirements in order to best meet the needs of their student population. Students would be allowed to take examinations with proctors in places such as other schools, places of worship or libraries.

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

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

Ms. Fox discussed specific policy options presented in the brief. She discussed the importance of leaving charters unencumbered by regulation. She specifically addressed standardized leases, master planning development, PSFA assessment of potential charter

facilities and the importance of charter school autonomy. Ms. Fox discussed existing legislation and potential consequences to proposed legislative and rule changes.

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

Work Group Discussion of Charter School Facilities Issues and Potential Legislation

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

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

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

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

Adjournment

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

Appendix E

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2012 ENDORSED LEGISLATION

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY LEASE PAYMENTS; MAKING
OPTIONAL THE ADJUSTMENT FOR LEASE PAYMENTS BASED UPON THE
CONSUMER PRICE INDEX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,
Chapter 235, Section 4, as amended) is amended to read:

"22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
USE.--

A. The "public school capital outlay fund" is
created. Balances remaining in the fund at the end of each
fiscal year shall not revert.

B. Except as provided in Subsections G and I
through L of this section, money in the fund may be used only
for capital expenditures deemed necessary by the council for an

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1 adequate educational program.

2 C. The council may authorize the purchase by the
3 public school facilities authority of portable classrooms to be
4 loaned to school districts to meet a temporary requirement.
5 Payment for these purchases shall be made from the fund. Title
6 to and custody of the portable classrooms shall rest in the
7 public school facilities authority. The council shall
8 authorize the lending of the portable classrooms to school
9 districts upon request and upon finding that sufficient need
10 exists. Application for use or return of state-owned portable
11 classroom buildings shall be submitted by school districts to
12 the council. Expenses of maintenance of the portable
13 classrooms while in the custody of the public school facilities
14 authority shall be paid from the fund; expenses of maintenance
15 and insurance of the portable classrooms while in the custody
16 of a school district shall be the responsibility of the school
17 district. The council may authorize the permanent disposition
18 of the portable classrooms by the public school facilities
19 authority with prior approval of the state board of finance.

20 D. Applications for assistance from the fund shall
21 be made by school districts to the council in accordance with
22 requirements of the council. Except as provided in Subsection
23 K of this section, the council shall require as a condition of
24 application that a school district have a current five-year
25 facilities plan, which shall include a current preventive

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1 maintenance plan to which the school adheres for each public
2 school in the school district.

3 E. The council shall review all requests for
4 assistance from the fund and shall allocate funds only for
5 those capital outlay projects that meet the criteria of the
6 Public School Capital Outlay Act.

7 F. Money in the fund shall be disbursed by warrant
8 of the department of finance and administration on vouchers
9 signed by the secretary of finance and administration following
10 certification by the council that an application has been
11 approved or an expenditure has been ordered by a court pursuant
12 to Section 22-24-5.4 NMSA 1978. At the discretion of the
13 council, money for a project shall be distributed as follows:

14 (1) up to ten percent of the portion of the
15 project cost funded with distributions from the fund or five
16 percent of the total project cost, whichever is greater, may be
17 paid to the school district before work commences with the
18 balance of the grant award made on a cost-reimbursement basis;
19 or

20 (2) the council may authorize payments
21 directly to the contractor.

22 G. Balances in the fund may be annually
23 appropriated for the core administrative functions of the
24 public school facilities authority pursuant to the Public
25 School Capital Outlay Act, and, in addition, balances in the

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1 fund may be expended by the public school facilities authority,
2 upon approval of the council, for project management expenses;
3 provided that:

4 (1) the total annual expenditures from the
5 fund for the core administrative functions pursuant to this
6 subsection shall not exceed five percent of the average annual
7 grant assistance authorized from the fund during the three
8 previous fiscal years; and

9 (2) any unexpended or unencumbered balance
10 remaining at the end of a fiscal year from the expenditures
11 authorized in this subsection shall revert to the fund.

12 H. Up to ten million dollars (\$10,000,000) of the
13 fund may be allocated annually by the council for expenditure
14 in fiscal years 2010 through 2015 for a roof repair and
15 replacement initiative with projects to be identified by the
16 council pursuant to Section 22-24-4.3 NMSA 1978; provided that
17 money allocated pursuant to this subsection shall be expended
18 within two years of the allocation.

19 I. The fund may be expended annually by the council
20 for grants to school districts for the purpose of making lease
21 payments for classroom facilities, including facilities leased
22 by charter schools. The grants shall be made upon application
23 by the school districts and pursuant to rules adopted by the
24 council; provided that an application on behalf of a charter
25 school shall be made by the school district, but, if the school

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1 district fails to make an application on behalf of a charter
2 school, the charter school may submit its own application. The
3 following criteria shall apply to the grants:

4 (1) the amount of a grant to a school district
5 shall not exceed:

6 (a) the actual annual lease payments
7 owed for leasing classroom space for schools, including charter
8 schools, in the district; or

9 (b) seven hundred dollars (\$700)
10 multiplied by the number of MEM using the leased classroom
11 facilities; provided that [~~in fiscal year 2009 and in each~~
12 ~~subsequent fiscal year~~] this amount [~~shall~~] may be adjusted by
13 the percentage change between the penultimate calendar year and
14 the immediately preceding calendar year of the consumer price
15 index for the United States, all items, as published by the
16 United States department of labor;

17 (2) a grant received for the lease payments of
18 a charter school may be used by that charter school as a state
19 match necessary to obtain federal grants pursuant to the
20 federal No Child Left Behind Act of 2001;

21 (3) at the end of each fiscal year, any
22 unexpended or unencumbered balance of the appropriation shall
23 revert to the fund;

24 (4) no grant shall be made for lease payments
25 due pursuant to a financing agreement under which the

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1 facilities may be purchased for a price that is reduced
2 according to the lease payments made unless:

3 (a) the agreement has been approved
4 pursuant to the provisions of the Public School Lease Purchase
5 Act; and

6 (b) the facilities are leased by a
7 charter school;

8 (5) if the lease payments are made pursuant to
9 a financing agreement under which the facilities may be
10 purchased for a price that is reduced according to the lease
11 payments made, neither a grant nor any provision of the Public
12 School Capital Outlay Act creates a legal obligation for the
13 school district or charter school to continue the lease from
14 year to year or to purchase the facilities nor does it create a
15 legal obligation for the state to make subsequent grants
16 pursuant to the provisions of this subsection; and

17 (6) as used in this subsection:

18 (a) "MEM" means: 1) the average
19 full-time-equivalent enrollment using leased classroom
20 facilities on the eightieth and one hundred twentieth days of
21 the prior school year; or 2) in the case of an approved charter
22 school that has not commenced classroom instruction, the
23 estimated full-time-equivalent enrollment that will use leased
24 classroom facilities in the first year of instruction, as shown
25 in the approved charter school application; provided that,

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1 after the eightieth day of the school year, the MEM shall be
2 adjusted to reflect the full-time-equivalent enrollment on that
3 date; and

4 (b) "classroom facilities" or "classroom
5 space" includes the space needed, as determined by the minimum
6 required under the statewide adequacy standards, for the direct
7 administration of school activities.

8 J. In addition to other authorized expenditures
9 from the fund, up to one percent of the average grant
10 assistance authorized from the fund during the three previous
11 fiscal years may be expended in each fiscal year by the public
12 school facilities authority to pay the state fire marshal, the
13 construction industries division of the regulation and
14 licensing department and local jurisdictions having authority
15 from the state to permit and inspect projects for expenditures
16 made to permit and inspect projects funded in whole or in part
17 under the Public School Capital Outlay Act. The authority may
18 enter into contracts with the state fire marshal, the
19 construction industries division or the appropriate local
20 authorities to carry out the provisions of this subsection.
21 Such a contract may provide for initial estimated payments from
22 the fund prior to the expenditures if the contract also
23 provides for additional payments from the fund if the actual
24 expenditures exceed the initial payments and for repayments
25 back to the fund if the initial payments exceed the actual

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1 expenditures. Money distributed from the fund to the state
2 fire marshal or the construction industries division pursuant
3 to this subsection shall be used to supplement, rather than
4 supplant, appropriations to those entities.

5 K. Pursuant to guidelines established by the
6 council, allocations from the fund may be made to assist school
7 districts in developing and updating five-year facilities plans
8 required by the Public School Capital Outlay Act; provided
9 that:

10 (1) no allocation shall be made unless the
11 council determines that the school district is willing and able
12 to pay the portion of the total cost of developing or updating
13 the plan that is not funded with the allocation from the fund.
14 Except as provided in Paragraph (2) of this subsection, the
15 portion of the total cost to be paid with the allocation from
16 the fund shall be determined pursuant to the methodology in
17 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

18 (2) the allocation from the fund may be used
19 to pay the total cost of developing or updating the plan if:

20 (a) the school district has fewer than
21 an average of six hundred full-time-equivalent students on the
22 eightieth and one hundred twentieth days of the prior school
23 year; or

24 (b) the school district meets all of the
25 following requirements: 1) the school district has fewer than

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1 an average of one thousand full-time-equivalent students on the
2 eightieth and one hundred twentieth days of the prior school
3 year; 2) the school district has at least seventy percent of
4 its students eligible for free or reduced-fee lunch; 3) the
5 state share of the total cost, if calculated pursuant to the
6 methodology in Paragraph (5) of Subsection B of Section 22-24-5
7 NMSA 1978, would be less than fifty percent; and 4) for all
8 educational purposes, the school district has a residential
9 property tax rate of at least seven dollars (\$7.00) on each one
10 thousand dollars (\$1,000) of taxable value, as measured by the
11 sum of all rates imposed by resolution of the local school
12 board plus rates set to pay interest and principal on
13 outstanding school district general obligation bonds.

14 L. Upon application by a school district,
15 allocations from the fund may be made by the council for the
16 purpose of demolishing abandoned school district facilities,
17 provided that:

18 (1) the costs of continuing to insure an
19 abandoned facility outweigh any potential benefit when and if a
20 new facility is needed by the school district;

21 (2) there is no practical use for the
22 abandoned facility without the expenditure of substantial
23 renovation costs; and

24 (3) the council may enter into an agreement
25 with the school district under which an amount equal to the

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1 savings to the district in lower insurance premiums are used to
2 reimburse the fund fully or partially for the demolition costs
3 allocated to the district."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2013.

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

MAKING AN APPROPRIATION FROM THE PUBLIC SCHOOL CAPITAL OUTLAY FUND TO ALLOW SCHOOL DISTRICTS AND CHARTER SCHOOLS TO ADDRESS DEFERRED-MAINTENANCE ISSUES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Ten million dollars

(\$10,000,000) is appropriated from the public school capital outlay fund to the public school capital outlay council for expenditure in fiscal years 2014 through 2016 to provide allocations to school districts and charter schools that demonstrate a need to address deferred-maintenance issues in classrooms or other facilities that are used primarily by students. The public school capital outlay council shall establish guidelines for prioritizing and distributing allocations from the fund. Any unexpended or unencumbered

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balance remaining at the end of fiscal year 2016 shall revert
to the public school capital outlay fund.

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO CHARTER SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL TO RECOMMEND SUSPENSION, NONRENEWAL OR REVOCATION OF A CHARTER BASED ON THE CHARTER SCHOOL'S FACILITY CONDITION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005, Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2, as amended) is amended to read:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter

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1 has been renewed at least once shall be evaluated, prioritized
2 and eligible for grants pursuant to the Public School Capital
3 Outlay Act in the same manner as all other public schools in
4 the state; provided that for charter school facilities in
5 leased facilities, grants may be used to provide additional
6 lease payments for leasehold improvements made by the lessor.

7 C. On or after July 1, 2011, a new charter school
8 shall not open and an existing charter school shall not
9 relocate unless the facilities of the new or relocated charter
10 school, as measured by the New Mexico condition index, receive
11 a condition rating equal to or better than the average
12 condition for all New Mexico public schools for that year or
13 the charter school [~~demonstrates~~] submits, within eighteen
14 months of occupancy or relocation of the charter, [~~the way in~~]
15 a plan by which the facilities will achieve a rating equal to
16 or better than the average New Mexico condition index.

17 D. On or after July 1, 2015, a new charter school
18 shall not open and an existing charter shall not be renewed
19 unless the charter school:

20 (1) is housed in a building that is:

21 (a) owned by the charter school, the
22 school district, the state, an institution of the state,
23 another political subdivision of the state, the federal
24 government or one of its agencies or a tribal government; or

25 (b) subject to a lease-purchase

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1 arrangement that has been entered into and approved pursuant to
2 the Public School Lease Purchase Act; or

3 (2) if it is not housed in a building
4 described in Paragraph (1) of this subsection, demonstrates
5 that:

6 (a) the facility in which the charter
7 school is housed meets the statewide adequacy standards
8 developed pursuant to the Public School Capital Outlay Act and
9 the owner of the facility is contractually obligated to
10 maintain those standards at no additional cost to the charter
11 school or the state; and

12 (b) either: 1) public buildings are not
13 available or adequate for the educational program of the
14 charter school; or 2) the owner of the facility is a nonprofit
15 entity specifically organized for the purpose of providing the
16 facility for the charter school.

17 E. Without the approval of the public school
18 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
19 charter school shall not enter into a lease-purchase agreement.

20 F. The public school capital outlay council:

21 (1) shall determine whether facilities of a
22 charter school meet the educational occupancy standards
23 pursuant to the requirements of Subsection A of this section
24 or the requirements of Subsections B, C and D of this section,
25 as applicable; and

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1 (2) upon a determination that specific
2 requirements are not appropriate or reasonable for a charter
3 school, may grant a variance from those requirements for that
4 charter school."

5 SECTION 2. Section 22-8B-5.3 NMSA 1978 (being Laws 2011,
6 Chapter 14, Section 8) is amended to read:

7 "22-8B-5.3. CHARTERING AUTHORITY--POWERS--DUTIES--
8 LIABILITY.--A chartering authority shall:

9 A. evaluate charter applications;

10 B. actively pursue the utilization of charter
11 schools to satisfy identified education needs and promote a
12 diversity of educational choices;

13 C. approve charter applications that meet the
14 requirements of the Charter Schools Act and the provisions of
15 Section 22-8B-4.2 NMSA 1978;

16 D. decline to approve charter applications that
17 fail to meet the requirements of the Charter Schools Act and
18 the provisions of Section 22-8B-4.2 NMSA 1978 or that are
19 otherwise inadequate;

20 E. negotiate and execute, in good faith, charter
21 contracts that meet the requirements of the Charter Schools Act
22 and the provisions of Section 22-8B-4.2 NMSA 1978 with each
23 approved charter school;

24 F. monitor, in accordance with the requirements of
25 the Charter Schools Act and the provisions of Section 22-8B-4.2

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1 NMSA 1978, the terms of the charter [~~contract~~] contracts and
2 the performance and legal compliance of charter schools under
3 their authority;

4 G. determine whether a charter school merits
5 suspension, revocation or nonrenewal; and

6 H. develop and maintain chartering policies and
7 practices consistent with nationally recognized principles and
8 standards for quality charter authorizing in all major areas of
9 authorizing, including:

10 (1) organizational capacity and
11 infrastructure;

12 (2) evaluating charter applications;

13 (3) performance contracting;

14 (4) charter school oversight and evaluation;

15 and

16 (5) charter school suspension, revocation and
17 renewal processes."

18 SECTION 3. Section 22-24-5.1 NMSA 1978 (being Laws 2001,
19 Chapter 338, Section 9) is amended to read:

20 "22-24-5.1. COUNCIL ASSISTANCE AND OVERSIGHT.--In
21 providing grant assistance pursuant to Section 22-24-5 NMSA
22 1978, the council shall:

23 A. assist school districts in identifying critical
24 capital outlay needs and in preparing grant applications;

25 B. take such actions as are necessary to assist

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1 school districts in implementing the projects for which grants
2 are made, including assistance with the preparation of requests
3 for bids or proposals, contract negotiations and contract
4 implementation;

5 C. take such actions as are necessary to ensure
6 cost savings and efficiencies for those school districts that
7 are not large enough to maintain their own construction
8 management staff; ~~and~~

9 D. include such reporting requirements and
10 conditions and take such actions as are necessary to ensure
11 that the grants are expended in the most prudent manner
12 possible and consistent with the original purpose for which
13 they were made. In order to ensure compliance with the intent
14 of this subsection, the council may:

15 (1) access the premises of a project and
16 review any documentation relating to a project;

17 (2) withhold all or part of the amount of
18 grant assistance available for a project for grounds
19 established by rule of the council; and

20 (3) if it determines that a project is
21 repeatedly in substantial noncompliance with any reporting
22 requirement or condition, take over the direct administration
23 of the project until the project is completed; and

24 E. recommend to a chartering authority the
25 suspension, nonrenewal or revocation of a new or relocating

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1 charter school based upon the charter school's New Mexico
2 condition index ranking pursuant to Section 22-8B-4.2 NMSA
3 1978."

4 SECTION 4. Section 22-24-9 NMSA 1978 (being Laws 2003,
5 Chapter 147, Section 1, as amended) is amended to read:

6 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
7 CREATION--POWERS AND DUTIES.--

8 A. The "public school facilities authority" is
9 created under the council. The authority shall be headed by a
10 director, selected by the council, who shall be versed in
11 construction, architecture or project management. The director
12 may hire no more than two deputies with the approval of the
13 council, and, subject to budgetary constraints set out in
14 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
15 contract with such technical and administrative personnel as
16 are necessary to carry out the provisions of this section. The
17 director, deputies and all other employees of the authority
18 shall be exempt from the provisions of the Personnel Act.

19 B. The authority shall:
20 (1) serve as staff to the council;
21 (2) as directed by the council, provide those
22 assistance and oversight functions required of the council by
23 Section 22-24-5.1 NMSA 1978;
24 (3) assist school districts with:
25 (a) the development and implementation

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1 of five-year facilities plans and preventive maintenance plans;

2 (b) procurement of architectural and
3 engineering services;

4 (c) management and oversight of
5 construction activities; and

6 (d) training programs;

7 (4) conduct ongoing reviews of five-year
8 facilities plans, preventive maintenance plans and performance
9 pursuant to those plans;

10 (5) as directed by the council, assist school
11 districts in analyzing and assessing their space utilization
12 options;

13 (6) ensure that public school capital outlay
14 projects are in compliance with applicable building codes;

15 (7) conduct on-site inspections as necessary
16 to ensure that the construction specifications are being met
17 and periodically inspect all of the documents related to
18 projects;

19 (8) require the use of standardized
20 construction documents and the use of a standardized process
21 for change orders;

22 (9) have access to the premises of a project
23 and any documentation relating to the project;

24 (10) after consulting with the department,
25 recommend building standards for public school facilities to

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1 the council and ensure compliance with building standards
2 adopted by the council;

3 (11) notwithstanding the provisions of
4 Subsection D of Section 22-24-6 NMSA 1978, account for all
5 distributions of grant assistance from the fund for which the
6 initial award was made after July 1, 2004, and make annual
7 reports to the department, the governor, the legislative
8 education study committee, the legislative finance committee
9 and the legislature;

10 (12) maintain a database of the condition of
11 school facilities and maintenance schedules;

12 (13) advise the council regarding the New
13 Mexico condition index ranking of a new or renewing charter
14 school; and

15 [~~(13)~~] (14) as a central purchasing office
16 pursuant to the Procurement Code and as directed by the
17 council, select contractors and enter into and administer
18 contracts for certain emergency projects funded pursuant to
19 Subparagraph (b) of Paragraph (2) of Subsection B of Section
20 22-24-5 NMSA 1978 [~~and~~

21 ~~(14) ensure that outstanding deficiencies are~~
22 ~~corrected pursuant to Section 22-24-4.1 NMSA 1978. In the~~
23 ~~performance of this duty, the authority:~~

24 ~~(a) shall work with school districts to~~
25 ~~validate the assessment of the outstanding deficiencies and the~~

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1 ~~projected costs to correct the deficiencies;~~

2 ~~(b) shall work with school districts to~~
3 ~~provide direct oversight of the management and construction of~~
4 ~~the projects that will correct the outstanding deficiencies;~~

5 ~~(c) shall oversee all aspects of the~~
6 ~~contracts entered into by the council to correct the~~
7 ~~outstanding deficiencies;~~

8 ~~(d) may conduct on-site inspections~~
9 ~~while the deficiencies correction work is being done to ensure~~
10 ~~that the construction specifications are being met and may~~
11 ~~periodically inspect all of the documents relating to the~~
12 ~~projects;~~

13 ~~(e) may require the use of standardized~~
14 ~~construction documents and the use of a standardized process~~
15 ~~for change orders;~~

16 ~~(f) may access the premises of a project~~
17 ~~and any documentation relating to the project; and~~

18 ~~(g) shall maintain, track and account~~
19 ~~for deficiency correction projects separately from other~~
20 ~~capital outlay projects funded pursuant to the Public School~~
21 ~~Capital Outlay Act].~~

22 C. All actions taken by the authority shall be
23 consistent with educational programs conducted pursuant to the
24 Public School Code. In the event of any potential or perceived
25 conflict between a proposed action of the authority and an

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1 educational program, the authority shall consult with the
2 secretary.

3 D. A school district, aggrieved by a decision or
4 recommendation of the authority, may appeal the matter to the
5 council by filing a notice of appeal with the council within
6 thirty days of the authority's decision or recommendation.

7 Upon filing of the notice:

8 (1) the decision or recommendation of the
9 authority shall be suspended until the matter is decided by the
10 council;

11 (2) the council shall hear the matter at its
12 next regularly scheduled hearing or at a special hearing called
13 by the chair for that purpose;

14 (3) at the hearing, the school district, the
15 authority and other interested parties may make informal
16 presentations to the council; and

17 (4) the council shall finally decide the
18 matter within ten days after the hearing."

19 SECTION 5. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2013.

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO ALLOW THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL TO DETERMINE WHETHER A SCHOOL DISTRICT SHOULD BE ELIGIBLE FOR A WAIVER OF ITS REQUIRED FUNDING MATCH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-24-5 NMSA 1978 (being Laws 1975, Chapter 235, Section 5, as amended) is amended to read:

"22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS-- APPLICATION--GRANT ASSISTANCE.--

A. Applications for grant assistance, approval of applications, prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section.

B. Except as provided in Sections 22-24-4.3, 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions

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1 govern grant assistance from the fund for a public school
2 capital outlay project not wholly funded pursuant to
3 Section 22-24-4.1 NMSA 1978:

4 (1) all school districts are eligible to apply
5 for funding from the fund, regardless of percentage of
6 indebtedness;

7 (2) priorities for funding shall be determined
8 by using the statewide adequacy standards developed pursuant to
9 Subsection C of this section; provided that:

10 (a) the council shall apply the
11 standards to charter schools to the same extent that they are
12 applied to other public schools;

13 (b) the council shall adopt and apply
14 adequacy standards appropriate to the unique needs of the
15 constitutional special schools; and

16 (c) in an emergency in which the health
17 or safety of students or school personnel is at immediate risk
18 or in which there is a threat of significant property damage,
19 the council may award grant assistance for a project using
20 criteria other than the statewide adequacy standards;

21 (3) the council shall establish criteria to be
22 used in public school capital outlay projects that receive
23 grant assistance pursuant to the Public School Capital Outlay
24 Act. In establishing the criteria, the council shall consider:

25 (a) the feasibility of using design,

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1 build and finance arrangements for public school capital outlay
2 projects;

3 (b) the potential use of more durable
4 construction materials that may reduce long-term operating
5 costs;

6 (c) concepts that promote efficient but
7 flexible utilization of space; and

8 (d) any other financing or construction
9 concept that may maximize the dollar effect of the state grant
10 assistance;

11 (4) no more than ten percent of the combined
12 total of grants in a funding cycle shall be used for
13 retrofitting existing facilities for technology infrastructure;

14 (5) except as provided in Paragraph (6), (8),
15 (9) or (10) of this subsection, the state share of a project
16 approved and ranked by the council shall be funded within
17 available resources pursuant to the provisions of this
18 paragraph. No later than May 1 of each calendar year, a value
19 shall be calculated for each school district in accordance with
20 the following procedure:

21 (a) the final prior year net taxable
22 value for a school district divided by the MEM for that school
23 district is calculated for each school district;

24 (b) the final prior year net taxable
25 value for the whole state divided by the MEM for the state is

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1 calculated;

2 (c) excluding any school district for
3 which the result calculated pursuant to Subparagraph (a) of
4 this paragraph is more than twice the result calculated
5 pursuant to Subparagraph (b) of this paragraph, the results
6 calculated pursuant to Subparagraph (a) of this paragraph are
7 listed from highest to lowest;

8 (d) the lowest value listed pursuant to
9 Subparagraph (c) of this paragraph is subtracted from the
10 highest value listed pursuant to that subparagraph;

11 (e) the value calculated pursuant to
12 Subparagraph (a) of this paragraph for the subject school
13 district is subtracted from the highest value listed in
14 Subparagraph (c) of this paragraph;

15 (f) the result calculated pursuant to
16 Subparagraph (e) of this paragraph is divided by the result
17 calculated pursuant to Subparagraph (d) of this paragraph;

18 (g) the sum of the property tax mill
19 levies for the prior tax year imposed by each school district
20 on residential property pursuant to Chapter 22, Article 18 NMSA
21 1978, the Public School Capital Improvements Act, the Public
22 School Buildings Act, the Education Technology Equipment Act
23 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
24 is calculated for each school district;

25 (h) the lowest value calculated pursuant

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1 to Subparagraph (g) of this paragraph is subtracted from the
2 highest value calculated pursuant to that subparagraph;

3 (i) the lowest value calculated pursuant
4 to Subparagraph (g) of this paragraph is subtracted from the
5 value calculated pursuant to that subparagraph for the subject
6 school district;

7 (j) the value calculated pursuant to
8 Subparagraph (i) of this paragraph is divided by the value
9 calculated pursuant to Subparagraph (h) of this paragraph;

10 (k) if the value calculated for a
11 subject school district pursuant to Subparagraph (j) of this
12 paragraph is less than five-tenths, then, except as provided in
13 Subparagraph (n) or (o) of this paragraph, the value for that
14 school district equals the value calculated pursuant to
15 Subparagraph (f) of this paragraph;

16 (l) if the value calculated for a
17 subject school district pursuant to Subparagraph (j) of this
18 paragraph is five-tenths or greater, then that value is
19 multiplied by five-hundredths;

20 (m) if the value calculated for a
21 subject school district pursuant to Subparagraph (j) of this
22 paragraph is five-tenths or greater, then the value calculated
23 pursuant to Subparagraph (l) of this paragraph is added to the
24 value calculated pursuant to Subparagraph (f) of this
25 paragraph. Except as provided in Subparagraph (n) or (o) of

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1 this paragraph, the sum equals the value for that school
2 district;

3 (n) in those instances in which the
4 calculation pursuant to Subparagraph (k) or (m) of this
5 paragraph yields a value less than one-tenth, one-tenth shall
6 be used as the value for the subject school district;

7 (o) in those instances in which the
8 calculation pursuant to Subparagraph (k) or (m) of this
9 paragraph yields a value greater than one, one shall be used as
10 the value for the subject school district;

11 (p) except as provided in Section
12 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
13 Paragraph (6), (8), (9) or (10) of this subsection, the amount
14 to be distributed from the fund for an approved project shall
15 equal the total project cost multiplied by a fraction the
16 numerator of which is the value calculated for the subject
17 school district in the current year plus the value calculated
18 for that school district in each of the two preceding years and
19 the denominator of which is three; and

20 (q) as used in this paragraph: 1) "MEM"
21 means the average full-time-equivalent enrollment of students
22 attending public school in a school district on the eightieth
23 and one hundred twentieth days of the prior school year; 2)
24 "total project cost" means the total amount necessary to
25 complete the public school capital outlay project less any

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1 insurance reimbursement received by the school district for the
2 project; and 3) in the case of a state-chartered charter school
3 that has submitted an application for grant assistance pursuant
4 to this section, the "value calculated for the subject school
5 district" means the value calculated for the school district in
6 which the state-chartered charter school is physically located;

7 (6) the amount calculated pursuant to
8 Subparagraph (p) of Paragraph (5) of this subsection shall be
9 reduced by the following procedure:

10 (a) the total of all legislative
11 appropriations made after January 1, 2003 for nonoperating
12 purposes either directly to the subject school district or to
13 another governmental entity for the purpose of passing the
14 money through directly to the subject school district, and not
15 rejected by the subject school district, is calculated;
16 provided that: 1) an appropriation made in a fiscal year shall
17 be deemed to be accepted by a school district unless, prior to
18 June 1 of that fiscal year, the school district notifies the
19 department of finance and administration and the public
20 education department that the district is rejecting the
21 appropriation; 2) the total shall exclude any educational
22 technology appropriation made prior to January 1, 2005 unless
23 the appropriation was on or after January 1, 2003 and not
24 previously used to offset distributions pursuant to the
25 Technology for Education Act; 3) the total shall exclude any

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1 appropriation previously made to the subject school district
2 that is reauthorized for expenditure by another recipient;
3 4) the total shall exclude one-half of the amount of any
4 appropriation made or reauthorized after January 1, 2007 if the
5 purpose of the appropriation or reauthorization is to fund, in
6 whole or in part, a capital outlay project that, when
7 prioritized by the council pursuant to this section either in
8 the immediately preceding funding cycle or in the current
9 funding cycle, ranked in the top one hundred fifty projects
10 statewide; 5) the total shall exclude the proportionate share
11 of any appropriation made or reauthorized after January 1, 2008
12 for a capital project that will be jointly used by a
13 governmental entity other than the subject school district.
14 Pursuant to criteria adopted by rule of the council and based
15 upon the proposed use of the capital project, the council shall
16 determine the proportionate share to be used by the
17 governmental entity and excluded from the total; and 6) unless
18 the grant award is made to the state-chartered charter school
19 or unless the appropriation was previously used to calculate a
20 reduction pursuant to this paragraph, the total shall exclude
21 appropriations made after January 1, 2007 for nonoperating
22 purposes of a specific state-chartered charter school,
23 regardless of whether the charter school is a state-chartered
24 charter school at the time of the appropriation or later opts
25 to become a state-chartered charter school;

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1 (b) the applicable fraction used for the
2 subject school district and the current calendar year for the
3 calculation in Subparagraph (p) of Paragraph (5) of this
4 subsection is subtracted from one;

5 (c) the value calculated pursuant to
6 Subparagraph (a) of this paragraph for the subject school
7 district is multiplied by the amount calculated pursuant to
8 Subparagraph (b) of this paragraph for that school district;

9 (d) the total amount of reductions for
10 the subject school district previously made pursuant to
11 Subparagraph (e) of this paragraph for other approved public
12 school capital outlay projects is subtracted from the amount
13 calculated pursuant to Subparagraph (c) of this paragraph; and

14 (e) the amount calculated pursuant to
15 Subparagraph (p) of Paragraph (5) of this subsection shall be
16 reduced by the amount calculated pursuant to Subparagraph (d)
17 of this paragraph;

18 (7) as used in this subsection:

19 (a) "governmental entity" includes an
20 Indian nation, tribe or pueblo; and

21 (b) "subject school district" means the
22 school district that has submitted the application for funding
23 and in which the approved public school capital outlay project
24 will be located;

25 (8) the amount calculated pursuant to

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1 Subparagraph (p) of Paragraph (5) of this subsection, after any
2 reduction pursuant to Paragraph (6) of this subsection, may be
3 increased by an additional five percent if the council finds
4 that the subject school district has been exemplary in
5 implementing and maintaining a preventive maintenance program.
6 The council shall adopt such rules as are necessary to
7 implement the provisions of this paragraph;

8 (9) the council may adjust the amount of local
9 share otherwise required if it determines that a school
10 district has ~~used~~ made a good-faith effort to use all of its
11 local resources. Before making any adjustment to the local
12 share, the council ~~shall~~ may consider whether:

13 (a) the school district: 1) has fewer
14 than an average of eight hundred full-time-equivalent students
15 on the eightieth and two hundred twentieth days of the prior
16 school year; 2) has insufficient bonding capacity over the next
17 four years to provide the local match necessary to complete the
18 project; and 3) for all educational purposes, has a residential
19 property tax rate of at least ten dollars (\$10.00) on each one
20 thousand dollars (\$1,000) of taxable value, as measured by the
21 sum of all rates imposed by resolution of the local school
22 board plus rates set to pay interest and principal on
23 outstanding school district general obligation bonds;

24 (b) the school district: 1) has fewer
25 than an average of eight hundred full-time-equivalent students

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1 on the eightieth and one hundred twentieth days of the prior
2 school year; 2) has at least seventy percent of its students
3 eligible for free or reduced-fee lunch; 3) has a share of the
4 total project cost, as calculated pursuant to provisions of
5 this section, that would be greater than fifty percent; and 4)
6 for all educational purposes, has a residential property tax
7 rate of at least seven dollars (\$7.00) on each one thousand
8 dollars (\$1,000) of taxable value, as measured by the sum of
9 all rates imposed by resolution of the local school board plus
10 rates set to pay interest and principal on outstanding school
11 district general obligation bonds; or

12 (c) the school district: 1) has an
13 enrollment growth rate over the previous school year of at
14 least two and one-half percent; 2) pursuant to its five-year
15 facilities plan, will be building a new school within the next
16 two years; and 3) for all educational purposes, has a
17 residential property tax rate of at least ten dollars (\$10.00)
18 on each one thousand dollars (\$1,000) of taxable value, as
19 measured by the sum of all rates imposed by resolution of the
20 local school board plus rates set to pay interest and principal
21 on outstanding school district general obligation bonds;

22 (10) the local match for the constitutional
23 special schools shall be set at fifty percent for projects that
24 qualify under the educational adequacy category and one hundred
25 percent for projects that qualify in the support spaces

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1 category; provided that the council may adjust or waive the
2 amount of any direct appropriation offset to or local share
3 required for the constitutional special schools if an applicant
4 constitutional special school has insufficient or no local
5 resources available; and

6 (11) no application for grant assistance from
7 the fund shall be approved unless the council determines that:

8 (a) the public school capital outlay
9 project is needed and included in the school district's
10 five-year facilities plan among its top priorities;

11 (b) the school district has used its
12 capital resources in a prudent manner;

13 (c) the school district has provided
14 insurance for buildings of the school district in accordance
15 with the provisions of Section 13-5-3 NMSA 1978;

16 (d) the school district has submitted a
17 five-year facilities plan that includes: 1) enrollment
18 projections; 2) a current preventive maintenance plan that has
19 been approved by the council pursuant to Section 22-24-5.3 NMSA
20 1978 and that is followed by each public school in the
21 district; 3) the capital needs of charter schools located in
22 the school district; and 4) projections for the facilities
23 needed in order to maintain a full-day kindergarten program;

24 (e) the school district is willing and
25 able to pay any portion of the total cost of the public school

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1 capital outlay project that, according to Paragraph (5), (6),
2 (8) or (9) of this subsection, is not funded with grant
3 assistance from the fund; provided that school district funds
4 used for a project that was initiated after September 1, 2002
5 when the statewide adequacy standards were adopted, but before
6 September 1, 2004 when the standards were first used as the
7 basis for determining the state and school district share of a
8 project, may be applied to the school district portion required
9 for that project;

10 (f) the application includes the capital
11 needs of any charter school located in the school district or
12 the school district has shown that the facilities of the
13 charter school have a smaller deviation from the statewide
14 adequacy standards than other district facilities included in
15 the application; and

16 (g) the school district has agreed, in
17 writing, to comply with any reporting requirements or
18 conditions imposed by the council pursuant to Section 22-24-5.1
19 NMSA 1978.

20 C. After consulting with the public school capital
21 outlay oversight task force and other experts, the council
22 shall regularly review and update statewide adequacy standards
23 applicable to all school districts. The standards shall
24 establish the acceptable level for the physical condition and
25 capacity of buildings, the educational suitability of

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1 facilities and the need for technological infrastructure.
2 Except as otherwise provided in the Public School Capital
3 Outlay Act, the amount of outstanding deviation from the
4 standards shall be used by the council in evaluating and
5 prioritizing public school capital outlay projects.

6 D. The acquisition of a facility by a school
7 district or charter school pursuant to a financing agreement
8 that provides for lease payments with an option to purchase for
9 a price that is reduced according to lease payments made may be
10 considered a public school capital outlay project and eligible
11 for grant assistance under this section pursuant to the
12 following criteria:

13 (1) no grant shall be awarded unless the
14 council determines that, at the time of exercising the option
15 to purchase the facility by the school district or charter
16 school, the facility will equal or exceed the statewide
17 adequacy standards and the building standards for public school
18 facilities;

19 (2) no grant shall be awarded unless the
20 school district and the need for the facility meet all of the
21 requirements for grant assistance pursuant to the Public School
22 Capital Outlay Act;

23 (3) the total project cost shall equal the
24 total payments that would be due under the agreement if the
25 school district or charter school would eventually acquire

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1 title to the facility;

2 (4) the portion of the total project cost to
3 be paid from the fund may be awarded as one grant, but
4 disbursements from the fund shall be made from time to time as
5 lease payments become due;

6 (5) the portion of the total project cost to
7 be paid by the school district or charter school may be paid
8 from time to time as lease payments become due; and

9 (6) neither a grant award nor any provision of
10 the Public School Capital Outlay Act creates a legal obligation
11 for the school district or charter school to continue the lease
12 from year to year or to purchase the facility.

13 E. In order to encourage private capital investment
14 in the construction of public school facilities, the purchase
15 of a privately owned school facility that is, at the time of
16 application, in use by a school district may be considered a
17 public school capital outlay project and eligible for grant
18 assistance pursuant to this section if the council finds that:

19 (1) at the time of the initial use by the
20 school district, the facility to be purchased equaled or
21 exceeded the statewide adequacy standards and the building
22 standards for public school facilities;

23 (2) at the time of application, attendance at
24 the facility to be purchased is at seventy-five percent or
25 greater of design capacity and the attendance at other schools

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1 in the school district that the students at the facility would
2 otherwise attend is at eighty-five percent or greater of design
3 capacity; and

4 (3) the school district and the capital outlay
5 project meet all of the requirements for grant assistance
6 pursuant to the Public School Capital Outlay Act; provided
7 that, when determining the deviation from the statewide
8 adequacy standards for the purposes of evaluating and
9 prioritizing the project, the students using the facility shall
10 be deemed to be attending other schools in the school district.

11 F. It is the intent of the legislature that grant
12 assistance made pursuant to this section allows every school
13 district to meet the standards developed pursuant to Subsection
14 C of this section; provided, however, that nothing in the
15 Public School Capital Outlay Act or the development of
16 standards pursuant to that act prohibits a school district from
17 using other funds available to the district to exceed the
18 statewide adequacy standards.

19 G. Upon request, the council shall work with, and
20 provide assistance and information to, the public school
21 capital outlay oversight task force.

22 H. The council may establish committees or task
23 forces, not necessarily consisting of council members, and may
24 use the committees or task forces, as well as existing agencies
25 or organizations, to conduct studies, conduct surveys, submit

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1 recommendations or otherwise contribute expertise from the
2 public schools, programs, interest groups and segments of
3 society most concerned with a particular aspect of the
4 council's work.

5 I. Upon the recommendation of the public school
6 facilities authority, the council shall develop building
7 standards for public school facilities and shall promulgate
8 other such rules as are necessary to carry out the provisions
9 of the Public School Capital Outlay Act.

10 J. No later than December 15 of each year, the
11 council shall prepare a report summarizing its activities
12 during the previous fiscal year. The report shall describe in
13 detail all projects funded, the progress of projects previously
14 funded but not completed, the criteria used to prioritize and
15 fund projects and all other council actions. The report shall
16 be submitted to the public education commission, the governor,
17 the legislative finance committee, the legislative education
18 study committee and the legislature."

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL
OUTLAY ACT TO PROVIDE PROCEDURES FOR STATE-CHARTERED AND
LOCALLY CHARTERED CHARTER SCHOOLS FOR ADEQUATE FACILITIES;
CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-24-6.1 NMSA 1978 (being Laws 2007,
Chapter 214, Section 1, as amended) is amended to read:

"22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
SCHOOL.--All of the provisions of the Public School Capital
Outlay Act apply to an application by a state-chartered charter
school for grant assistance for a capital project except:

A. the portion of the cost of the project to be
paid from the fund shall be calculated pursuant to Paragraph
(5) of Subsection B of Section 22-24-5 NMSA 1978 using data

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1 from the school district in which the state-chartered charter
2 school is located;

3 B. in calculating a reduction pursuant to Paragraph
4 (6) of Subsection B of Section 22-24-5 NMSA 1978, ~~[(1)]~~ the
5 amount to be used in Subparagraph (a) of that paragraph shall
6 equal the total of all legislative appropriations made after
7 January 1, 2007 for nonoperating expenses either directly to
8 the charter school or to another governmental entity for the
9 purpose of passing the money through directly to the charter
10 school, regardless of whether the charter school was a state-
11 chartered charter school at the time of the appropriation or
12 later opted to become a state-chartered charter school, except
13 that the total shall not include any such appropriation if,
14 before the charter school became a state-chartered charter
15 school, the appropriation was previously used to calculate a
16 reduction pursuant to Paragraph (6) of Subsection B of Section
17 22-24-5 NMSA 1978; and

18 ~~[(2) the amount to be used in Subparagraph (b)~~
19 ~~of that paragraph shall equal the total of all federal money~~
20 ~~received by the charter school for nonoperating purposes~~
21 ~~pursuant to Title XIV of the American Recovery and Reinvestment~~
22 ~~Act of 2009, regardless of whether the charter school was a~~
23 ~~state-chartered charter school at the time of receiving the~~
24 ~~federal money or later opted to become a state-chartered~~
25 ~~charter school, except that the total shall not include any~~

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1 ~~such federal money if, before the charter school became a~~
2 ~~state-chartered charter school, the money was previously used~~
3 ~~to calculate a reduction pursuant to Paragraph (6) of~~
4 ~~Subsection B of Section 22-24-5 NMSA 1978; and]~~

5 C. if the council determines that the state-
6 chartered charter school does not have the resources to pay all
7 or a portion of the total cost of the capital outlay project
8 that is not funded with grant assistance from the fund, to the
9 extent that money is available in the charter school capital
10 outlay fund, the council shall make an award from that fund for
11 the remaining amount necessary to pay for the project. The
12 council may establish, by rule, a procedure for determining the
13 amount of resources available to the charter school and the
14 amount needed from the charter school capital outlay fund."

15 SECTION 2. A new section of the Public School Capital
16 Outlay Act is enacted to read:

17 "[NEW MATERIAL] PUBLIC FACILITIES FOR CHARTER SCHOOLS.--

18 A. The council shall develop a program for
19 assisting charter schools to be located in public buildings or
20 in buildings being acquired by charter schools pursuant to a
21 lease-purchase agreement.

22 B. A locally chartered or state-chartered charter
23 school, desiring assistance pursuant to this section, shall
24 make application to the council for a grant. The application
25 shall include:

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1 (1) a summary of the efforts that have been
2 made by the charter school to be located in a public facility;

3 (2) an estimate of the costs necessary to
4 bring the public facilities up to the statewide adequacy
5 standards; and

6 (3) such other information as required by rule
7 of the council.

8 C. The public school facilities authority shall
9 review the information submitted by the charter school and rank
10 the application with similar applications pursuant to a
11 methodology adopted by the council.

12 D. After a public hearing and to the extent that
13 money is available in the charter school capital outlay fund
14 for such purposes, the council shall approve grants from the
15 fund on the established priority basis.

16 E. An award made pursuant to this section shall not
17 be considered when calculating an amount to offset grants to a
18 school district or state-chartered charter school pursuant to
19 Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978 or
20 Subsection B of Section 22-24-6.1 NMSA 1978."

21 **SECTION 3.** A new section of the Public School Capital
22 Outlay Act is enacted to read:

23 "[NEW MATERIAL] CHARTER SCHOOL CAPITAL OUTLAY FUND.--

24 A. The "charter school capital outlay fund" is
25 created in the state treasury. The fund shall consist of

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1 appropriations, gifts, grants, donations and bequests made to
2 the fund. Income from the fund shall be credited to the fund,
3 and money in the fund shall not revert or be transferred to any
4 other fund at the end of a fiscal year. Money in the fund is
5 appropriated to the council for the purposes of making grants
6 pursuant to Subsection B of this section. Expenditures from
7 the fund shall be made on warrant of the secretary of finance
8 and administration pursuant to vouchers signed by the director
9 of the public school facilities authority.

10 B. Balances in the charter school capital outlay
11 fund shall be used for the following purposes and, to the
12 extent money is available in the fund, in the following order:

13 (1) for making grants to state-chartered
14 charter schools pursuant to Subsection C of Section 22-24-6.1
15 NMSA 1978 to assist with the local match needed for an approved
16 public school capital outlay project; and

17 (2) if the council determines that money in
18 the fund is not needed for grants pursuant to Paragraph (1) of
19 this subsection, remaining balances in the fund may be used for
20 providing assistance to charter schools pursuant to Section 2
21 of this 2013 act."

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BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO ALLOW THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL TO PROVIDE ANNUAL ALLOCATIONS TO SCHOOL DISTRICTS TO ADDRESS BUILDING SYSTEMS NEEDS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975, Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School Capital Outlay Act:

A. "building system" means a set of interacting parts that make up a single, non-portable or fixed component of a facility and that, together with other building systems, make up an entire integrated facility or property, including

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1 roofing, electrical distribution, electronic communication,
2 plumbing, lighting, mechanical, fire prevention, facility
3 shell, interior finishes and heating, ventilation and air
4 conditioning systems, as defined by the council;

5 ~~[A-]~~ B. "constitutional special schools" means the
6 New Mexico school for the blind and visually impaired and the
7 New Mexico school for the deaf;

8 ~~[B-]~~ C. "constitutional special schools support
9 spaces" means all facilities necessary to support the
10 constitutional special schools' educational mission that are
11 not included in the constitutional special schools' educational
12 adequacy standards, including, but not limited to, performing
13 arts centers, facilities for athletic competition, school
14 district administration and facility and vehicle maintenance;

15 ~~[G-]~~ D. "council" means the public school capital
16 outlay council;

17 ~~[D-]~~ E. "fund" means the public school capital
18 outlay fund; and

19 ~~[E-]~~ F. "school district" includes state-chartered
20 charter schools and the constitutional special schools."

21 **SECTION 2.** Section 22-24-4 NMSA 1978 (being Laws 1975,
22 Chapter 235, Section 4, as amended) is amended to read:

23 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
24 USE.--

25 A. The "public school capital outlay fund" is

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1 created. Balances remaining in the fund at the end of each
2 fiscal year shall not revert.

3 B. Except as provided in Subsections G and [~~F~~] J
4 through [~~H~~] M of this section, money in the fund may be used
5 only for capital expenditures deemed necessary by the council
6 for an adequate educational program.

7 C. The council may authorize the purchase by the
8 public school facilities authority of portable classrooms to be
9 loaned to school districts to meet a temporary requirement.
10 Payment for these purchases shall be made from the fund. Title
11 to and custody of the portable classrooms shall rest in the
12 public school facilities authority. The council shall
13 authorize the lending of the portable classrooms to school
14 districts upon request and upon finding that sufficient need
15 exists. Application for use or return of state-owned portable
16 classroom buildings shall be submitted by school districts to
17 the council. Expenses of maintenance of the portable
18 classrooms while in the custody of the public school facilities
19 authority shall be paid from the fund; expenses of maintenance
20 and insurance of the portable classrooms while in the custody
21 of a school district shall be the responsibility of the school
22 district. The council may authorize the permanent disposition
23 of the portable classrooms by the public school facilities
24 authority with prior approval of the state board of finance.

25 D. Applications for assistance from the fund shall

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1 be made by school districts to the council in accordance with
2 requirements of the council. Except as provided in Subsection
3 ~~[K]~~ L of this section, the council shall require as a condition
4 of application that a school district have a current five-year
5 facilities plan, which shall include a current preventive
6 maintenance plan to which the school adheres for each public
7 school in the school district.

8 E. The council shall review all requests for
9 assistance from the fund and shall allocate funds only for
10 those capital outlay projects that meet the criteria of the
11 Public School Capital Outlay Act.

12 F. Money in the fund shall be disbursed by warrant
13 of the department of finance and administration on vouchers
14 signed by the secretary of finance and administration following
15 certification by the council that an application has been
16 approved or an expenditure has been ordered by a court pursuant
17 to Section 22-24-5.4 NMSA 1978. At the discretion of the
18 council, money for a project shall be distributed as follows:

19 (1) up to ten percent of the portion of the
20 project cost funded with distributions from the fund or five
21 percent of the total project cost, whichever is greater, may be
22 paid to the school district before work commences with the
23 balance of the grant award made on a cost-reimbursement basis;
24 or

25 (2) the council may authorize payments

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1 directly to the contractor.

2 G. Balances in the fund may be annually
3 appropriated for the core administrative functions of the
4 public school facilities authority pursuant to the Public
5 School Capital Outlay Act, and, in addition, balances in the
6 fund may be expended by the public school facilities authority,
7 upon approval of the council, for project management expenses;
8 provided that:

9 (1) the total annual expenditures from the
10 fund for the core administrative functions pursuant to this
11 subsection shall not exceed five percent of the average annual
12 grant assistance authorized from the fund during the three
13 previous fiscal years; and

14 (2) any unexpended or unencumbered balance
15 remaining at the end of a fiscal year from the expenditures
16 authorized in this subsection shall revert to the fund.

17 H. Up to ten million dollars (\$10,000,000) of the
18 fund may be allocated annually by the council for expenditure
19 in fiscal years 2010 through 2015 for a roof repair and
20 replacement initiative with projects to be identified by the
21 council pursuant to Section 22-24-4.3 NMSA 1978; provided that
22 money allocated pursuant to this subsection shall be expended
23 within two years of the allocation.

24 I. Up to fifteen million dollars (\$15,000,000) of
25 the fund may be expended annually by the council for

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1 expenditure in fiscal years 2014 through 2018 for a building
2 system repair, renovation or replacement initiative with
3 projects to be identified by the council pursuant to Section 3
4 of this 2013 act; provided that money allocated pursuant to
5 this subsection shall be expended within two years of the
6 allocation.

7 ~~[F.]~~ J. The fund may be expended annually by the
8 council for grants to school districts for the purpose of
9 making lease payments for classroom facilities, including
10 facilities leased by charter schools. The grants shall be made
11 upon application by the school districts and pursuant to rules
12 adopted by the council; provided that an application on behalf
13 of a charter school shall be made by the school district, but,
14 if the school district fails to make an application on behalf
15 of a charter school, the charter school may submit its own
16 application. The following criteria shall apply to the grants:

17 (1) the amount of a grant to a school district
18 shall not exceed:

19 (a) the actual annual lease payments
20 owed for leasing classroom space for schools, including charter
21 schools, in the school district; or

22 (b) seven hundred dollars (\$700)
23 multiplied by the number of MEM using the leased classroom
24 facilities; provided that in fiscal year 2009 and in each
25 subsequent fiscal year, this amount shall be adjusted by the

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1 percentage change between the penultimate calendar year and the
2 immediately preceding calendar year of the consumer price index
3 for the United States, all items, as published by the United
4 States department of labor;

5 (2) a grant received for the lease payments of
6 a charter school may be used by that charter school as a state
7 match necessary to obtain federal grants pursuant to the
8 federal No Child Left Behind Act of 2001;

9 (3) at the end of each fiscal year, any
10 unexpended or unencumbered balance of the appropriation shall
11 revert to the fund;

12 (4) no grant shall be made for lease payments
13 due pursuant to a financing agreement under which the
14 facilities may be purchased for a price that is reduced
15 according to the lease payments made unless:

16 (a) the agreement has been approved
17 pursuant to the provisions of the Public School Lease Purchase
18 Act; and

19 (b) the facilities are leased by a
20 charter school;

21 (5) if the lease payments are made pursuant to
22 a financing agreement under which the facilities may be
23 purchased for a price that is reduced according to the lease
24 payments made, neither a grant nor any provision of the Public
25 School Capital Outlay Act creates a legal obligation for the

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1 school district or charter school to continue the lease from
2 year to year or to purchase the facilities nor does it create a
3 legal obligation for the state to make subsequent grants
4 pursuant to the provisions of this subsection; and

5 (6) as used in this subsection:

6 (a) "MEM" means: 1) the average
7 full-time-equivalent enrollment using leased classroom
8 facilities on the eightieth and one hundred twentieth days of
9 the prior school year; or 2) in the case of an approved charter
10 school that has not commenced classroom instruction, the
11 estimated full-time-equivalent enrollment that will use leased
12 classroom facilities in the first year of instruction, as shown
13 in the approved charter school application; provided that,
14 after the eightieth day of the school year, the MEM shall be
15 adjusted to reflect the full-time-equivalent enrollment on that
16 date; and

17 (b) "classroom facilities" or "classroom
18 space" includes the space needed, as determined by the minimum
19 required under the statewide adequacy standards, for the direct
20 administration of school activities.

21 [~~J.~~] K. In addition to other authorized
22 expenditures from the fund, up to one percent of the average
23 grant assistance authorized from the fund during the three
24 previous fiscal years may be expended in each fiscal year by
25 the public school facilities authority to pay the state fire

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1 marshal, the construction industries division of the regulation
2 and licensing department and local jurisdictions having
3 authority from the state to permit and inspect projects for
4 expenditures made to permit and inspect projects funded in
5 whole or in part under the Public School Capital Outlay Act.
6 The authority may enter into contracts with the state fire
7 marshal, the construction industries division or the
8 appropriate local authorities to carry out the provisions of
9 this subsection. Such a contract may provide for initial
10 estimated payments from the fund prior to the expenditures if
11 the contract also provides for additional payments from the
12 fund if the actual expenditures exceed the initial payments and
13 for repayments back to the fund if the initial payments exceed
14 the actual expenditures. Money distributed from the fund to
15 the state fire marshal or the construction industries division
16 pursuant to this subsection shall be used to supplement, rather
17 than supplant, appropriations to those entities.

18 ~~[K-]~~ L. Pursuant to guidelines established by the
19 council, allocations from the fund may be made to assist school
20 districts in developing and updating five-year facilities plans
21 required by the Public School Capital Outlay Act; provided
22 that:

23 (1) no allocation shall be made unless the
24 council determines that the school district is willing and able
25 to pay the portion of the total cost of developing or updating

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1 the plan that is not funded with the allocation from the fund.
2 Except as provided in Paragraph (2) of this subsection, the
3 portion of the total cost to be paid with the allocation from
4 the fund shall be determined pursuant to the methodology in
5 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

6 (2) the allocation from the fund may be used
7 to pay the total cost of developing or updating the plan if:

8 (a) the school district has fewer than
9 an average of six hundred full-time-equivalent students on the
10 eightieth and one hundred twentieth days of the prior school
11 year; or

12 (b) the school district meets all of the
13 following requirements: 1) the school district has fewer than
14 an average of one thousand full-time-equivalent students on the
15 eightieth and one hundred twentieth days of the prior school
16 year; 2) the school district has at least seventy percent of
17 its students eligible for free or reduced-fee lunch; 3) the
18 state share of the total cost, if calculated pursuant to the
19 methodology in Paragraph (5) of Subsection B of Section 22-24-5
20 NMSA 1978, would be less than fifty percent; and 4) for all
21 educational purposes, the school district has a residential
22 property tax rate of at least seven dollars (\$7.00) on each one
23 thousand dollars (\$1,000) of taxable value, as measured by the
24 sum of all rates imposed by resolution of the local school
25 board plus rates set to pay interest and principal on

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1 outstanding school district general obligation bonds.

2 ~~[H.]~~ M. Upon application by a school district,
3 allocations from the fund may be made by the council for the
4 purpose of demolishing abandoned school district facilities,
5 provided that:

6 (1) the costs of continuing to insure an
7 abandoned facility outweigh any potential benefit when and if a
8 new facility is needed by the school district;

9 (2) there is no practical use for the
10 abandoned facility without the expenditure of substantial
11 renovation costs; and

12 (3) the council may enter into an agreement
13 with the school district under which an amount equal to the
14 savings to the school district in lower insurance premiums are
15 used to reimburse the fund fully or partially for the
16 demolition costs allocated to the school district."

17 **SECTION 3.** A new section of the Public School Capital
18 Outlay Act is enacted to read:

19 "[NEW MATERIAL] BUILDING SYSTEM REPAIR, RENOVATION OR
20 REPLACEMENT.--

21 A. The council shall develop guidelines for a
22 building system repair, renovation or replacement initiative
23 pursuant to the provisions of this section.

24 B. A school district desiring a grant award
25 pursuant to this section shall submit an application to the

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1 council. The application shall include an assessment of the
2 building system that, in the opinion of the school district,
3 the repair, renovation or replacement of which would extend the
4 useful life of the building itself.

5 C. The public school facilities authority shall
6 verify the assessment made by the school district and rank the
7 application with similar applications pursuant to a methodology
8 adopted by the council.

9 D. After a public hearing and to the extent that
10 money is available in the fund for such purposes, the council
11 shall approve building system repair, renovation or replacement
12 projects on the established priority basis; provided that no
13 project shall be approved unless the council determines that
14 the school district is willing and able to pay the portion of
15 the total cost of the project that is not funded with grant
16 assistance from the fund. In order to pay its portion of the
17 total project cost, a school district may use state
18 distributions made to the school district pursuant to the
19 Public School Capital Improvements Act or, if within the scope
20 of the authorizing resolution, proceeds of the property tax
21 imposed pursuant to that act or to the Public School Buildings
22 Act.

23 E. The state share of the cost of an approved
24 building system repair, renovation or replacement project shall
25 be calculated pursuant to the methodology in Paragraph (5) of

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1 Subsection B of Section 22-24-5 NMSA 1978.

2 F. A grant made pursuant to this section shall be
3 expended by the school district within two years of the grant
4 allocation."

5 SECTION 4. Section 22-24-5 NMSA 1978 (being Laws 1975,
6 Chapter 235, Section 5, as amended) is amended to read:

7 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
8 APPLICATION--GRANT ASSISTANCE.--

9 A. Applications for grant assistance, approval of
10 applications, prioritization of projects and grant awards shall
11 be conducted pursuant to the provisions of this section.

12 B. Except as provided in Sections 22-24-4.3,
13 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
14 govern grant assistance from the fund [~~for a public school~~
15 ~~capital outlay project not wholly funded pursuant to Section~~
16 ~~22-24-4.1 NMSA 1978~~]:

17 (1) all school districts are eligible to apply
18 for funding from the fund, regardless of percentage of
19 indebtedness;

20 (2) priorities for funding shall be determined
21 by using the statewide adequacy standards developed pursuant to
22 Subsection C of this section; provided that:

23 (a) the council shall apply the
24 standards to charter schools to the same extent that they are
25 applied to other public schools;

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1 (b) the council may award grants
2 annually to school districts for the purpose of repairing,
3 renovating or replacing public school building systems as
4 identified in Section 3 of this 2013 act;

5 [~~(b)~~] (c) the council shall adopt and
6 apply adequacy standards appropriate to the unique needs of the
7 constitutional special schools; and

8 [~~(c)~~] (d) in an emergency in which the
9 health or safety of students or school personnel is at
10 immediate risk or in which there is a threat of significant
11 property damage, the council may award grant assistance for a
12 project using criteria other than the statewide adequacy
13 standards;

14 (3) the council shall establish criteria to be
15 used in public school capital outlay projects that receive
16 grant assistance pursuant to the Public School Capital Outlay
17 Act. In establishing the criteria, the council shall consider:

18 (a) the feasibility of using design,
19 build and finance arrangements for public school capital outlay
20 projects;

21 (b) the potential use of more durable
22 construction materials that may reduce long-term operating
23 costs;

24 (c) concepts that promote efficient but
25 flexible utilization of space; and

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1 (d) any other financing or construction
2 concept that may maximize the dollar effect of the state grant
3 assistance;

4 (4) no more than ten percent of the combined
5 total of grants in a funding cycle shall be used for
6 retrofitting existing facilities for technology infrastructure;

7 (5) except as provided in Paragraph (6), (8),
8 (9) or (10) of this subsection, the state share of a project
9 approved and ranked by the council shall be funded within
10 available resources pursuant to the provisions of this
11 paragraph. No later than May 1 of each calendar year, a value
12 shall be calculated for each school district in accordance with
13 the following procedure:

14 (a) the final prior year net taxable
15 value for a school district divided by the MEM for that school
16 district is calculated for each school district;

17 (b) the final prior year net taxable
18 value for the whole state divided by the MEM for the state is
19 calculated;

20 (c) excluding any school district for
21 which the result calculated pursuant to Subparagraph (a) of
22 this paragraph is more than twice the result calculated
23 pursuant to Subparagraph (b) of this paragraph, the results
24 calculated pursuant to Subparagraph (a) of this paragraph are
25 listed from highest to lowest;

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1 (d) the lowest value listed pursuant to
2 Subparagraph (c) of this paragraph is subtracted from the
3 highest value listed pursuant to that subparagraph;

4 (e) the value calculated pursuant to
5 Subparagraph (a) of this paragraph for the subject school
6 district is subtracted from the highest value listed in
7 Subparagraph (c) of this paragraph;

8 (f) the result calculated pursuant to
9 Subparagraph (e) of this paragraph is divided by the result
10 calculated pursuant to Subparagraph (d) of this paragraph;

11 (g) the sum of the property tax mill
12 levies for the prior tax year imposed by each school district
13 on residential property pursuant to Chapter 22, Article 18 NMSA
14 1978, the Public School Capital Improvements Act, the Public
15 School Buildings Act, the Education Technology Equipment Act
16 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
17 is calculated for each school district;

18 (h) the lowest value calculated pursuant
19 to Subparagraph (g) of this paragraph is subtracted from the
20 highest value calculated pursuant to that subparagraph;

21 (i) the lowest value calculated pursuant
22 to Subparagraph (g) of this paragraph is subtracted from the
23 value calculated pursuant to that subparagraph for the subject
24 school district;

25 (j) the value calculated pursuant to

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1 Subparagraph (i) of this paragraph is divided by the value
2 calculated pursuant to Subparagraph (h) of this paragraph;

3 (k) if the value calculated for a
4 subject school district pursuant to Subparagraph (j) of this
5 paragraph is less than five-tenths, then, except as provided in
6 Subparagraph (n) or (o) of this paragraph, the value for that
7 school district equals the value calculated pursuant to
8 Subparagraph (f) of this paragraph;

9 (l) if the value calculated for a
10 subject school district pursuant to Subparagraph (j) of this
11 paragraph is five-tenths or greater, then that value is
12 multiplied by five-hundredths;

13 (m) if the value calculated for a
14 subject school district pursuant to Subparagraph (j) of this
15 paragraph is five-tenths or greater, then the value calculated
16 pursuant to Subparagraph (l) of this paragraph is added to the
17 value calculated pursuant to Subparagraph (f) of this
18 paragraph. Except as provided in Subparagraph (n) or (o) of
19 this paragraph, the sum equals the value for that school
20 district;

21 (n) in those instances in which the
22 calculation pursuant to Subparagraph (k) or (m) of this
23 paragraph yields a value less than one-tenth, one-tenth shall
24 be used as the value for the subject school district;

25 (o) in those instances in which the

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1 calculation pursuant to Subparagraph (k) or (m) of this
2 paragraph yields a value greater than one, one shall be used as
3 the value for the subject school district;

4 (p) except as provided in Section
5 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
6 Paragraph (6), (8), (9) or (10) of this subsection, the amount
7 to be distributed from the fund for an approved project shall
8 equal the total project cost multiplied by a fraction the
9 numerator of which is the value calculated for the subject
10 school district in the current year plus the value calculated
11 for that school district in each of the two preceding years and
12 the denominator of which is three; and

13 (q) as used in this paragraph: 1) "MEM"
14 means the average full-time-equivalent enrollment of students
15 attending public school in a school district on the eightieth
16 and one hundred twentieth days of the prior school year; 2)
17 "total project cost" means the total amount necessary to
18 complete the public school capital outlay project less any
19 insurance reimbursement received by the school district for the
20 project; and 3) in the case of a state-chartered charter school
21 that has submitted an application for grant assistance pursuant
22 to this section, the "value calculated for the subject school
23 district" means the value calculated for the school district in
24 which the state-chartered charter school is physically located;

25 (6) the amount calculated pursuant to

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1 Subparagraph (p) of Paragraph (5) of this subsection shall be
2 reduced by the following procedure:

3 (a) the total of all legislative
4 appropriations made after January 1, 2003 for nonoperating
5 purposes either directly to the subject school district or to
6 another governmental entity for the purpose of passing the
7 money through directly to the subject school district, and not
8 rejected by the subject school district, is calculated;
9 provided that: 1) an appropriation made in a fiscal year shall
10 be deemed to be accepted by a school district unless, prior to
11 June 1 of that fiscal year, the school district notifies the
12 department of finance and administration and the public
13 education department that the school district is rejecting the
14 appropriation; 2) the total shall exclude any educational
15 technology appropriation made prior to January 1, 2005 unless
16 the appropriation was on or after January 1, 2003 and not
17 previously used to offset distributions pursuant to the
18 Technology for Education Act; 3) the total shall exclude any
19 appropriation previously made to the subject school district
20 that is reauthorized for expenditure by another recipient;
21 4) the total shall exclude one-half of the amount of any
22 appropriation made or reauthorized after January 1, 2007 if the
23 purpose of the appropriation or reauthorization is to fund, in
24 whole or in part, a capital outlay project that, when
25 prioritized by the council pursuant to this section either in

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1 the immediately preceding funding cycle or in the current
2 funding cycle, ranked in the top one hundred fifty projects
3 statewide; 5) the total shall exclude the proportionate share
4 of any appropriation made or reauthorized after January 1, 2008
5 for a capital project that will be jointly used by a
6 governmental entity other than the subject school district.

7 Pursuant to criteria adopted by rule of the council and based
8 upon the proposed use of the capital project, the council shall
9 determine the proportionate share to be used by the
10 governmental entity and excluded from the total; and 6) unless
11 the grant award is made to the state-chartered charter school
12 or unless the appropriation was previously used to calculate a
13 reduction pursuant to this paragraph, the total shall exclude
14 appropriations made after January 1, 2007 for nonoperating
15 purposes of a specific state-chartered charter school,
16 regardless of whether the charter school is a state-chartered
17 charter school at the time of the appropriation or later opts
18 to become a state-chartered charter school;

19 (b) the applicable fraction used for the
20 subject school district and the current calendar year for the
21 calculation in Subparagraph (p) of Paragraph (5) of this
22 subsection is subtracted from one;

23 (c) the value calculated pursuant to
24 Subparagraph (a) of this paragraph for the subject school
25 district is multiplied by the amount calculated pursuant to

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1 Subparagraph (b) of this paragraph for that school district;

2 (d) the total amount of reductions for
3 the subject school district previously made pursuant to
4 Subparagraph (e) of this paragraph for other approved public
5 school capital outlay projects is subtracted from the amount
6 calculated pursuant to Subparagraph (c) of this paragraph; and

7 (e) the amount calculated pursuant to
8 Subparagraph (p) of Paragraph (5) of this subsection shall be
9 reduced by the amount calculated pursuant to Subparagraph (d)
10 of this paragraph;

11 (7) as used in this subsection:

12 (a) "governmental entity" includes an
13 Indian nation, tribe or pueblo; and

14 (b) "subject school district" means the
15 school district that has submitted the application for funding
16 and in which the approved public school capital outlay project
17 will be located;

18 (8) the amount calculated pursuant to
19 Subparagraph (p) of Paragraph (5) of this subsection, after any
20 reduction pursuant to Paragraph (6) of this subsection, may be
21 increased by an additional five percent if the council finds
22 that the subject school district has been exemplary in
23 implementing and maintaining a preventive maintenance program.
24 The council shall adopt such rules as are necessary to
25 implement the provisions of this paragraph;

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1 (9) the council may adjust the amount of local
2 share otherwise required if it determines that a school
3 district has used all of its local resources. Before making
4 any adjustment to the local share, the council shall consider
5 whether:

6 (a) the school district has insufficient
7 bonding capacity over the next four years to provide the local
8 match necessary to complete the project and, for all
9 educational purposes, has a residential property tax rate of at
10 least ten dollars (\$10.00) on each one thousand dollars
11 (\$1,000) of taxable value, as measured by the sum of all rates
12 imposed by resolution of the local school board plus rates set
13 to pay interest and principal on outstanding school district
14 general obligation bonds;

15 (b) the school district: 1) has fewer
16 than an average of eight hundred full-time-equivalent students
17 on the eightieth and one hundred twentieth days of the prior
18 school year; 2) has at least seventy percent of its students
19 eligible for free or reduced-fee lunch; 3) has a share of the
20 total project cost, as calculated pursuant to provisions of
21 this section, that would be greater than fifty percent; and 4)
22 for all educational purposes, has a residential property tax
23 rate of at least seven dollars (\$7.00) on each one thousand
24 dollars (\$1,000) of taxable value, as measured by the sum of
25 all rates imposed by resolution of the local school board plus

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1 rates set to pay interest and principal on outstanding school
2 district general obligation bonds; or

3 (c) the school district: 1) has an
4 enrollment growth rate over the previous school year of at
5 least two and one-half percent; 2) pursuant to its five-year
6 facilities plan, will be building a new school within the next
7 two years; and 3) for all educational purposes, has a
8 residential property tax rate of at least ten dollars (\$10.00)
9 on each one thousand dollars (\$1,000) of taxable value, as
10 measured by the sum of all rates imposed by resolution of the
11 local school board plus rates set to pay interest and principal
12 on outstanding school district general obligation bonds;

13 (10) the local match for the constitutional
14 special schools shall be set at fifty percent for projects that
15 qualify under the educational adequacy category and one hundred
16 percent for projects that qualify in the support spaces
17 category; provided that the council may adjust or waive the
18 amount of any direct appropriation offset to or local share
19 required for the constitutional special schools if an applicant
20 constitutional special school has insufficient or no local
21 resources available; and

22 (11) no application for grant assistance from
23 the fund shall be approved unless the council determines that:

24 (a) the public school capital outlay
25 project is needed and included in the school district's

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1 five-year facilities plan among its top priorities;

2 (b) the school district has used its
3 capital resources in a prudent manner;

4 (c) the school district has provided
5 insurance for buildings of the school district in accordance
6 with the provisions of Section 13-5-3 NMSA 1978;

7 (d) the school district has submitted a
8 five-year facilities plan that includes: 1) enrollment
9 projections; 2) a current preventive maintenance plan that has
10 been approved by the council pursuant to Section 22-24-5.3 NMSA
11 1978 and that is followed by each public school in the
12 district; 3) the capital needs of charter schools located in
13 the school district; and 4) projections for the facilities
14 needed in order to maintain a full-day kindergarten program;

15 (e) the school district is willing and
16 able to pay any portion of the total cost of the public school
17 capital outlay project that, according to Paragraph (5), (6),
18 (8) or (9) of this subsection, is not funded with grant
19 assistance from the fund; provided that school district funds
20 used for a project that was initiated after September 1, 2002
21 when the statewide adequacy standards were adopted, but before
22 September 1, 2004 when the standards were first used as the
23 basis for determining the state and school district share of a
24 project, may be applied to the school district portion required
25 for that project;

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1 (f) the application includes the capital
2 needs of any charter school located in the school district or
3 the school district has shown that the facilities of the
4 charter school have a smaller deviation from the statewide
5 adequacy standards than other district facilities included in
6 the application; and

7 (g) the school district has agreed, in
8 writing, to comply with any reporting requirements or
9 conditions imposed by the council pursuant to Section 22-24-5.1
10 NMSA 1978.

11 C. After consulting with the public school capital
12 outlay oversight task force and other experts, the council
13 shall regularly review and update statewide adequacy standards
14 applicable to all school districts. The standards shall
15 establish the acceptable level for the physical condition and
16 capacity of buildings, the educational suitability of
17 facilities and the need for technological infrastructure.
18 Except as otherwise provided in the Public School Capital
19 Outlay Act, the amount of outstanding deviation from the
20 standards shall be used by the council in evaluating and
21 prioritizing public school capital outlay projects.

22 D. The acquisition of a facility by a school
23 district or charter school pursuant to a financing agreement
24 that provides for lease payments with an option to purchase for
25 a price that is reduced according to lease payments made may be

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1 considered a public school capital outlay project and eligible
2 for grant assistance under this section pursuant to the
3 following criteria:

4 (1) no grant shall be awarded unless the
5 council determines that, at the time of exercising the option
6 to purchase the facility by the school district or charter
7 school, the facility will equal or exceed the statewide
8 adequacy standards and the building standards for public school
9 facilities;

10 (2) no grant shall be awarded unless the
11 school district and the need for the facility meet all of the
12 requirements for grant assistance pursuant to the Public School
13 Capital Outlay Act;

14 (3) the total project cost shall equal the
15 total payments that would be due under the agreement if the
16 school district or charter school would eventually acquire
17 title to the facility;

18 (4) the portion of the total project cost to
19 be paid from the fund may be awarded as one grant, but
20 disbursements from the fund shall be made from time to time as
21 lease payments become due;

22 (5) the portion of the total project cost to
23 be paid by the school district or charter school may be paid
24 from time to time as lease payments become due; and

25 (6) neither a grant award nor any provision of

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1 the Public School Capital Outlay Act creates a legal obligation
2 for the school district or charter school to continue the lease
3 from year to year or to purchase the facility.

4 E. In order to encourage private capital investment
5 in the construction of public school facilities, the purchase
6 of a privately owned school facility that is, at the time of
7 application, in use by a school district may be considered a
8 public school capital outlay project and eligible for grant
9 assistance pursuant to this section if the council finds that:

10 (1) at the time of the initial use by the
11 school district, the facility to be purchased equaled or
12 exceeded the statewide adequacy standards and the building
13 standards for public school facilities;

14 (2) at the time of application, attendance at
15 the facility to be purchased is at seventy-five percent or
16 greater of design capacity and the attendance at other schools
17 in the school district that the students at the facility would
18 otherwise attend is at eighty-five percent or greater of design
19 capacity; and

20 (3) the school district and the capital outlay
21 project meet all of the requirements for grant assistance
22 pursuant to the Public School Capital Outlay Act; provided
23 that, when determining the deviation from the statewide
24 adequacy standards for the purposes of evaluating and
25 prioritizing the project, the students using the facility shall

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1 be deemed to be attending other schools in the school district.

2 F. It is the intent of the legislature that grant
3 assistance made pursuant to this section allows every school
4 district to meet the standards developed pursuant to Subsection
5 C of this section; provided, however, that nothing in the
6 Public School Capital Outlay Act or the development of
7 standards pursuant to that act prohibits a school district from
8 using other funds available to the district to exceed the
9 statewide adequacy standards.

10 G. Upon request, the council shall work with, and
11 provide assistance and information to, the public school
12 capital outlay oversight task force.

13 H. The council may establish committees or task
14 forces, not necessarily consisting of council members, and may
15 use the committees or task forces, as well as existing agencies
16 or organizations, to conduct studies, conduct surveys, submit
17 recommendations or otherwise contribute expertise from the
18 public schools, programs, interest groups and segments of
19 society most concerned with a particular aspect of the
20 council's work.

21 I. Upon the recommendation of the public school
22 facilities authority, the council shall develop building
23 standards for public school facilities and shall promulgate
24 other such rules as are necessary to carry out the provisions
25 of the Public School Capital Outlay Act.

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1 J. No later than December 15 of each year, the
2 council shall prepare a report summarizing its activities
3 during the previous fiscal year. The report shall describe in
4 detail all projects funded, the progress of projects previously
5 funded but not completed, the criteria used to prioritize and
6 fund projects and all other council actions. The report shall
7 be submitted to the public education commission, the governor,
8 the legislative finance committee, the legislative education
9 study committee and the legislature."

10 SECTION 5. Section 22-24-9 NMSA 1978 (being Laws 2003,
11 Chapter 147, Section 1, as amended) is amended to read:

12 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
13 CREATION--POWERS AND DUTIES.--

14 A. The "public school facilities authority" is
15 created under the council. The authority shall be headed by a
16 director, selected by the council, who shall be versed in
17 construction, architecture or project management. The director
18 may hire no more than two deputies with the approval of the
19 council, and, subject to budgetary constraints set out in
20 Subsection G of Section 22-24-4 NMSA 1978, shall employ or
21 contract with such technical and administrative personnel as
22 are necessary to carry out the provisions of this section. The
23 director, deputies and all other employees of the authority
24 shall be exempt from the provisions of the Personnel Act.

25 B. The authority shall:

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- 1 (1) serve as staff to the council;
- 2 (2) as directed by the council, provide those
- 3 assistance and oversight functions required of the council by
- 4 Section 22-24-5.1 NMSA 1978;
- 5 (3) assist school districts with:
 - 6 (a) the development and implementation
 - 7 of five-year facilities plans and preventive maintenance plans;
 - 8 (b) procurement of architectural and
 - 9 engineering services;
 - 10 (c) management and oversight of
 - 11 construction activities; and
 - 12 (d) training programs;
- 13 (4) conduct ongoing reviews of five-year
- 14 facilities plans, preventive maintenance plans and performance
- 15 pursuant to those plans;
- 16 (5) as directed by the council, assist school
- 17 districts in analyzing and assessing their space utilization
- 18 options;
- 19 (6) ensure that public school capital outlay
- 20 projects are in compliance with applicable building codes;
- 21 (7) conduct on-site inspections as necessary
- 22 to ensure that the construction specifications are being met
- 23 and periodically inspect all of the documents related to
- 24 projects;
- 25 (8) require the use of standardized

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1 construction documents and the use of a standardized process
2 for change orders;

3 (9) have access to the premises of a project
4 and any documentation relating to the project;

5 (10) after consulting with the department,
6 recommend building standards for public school facilities to
7 the council and ensure compliance with building standards
8 adopted by the council;

9 (11) notwithstanding the provisions of
10 Subsection D of Section 22-24-6 NMSA 1978, account for all
11 distributions of grant assistance from the fund for which the
12 initial award was made after July 1, 2004, and make annual
13 reports to the department, the governor, the legislative
14 education study committee, the legislative finance committee
15 and the legislature;

16 (12) maintain a database of the condition of
17 school facilities and maintenance schedules; and

18 (13) as a central purchasing office pursuant
19 to the Procurement Code and as directed by the council, select
20 contractors and enter into and administer contracts for certain
21 emergency projects funded pursuant to Subparagraph (b) of
22 Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978 [and

23 ~~(14) ensure that outstanding deficiencies are~~
24 ~~corrected pursuant to Section 22-24-4.1 NMSA 1978. In the~~
25 ~~performance of this duty, the authority:~~

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1 ~~(a) shall work with school districts to~~
2 ~~validate the assessment of the outstanding deficiencies and the~~
3 ~~projected costs to correct the deficiencies;~~

4 ~~(b) shall work with school districts to~~
5 ~~provide direct oversight of the management and construction of~~
6 ~~the projects that will correct the outstanding deficiencies;~~

7 ~~(c) shall oversee all aspects of the~~
8 ~~contracts entered into by the council to correct the~~
9 ~~outstanding deficiencies;~~

10 ~~(d) may conduct on-site inspections~~
11 ~~while the deficiencies correction work is being done to ensure~~
12 ~~that the construction specifications are being met and may~~
13 ~~periodically inspect all of the documents relating to the~~
14 ~~projects;~~

15 ~~(e) may require the use of standardized~~
16 ~~construction documents and the use of a standardized process~~
17 ~~for change orders;~~

18 ~~(f) may access the premises of a project~~
19 ~~and any documentation relating to the project; and~~

20 ~~(g) shall maintain, track and account~~
21 ~~for deficiency correction projects separately from other~~
22 ~~capital outlay projects funded pursuant to the Public School~~
23 ~~Capital Outlay Act].~~

24 C. All actions taken by the authority shall be
25 consistent with educational programs conducted pursuant to the

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1 Public School Code. In the event of any potential or perceived
2 conflict between a proposed action of the authority and an
3 educational program, the authority shall consult with the
4 secretary.

5 D. A school district, aggrieved by a decision or
6 recommendation of the authority, may appeal the matter to the
7 council by filing a notice of appeal with the council within
8 thirty days of the authority's decision or recommendation.

9 Upon filing of the notice:

10 (1) the decision or recommendation of the
11 authority shall be suspended until the matter is decided by the
12 council;

13 (2) the council shall hear the matter at its
14 next regularly scheduled hearing or at a special hearing called
15 by the chair for that purpose;

16 (3) at the hearing, the school district, the
17 authority and other interested parties may make informal
18 presentations to the council; and

19 (4) the council shall finally decide the
20 matter within ten days after the hearing."

21 SECTION 6. REPEAL.--Section 22-24-4.1 NMSA 1978 (being
22 Laws 2001, Chapter 338, Section 6, as amended) is repealed.

23 SECTION 7. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2013.