



Public School Capital Outlay Oversight Task Force

**2013
ANNUAL REPORT**

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***PUBLIC SCHOOL CAPITAL OUTLAY
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**2013 INTERIM 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 2013 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

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).

task force during the 2013 interim, the following background information is provided for perspective on the issues before the task force.

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 (PED)) in 1998 and co-chaired by Representative Ben Lujan and Senator Linda M. Lopez. This task force contracted with a nationally known consulting firm, MGT of America, Inc., to conduct a comprehensive review of issues concerning New Mexico public school capital outlay, including conducting a sampling assessment of public school facilities in 35 school districts.

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the Forty-Fourth Legislature, Second Special Session, in response to an order by *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.

2005 Legislative Session and Interim

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.

2006 Legislative Session and Interim

Acting on the recommendations of the PSCOOTF, the 2006 legislature passed and the governor signed into law amendments to the Public School Capital Outlay Act to:

- increase distributions for lease payments from \$600 to \$700;
- provide for partial state funding to school districts for five-year facilities master plans, including full funding for some of the smaller districts;
- allow state funding to demolish abandoned school buildings;
- create a process to identify and correct serious outstanding deficiencies at the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD);
- 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".

Additional legislation passed and signed into law:

- requires districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;
- allows school district cash balances to be used for the local match required for PSCOC grants;
- provides funding for school districts for one-time expenditures associated with opening 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.

2007 Legislative Session and Interim

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 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 (often called "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 include 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, the school district will have no available resources from the state to exceed statewide adequacy standards because any local resources of the school district will be spent as the local match for projects.

The vetoed legislation would have equaled an amount from 10 percent 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 special 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.

2008 Legislative Session and Interim

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

another governmental entity; to provide an increased grant award to districts with a demonstrable exemplary record of preventive maintenance; to reauthorize continuation of FIMS funding; and to appropriate funding to the already established New School Development Fund for fiscal year (FY) 2009 and subsequent fiscal years for distributions to school districts for equipment and other non-operating 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 to: 1) repeal the current statutory requirement for bonding of subcontractors; 2) 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) 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.

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; and
- 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.

2009 Legislative Session and Interim

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 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 non-operating costs to be included in the district's or charter school's offset; and
- amendments to the Public School Capital Improvements Act to:
 - ▶ expand the definition of "capital improvements";
 - ▶ require bond resolutions to include charter school capital improvements; and
 - ▶ require proportional distributions of bond proceeds and state match dollars to charter schools.

The governor vetoed language in this measure that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high schools and authorized an increase in grant assistance for qualifying rural high schools. The governor vetoed similar legislative language allowing an increase in grant assistance for certain rural high schools that passed in the 2008 session.

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

- amendments to the Public School Insurance Authority Act to allow for insurance for joint use of school buildings (Laws 2009, Chapter 198);
- a measure that appropriates \$575,000 from the Public School Capital Outlay Fund (PSCOF) to develop and implement a geographic information system (Laws 2009, Chapter 115);
- amendments to the Public School Capital Outlay Act to add the NMSBVI and the NMSD in the statewide deficiencies correction 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.

2010 Legislative Session and Interim

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 (APS)); 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:

- the APS Capital Master Plan and APS' current policy regarding charter school facilities;
- the geographic information system, developed by the 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 the PSFA's FIMS and on equipment inventories and school district preventive 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
- 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 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 weighted New Mexico Condition Index (wNMCI) 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 previous four years, the task force endorsed legislation, which did not pass, to eliminate or modify the statutory requirements for the bonding of subcontractors for public school projects. In response to continued concerns and a requirement in the "omnibus" bill, the task force continued and expanded the work group to examine the cost and benefits of bonding subcontractors on public school projects. The 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.

2011 Legislative Session and Interim

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

The PSCOOTF also spent time considering issues unique to the NMSD and the NMSBVI. Working together with legislative staff and appropriate staff members from the two

schools, PSFA staff members were able to provide the task force the opportunity to review and comment on proposed statutory and rule changes that would make the NMSBVI and the NMSD eligible to participate in the standards-based process. 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.

2012 Legislative Session and Interim

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 the public school capital outlay funding formula at several meetings and eventually endorsed legislation to: 1) allow an annual distribution from the PSCOF for building systems repair, remodel or replacement; 2) allow the PSCOC more flexibility to determine local match waiver eligibility; 3) allow the PSCOC to make optional or adjust the automatic Consumer Price Index rate for the lease-assistance program; 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.

Work During the 2013 Interim

With a record 18 new members (including, for the first time, nine advisory members), the task force began its tenth year of overseeing the implementation of the public school capital outlay standards-based process with discussion of a number of basic issues on its first meeting in the 2013 interim, including staff presentations on interim committee procedures, a primer and brief background review of the task force's purpose and history and a review of the *Zuni* lawsuit. The chair of the Public School Capital Outlay Council (PSCOC) provided the task force with the council's fiscal year 2012 annual report and proposed fiscal year 2013 strategic issues.

Noting that the 2013 legislature had passed only one of the task force's endorsed bills — which the governor vetoed — the task force focused on its 2013 work plan and on approving Representative Mimi Stewart as chair and Senator John M. Sapien as vice chair.

Continuing its review of public school capital outlay basics at its second 2013 interim meeting, the task force heard a staff presentation on a brief overview of property tax rates as they relate to public school capital outlay and a presentation from the state investment officer and his deputy on the Public School Capital Outlay Act funding stream, which is the Severance Tax Permanent Fund, and issuance of severance tax bonds. The PSCOC chair provided a report on the PSCOC fiscal year 2014 awards, and the New Mexico Finance Authority provided a presentation on other sources of funding to finance school-related buildings outside Public School Capital Outlay Act provisions.

During the remainder of the interim, the task force heard a presentation from the State Board of Finance on the state's severance tax bonding program and the Severance Tax Permanent Fund. PSFA staff provided presentations on PSCOC finances, funding allocations and the Facilities Condition Index, as well as PSFA staff presentations on utilization and maintenance issues related to public school facilities.

Always a topic of concern, the task force spent some 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. The third meeting was devoted almost entirely to charter school capital outlay issues with a general presentation by PSFA staff on Public School Capital Outlay Fund lease assistance. PSFA staff also provided an update on the current status of the development of a standardized lease form as well as an update on the status of charter schools already in public buildings.

School district staff and PSFA staff provided a presentation on opportunities to lease public spaces that local districts have been using. Finally, representatives of the New Mexico Coalition for Charter Schools presented on their proposal to include charter schools in a buying consortium similar to the Cooperative Educational Services purchasing consortium used by a large number of school districts and charter schools to purchase supplies and pay for some capital outlay projects.

At its final meeting, the task force unanimously agreed to endorse legislation to amend the Public School Capital Outlay Act to allow the PSCOC to allocate up to \$15 million per year in fiscal years 2015 through 2019 for building systems repair, renovation or replacement projects. The task force had endorsed a similar bill in 2013 that did not pass.

The task force declined to endorse proposed legislation to allow PSCOC allocations to purchase educational technology to meet assessments requirements of the common core currently adopted and being implemented by the Public Education Department. The task force also discussed the possibility of supporting proposed legislation to provide waivers of the district match for certain qualifying districts but decided the issue needed additional study.

Recommendations included in this report represent the policy examination and development work of the task force during the 2013 interim related to the ongoing monitoring of the standards-based capital outlay program to ensure continued success toward achieving the goal of bringing all school facilities up to the adequacy standards and working to keep them there. The work of the task force during the 2013 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 has expressed its appreciation for the assistance of the staff in furthering its work.

Highlights of Proposed 2014 Legislation

The PSCOOTF endorsed a measure for consideration by the 2014 legislature to define "building systems" as a set of interacting parts that make up a single, non-portable or fixed component of a facility that, together with other building systems, makes up an entire integrated facility or property, including roofing, electrical distribution, electronic communication, plumbing, lighting, mechanical, fire prevention, facility shell, interior finishes and heating, ventilation and air conditioning systems (as defined by the PSCOC) and to allow the PSCOC to provide up to \$15 million per year for expenditure in each of fiscal years 2015 through 2019 to address building system repairs.

Appendix A

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

MEMBERSHIP, 2013 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2013 INTERIM MEMBERSHIP**

Representative Mimi Stewart, Task Force Chair	House Education Committee Chair
Senator John M. Sapien, Task Force Vice Chair	Senate Education Committee Chair
Senator Mary Kay Papen	Senate President Pro Tempore
Representative W. Ken Martinez	Speaker of the House
Representative Henry Kiki Saavedra	House Appropriations and Finance Chair
Senator John Arthur Smith	Senate Finance Committee Chair
Representative Larry A. Larrañaga	House Minority Member
Representative James Roger Madalena	"Impact Aid" District Representative
Senator George K. Munoz	Indian Affairs Committee
Senator Cliff R. Pirtle	Senate Minority Member
Senator Sander Rue	Senate Minority Member
Senator Benny Shendo, Jr.	"Impact Aid" District Senator
Representative James E. Smith	House Minority Member
Paul Aguilar	Secretary of Public Education Designee
Tom Clifford	Secretary of Finance and Administration
Carl Foster, Ed.D. expertise	Retired educator, public member with in education & finance
Cecilia Grimes expertise	Retired educator, public member with in education & finance
Lisa Grover, Ph.D.	Public member, non-"Impact Aid" District
Kirk Hartom	Superintendent, "Impact Aid" District (Cuba Independent School District)

Leonard Haskie	Public member with expertise in education & finance
Robbie Heyman, Esq.	Bond counsel
T.J. Parks	Superintendent, non-"Impact Aid" District (Hobbs Municipal School District)
Mike Phipps expertise	Retired educator, public member with in education & finance
Judy Rabon	Public member, "Impact Aid" District (Alamogordo Public School District)
Allan Tapia (Bernalillo)	Superintendent, "Impact Aid" District Public School District)

ADVISORY MEMBERS, 2013 INTERIM

Representative Eliseo Lee Alcon

Representative Sharon Clahchischilliage

Representative Roberto "Bobby" J. Gonzales

Representative Sandra D. Jeff

Senator Howie C. Morales

Senator John C. Ryan

Senator William E. Sharer

Senator William P. Soules

Senator Pat Woods

STAFF, 2013 INTERIM

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

Sharon S. Ball, Senior Researcher, LCS

Cassandra Jones, Research Assistant, LCS

Appendix B

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

**2013 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 2013 INTERIM WORK PLAN

**2013 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Members

Rep. Mimi Stewart, Chair
Sen. John M. Sapien, Vice Chair
Paul Aguilar
Tom Clifford
Carl Foster
Cecilia Grimes
Lisa Grover
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. George K. Munoz
Sen. Mary Kay Papen
T.S. Parks
Mike Phipps

Sen. Cliff R. Pirtle
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith
Allan Tapia, Superintendent, Bernalillo Public
Schools
Kirk Hartom, Superintendent, Cuba
Independent Schools
TJ Parks, Superintendent, Hobbs Municipal
Schools

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff
Sen. Howie C. Morales

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

Background

Created in statute in 2005 (Sections 22-24-7 and 22-24-8 NMSA 1978), the Public School Capital Outlay Oversight Task Force oversees the work of the Public School Capital Outlay Council and the Public School Facilities Authority as they administer the state's standards-based public school capital outlay funding. The task force consists of 25 members (or their respective designees), as provided by statute.

Approved 2013 Work Plan

Pursuant to statute, the task force will focus on the following activities during the 2013 interim:

- (1) monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
- (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.

**Public School Capital Outlay Oversight Task Force
2013 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
July 24	State Capitol, Santa Fe
August 6	State Capitol, Santa Fe
September 12	State Capitol, Santa Fe
October 10	State Capitol, Santa Fe
November 18	State Capitol, Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2013 MEETING AGENDAS, MINUTES OF MEETINGS AND RECOMMENDATIONS

Revised: July 17, 2013

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

**July 24, 2013
Room 322, State Capitol
Santa Fe**

Wednesday, July 24

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair, Public School Capital Outlay Oversight Task Force (PSCOOTF)
—Senator John M. Sapien, Vice Chair, PSCOOTF
- 9:05 a.m. (1) **Interim Committee Procedures**
—Raúl E. Burciaga, Director, Legislative Council Service (LCS), PSCOOTF Staff
- 9:15 a.m. (2) **Public School Capital Outlay Primer and Brief Background Review of the PSCOOTF**
—Sharon Ball, PSCOOTF Staff, LCS
- 10:00 a.m. (3) **Review of the *Zuni* Lawsuit**
—Raúl E. Burciaga, PSCOOTF Staff, LCS
- 10:50 a.m. (4) **Public School Capital Outlay Council FY 2012 Annual Report and FY 2013 Strategic Initiatives**
—Robert Gorrell, Director, Public School Facilities Authority
- 12:00 noon (5) **Discussion of Work Plan, Items for Future Agendas and Other Organizational Business**
—PSCOOTF Members and Staff
- 1:30 p.m. **Adjourn**

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

**July 24, 2013
Santa Fe, NM**

The forty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on July 24, 2013 at 9:15 a.m. in Room 322 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Sen. John M. Sapien, Vice Chair
Paul Aguilar, Deputy Secretary, Public Education Department (PED)
Tom Clifford, Secretary, Department of Finance and Administration
Dr. Carl Foster
Cecilia Grimes
Leonard Haskie
Robbie Heyman
Rep. James Roger Madalena
Rep. W. Ken Martinez
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Sander Rue
Rep. James E. Smith
Sen. John Arthur Smith

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff

Guest Legislator

Rep. Dennis J. Roch

Absent

Dr. Lisa Grover
Rep. Larry A. Larrañaga
Sen. George K. Munoz
Sen. Mary Kay Papen
Judy Rabon
Rep. Henry Kiki Saavedra
Sen. Benny Shendo, Jr.

Rep. Sharon Clahchischilliage
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, 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, July 24

Representative Stewart welcomed members of the task force and the public. She asked task force members to introduce themselves and provide some brief background. She also asked guests to introduce themselves.

Interim Committee Procedures

Mr. Burciaga reviewed some interim committee procedures. He reminded task force members that some action, such as directing staff to conduct research, can be done informally by consensus of the task force, but formal action requires a formal vote by a majority of the task force. He also explained that task force members can meet as a special subcommittee under certain conditions, but the subcommittee would not be able to take any formal action.

Members of the task force asked questions about changes in task force membership and current vacancies. Mr. Burciaga noted that changes in legislative leadership have precipitated several changes to task force membership. He noted that the task force currently has three vacancies. He noted that Speaker Martinez has reappointed Ms. Grimes and Mr. Haskie and that President Pro Tempore Papen has reappointed Mr. Phipps and Mr. Heyman. He also noted that the New Mexico Legislative Council has appointed several new members and that the council must appoint three additional members in consultation with the governor. He said that council and leadership staff are working to find appropriate people to fill these positions. Task force members discussed the vacancies and individuals for consideration to fill them.

Public School Capital Outlay Primer and Brief Background Review of the PSCOOTF

Directing task force members' attention to handouts in their meeting folders, in particular a flow chart titled "Public School Capital Outlay Standards-Based Process", Ms. Ball explained that the PSCOOTF is required by statute to oversee the work of the Public School Capital Outlay Council (PSCOC). The PSCOC is composed of nine members and oversees the Public School Facilities Authority (PSFA). The task force is composed of 25 statutory members as well as additional advisory members.

Ms. Ball explained that responsibility for public school capital outlay funding in New Mexico is a shared responsibility among local districts and charter schools, along with the state. She explained that local capital outlay funding must be approved by school district voters and that

the rate is calculated in "mills". She explained that a mill amounts to \$1.00 for every \$1,000 of taxable valuation of the property being taxed. She discussed several of the most used funding mechanisms, including the following:

1. the Public School Capital Improvements Act, also known as Senate Bill 9 or the "two-mill levy", which provides for the state to guarantee a minimal level of funding for districts whose voters agree to impose a two-mill levy on their property to support capital outlay. Ms. Ball noted that the act changed as a result of task force-endorsed legislation to ensure that every district that imposes the SB 9 levy receives at least a small amount of state funds. She noted that only six districts statewide do not use this funding mechanism;
2. the Public School Buildings Act, also known as House Bill 33, which allows a district to impose up to a 10-mill levy for a six-year period in order to fund public school capital outlay projects. This act is most beneficial for districts that have high per-student property taxes. If a district elects to use HB 33 funds, it can have a total levy of no more than 15 mills;
3. general obligation bonds, which allow for a school district to tax as much as is necessary, with voter approval, in order to pay off the bonds; and
4. Public School Capital Outlay Act funding, formerly called "critical capital outlay" funding, provides for state funding of school district capital outlay needs that cannot be met after a district has used other sources of funding. Ms. Ball explained that this funding mechanism has been amended extensively over the past 12 years to establish a standards-based process in order for the state to comply with the judge's order in the *Zuni* lawsuit. She noted that, in the next presentation, Mr. Burciaga would explain issues related to the *Zuni* lawsuit.

Ms. Ball told the task force that in previous years, the task force endorsed legislation to allow school districts and charter schools to receive lease payments for buildings that they are leasing. Lease assistance amounts to approximately \$700 per student, adjusted by a Consumer Price Index adjustment. Ms. Ball indicated that the PSCOC would present to the PSCOOTF at the next meeting regarding fiscal year (FY) 2014 capital outlay awards, including lease payment awards. Ms. Ball explained that because direct appropriations to school districts have a disqualifying effect, the Public School Capital Outlay Task Force, a predecessor of the PSCOOTF, endorsed legislation that was enacted by the 2003 legislature to require that an offset be applied against the state share of funds awarded to a school district by the PSCOC for all capital outlay projects.

Members of the task force asked questions about and discussed charter school authorizations; constitutional bonding requirements; HB 33 and SB 9 funding; lease assistance; PSCOC awards; the Partnership for Assessment of Readiness of College and Careers; and voter approval for bonds.

Review of the *Zuni* Lawsuit

Mr. Burciaga told the task force that in 1974, the New Mexico Legislature was one of the first in the nation to adopt a school financing system for operational expenses that provided funding for public education based on an equalized formula rather than on local property taxes. This became a national model of equitable school finance and was based on a studied, deliberate effort to create an equitable system. Mr. Burciaga told the task force that around 10 years ago, lawsuits challenging state financing of public schools had been brought in 45 of the 50 states, most of which were aimed at breaking the tie between local property wealth and school funding, something that New Mexico had done 40 years ago. Early on, many of these cases were based on the concept of equity; however, it was argued that successful finance lawsuits did not translate to success in the classroom, partly because by weaning the school funding system from its dependence on local property wealth, less money overall was spent on education. The argument that "equity" failed to achieve results shifted the focus to "adequacy" for specific education results. More than one-half of the states have conducted adequacy studies trying to determine what it would cost to bring the majority of students up to a specific level of performance.

Mr. Burciaga reminded the task force that Article 12, Section 1 of the New Mexico Constitution provides 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". New Mexico courts have not yet specifically construed the meaning of "uniform" or "sufficient" in this constitutional provision. While New Mexico had addressed program funding for schools, it had not addressed capital funding, which remained largely dependent on property wealth. In addition, because the state could take credit for 95 percent of impact aid funding, which is federal funding provided to school districts in lieu of property taxes for children living on tribal and federal lands, the affected districts were left with only five percent of impact aid funds for capital expenses. Thus, the equalization of operating funds had resulted in an unequal effect on capital funding for districts with little taxable property.

Mr. Burciaga told the task force that a 1998 study of conditions of New Mexico school facilities determined that there was a capital outlay deficiency of \$1.5 billion statewide for public schools. The Zuni Public School District, which had been unsuccessful in obtaining direct legislative appropriations for capital expenditures, raised the question of whether the capital system, based on local property wealth, violated the state constitution's promise for a uniform system for public schools. The school filed a lawsuit on the premise that the state's financing of public schools violated the rights under the New Mexico and U.S. constitutions. The Zuni Public School District was subsequently joined by two nearby school districts, Gallup-McKinley County and Grants-Cibola County school districts.

State District Court Judge Rich granted the school districts' motion for partial summary judgment and ordered the state to "establish and implement a uniform funding system for capital improvements" as well as to correct "existing past inequities". The state created the Public School Capital Outlay Task Force to design a new capital financing system. The task force chose adequacy as its guiding principle. "Adequacy" was defined as the minimum acceptable level for the physical condition and capacity of school buildings, the educational suitability of educational facilities and the need for technological infrastructure.

In 2001, Senate Bill 167, which covered short-term deficiencies and long-term critical capital outlay needs, passed the legislature. Public school capital outlay projects would "be shared between the state and local districts on a formula basis", with awards granted to school districts based on statewide adequacy standards. At the request of the *Zuni* lawsuit parties, Judge Rich appointed a special master to conduct a review of the state's progress in developing a new capital outlay program for public schools. Dan McKinnon, a former New Mexico Supreme Court judge, was appointed special master. The special master issued his report and stated that the legislature had passed "one of the most dramatic actions ever taken by the state to remedy disparities of capital funding". He endorsed most of the task force's views on adequacy versus equity but also stated that the direct capital appropriations were in conflict with uniformity. He indicated that the legislature was operating in good faith, and more time was needed to see how the process developed. Judge Rich ordered that the report of the special master be approved. Mr. Burciaga told the task force that no further review of the *Zuni* lawsuit has occurred.

Members of the task force discussed and asked questions about adequacy standards; property taxes; the *Zuni* lawsuit; adequacy standards for charter schools; the Severance Tax Permanent Fund (STPF); and present-day adequacy issues for specific schools.

PSCOC FY 2012 Annual Report and FY 2013 Strategic Initiatives

Bob Gorrell, director, PSFA, told the task force that the PSCOC has been working to move toward smaller gross square footage in schools in order to minimize construction and long-term maintenance expenses. He stressed the importance of maintenance because it is less expensive to maintain a facility through a planned preventive maintenance program than to make repairs in emergency situations. He told the task force that school district investments in preventive maintenance as a percentage of total maintenance expenditures are at 17.86 percent, a 2.3 percent decline from 2011. According to the Facility Information Management System global data, studies indicate that every \$1.00 invested in preventive building maintenance can eliminate up to \$3.00 in maintenance expenditures overall.

Tim Berry, deputy director, PSFA, told the task force that a small number of school districts have been assessed so far for maintenance effectiveness. He stated that the PSFA is actively trying to increase staff in order to do maintenance assessments in school districts. Mr. Berry gave the task force information about this history of the PSCOC. In FY 2012, standards-based capital outlay awards totaled \$122.45 million for 60 school construction projects in 25 districts. This number represents a 6.7 percent increase over the awards of FY 2011.

Mr. Berry told the task force that the PSFA's operating budget is statutorily limited to five percent of the average of the previous three years' public school capital outlay awards. The PSFA's current budget is 3.6 percent of that average. He told the task force that lease payment assistance has increased annually at an average of 21.9 percent, with a 440 percent increase overall. In FY 2012, the PSCOC awarded \$10.8 million for lease assistance to 83 charter schools and seven public schools in 43 districts. The New Mexico Legislature has mandated that all charter schools be in publicly owned buildings by FY 2015.

Members of the task force asked questions about and discussed the cost of projects; project managers; how construction affects market cost; average gross square feet per student; quality of facilities; districts that have a difficult time raising revenues for school facilities; standards for facilities maintenance; the value of vacant schools; how the Facilities Condition Index (FCI) is calculated; avenues to receive funding to build teacherages as well as the importance of having teacherages to attract employees in rural areas; and the cost of insuring schools.

Representative Stewart requested that the PSFA provide a review of the adequacy standards as well as the FCIs of various schools to the task force at a future meeting. The task force members requested that the Public School Insurance Authority be invited to present on insurance rates for schools at a future meeting.

Discussion of PSCOOTF Work Plan, Items for Future Agendas and Other Organizational Business

Task force members discussed the work plan and possible topics of discussion for future meetings. Members of the task force suggested topics such as:

- a review of the FCI and adequacy standards with specific examples;
- a review of the cost of insurance and its correlation to facility conditions;
- information about the STPF;
- state funding for teacherages;
- new considerations for construction, such as solar and geothermal energy; and
- the consolidation of school districts.

Representative Stewart thanked the task force members for their ideas and assured them that the ideas would be taken into consideration when planning future agendas.

On a motion by Dr. Foster, seconded by Senator Rue, the task force voted unanimously to approve the PSCOOTF work plan for the 2013 interim.

Adjournment

There being no further business to come before the task force, the forty-first meeting of the PSCOOTF adjourned at 12:45 p.m.

Revised: August 5, 2013

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

**August 6, 2013
Room 322, State Capitol
Santa Fe**

Tuesday, August 6

- 9:00 a.m. **Call to Order**
—Rep. Mimi Stewart, Chair
—Sen. John M. Sapien, Vice Chair
- 9:05 a.m. **Approval of Agenda**
- 9:10 a.m. (1) **Property Tax Rates: A Brief Overview**
—Sharon Ball, Public School Capital Outlay Oversight Task Force
 (PSCOOTF) Staff, Legislative Council Service (LCS)
- 10:10 a.m. (2) **Public School Capital Outlay Funding Stream: Report on the Severance
Tax Permanent Fund and Issuance of Supplemental Severance Tax
Bonds**
—Steven K. Moise, State Investment Officer, State Investment
 Council (SIC)
—Vincent Smith, Deputy State Investment Officer, SIC
- 11:45 a.m. **Lunch**
- 1:00 p.m. (3) **Public School Capital Outlay Council (PSCOC) Fiscal Year 2014
Awards: Report to PSCOOTF**
—David Abbey, Chair, PSCOC; Director, Legislative Finance Committee
- 2:45 p.m. (4) **Sources To Finance School-Related Buildings Outside the Public School
Capital Outlay Act**
—Zach Dillenback, Chief Lending Officer, New Mexico Finance Authority
—Sharon Ball, PSCOOTF Staff, LCS
- 4:00 p.m. **Continuation: Discussion of Work Plan**
—Task Force Members and Staff
- 4:30 p.m. **Adjourn**

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

**August 6, 2013
Room 322, State Capitol
Santa Fe**

The forty-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on August 6, 2013 at 9:07 a.m. in Room 322 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Tom Clifford, Secretary, Department of
Finance and Administration
Cecilia J. Grimes
Kirk Hartom
Leonard Haskie
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Michael Marcelli, Designee for Secretary
Clifford
Rep. W. Ken Martinez
Sen. George K. Munoz
Antonio Ortiz, Designee for Paul Aguilar,
Public Education Department
Sen. Mary Kay Papen
Mike Phipps
T.J. Parks
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Rep. James E. Smith
Allan Tapia

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Sandra D. Jeff
Sen. William P. Soules

Absent

Sen. John M. Sapien, Vice Chair
Dr. Carl Foster
Dr. Lisa Grover
Robbie G. Heyman
Sen. Cliff R. Pirtle
Judy Rabon
Rep. Henry Kiki Saavedra

Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. Pat Woods

Staff

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

Sharon Ball, Senior Researcher, LCS

Claudia Armijo, Staff Attorney, 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.

Tuesday, August 6**Call to Order**

Representative Stewart called the meeting to order and asked task force members to introduce themselves.

Property Tax Rates: A Brief Overview

Ms. Ball explained to the task force that a mill represents \$1.00 for every \$1,000 of property tax valuation. Noting that Albuquerque Public Schools is the largest district in the state, Ms. Ball said that some Albuquerque residents pay approximately 46.02 mills, by far the highest mill levy rate in the state. Ms. Ball reviewed mill rates in various other districts, noting that some Gadsden Independent School District residents pay more than 35 mills, Socorro residents pay more than 31 mills, Portales residents pay more than 26 mills, Hobbs residents pay more than 25 mills, Carlsbad residents pay more than 22 mills and Chama residents pay more than 21 mills.

Ms. Ball referred the task force to a handout that sorted a sample of districts by assessed valuation per MEM and reviewed some of the figures with the task force members. She noted that the Cimarron school district has one of the highest assessed valuations per MEM in the state, at more than \$1 million per MEM. On the other hand, she pointed out, Zuni has less assessed property tax valuation per MEM than any other district in the state, at \$1,838 per MEM. She explained that because of this inequity among per MEM valuations, the state district court found New Mexico's funding system for capital outlay to be unconstitutional, and the legislature and the executive, as a result, set up a standards-based program about 10 years ago to address this unconstitutional inequity.

Ms. Ball reviewed the assessed valuation per MEM for several other districts, including Santa Fe's assessed valuation per MEM at almost \$447,000 and Hobbs' at just over \$150,000. Las Vegas has an assessed valuation per MEM of almost \$133,000, and Dexter's is just under \$65,000.

Ms. Ball referred task force members to a handout in their resource binders prepared by the Department of Finance and Administration, entitled *2012 Property Tax Facts*.

Members of the task force asked questions about and discussed property tax rates in various districts, how district effort is quantified for the purposes of the offset, 2012 PSCOOTF-

endorsed legislation, adequacy of school buildings in small districts, challenges specific to Zuni and local match requirements for districts to receive Public School Capital Outlay Council (PSCOC) funding.

Task force members requested that the Public Education Department (PED) provide a breakdown of the way in which the offset formula is calculated.

Public School Capital Outlay Funding Stream: Report on the Severance Tax Permanent Fund (STPF) and Issuance of Supplement

Steven K. Moise, state investment officer for the State Investment Council (SIC), told the task force that on June 30, 2013, STPF assets were \$4.147 billion. In October 2007, the fund's high watermark, STPF assets were \$4.803 billion. STPF annual distributions are 4.7 percent of the fund's five-year average. In fiscal year (FY) 2014, distributions from the STPF will be \$170 million. In FY 2009, STPF distributions were \$191 million. Mr. Moise compared the STPF to the Land Grant Permanent Funds (LGPF). In June 2013, the balance of the STPF was \$4.147 billion and the balance of the LGPF was \$12.137 billion. He noted that in October 2007, the balance of the STPF was \$4.803 billion and the balance of the LGPF was \$11.406 billion. He emphasized that while the balance of the LGPF has increased by 6.5 percent, the balance of the STPF has decreased by 13.7 percent.

Mr. Moise explained that the LGPF has been distributing 5.8 percent of its five-year average since 2003, while the STPF distributes 4.7 percent of its five-year average. In FY 2014, the STPF will distribute \$170 million to the general fund, and the LGPF will distribute \$535 million to beneficiaries. The LGPF had a 4.1 percent rate-of-investment return over five years and a 7.1 percent rate-of-investment return over 10 years. The STPF had a three percent rate-of-investment return over five years and a 6.4 percent rate-of-investment return for 10 years.

Mr. Moise told the task force that the LGPF receives regular and healthy contributions that help to maintain and grow the LGPF. On the other hand, he said, the STPF receives inconsistent contributions and is losing real-dollar value, which is resulting in diminished distributions to the general fund. Mr. Moise reminded the task force that 45 percent of annual STPF distributions go to the public school operating budget. Mr. Moise told the task force that the lower the yearly contributions, the less the fund can grow, which will lower the annual distributions to school general funds.

Members of the task force discussed and asked questions about contributions to the STPF, SIC investment requirements for each of the funds, when the State Board of Finance (SBOF) allocates to the STPF, constitutional requirements for the funds, the possibility of investing in foreign markets, the Uniform Prudent Investor Act and the effects of current federal sequestration on the funds.

Members of the task force requested that the SBOF make a presentation on distributions to the Severance Tax Bonding Fund and the STPF.

Sources to Finance School-Related Buildings Outside the Public School Capital Outlay Act

Zach Dillenback, chief lending officer for the New Mexico Finance Authority (NMFA), told the task force that the NMFA's mission is to improve the lives of New Mexicans by planning and financing infrastructure, strengthening the economy through public-private partnerships and setting the standard for superior, diverse, innovative and solution-driven financing.

By way of background, Mr. Dillenback explained that the NMFA was created by the legislature in 1992 to finance critical infrastructure needs in New Mexico. Local governments in New Mexico have access to decreased interest rates and costs of financing. He said that the Public Project Revolving Fund (PPRF) is a loan fund that was created to assist a wide range of governmental entities to access capital markets at an "all-in" cost that is highly competitive, and usually more competitive, than other financing alternatives available to public entities. The PPRF is primarily funded through the NMFA's share of government gross receipts taxes, which provide approximately \$26 million per year in new capital. The NMFA uses this capital base to make loans to qualified borrowers and then replenishes the fund by issuing tax-exempt, tax-subsidized and taxable bonds that are secured by the loans. NMFA bonds are not obligations of the state and are not a factor in state bond ratings. The separate stand-alone existence of the NMFA increases the overall capacity of the state to support infrastructure financing, especially for economically challenged communities.

Mr. Dillenback told the task force that the NMFA has helped finance many school projects over the years; specifically, he said, the NMFA helped four school districts build a total of seven teacherages between 2003 and 2006. Each of these transactions was secured by a school district's distribution of federal impact aid and teacher rental fees. Congress has since reconsidered the distribution of impact aid and authorizes it for only one year at a time. Mr. Dillenback told the task force that the legislature expanded the PPRF to include funding for charter schools in cases of lease-purchase. The PPRF maintains a high credit rating, and its bonds are highly sought by investors, which allows the NMFA to issue bonds in the capital markets at a very attractive rate. The NMFA passes the pricing benefits it receives in the public capital markets on to New Mexico communities in the form of loans. Disadvantaged funding is offered through the PPRF to qualified disadvantaged entities as determined by a community's median household income. Legislative authorization is required for projects financed in excess of \$1 million.

Mr. Dillenback also told task force members that, since its inception, the NMFA has made more than 1,000 PPRF loans, totaling over \$2 billion, of which 590 loans received over \$68 million in disadvantaged funding. Currently, 703 PPRF loans totaling approximately \$1.4 billion are outstanding. Mr. Dillenback told the task force that the PPRF continues to fund school districts' general obligation (GO) bonds for vital capital improvements on a regular basis. In FY 2010, the PPRF funded 14 GO bonds totaling more than \$26 million. In FY 2011, the PPRF funded 14 GO bonds totaling almost \$37 million. In FY 2012, the PPRF funded nine GO bonds totaling more than \$16 million, and in FY 2013, the PPRF funded eight GO bonds totaling more than \$12 million. Mr. Dillenback gave task force members examples of collaborative funding between the NMFA and the PSCOC, including funding for the Tucumcari Public School District, the Cuba Independent School District, the Cobre Consolidated School District and others.

Members of the task force asked questions about and discussed bonds and other funds for

teacherages, requirements for applicants for PPRF funds, quality of teacherages, the rent that teachers pay to occupy teacherages, standards for teacherages and NMFA funding for charter schools.

PSCOC FY 2014 Awards

David Abbey, chair of the PSCOC and director of the Legislative Finance Committee, told task force members that the purpose of the Public School Capital Outlay Act is to ensure that, through a standards-based process for all school districts, the physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and that the design, construction and maintenance of school sites and facilities encourage, promote and maximize safe, functional and durable learning environments in order for the state to meet its educational responsibilities and for New Mexico's students to have the opportunity to achieve success.

Mr. Abbey told the task force that programs funded by the Public School Capital Outlay Fund include five-year facility master plans, standards-based construction awards, roof repair and replacement and lease-assistance reimbursements. In order to be eligible for any capital outlay awards from the Public School Capital Outlay Fund, school districts and charter schools must have a current five-year facilities plan in place that includes a functioning preventive maintenance plan. He said that awards for facility master plans follow state and local match requirements, except under certain exceptions. Mr. Abbey told the task force that facility master plan awards for the 2012-2013 year totaled \$236,000 for Clayton, Cloudcroft, Corona, Des Moines, Farmington, Lake Arthur and a number of charter schools. District matching funds totaled \$195,000.

Mr. Abbey told the task force that the standards-based program has been extremely successful in providing safe and adequate educational space for New Mexico students. Since its inception, the statewide average Facility Condition Index (FCI) has improved from 70 percent to 35 percent. The FCI measures the cost of repair divided by the cost of replacement. The FCI measures only the actual condition of the building and does not include a measure of educational adequacy or any of the individual building systems. The weighted New Mexico Condition Index (wNMCI) measures the condition of the building as well as the facility's educational usefulness. It does so by examining a school's adherence to the New Mexico educational adequacy standards as well as creating a prioritization of need by assigning weight factors to the categories of building systems and educational adequacy requirements. These weight factors are based on the importance established by the PSCOC. According to Mr. Abbey, the PSCOC opened the application process to the 100 worst schools based on their wNMCI. The top 100 schools have an average wNMCI of 49 percent.

Mr. Abbey referred task force members to a list of the 2013-2014 standards-based awards. Awards include projects for four elementary schools in Albuquerque, one elementary school in Belen, one high school and two elementary schools in Central, one school in Deming, two schools in Farmington, a new elementary school and remodeling an existing elementary school in Gadsden, one school in Gallup, one school in Grants, a new elementary school and remodeling an existing elementary school in Hobbs, a high school in Lordsburg, an elementary school in Mesa Vista, one school in Reserve, one school in Roswell, one school in Silver City and three buildings

belonging to the New Mexico School for the Blind and Visually Impaired. The estimated total standards-based awards for 2013-2014 is \$162 million. Mr. Abbey told the task force that the amount of funding needed for replacement and repair is greatly diminished due to substantial lowering of the FCI. According to Public School Facilities Authority staff, school districts and charter schools continue to experience persistent maintenance problems. Mr. Abbey told the task force that the Public School Capital Outlay Act does not require districts to prioritize locally generated funding to bring facilities up to adequacy or maintain facilities before spending revenues on projects above adequacy, nor does the act encourage districts to prioritize the worst-ranked facilities. Mr. Abbey told the task force that some schools, including Clayton High School, Floyd combined schools, Yarbro Elementary School in Lovington and several schools in Tatum, remain in poor condition and are not participating in the standards-based program.

Mr. Abbey told the task force that up to \$10 million of the Public School Capital Outlay Fund may be used annually by the PSCOC for roof repair and replacement. Money allocated for these projects must be expended within two years. The PSCOC approves roofing projects on an established priority basis; however, for the past several years, no projects have been denied due to the fact that there has been less than \$10 million requested for roofing projects. School districts are required to pay the local share of roofing projects. For 2013-2014, the PSCOC approved approximately \$10.8 million for roofing projects, of which the state share is \$7.1 million. Projects are in 13 school districts with multiple projects in Gallup, Gadsden, Grants and Tularosa.

Mr. Abbey told the task force that lease-assistance funding may be granted to school districts for the purpose of making lease payments for classroom facilities, including facilities leased by charter schools. Grant amounts are the lesser of the actual lease payment of \$700 per MEM adjusted by the Consumer Price Index (CPI). Lease-assistance funding may be used by a charter school for lease payments pursuant to a lease-purchase agreement approved by the PED.

Mr. Abbey reviewed some policy considerations with the task force. He suggested that the task force consider shifting funding from entire schools to separate buildings or discrete systems. He also suggested consideration of allocating supplemental severance tax bonds for other critical public school capital outlay needs such as preschools, school buses and increased maintenance, allowing more funding to flow to the STPF and reallocating funding to other critical state needs such as roads and higher education.

Mr. Abbey reviewed some charter school issues with the task force. He told the task force that facility capital needs are growing with the continued growth in charter schools and that many charter schools appear to be paying excessive lease costs. Some charter schools do not take advantage of excess district-owned space. He told the task force that lease-assistance funding discourages schools and property owners from negotiating lease terms and that lease assistance is adjusted automatically based on the CPI, regardless of the market rate. The state is paying lease assistance to some charter schools to lease district-owned facilities.

Members of the task force discussed and asked questions about funding for technology needs in schools, the importance of school maintenance, policy considerations posed by Mr. Abbey, preschool funding in New Mexico, capital outlay funding by systems, allocating funding

for the STPF and certain public school earmarks.

Adjournment

There being no further business before the task force, the forty-second meeting of the PSCOOTF adjourned at 3:45 p.m.

Revised: August 28, 2013

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

**September 12, 2013
Room 322, State Capitol
Santa Fe**

Thursday, September 12

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair
—Senator John M. Sapien, Vice Chair
- 9:05 a.m. **Approval of July 24 and August 6, 2013 Meeting Minutes**
- 9:10 a.m. (1) **Severance Tax Bonding Program and Severance Tax Permanent Fund**
—Stephanie Schardin Clarke, Executive Director, State Board
of Finance
- 10:10 a.m. (2) **Public School Capital Outlay Council Finances, Funding Allocations and
Facilities Condition Index**
—Jeff Eaton, Chief Financial Officer, Public School Facilities Authority
(PSFA)
—Pat McMurray, Senior Facilities Manager, PSFA
—Chris Aguilar, Facilities Data Manager, PSFA
- 11:30 a.m. **Lunch**
- 12:30 p.m. (3) **Utilization and Maintenance of Public School Facilities**
—*Utilization Issues*
—Martica Casias, Planning and Design Manager, PSFA
—Bill Sprick, Facilities Master Planner, PSFA
—John Valdez, Facilities Master Planner, PSFA
- 1:30 p.m. —*Maintenance Issues*
—Les Martinez, Maintenance Manager, PSFA
—District Superintendents
- 3:00 p.m. (4) **Potential Legislation: Discussion and Direction to Staff**
—Task Force Members and Staff
- 4:30 p.m. **Adjourn**

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

**September 12, 2013
Room 322, State Capitol
Santa Fe**

The forty-third meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on September 12, 2013 at 9:12 a.m. in Room 322 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Sen. John M. Sapien, Vice Chair
Dr. Carl Foster
Cecilia J. Grimes
Kirk Hartom
Leonard Haskie
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. George K. Munoz
Antonio Ortiz, Designee for Paul Aguilar
T.J. Parks
Mike Phipps
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Allan Tapia

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff

Absent

Tom Clifford
Lisa Grover
Robbie Heyman
Sen. Mary Kay Papen
Sen. Cliff R. Pirtle
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Rep. Sharon Clahchischilliage
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Senior Researcher, LCS
Claudia Armijo, Staff Attorney, 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.

Thursday, September 12

Approval of Minutes

The task force voted unanimously to approve the minutes of the July 24, 2013 and August 6, 2013 meetings.

Severance Tax Bonding Program and Severance Tax Permanent Fund

By way of background, Stephanie Schardin Clarke, director, State Board of Finance (SBF), told the task force that severance taxes have been collected in New Mexico since 1937. She said that New Mexico imposes several taxes on natural resource production, including school taxes to the general fund, severance taxes to the Severance Tax Permanent Fund (STPF), ad valorem taxes to local governments and conservation taxes to the general fund and the Oil and Gas Reclamation Fund. In addition, the state receives royalty payments from production on state and federal funds, including the land grant permanent funds contributions, federal mineral leasing contributions and diversified use of revenues from oil and gas production.

Ms. Schardin Clarke told the task force that, since 1959, certain severance tax receipts have been deposited into the Severance Tax Bonding Fund (STBF) and used to service severance tax bonds (STBs) to fund capital improvements. The modern STB program dates to 1973, along with the creation of the STPF and the diversion of severance taxes into the STPF. At that time, statute restricted capacity to issue new STBs such that debt service could be paid with 50 percent of prior fiscal year STBF revenue. In 1976, voters agreed to grant the STPF constitutional status. In 1982, a constitutional amendment removed the option to appropriate from the corpus of the STPF.

Beginning in 1999, a judge's order resulting from the *Zuni* lawsuit required the state to establish and implement a uniform system of funding future public school capital improvements, and the STB program was expanded so that additional revenue could be used to pay debt service on supplemental severance tax bonds (SSTBs). SSTBs finance public school capital improvements. Currently, 45 percent of prior fiscal year STBF revenue can be used for SSTBs. Since 1999, SSTBs have provided \$2.4 billion for public school construction statewide. These are funds that, otherwise, would have been deposited to the STPF.

Ms. Schardin Clarke told the task force that senior short-term notes are used to fund various capital projects, are taxable, are sold each June and December and are used for projects authorized by the legislature. Supplemental short-term notes are used for public school capital projects, are taxable, are also sold each June and December and are used for projects certified by the Public School Capital Outlay Council (PSCOC). Senior long-term bonds are used for various capital projects, are tax exempt and are sold competitively. Supplemental long-term bonds are used for public school capital projects, are tax exempt and are sold competitively.

Ms. Schardin Clarke told the task force that STBF revenues are derived from the production of oil, natural gas and other minerals. The value of these products is naturally volatile. In addition, hurricanes, pipeline constraints, geopolitical events and supply and demand all contribute to revenue volatility. Statute allows for bonds to be issued up to the point at which debt service is 95 percent of the previous fiscal year's STBF revenue or up to the amount of cash available, whichever is less. Ms. Schardin Clarke presented the task force with different STPF scenarios.

Ms. Schardin Clarke presented the task force with several policy considerations. She told members that the bonding programs and the STPF contributions are both worthwhile competing uses for severance tax revenue. She told the task force that STBs and SSTBs finance capital assets that will last for many years and are an investment in the future of New Mexico. She noted, however, that the state must choose projects strategically to ensure that the state's investment in capital assets yields lasting benefits. Capital projects stimulate the economy in the near term through construction activity and generation of gross receipts. The availability of productive capital assets increases the productivity of the state's economy. Ms. Schardin Clarke told the task force that the STPF contributes to general fund revenue, stimulating the economy through government spending over the long term. For every dollar the state wants to spend, STPF distributions to the general fund reduce the amount of taxes that must be collected. STPF contributions increase future general fund revenue, of which approximately 45 percent goes to public education. Permanent funds generate distributions that currently finance 10.8 percent of general fund recurring revenue. Ms. Schardin Clarke told the task force that investing severance tax revenues in the STPF can have some risks. From 1994 to present, after adjusting for contributions and distributions, estimated annual return on the STPF has fluctuated from -29 percent to +22 percent with an average return over the period of 5.3 percent.

Ms. Schardin Clarke explained that other possible uses of severance tax revenues include lowering tax burdens on oil and gas producers, lowering taxes on other businesses and New Mexico households or spending the funds in other ways. Some states with oil and gas revenue make a direct distribution to households from the proceeds. Ms. Schardin Clarke told the task force that each of these uses could have positive effects on the New Mexico economy.

Members of the task force asked questions about and discussed various contributions to the STPF and other state funds; changes and challenges in the market; contributions to the land grant permanent funds and the STPF; capital projects; and distributions to the Public School Capital Outlay Fund.

PSCOC Finances, Funding Allocations and Facilities Condition Index

Jeff Eaton, chief financial officer for the Public School Facilities Authority (PSFA), told the task force that uses of the Public School Capital Outlay Fund, pursuant to the Public School Capital Outlay Act, include state match distributions for the Public School Capital Improvements Act, lease assistance awards, master plan awards, the PSFA's operating budget and standards-based project awards. Annually, approximately 75 percent of SSTB proceeds are used for standards-based projects. The Public School Capital Outlay Act specifies these uses but may also use money in the fund generally for capital expenditures deemed necessary by the PSCOC for an adequate educational program. Recently, the legislature has, through the capital outlay bill for

statewide projects, made appropriations from the Public School Capital Outlay Fund for various other purposes. Prior to 1999, public school capital outlay funding received for school projects was allocated annually by the legislature to the critical capital outlay program. The source of funds ranged from the general fund and general obligation bond proceeds to senior STB proceeds. Annual appropriations were highly variable from year to year. As a result of the *Zuni* lawsuit, SSTBs were created to provide a dedicated funding stream for public school capital improvements, and the standards-based process was developed to prioritize the greatest funding needs.

Mr. Eaton told the task force that between 1982 and 1999, the state bonding program operated so that 50 percent of severance taxes were used for statewide capital projects and the other 50 percent were deposited into the STPF. The legislature amended the law as a result of the lawsuit to allow up to 45 percent of the balance of the deposits in the STBF to be used instead for issuing SSTBs for public school capital outlay. The last five percent remains for transfer to the STPF. Since 2001, the SBF has issued SSTBs for PSCOC programs totaling more than \$1.8 billion.

Pat McMurray, senior facilities manager, PSFA, told the task force that the PSCOC utilizes a two-phase funding approach. Phase 1 funding revolves around planning and design. Typically, around 10 percent of the anticipated total project cost includes early planning, including the cost for educational specifications, the cost for a feasibility study, the cost for pre-design services and the cost to enter into an owner-architect agreement. Phase 2 funding is based on actual general contractor costs, and the PSCOC ensures that funding is sufficient but not excessive. This method, known as "just in time" funding, allows funds to begin flowing within three to four weeks after phase 2 construction funding is awarded by the PSCOC.

Chris Aguilar, facilities data manager, PSFA, explained the purpose and operation of the PSCOC facilities assessment database. He explained that a life-cycle renewal requirement exists when a building system is in use beyond its expected life. Each building system is assessed against the original installation or last renovation date to determine the percent used based on an expected system life span, which, in turn, is based on national data. Facility condition assessments are performed in order to determine when a building system needs to be renewed. This analysis can be done by walk-through inspections, mathematical modeling or a combination of both. Mr. Aguilar presented the task force with PSCOC funding needs for projects for the next six years.

Members of the task force asked questions about and discussed balances in the Public School Capital Outlay Fund; PSCOC procedures in situations in which awarded funding ends up being more than the cost of the project; PSCOC certification of projects; leasing of school buildings; projects in specific districts; options for districts that have a hard time meeting their local match for standards-based projects; public school capital outlay funds for school buses; energy saving standards in standards-based projects; systems-based funding; and funding advances.

Utilization and Maintenance of Public School Facilities

Martica Casias, planning and design manager, PSFA, told the task force that the PSCOC oversees facility issues for 800 schools in 89 districts as well as 52 state-chartered charter schools. Bill Sprick, facilities master planner, PSFA, explained that the concepts of "utilization" and "capacity" are components of long-range planning. The utilization of each facility is analyzed to identify if the schools are too small or too large and to develop solutions to begin to "right-size" schools for their educational programs and current and projected enrollment. The utilization is tied directly with square footage and the number of classrooms.

Ms. Casias told the task force that the majority of districts have too much capacity and inefficient utilization based on their current enrollments. In most of the rural districts, the demographics and population projections are not projecting growth but instead indicate a declining or flat enrollment. The majority of the districts have existing facilities that were sized for much larger student enrollments at the time they were built. Ms. Casias presented the task force with current examples of utilization.

John Valdez, facilities master planner, PSFA, discussed how the PSFA measures capacity. He said that "functional capacity" is the number of students that the general and special education spaces can accommodate based on room size as well as pupil-to-teacher ratio guidelines while discounting the spaces used for specialized activities that may not always be available on a regular basis or are not appropriate for general education instruction. Mr. Valdez told the task force that education specifications (or "ed specs") are pre-planning tools that school districts initiate prior to design of a school facility project. Ed specs can be specific to a project or can apply to all facilities of a certain type.

Ms. Casias told the task force that, over the past 10 years, statewide student enrollment has remained relatively flat with a statewide increase of just over 10,000 students. Within this slight increase, some districts have declined and others have increased. While enrollment growth has remained relatively flat, the gross square footage of schools has increased by eight million gross square feet statewide. Ms. Casias told the task force that the inclusion of preventive maintenance plans into the facilities master plan is important. She explained that the focus of the facilities master plan is to identify and guide capital investments required to provide educational programs to district students and to meet New Mexico's statewide adequacy standards. The preventive maintenance plan, which is a subset of the facility master plan, seeks to prioritize and schedule preventive maintenance tasks needed to maintain district facility systems and equipment in effective working order. She said that while the purposes of the two plans are different, they are definitely related.

Members of the task force asked questions about and discussed school gross square footage standards; capacity and enrollment for specific schools; students in charter schools; facility master plan development; New Mexico's student enrollment; enrollment projections; and space requirements for virtual charter schools.

Les Martinez, maintenance manager, PSFA, provided the task force with an example of the PSFA's facility maintenance assessment report (FMAR), a tool that the PSFA utilizes to evaluate school facility conditions and determine and verify the implementation of an effective

maintenance management program. The FMAR consists of a site survey, a building exterior survey, a building interior survey, a building equipment and systems survey and a maintenance management component. He said that the current average FMAR score is 60.9 percent. He explained that factors that contribute to this score are people, including staff and accountability; methods, including reactive and deferral of maintenance; money, including short-term and long-term planning; and the capitalization of expenses and hardware, including outdated equipment and lack of training. Mr. Martinez provided the task force with a breakdown of the cost of various maintenance components.

Mr. Martinez explained to the task force that he had invited several representatives from school districts to discuss maintenance concerns and procedures. J. Vance Lee, director, support services, Alamogordo Public School District, told the task force that the facility information management system, developed by the PSFA, is an extremely useful tool for managing maintenance issues. He told the task force that the Alamogordo Public School District tries to develop and implement a comprehensive customer care program and communication system and to maximize the efficiency and effectiveness of the maintenance department. Mr. Lee told the task force that since the district has been able to retain licensed contractors in several areas, it has been able to cut certain costs by more than half because of the ability to reduce labor costs and markups. He stressed that the school district strives to balance preventive maintenance with the installation of new systems. Mr. Lee told the task force that he strongly supports systems-based funding by the PSCOC.

John D. Cresto, maintenance director, Gallup-McKinley County School District (GMCSO), told the task force that the GMCSO's maintenance department functions as both a water and gas utility regulated by the Public Regulation Commission. In addition, the GMCSO provides phone service, internet, fire protection, underground storage and wastewater disposal. Mr. Cresto discussed the challenges of performing maintenance on schools that are placed in very remote geographic areas.

Mark Clark, maintenance director, Grants-Cibola County School District (GCCSD), told the task force that the GCCSD has two licensed contractors on staff. Because of permitting regulations from the Construction Industries Division (CID) of the Regulation and Licensing Department, those contractors cannot deal with certain voltages, which has been a big problem for the GCCSD. Mr. Clark discussed many maintenance challenges that have been faced by the GCCSD, including a fluctuating enrollment and budget cuts.

Bobby J. Stout, director of the physical plant department for the Las Cruces Public School District, told the task force that he has one major concern. In the past, the Las Cruces Public School District has hired apprentice tradespeople licensed by the CID. After 2010, because districts operate off annual permits, experience working for a school district no longer applies toward an apprentice's application to become a journeyman. Mr. Stout recommended that the CID create a separate classification for those that have experience in repair and maintenance and allow the time spent working for a school district to apply.

Terry Cummings, director of operations, Pojoaque Valley Public School District, discussed

challenges that the district has faced and ways in which those challenges have been overcome. She told the task force that the district has experienced a reduction in its custodial force and that it has no tradespeople on staff.

Potential Legislation: Discussion and Direction to Staff

Representative Stewart advised task force members to call Ms. Ball with any legislative requests before the October meeting. She told task force members that the task force would consider several pieces of legislation at its October and November meetings for the 2014 legislative session.

Adjournment

There being no further business before the task force, the forty-third meeting of the PSCOOTF adjourned at 3:25 p.m.

Revised: October 9, 2013

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

**October 10, 2013
Room 322, State Capitol
Santa Fe**

Thursday, October 10

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair
—Senator John M. Sapien, Vice Chair
- 9:05 a.m. **Approval of September 12, 2013 Meeting Minutes**
- 9:10 a.m. **Public School Capital Outlay Fund Lease Assistance**
- Introduction**
—Robert Gorrell, Director, PSFA
—Jeff Eaton, Chief Financial Officer, PSFA
- (1) **Standardized Lease Development: Status Report**
—Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)
—Ken Hunt, Esq., Contract Attorney, PSFA
- (2) **Charter Schools in Public Buildings: Current Status**
—Martica Casias, Planning and Design Manager, PSFA
—Richard Romero, Facilities Specialist, PSFA
- (3) **Opportunities to Lease Public Space**
—Robert Gorrell, Director, PSFA
—Stan Rounds, Superintendent, Las Cruces Public Schools
—Bill Sprick, Facilities Master Planner, PSFA
—John Valdez, Facilities Master Planner, PSFA
—Don Moya, Chief Financial Officer, Albuquerque Public Schools
—Kizito Wijenje, AICP, Director, Capital Master Plan, Albuquerque
Public Schools
- 12:00 noon **Lunch**

- 1:00 p.m. (4) [Opportunities to Lease Public Space, Continued](#)
- 2:00 p.m. (5) [Charter School Facilities Issues](#)
—Bruce Hegwer, Executive Director, New Mexico Coalition for Charter
Schools (NMCCS)
—Carlos Rey Romero, Vice President, NMCCS Governing Board
- 4:00 p.m. (6) [Continuation: Potential Legislation: Discussion and Direction to Staff](#)
—Task Force Members and Staff
- 4:30 p.m. **Adjourn**

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

**October 10, 2013
Room 322, State Capitol
Santa Fe**

The forty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on October 10, 2013 at 9:17 a.m. in Room 322 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Paul Aguilar
Tom Clifford
Dr. Carl Foster
Kirk Hartom
Leonard Haskie
T.J. Parks
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith

Absent

Sen. John M. Sapien, Vice Chair
Cecilia J. Grimes
Lisa Grover
Robbie Heyman
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. George K. Munoz
Sen. Mary Kay Papen
Judy Rabon
Rep. Henry Kiki Saavedra
Allan Tapia

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales

Rep. Sandra D. Jeff
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

Staff

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

Thursday, October 10

Call to Order

At the chair's request, members of the task force introduced themselves.

Approval of September 12, 2013 Meeting Minutes

Upon a motion by Senator Smith, seconded by Representative Smith, the minutes of the September 12, 2013 meeting of the PSCOOTF were approved as distributed.

Standardized Lease Development: Status Report

Tim Berry, deputy director, Public School Facilities Authority (PSFA), told the task force that in 2012, the Public School Capital Outlay Council (PSCOC) raised concerns about several individual charter school lease costs. An examination of those leases was performed and some were found to be problematic and even burdensome to the individual charter schools. As a result and in order to attempt to avoid leases with unfavorable terms, the PSCOC has developed and favors the adoption of standardized leases. Mr. Berry told the task force that the PSCOC's fiscal year (FY) 2015 budget includes an expansion to the base budget to add a staff attorney to examine standardized leases and other issues related to PSCOC project cost containment. Toward the end of FY 2013 and at the urging of the PSCOC, the PSFA contracted with a real estate attorney to draft two standardized leases. Mr. Berry discussed benefits of standardized leases, including: ease of use; defined gross square footage; clear definition of terms and conditions; identification of responsibility for all operating costs; reduced legal support costs; and a clear understanding of how tax revenue is being spent. Mr. Berry referred the task force to a handout containing a listing of the standardized leases. He told the task force that the leases are structured so that all variables in the documents are at the beginning of the document in order to make comparison from one lease to another simpler.

Ken Hunt, Esq., contract attorney, PSFA, told the task force that he had been contracted by the PSCOC, through the PSFA, to come up with a template for a typical lease of facilities and a template for a lease purchase in which charter schools would ultimately become owners of the property. He told the task force that many different variables, such as shared space, are taken into account. Mr. Berry told the task force that on July 25, 2013, the PSCOC approved the standardized leases for lease or lease purchase of facilities by charter schools, subject to technical corrections, to go out for public comment and be brought for final approval along with draft rules to implement their use at a future PSCOC meeting. The PSFA scheduled a review meeting for October 23, 2013 to receive comments from stakeholders. He told the task force that after sufficient review and comment by the public, the leases will be submitted to the PSCOC for its final approval. Mr. Berry also told the task force that conflict of interest disclosures are not included in the lease but are included in the lease assistance application. The PSCOC directed the PSFA to add a conflict-of-interest disclosure to the standardized lease documents.

Mr. Berry told the task force that charter school representatives have extensively analyzed

the leases and that their main concern is the way in which implementation of these leases will affect current leases already in place. Mr. Berry told the task force that the intent is to implement the lease moving forward rather than retroactively. Members of the task force asked questions about and discussed stakeholder comments; concerns about responsibility for property taxes and charter school foundations; PSFA resources for charter schools; charter school lease oversight; charter schools in public buildings; lease negotiation; charter school facility needs; the lease assistance program; privately owned facilities for public use; and adequacy standards.

Charter Schools in Public Buildings: Current Status

Mr. Berry told the task force that in New Mexico, charter schools were created by the legislature in 1992 through passage of the Charter Schools Act. The original legislation allowed only traditional public schools to convert to charter schools. In 1999, the legislature fundamentally changed the Charter Schools Act to allow the creation of district-authorized start-up charter schools. Mr. Berry told the task force that the Charter Schools Act was again amended in 2006 to authorize the Public Education Commission to charter schools independently of a local school district. Currently, there are 96 charter schools providing education for more than 20,000 students in more than 2.5 million square feet of space.

Mr. Berry told the task force that the 1999 Charter Schools Act required that charter schools be housed in local school district facilities, but it soon became clear that identifying sufficient available school district space in which to operate was challenging. Charter schools found that the most readily accessible option was to lease private facilities. Because charter schools cannot levy taxes to raise capital for facilities, the impact of the lease cost on their operating budget was substantial. In order to assist charter schools with the added cost of leasing facilities and in the hope of incentivizing school districts to identify or make available existing school district space, the legislature created the lease assistance program administered by the PSCOC and funded from supplemental severance tax bonds (SSTBs).

Mr. Berry referred the task force to a chart showing the history of PSCOC lease assistance awards. In FY 2005, schools were awarded \$300 per MEM with a cap of \$4 million for the program. In 2009, the statutes were amended to provide \$719.6 per MEM with a cap of \$7.5 million to charter schools for the program. Awards totaled approximately \$7.3 million. In FY 2010, the cap was removed, and the program was awarded more than \$8 million. For FY 2014, the rate per MEM is \$739.95, and total awards are almost \$13 million. The average costs per square foot for charter school leases increased from FY 2008 to FY 2013, even though the market moved in the opposite direction. If existing underutilized or unused public space can be acquired and meet the standards for existing or new charter schools, it would be a better value for taxpayers than leasing additional privately owned space.

Richard Romero, facilities specialist, PSFA, told the task force that facility cost per student per year and facility cost per square foot per year were analyzed by the PSFA and the cost of leasing charter school facilities was annualized for comparison purposes. Mr. Romero told the task force that owning and maintaining a facility have many costs, and some costs change quite often. The PSFA estimates that the average cost for a new school facility is currently \$280 per square foot. If it is assumed that a facility's expected life is 40 years, the annual depreciation cost of the facility is \$7.00 per square foot. Industry studies have shown that the cost to properly

maintain a school facility is approximately \$6.00 per square foot. Based on these assumptions, the annual cost of building and maintaining a school facility is approximately \$13.00 per square foot. Mr. Berry told the task force that charter school leases currently average approximately \$10.00 per square foot.

Mr. Romero told the task force that comparisons between charter schools and traditional schools are problematic because charter schools have nontraditional programs, delivery methods, space needs and facility space requirements. Each charter school facility is evaluated by the PSFA Planning Department for suitability and that facility conditions meet at least the average statewide facility condition of public schools. A charter school can have its own unique facility requirements, though variances are considered carefully by PSFA staff upon evaluating the school's curriculum as well as the use of shared public spaces for program delivery.

Members of the task force discussed and asked questions about requirement differences for charter and public schools; unique needs for charter schools; adequacy standards; charter schools in public buildings; and traditional schools leasing space to charter schools.

Opportunities to Lease Public Space

Robert Gorrell, director, PSFA, told the task force that the rising cost of public school funds going to private owners leasing facilities to charter schools prompted the legislature in 2005 to create a deadline of 2010 for charters to be located in public facilities or to meet other requirements prior to authorization. As the deadline approached, only a small percentage of charter schools were in public facilities. In 2009, the legislature amended the deadline to 2015. With less than two years to go until the deadline, only 46 of the 96 charter schools are currently in a public facility or are leasing from a nonprofit entity specifically organized for the purpose of providing the facility for the charter school. The other 50 charter schools are still located in privately owned facilities.

Mr. Gorrell told the task force that the PSFA relies on the school district's facilities master plan capacity and utilization analysis to determine whether traditional public schools have potential to house charter schools in their facilities. The capacity analysis quantifies the number of students a school can hold in its general and special educational rooms while discounting the spaces that are used for special purposes and unable to accommodate students based on the current educational program.

Mr. Gorrell explained that the master plan consultant, in conjunction with the district, determines the school's capacity and compares it to the school's enrollment to determine the number of seats available for growth or other functions. The consultant considers the appropriateness of available space as well as the utilization of the space by the school district. Based on a utilization analysis, a charter school may or may not be able to implement its schedule in a traditional school space. Other factors, such as age appropriateness, scheduling and rules and procedures, are also considered when evaluating a traditional public school's vacant or underutilized space for a charter. Charter schools that are not in public spaces by 2015 are still in compliance with state law if the charter school is housed in a facility that meets statewide adequacy standards and the owner of the facility is contractually obligated to maintain those

standards at no additional cost to the state and if either: 1) public buildings are not available or adequate; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

Stan Rounds, superintendent, Las Cruces Public School District, told the task force that Las Cruces is a growing school district despite the recession, which makes the availability of traditional school space for charter schools unlikely. Mr. Rounds discussed various resources that he has been accessing and utilizing in order to keep up with the growing student population. He told the task force that many banks will not work with charter schools, which makes it more difficult for them to acquire facilities. Mr. Rounds discussed the ways in which the Las Cruces Public School District has worked to assist charter schools with facilities, including purchasing property to be used by charter schools and leasing it to them. Mr. Rounds told the task force that one charter school has refused available space.

Kizito Wijenje, A.I.C.P., director, Capital Master Plan, Albuquerque Public School District (APS), referred the task force to a handout provided by APS. Don Moya, chief financial officer, APS, told the task force that there are 55 charter schools in APS, 20 of which are locally chartered and 35 that are state-chartered. APS charter schools constitute more than 65 percent of all charter schools in New Mexico in an area that has 27 percent of New Mexico's students. The APS area has 101,000 public school students. Of those students, 88 percent attend 132 traditional schools and 12 percent attend the 55 charter schools. Mr. Moya told the task force that from 2011 to 2019, more than \$40 million will flow directly to APS charter schools from Bernalillo and Sandoval county assessors as required by state mandate through the Public School Capital Improvements Act (often called "SB 9") and the Public School Buildings Act (often called "HB 33"). From 2011 to 2016, APS has dedicated \$34 million to constructing technically assessed and prioritized charter school capital facilities. He reported that APS has six charter schools in district-owned and-maintained facilities. Mr. Moya told the task force that all APS collaboration with charter schools on facilities is voluntary on the part of the charter schools and overseen through memoranda of understanding (MOUs) entered into by the district and each individual charter school participating in the program. He said that the APS charter facility provision program is limited by priorities, limitations of planning and a finite tax base, and state-authorized and locally authorized charters.

Mr. Wijenje reviewed the status of six charter schools that are housed in APS facilities. Mr. Moya discussed APS oversight of charter schools that are housed in APS facilities. Mr. Moya told the task force that APS has very little control over charter school creation, location and operation and that the APS tax base does not have the capacity to absorb entire charter school needs into existing facilities or sites. He suggested that the sharing of common facilities should be encouraged as much as possible in order to achieve economies of scale.

Mr. Moya told the task force that the capital and operational consequence to taxpayers from the creation of a new charter school can range anywhere from \$5 million to \$20 million. Mr. Moya provided the task force with preliminary recommendations, including requiring a fiscal cost-benefit analysis when considering new charter school proposals; requiring districts to be responsible for district-authorized charter school facilities; requiring district-authorized charter

schools to accept available district facility solutions; requiring the state to be responsible for the facility, construction and maintenance of state-authorized charter schools; and requiring the state and districts to put in place a rational technical process for location and construction of charter schools before approving their creation. Mr. Moya suggested that SB 9 and HB 33 mill levy funds should be provided to charter schools on a reimbursement basis in order to provide adequate oversight of how the funds are used.

Members of the task force discussed and asked questions about consequences for charter schools that are not in public facilities by 2015 and for traditional schools that do not offer available space; lease-purchase agreements for charter schools; the lease reimbursement program; state- and district-chartered charter schools; use of HB 33 and SB 9 mill levy funds for charter school facilities; adequacy standards for charter schools; MOUs between APS and charter schools; charter school funding; and responsibility for state-chartered charter school facilities.

Charter School Facilities Issues

Carlos Rey Romero, vice president, New Mexico Coalition for Charter Schools (NMCCS) Governing Board, told the task force that he believes it is in the best interest of the taxpayers to come up with a better solution for providing charter school facilities. He expressed concerns about situations in which a charter school in a lease-purchase agreement is not renewed, which causes the state to lose any investment put into the purchase of the facility. He suggested a partnership among the New Mexico Finance Authority (NMFA) and the legislative and executive branches to come up with practical solutions to get charter schools into public buildings could be helpful.

Dr. Bruce Hegwer, executive director of the NMCCS, told the task force that three options are available to acquire charter school facilities: leasing, lease purchasing and purchasing. Public buildings that house charter schools must comply with certain standards provided in law. Dr. Hegwer told the task force that it is often difficult to find public buildings that are adequate for charter schools. He said that more private than public buildings are available, but beginning on July 1, 2015, private buildings that house charter schools must also comply with standards provided in law, which may be challenging. Dr. Hegwer told the task force that options for lease-purchasing include private buildings, foundations, public buildings and joint powers agreements. Options for purchasing include the NMFA, bonds and joint powers agreements.

Dr. Hegwer told the task force that joint powers agreements can be facilitated by the Association for Charter Education Services (ACES), which is a new public entity that facilitates the purchase of professional services, construction services and tangible personal property for local bodies and state agencies when it is requested to do so and in accordance with the requirements of the Procurement Code. ACES has the authority to issue bonds to pay for the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary. Revenue bonds could be secured by lease assistance payments. There is some risk that lease assistance payments could be eliminated or decreased.

Dr. Hegwer explained that the NMFA's Public Project Revolving Fund provides credit enhancements to revenue bonds. He told the task force that if a charter school in a building

provided by ACES was to have its charter revoked or not renewed, ACES would own the building and could easily lease it to another charter school. Risk would be distributed among all members of ACES, rather than just one entity.

Members of the task force asked questions about and discussed funding for ACES; how ACES differs from other public entities; charter school inefficiencies; models for charter school facilities funding; NMFA funds; and services that might potentially be offered by ACES.

Continuation: Potential Legislation: Discussion and Direction to Staff

In response to a question from a task force member, Antonio Ortiz, PED, told the task force that charter schools are required to report budgetary expenses for HB 33 and SB 9 funding on December 1 of each year. The PED is required to respond by December 20 regarding whether the expenditures are qualified. In January of each year, the charter schools are then required to report what the funds were spent on. Mr. Ortiz told the task force that in some cases the expenditures proposed in December are not the same as those that are reported in January.

Ms. Ball discussed draft legislation requested by the task force:

- 194694.1: Ms. Ball told the task force that this bill would amend the Public School Capital Outlay Act to make awards for building system needs. The bill defines what a building system is. The bill would allow up to \$15 million to be expended annually from 2015 to 2019 and requires that awards be expended within two years. The bill was endorsed by the 2012 task force but did not pass the legislature. Members of the task force discussed and asked questions about the bill. The task force directed Ms. Ball to change the bill to allow for three years between the award being made and the funds being expended.
- 194695.1: Ms. Ball told the task force that this bill would allow the PSCOC to have more latitude when providing waivers for required funding matches. The task force endorsed this legislation in 2012, but it did not pass. Members of the task force discussed and asked questions about free and reduced-price lunch requirements and calculations and the proposed legislation.
- 194690.1: Ms. Ball told the task force that this bill combined HB 660 (2013) and SB 620 (2013). The bill defines the term "education technology infrastructure". The bill provides for allocations from the Public School Capital Outlay Fund for education technology infrastructure and establishes an Educational Technology Infrastructure Deficiency Corrections Initiative. The bill also allows for district share waivers. Ms. Ball told the task force that the bill was originally requested as a result of the Partnership for Assessment of Readiness of College and Careers (PARCC) assessment. Members of the task force discussed and asked questions about the PARCC assessment; district match requirements; stakeholder input; funding for the initiative; and the nature of education technology. The task force directed staff to work with the PSFA to make some minor changes and prepare the bill for potential endorsement at the November PSCOOTF meeting.

Members of the task force discussed the Severance Tax Permanent Fund. The members discussed potential funding sources and trade-offs that could be made to grow the fund. Members of the task force asked questions about the lease assistance program. Representative Stewart reminded the task force to send any ideas for potential legislation to her and to LCS staff as soon as possible in order to prepare legislation for consideration for endorsement at the next PSCOOTF meeting.

Adjournment

There being no further business to come before the task force, the forty-fourth meeting of the PSCOOTF for the 2013 interim adjourned at 4:08 p.m.

Revised: November 13, 2013

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

**November 18, 2013
Room 307, State Capitol
Santa Fe**

Monday, November 18

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of October 10, 2013 Meeting Minutes**
- 9:10 a.m. (1) **Santa Fe Indian School (SFIS) Capital Outlay**
 —Ray Herrera, Superintendent, SFIS
 —Gary Lujan, Director of Trust Lands, SFIS
 —Pancho Guardiola, Director, Human Resources, SFIS
 —Mark Duran, Registered Lobbyist
- 10:00 a.m. (2) **Discussion of Potential Endorsement of Legislation**
 —Sharon Ball, Public School Capital Outlay Oversight Task Force Staff,
 Legislative Council Service
- 1:00 p.m. **Adjourn**

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

**November 18, 2013
Room 307, State Capitol
Santa Fe**

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The forty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on November 18, 2013 at 9:18 a.m. in Room 307 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Sen. John M. Sapien, Vice Chair
Paul Aguilar
Tom Clifford
Carl Foster
Cecilia J. Grimes
Kirk Hartom
Leonard Haskie
Rep. James Roger Madalena
Sen. Mary Kay Papen
Sen. Cliff R. Pirtle
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith
Allan Tapia

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Sharon Clahchischilliage
Rep. Sandra D. Jeff
Sen. William P. Soules

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Claudia Armijo, Staff Attorney, LCS
Sharon Ball, Senior Researcher, LCS
Cassandra Jones, Research Assistant, LCS

Absent

Lisa Grover
Robbie Heyman
Rep. Larry A. Larrañaga
Rep. W. Ken Martinez
Sen. George K. Munoz
T.J. Parks
Mike Phipps
Judy Rabon

Rep. Roberto "Bobby" J. Gonzales
Sen. Howie C. Morales
Sen. John C. Ryan
Sen. William E. Sharer
Sen. Pat Woods

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Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, November 18

By consensus, the task force agreed to include a presentation by Andy Benson, AIA, LEED AP, Van H. Gilbert Architect PC, related to energy savings and benefits to student achievement in the recently completed Crownpoint Elementary School project built in partnership with the Gallup-McKinley County Schools and the Public School Capital Outlay Council (PSCOC).

Santa Fe Indian School (SFIS) House Memorial 97 (2013) Capital Outlay Funding Issues

Roy Herrera, superintendent, SFIS, discussed SFIS capital outlay funding issues. He explained that he has been superintendent at the SFIS for six months and discussed his prior experience. He thanked Representative Jeff for sponsoring House Memorial 97.

Mr. Herrera told the task force that the SFIS sits on 115 acres of land within Santa Fe city limits and was given as a trust to the 19 pueblos in New Mexico. The SFIS uses cultural heritage to enhance its students' knowledge and skills. Mr. Herrera told the task force that the SFIS has students from across New Mexico representing the 19 pueblos, the Mescalero Apache Tribe, the Jicarilla Apache Nation and the Navajo Nation. Enrollment averages more than 650 students, of whom more than two-thirds are housed in dormitories on campus. The remaining day-student population is bused in from communities within a 60-mile radius. The SFIS program serves grades seven through 12. Currently, the school has 185 middle school students and 438 high school students. Mr. Herrera said that the SFIS daily attendance rate is 94.7 percent; the graduation rate is 95.3 percent; and the dropout rate is zero percent. Mr. Herrera told the task force that the SFIS has met adequate yearly progress (AYP) for the last three years.

Mr. Herrera referred task force members to a letter from the SFIS to David Abbey, director of the Legislative Finance Committee (LFC) and chair of the PSCOC, expressing the school's desire to begin considering the ways in which the school might or might not fit into the standards-based public school capital outlay funding process in the future. Mr. Herrera emphasized that the SFIS would like to proceed cautiously, ensuring that questions regarding internal organization and relationships between the SFIS and state entities are addressed fully. He told the task force that the SFIS has proposed conducting an internal feasibility review of the school's desire and the legal and technical issues associated with potential inclusion in the public school capital outlay system.

Representative Stewart recognized Robert Gorrell, director of the Public School Facilities Authority (PSFA), and Jeffrey Eaton, chief financial officer of the PSFA, and requested that they comment on any potential issues regarding the inclusion of the SFIS into the standards-based public school capital outlay process. Mr. Gorrell referred the task force to a handout prepared by

the PSFA, which contains some background information on the SFIS. Mr. Gorrell expressed concern that incorporating the SFIS into the public school capital outlay system might require a constitutional amendment. He explained that funding and the local share would need to be provided for in statute. He told the task force that when adequacy standards for the state were created, documents from the Bureau of Indian Affairs and the Bureau of Indian Education (BIE) were considered and were more progressive than most school adequacy standards at the time. He told the task force that the standards-based process could be applied to the SFIS as long as statute allowed it. Mr. Eaton told the task force that there are 19 BIE schools in New Mexico and suggested that those schools should be considered throughout the discussion of incorporating the SFIS into the standards-based process. Mr. Herrera emphasized that the SFIS is currently only concerned with introducing itself to the task force in order to include the task force in conversations as the SFIS begins considering requesting inclusion in the statewide public school capital outlay process.

Members of the task force asked questions about and discussed federal funding received by the SFIS; tribal control of the SFIS; legal questions about the potential inclusion of the SFIS into the public school capital outlay funding structure; Public Education Department (PED) oversight of the SFIS; acceptance criteria for SFIS students; dormitories at the SFIS; the fact that the SFIS receives no gaming dollars from tribal casinos; the BIE funding formula; standardized tests administered by the SFIS; past appropriations to the SFIS for capital purposes; inclusion of the SFIS in statewide general obligation bond issues by the SFIS for capital purposes; the history of the SFIS; support of SFIS trustees; and the relationship between the SFIS and the PED.

The Crownpoint Elementary School Project: Can School Facilities Assist in Improving Student Learning?

Mr. Benson told the task force that Van H. Gilbert Architect PC won the design project for a new building for Crownpoint Elementary School. He said that his firm researched relationships among student and staff health, mechanical systems and the environment. The architects traveled and toured various school facilities. Eventually, they decided on a system that would bring air into the classroom at the ground level and exhaust it through the ceiling, which removes germs and impurities from the air.

Mr. Benson explained that the design of the building greatly improved the acoustics in the classrooms. He suggested that the task force support a memorial or establish a pilot program to study the effects of the building design on students, student attendance, student test scores and other criteria. He referred to studies that have been done in other states linking student environment to student performance.

Members of the task force asked questions about and discussed studies linking student performance to environment; the design of the Crownpoint Elementary School; specific aspects of the design; traditional air exchange and heating systems; maintenance of systems used in the Crownpoint Elementary School; expected life of the school facility; and the size of the school. Representative Stewart asked Mr. Gorrell to comment. Mr. Gorrell told the task force that the

PSFA looks at school condition and student performance but does not have access to all of the data. Representative Stewart told the task force that a memorial has not been prepared but that she intends to work with Mr. Benson and Mr. Gorrell to examine ways to continue this inquiry into the next legislative interim.

Approval of Minutes

Upon a motion by Representative Saavedra and seconded by Ms. Grimes, the task force approved the minutes of the October 10, 2013 meeting of the PSCOOTF.

Discussion of Potential Endorsement of Legislation

202.194694.2 allows the PSCOC to provide annual allocations to school districts to address building systems needs.

Ms. Ball explained that this bill draft reflects changes requested by the task force at a previous PSCOOTF meeting. The task force directed Ms. Ball to make minor technical changes to the bill. During discussion of the bill, Mr. Gorrell told the task force that the purpose of this bill draft is to allow the PSCOC to repair building systems rather than repair or renovate an entire school facility when building systems repairs or replacements could significantly renovate the life of a facility. Members of the task force asked questions about and discussed PSCOC review of projects; the process for selecting potential projects; using funding for systems needs for information technology needs; specific schools that could benefit from this legislation; the condition of various schools in the state; cleanup language in the bill; and potential criteria to evaluate systems needs in order to develop a priority list.

The task force agreed by consensus to endorse the draft legislation for introduction in the 2013 legislative session.

202.194690.2 establishes an education technology infrastructure deficiency corrections initiative.

Ms. Ball referred the task force members to Chapter 22, Article 15A NMSA 1978 and explained that the bill draft repeals the article in order to clean up the existing statute. Ms. Ball told the task force that the bill defines education technology infrastructure and provides for allocations from the PSCOC to establish education technology infrastructure. Members of the task force directed Ms. Ball to work with Mr. Aguilar, deputy secretary, PED, in order to repeal unnecessary sections of the Technology for Education Act while preserving and updating relevant sections.

Members of the task force asked questions about and discussed technical aspects of the bill; other sources of funds for education technology infrastructure; issues with education technology infrastructure and challenges in specific schools; regulations that might be established by the PSCOC to administer funding for education technology infrastructure; provisions allowing for the PSCOC to reduce or waive a local match requirement; and involvement by the Department of

Information Technology.

The task force requested that Mr. Aguilar provide information at a later date regarding which school districts would not be ready to implement the Partnership for Assessment of Readiness for College and Careers assessment. Representative Stewart indicated a desire to move forward with the bill and asked task force members if any were opposed. Several members expressed opposition to the bill. The chair removed the bill from consideration for task force endorsement.

202.194695.2 provides for a temporary provision to allow the PSCOC to waive all or a portion of the required funding match for grant assistance for certain school districts.

Ms. Ball told the task force that staff from the PSFA, the PED, the LFC, the LCS and the Legislative Education Study Committee had all met to discuss potential solutions suggested by task force members at the October meeting for several schools that are in need of repair but have been unable to meet current statutory requirements for local match waivers to receive public school capital outlay funding.

Ms. Ball told the task force that the legislation could be considered to be a result of the reluctance of the PSCOC to enforce provisions of the Public School Capital Outlay Act that allow the PSCOC to declare a district "recalcitrant" and to go to court to impose a mill levy on a district without voter approval.

Representative Stewart recognized Shirley Crawford, superintendent of the Capitan Municipal School District, to discuss the situation in Capitan. Ms. Crawford told the task force that because of the demographics of a resort community like Capitan, it has proven incredibly difficult to achieve the property tax rate required to get a waiver from the PSCOC under current statute.

Ms. Crawford explained that, originally, the district had requested PSCOC funding for a renovation of the high school in Capitan, but during the process of planning the renovation, serious structural and age-related issues with the facility were discovered. Ms. Crawford told the task force that the district now knows that it will cost more than 80 percent of the cost of a new school building to renovate the existing facility.

Ms. Crawford explained that Capitan currently does not have the money for a new facility or for renovation of the existing facility. She told the task force that, after meeting with the community, she believes that the district could achieve the property tax rate required in the proposed legislation.

Members of the task force asked questions about and discussed Capitan's current high school; where Capitan High School students are housed while renovations are under way; where Capitan schools fall on the facility condition index; how the PSFA evaluates projects; which

school districts would be eligible under the provisions in the proposed legislation; when the proposed legislation would sunset; public school capital funding solutions for small communities; and the possibility of removing the mill levy requirement from the proposed legislation.

By consensus, members of the task force agreed to endorse the draft legislation and requested staff to conduct additional research on the mill levy provision in the proposed legislation.

Adjournment

There being no further business before the task force, the forty-fifth meeting of the PSCOOTF adjourned at 1:04 p.m.

R

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Appendix E

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

2013 ENDORSED LEGISLATION

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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE AND
THE LEGISLATIVE EDUCATION STUDY COMMITTEE

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 ~~[C-]~~ 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 2015 through 2019 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 2014 act; provided that money allocated pursuant to
5 this subsection shall be expended within three 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.

17 E. The state share of the cost of an approved
18 building system repair, renovation or replacement project shall
19 be calculated pursuant to the methodology in Paragraph (5) of
20 Subsection B of Section 22-24-5 NMSA 1978.

21 F. A grant made pursuant to this section shall be
22 expended by the school district within three years of the grant
23 allocation."

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

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1 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
2 APPLICATION--GRANT ASSISTANCE.--

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

6 B. Except as provided in Sections 22-24-4.3,
7 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
8 govern grant assistance from the fund [~~for a public school~~
9 ~~capital outlay project not wholly funded pursuant to Section~~
10 ~~22-24-4.1 NMSA 1978~~]:

11 (1) all school districts are eligible to apply
12 for funding from the fund, regardless of percentage of
13 indebtedness;

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

17 (a) the council shall apply the
18 standards to charter schools to the same extent that they are
19 applied to other public schools;

20 (b) the council may award grants
21 annually to school districts for the purpose of repairing,
22 renovating or replacing public school building systems as
23 identified in Section 3 of this 2014 act;

24 [~~(b)~~] (c) the council shall adopt and
25 apply adequacy standards appropriate to the unique needs of the

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1 constitutional special schools; and

2 [~~e~~] (d) in an emergency in which the
3 health or safety of students or school personnel is at
4 immediate risk or in which there is a threat of significant
5 property damage, the council may award grant assistance for a
6 project using criteria other than the statewide adequacy
7 standards;

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

12 (a) the feasibility of using design,
13 build and finance arrangements for public school capital outlay
14 projects;

15 (b) the potential use of more durable
16 construction materials that may reduce long-term operating
17 costs;

18 (c) concepts that promote efficient but
19 flexible utilization of space; and

20 (d) any other financing or construction
21 concept that may maximize the dollar effect of the state grant
22 assistance;

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

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

8 (a) the final prior year net taxable
9 value for a school district divided by the MEM for that school
10 district is calculated for each school district;

11 (b) the final prior year net taxable
12 value for the whole state divided by the MEM for the state is
13 calculated;

14 (c) excluding any school district for
15 which the result calculated pursuant to Subparagraph (a) of
16 this paragraph is more than twice the result calculated
17 pursuant to Subparagraph (b) of this paragraph, the results
18 calculated pursuant to Subparagraph (a) of this paragraph are
19 listed from highest to lowest;

20 (d) the lowest value listed pursuant to
21 Subparagraph (c) of this paragraph is subtracted from the
22 highest value listed pursuant to that subparagraph;

23 (e) the value calculated pursuant to
24 Subparagraph (a) of this paragraph for the subject school
25 district is subtracted from the highest value listed in

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1 Subparagraph (c) of this paragraph;

2 (f) the result calculated pursuant to
3 Subparagraph (e) of this paragraph is divided by the result
4 calculated pursuant to Subparagraph (d) of this paragraph;

5 (g) the sum of the property tax mill
6 levies for the prior tax year imposed by each school district
7 on residential property pursuant to Chapter 22, Article 18 NMSA
8 1978, the Public School Capital Improvements Act, the Public
9 School Buildings Act, the Education Technology Equipment Act
10 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
11 is calculated for each school district;

12 (h) the lowest value calculated pursuant
13 to Subparagraph (g) of this paragraph is subtracted from the
14 highest value calculated pursuant to that subparagraph;

15 (i) the lowest value calculated pursuant
16 to Subparagraph (g) of this paragraph is subtracted from the
17 value calculated pursuant to that subparagraph for the subject
18 school district;

19 (j) the value calculated pursuant to
20 Subparagraph (i) of this paragraph is divided by the value
21 calculated pursuant to Subparagraph (h) of this paragraph;

22 (k) if the value calculated for a
23 subject school district pursuant to Subparagraph (j) of this
24 paragraph is less than five-tenths, then, except as provided in
25 Subparagraph (n) or (o) of this paragraph, the value for that

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1 school district equals the value calculated pursuant to
2 Subparagraph (f) of this paragraph;

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

7 (m) if the value calculated for a
8 subject school district pursuant to Subparagraph (j) of this
9 paragraph is five-tenths or greater, then the value calculated
10 pursuant to Subparagraph (l) of this paragraph is added to the
11 value calculated pursuant to Subparagraph (f) of this
12 paragraph. Except as provided in Subparagraph (n) or (o) of
13 this paragraph, the sum equals the value for that school
14 district;

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

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

23 (p) except as provided in Section
24 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
25 Paragraph (6), (8), (9) or (10) of this subsection, the amount

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1 to be distributed from the fund for an approved project shall
2 equal the total project cost multiplied by a fraction the
3 numerator of which is the value calculated for the subject
4 school district in the current year plus the value calculated
5 for that school district in each of the two preceding years and
6 the denominator of which is three; and

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

19 (6) the amount calculated pursuant to
20 Subparagraph (p) of Paragraph (5) of this subsection shall be
21 reduced by the following procedure:

22 (a) the total of all legislative
23 appropriations made after January 1, 2003 for nonoperating
24 purposes either directly to the subject school district or to
25 another governmental entity for the purpose of passing the

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1 money through directly to the subject school district, and not
2 rejected by the subject school district, is calculated;
3 provided that: 1) an appropriation made in a fiscal year shall
4 be deemed to be accepted by a school district unless, prior to
5 June 1 of that fiscal year, the school district notifies the
6 department of finance and administration and the public
7 education department that the school district is rejecting the
8 appropriation; 2) the total shall exclude any educational
9 technology appropriation made prior to January 1, 2005 unless
10 the appropriation was on or after January 1, 2003 and not
11 previously used to offset distributions pursuant to the
12 Technology for Education Act; 3) the total shall exclude any
13 appropriation previously made to the subject school district
14 that is reauthorized for expenditure by another recipient;
15 4) the total shall exclude one-half of the amount of any
16 appropriation made or reauthorized after January 1, 2007 if the
17 purpose of the appropriation or reauthorization is to fund, in
18 whole or in part, a capital outlay project that, when
19 prioritized by the council pursuant to this section either in
20 the immediately preceding funding cycle or in the current
21 funding cycle, ranked in the top one hundred fifty projects
22 statewide; 5) the total shall exclude the proportionate share
23 of any appropriation made or reauthorized after January 1, 2008
24 for a capital project that will be jointly used by a
25 governmental entity other than the subject school district.

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

13 (b) the applicable fraction used for the
14 subject school district and the current calendar year for the
15 calculation in Subparagraph (p) of Paragraph (5) of this
16 subsection is subtracted from one;

17 (c) the value calculated pursuant to
18 Subparagraph (a) of this paragraph for the subject school
19 district is multiplied by the amount calculated pursuant to
20 Subparagraph (b) of this paragraph for that school district;

21 (d) the total amount of reductions for
22 the subject school district previously made pursuant to
23 Subparagraph (e) of this paragraph for other approved public
24 school capital outlay projects is subtracted from the amount
25 calculated pursuant to Subparagraph (c) of this paragraph; and

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1 (e) the amount calculated pursuant to
2 Subparagraph (p) of Paragraph (5) of this subsection shall be
3 reduced by the amount calculated pursuant to Subparagraph (d)
4 of this paragraph;

5 (7) as used in this subsection:

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

8 (b) "subject school district" means the
9 school district that has submitted the application for funding
10 and in which the approved public school capital outlay project
11 will be located;

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

20 (9) the council may adjust the amount of local
21 share otherwise required if it determines that a school
22 district has used all of its local resources. Before making
23 any adjustment to the local share, the council shall consider
24 whether:

25 (a) the school district has insufficient

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1 bonding capacity over the next four years to provide the local
2 match necessary to complete the project and, for all
3 educational purposes, has a residential property tax rate of at
4 least ten dollars (\$10.00) on each one thousand dollars
5 (\$1,000) of taxable value, as measured by the sum of all rates
6 imposed by resolution of the local school board plus rates set
7 to pay interest and principal on outstanding school district
8 general obligation bonds;

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

22 (c) the school district: 1) has an
23 enrollment growth rate over the previous school year of at
24 least two and one-half percent; 2) pursuant to its five-year
25 facilities plan, will be building a new school within the next

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1 two years; and 3) for all educational purposes, has a
2 residential property tax rate of at least ten dollars (\$10.00)
3 on each one thousand dollars (\$1,000) of taxable value, as
4 measured by the sum of all rates imposed by resolution of the
5 local school board plus rates set to pay interest and principal
6 on outstanding school district general obligation bonds;

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

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

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

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

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

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1 (d) the school district has submitted a
2 five-year facilities plan that includes: 1) enrollment
3 projections; 2) a current preventive maintenance plan that has
4 been approved by the council pursuant to Section 22-24-5.3 NMSA
5 1978 and that is followed by each public school in the
6 district; 3) the capital needs of charter schools located in
7 the school district; and 4) projections for the facilities
8 needed in order to maintain a full-day kindergarten program;

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

20 (f) the application includes the capital
21 needs of any charter school located in the school district or
22 the school district has shown that the facilities of the
23 charter school have a smaller deviation from the statewide
24 adequacy standards than other district facilities included in
25 the application; and

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1 (g) the school district has agreed, in
2 writing, to comply with any reporting requirements or
3 conditions imposed by the council pursuant to Section 22-24-5.1
4 NMSA 1978.

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

16 D. The acquisition of a facility by a school
17 district or charter school pursuant to a financing agreement
18 that provides for lease payments with an option to purchase for
19 a price that is reduced according to lease payments made may be
20 considered a public school capital outlay project and eligible
21 for grant assistance under this section pursuant to the
22 following criteria:

23 (1) no grant shall be awarded unless the
24 council determines that, at the time of exercising the option
25 to purchase the facility by the school district or charter

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1 school, the facility will equal or exceed the statewide
2 adequacy standards and the building standards for public school
3 facilities;

4 (2) no grant shall be awarded unless the
5 school district and the need for the facility meet all of the
6 requirements for grant assistance pursuant to the Public School
7 Capital Outlay Act;

8 (3) the total project cost shall equal the
9 total payments that would be due under the agreement if the
10 school district or charter school would eventually acquire
11 title to the facility;

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

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

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

23 E. In order to encourage private capital investment
24 in the construction of public school facilities, the purchase
25 of a privately owned school facility that is, at the time of

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1 application, in use by a school district may be considered a
2 public school capital outlay project and eligible for grant
3 assistance pursuant to this section if the council finds that:

4 (1) at the time of the initial use by the
5 school district, the facility to be purchased equaled or
6 exceeded the statewide adequacy standards and the building
7 standards for public school facilities;

8 (2) at the time of application, attendance at
9 the facility to be purchased is at seventy-five percent or
10 greater of design capacity and the attendance at other schools
11 in the school district that the students at the facility would
12 otherwise attend is at eighty-five percent or greater of design
13 capacity; and

14 (3) the school district and the capital outlay
15 project meet all of the requirements for grant assistance
16 pursuant to the Public School Capital Outlay Act; provided
17 that, when determining the deviation from the statewide
18 adequacy standards for the purposes of evaluating and
19 prioritizing the project, the students using the facility shall
20 be deemed to be attending other schools in the school district.

21 F. It is the intent of the legislature that grant
22 assistance made pursuant to this section allows every school
23 district to meet the standards developed pursuant to Subsection
24 C of this section; provided, however, that nothing in the
25 Public School Capital Outlay Act or the development of

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1 standards pursuant to that act prohibits a school district from
2 using other funds available to the district to exceed the
3 statewide adequacy standards.

4 G. Upon request, the council shall work with, and
5 provide assistance and information to, the public school
6 capital outlay oversight task force.

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

15 I. Upon the recommendation of the public school
16 facilities authority, the council shall develop building
17 standards for public school facilities and shall promulgate
18 other such rules as are necessary to carry out the provisions
19 of the Public School Capital Outlay Act.

20 J. No later than December 15 of each year, the
21 council shall prepare a report summarizing its activities
22 during the previous fiscal year. The report shall describe in
23 detail all projects funded, the progress of projects previously
24 funded but not completed, the criteria used to prioritize and
25 fund projects and all other council actions. The report shall

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1 be submitted to the public education commission, the governor,
2 the legislative finance committee, the legislative education
3 study committee and the legislature."

4 SECTION 5. 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; and

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

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

20 ~~(a) shall work with school districts to~~
21 ~~validate the assessment of the outstanding deficiencies and the~~
22 ~~projected costs to correct the deficiencies;~~

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

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1 council by filing a notice of appeal with the council within
2 thirty days of the authority's decision or recommendation.

3 Upon filing of the notice:

4 (1) the decision or recommendation of the
5 authority shall be suspended until the matter is decided by the
6 council;

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

10 (3) at the hearing, the school district, the
11 authority and other interested parties may make informal
12 presentations to the council; and

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

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

17 SECTION 7. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2014.