



Public School Capital Outlay Oversight Task Force

**2014
ANNUAL REPORT**

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

Introduction

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

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

The current PSCOOTF consists of 25 members, including members of the legislature and the executive; certain designated public members, some of whom have expertise in finance and education; and superintendents of school districts or their designees, two of whom must be from districts that receive federal impact aid grants. Appendix A provides a listing of the members who served during the 2014 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the statewide standards-based public school capital outlay process that is now in its twelfth year of implementation. While this report focuses primarily on the work of the task force during the 2014 interim, background information in this report is provided for perspective on the issues before the task force.

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

Background

1998 - 2003

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

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

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

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

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

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

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

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

2004 Legislation

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

2005 Legislation

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

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

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

2005 Interim and 2006 Legislation

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

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

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

Additional legislation passed and signed into law:

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

2006 Interim and 2007 Legislation

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

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

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

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

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

2007 Interim and 2008 Legislation

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

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

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

2008 Interim and 2009 Legislation

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

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

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

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

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

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

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

2009 Interim and 2010 Legislation

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

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

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

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

2010 Interim and 2011 Legislation

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

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

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

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

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

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

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

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

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

2011 Interim and 2012 Legislation

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

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

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

2012 Interim and 2013 Legislation

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

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

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

2013 Interim and 2014 Legislation

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

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

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

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

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 FY 2015 through FY 2019 for building systems repair, renovation or replacement projects. The task force had endorsed a similar bill in 2013, which did not pass. The task force declined to endorse proposed legislation to allow the PSCOC to provide allocations to purchase educational technology to meet assessments requirements of the common core currently adopted and being implemented by the PED. 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.

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

Work During the 2014 Interim

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 regarding the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

State statute allows the PSCOOTF to hold a maximum of four meetings during each interim in addition to one organizational meeting. In 2014, those meetings were held in Santa Fe at the State Capitol on June 20, August 1, September 3 and November 18. The Santa Fe Indian School hosted the October 27 meeting of the task force.

At the first meeting, task force members received updates to their reference binders, a report on capital-outlay-related legislation from the 2014 session and a presentation from the PSCOC on the status of school conditions and the public school capital outlay standards-based funding capacity. Noting that one of the litigant districts in the *Zuni* lawsuit (the Gallup-McKinley County School District (GMCS D)) had requested and was granted a status conference in district court in March, the task force requested that the district be invited to come before the task force to discuss its concerns about those issues that may be resolved through rule changes or adjustments to existing rules and those issues that will need to be addressed through introduction and passage of legislation.

At the August meeting, task force members received testimony from the PSCOC chair on the FY 2014 PSCOC awards and a status report from the PSFA on the development of a standardized lease. They also heard extensive testimony from the PSFA maintenance manager and staff on the importance of developing and implementing continuing preventive maintenance to protect the state's \$2 billion investment in public school facilities.

Representatives from the GMCS D, including the district superintendent and the district's legal counsel, provided testimony to the task force on concerns related to the implementation of the standards-based public school capital outlay funding system. They noted in their testimony that school districts that are "outliers" on the low side of the bell curve (like the GMCS D) have a particular problem because the PSCOC funding system requires all districts (with the exception of Zuni) to make a match of anywhere from 10 percent to 90 percent of the grant award in order to receive a grant award. With only 20 percent of the property in McKinley County eligible to be taxed, 20 percent of the district's patrons are assuming 100 percent of the responsibility for the district's 19 percent local match required to receive a grant award. They also noted that the PSCOC does not fund teacherages, which are necessary in a far-flung district like the GMCS D, and that adequacy standards do not include all fixtures and equipment for new schools;

competition fields for sports, including bleachers, lights and restrooms; anything beyond minimal landscaping; water lines to fire hydrants; and square footage per student in excess of 135 square feet (originally, 150 square feet per student).

In additional testimony, the GMCS D representatives pointed out gaps between the state's adequacy standards and the state's adopted educational standards, including facilities for Navajo language and culture classes, federal Title IX requirements for equity between boys' and girls' facilities, facilities for pre-kindergarten classes, classrooms for response-to-intervention programs, computers and computer stations for mandated computer-based testing and spaces for ancillary service providers such as speech and language therapists, physical therapists and occupational therapists.

The task force also heard testimony from the superintendent of the GMCS D that, with federal sequestration of funds, the district no longer receives 100 percent of federal impact aid for which the district qualifies. He also pointed out that district patrons have continued to bond themselves to capacity for the past 25 years. He noted that even though the PSCOC can provide a waiver of the district match, it has not yet provided such a waiver for the GMCS D.

At the September meeting, task force members heard testimony from the Office of the State Auditor (OSA) about the agency's risk review of four Albuquerque-area charter schools that resulted in referrals to the Federal Bureau of Investigation (FBI) and subsequent FBI raids on the Southwest Secondary Center and Southwest Aeronautics, Mathematics and Science Academy and the schools' leases of aircraft and property from Southwest Educational Consultants, Inc., also doing business as Diamond Aviation, a business co-owned by an instructor and the head administrator of the schools. Task force members engaged in a lengthy discussion about ways to increase accountability over PSCOC funds.

Task force members spent a great deal of time at the September meeting discussing the availability of public facilities for charter schools to meet the statutory requirement that charter schools be in public buildings by July 1, 2015, which is almost always a topic of concern and discussion at task force meetings. Task force members heard testimony from staff that the 2015 deadline has some flexibility in statutory exceptions and that many charter schools will have one extra year or more to secure a public building, as the requirement does not go into effect until the charter school's charter is up for renewal. Task force members also had a lengthy discussion on conflicts of interest that seem to be inherent in some charter school operating models.

Also at the September meeting, the task force heard testimony from the managing director of the Royal Bank of Canada Capital Markets, U.S. Public Finance Division, and the Albuquerque Public Schools' legal counsel on proposed appropriate language to include charter schools as recipients of proceeds from the sale of education technology notes.

The October meeting was hosted by the Santa Fe Indian School in the school's Humanities Commons Room in Santa Fe. Task force members heard testimony from the

PSCOC chair and PSFA staff about responses to concerns expressed by the litigant districts at previous meetings during the interim. Members heard testimony that PSCOC and PSFA staff can address more than half of the concerns within the existing adequacy standards through administrative solutions. Issues such as funding of teacherages, the provisions of Title IX of the federal Education Amendments of 1972 that mandate equal opportunities in athletics for male and female athletes, construction of concession stands and other amenities for high school playing fields, facilities for Navajo language instruction, additional funding for facilities maintenance and state match requirements for PSCOC grant awards are outside the realm of PSCOC administrative solutions.

Members also heard presentations from PSFA staff and the state investment officer on several possibilities for reprioritizing the current distribution proceeds from the sale of supplemental severance tax bonds. Task force members agreed on the importance of rebuilding the corpus of the Severance Tax Permanent Fund.

Members also heard testimony on developing standardized lease agreements by the PSFA and learned that the proposed agreements can accommodate any special needs but should also guide users away from illegal activities and strengthen conflict of interest requirements.

At the last meeting of the interim in November, members heard testimony from the Attorney General's Office on the current status of the *Zuni* lawsuit. The assistant attorney general reported that the litigation had been inactive since March 2006, but the judge has retained jurisdiction in the case. In March 2014, the plaintiffs, led by the GMCSO, successfully sought to reinstate the litigation to address the concerns that the litigant school districts maintain with regard to capital outlay funding and specific district needs. With the litigant districts seeking legislative solutions, the assistant attorney general indicated that a hearing has been scheduled for spring 2015.

The task force also heard testimony from PSFA staff regarding the issue of distribution of supplemental severance tax bond proceeds with a workable solution that will not result in a degradation of public school facilities statewide. The task force heard a "hybrid" proposal that would implement a six percent reduction in funding for all of the beneficiaries, except public school capital outlay, beginning in FY 2016. A 16 percent reduction in funding would be applied to the public school capital outlay funding under the hybrid plan beginning in FY 2019, allowing time for appropriate scaling of upcoming projects and completion of projects in process.

**Public School Capital Outlay Oversight Task Force
Proposed Legislation**

After consideration of several pieces of proposed legislation, PSCOOTF members agreed to endorse legislation to allow the PSCOC to provide temporary annual allocations to school districts to address building system needs in existing buildings. The task force heard testimony that the proposed legislation will allow districts to address mechanical and other building systems needs and is similar to the previously enacted temporary roof repair program for school buildings. As a separate appropriation, the allocation will not compete with other PSCOF allocations.

Appendix A

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

MEMBERSHIP, 2014 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2014 INTERIM MEMBERSHIP**

Representative Mimi Stewart, Chair	House Education Committee Chair
Senator John M. Sapien, 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
Representative Eliseo Lee Alcon	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, Ph.D.	Secretary of Finance and Administration
Carl Foster, Ed.D.	Retired educator, public member with expertise in education and finance
Cecilia Grimes	Retired educator, public member with expertise in education and 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 and finance

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

ADVISORY MEMBERS, 2014 INTERIM

Representative Sharon Clahchischilliage

Representative Roberto "Bobby" J. Gonzales

Representative Sandra D. Jeff

Senator Howie C. Morales

Representative Patricia Roybal Caballero

Senator John C. Ryan

Senator William E. Sharer

Senator William P. Soules

Senator Pat Woods

STAFF, 2014 INTERIM

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

Sharon S. Ball, Senior Researcher, LCS

Kathleen Dexter, Senior Researcher, LCS

Michelle Jaschke, Researcher, LCS

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2014 STATUTORY AUTHORITY AND DUTIES

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

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

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

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

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

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

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

Appendix C

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

APPROVED 2014 INTERIM WORK PLAN

**2014 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
Rep. Eliseo Lee Alcon
Tom Clifford
Carl Foster
Cecilia Grimes
Lisa Grover
Kirk Hartom
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Rep. James Roger Madalena

Rep. W. Ken Martinez
Sen. Mary Kay Papen
T.J. 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

Advisory Members

Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff
Sen. Howie C. Morales
Rep. Patricia Roybal Caballero

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 implement the court-ordered standards-based public school capital outlay funding methodology.

Work Plan

The task force will focus on the following activities during the 2014 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 examination of the original intent of the establishment of the standards-based process and its evolution as it has been implemented;
4. taking testimony from the litigant school districts in the *Zuni* capital outlay lawsuit on progress and concerns related to implementation of the court order in their respective districts;
5. continuing to monitor the inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the standards-based process, including, but not limited to, the unique constitutional nature of these schools as their historical nature;
6. continuing to oversee the work of the Public School Capital Outlay Council and the Public School Facilities Authority as they continue to implement the statewide standards-based process for making grant awards;
7. taking testimony on compliance with requirements included in Public School Capital Outlay Council grant award contingencies that school districts demolish school buildings that have been replaced with new buildings that were funded in whole or in part with Public School Capital Outlay Fund dollars;
8. examining issues related to charter school facilities, including lease assistance from the state, utilization of public school buildings and other public buildings to accommodate charter schools; charter schools and the use of lease-purchase agreements; and discussion of charter school compliance with the 2015 deadlines to be in public buildings;
9. reviewing progress on the implementation of Laws 2014, Chapter 28, regarding establishment of a process to correct deficiencies in school districts' respective educational technology infrastructures in light of the electronic implementation of the state's student assessment of readiness for college and careers in the 2014-2015 school year;
10. examining school transportation capital outlay issues; and
11. reviewing provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act and making recommendations for changes as necessary.

**Public School Capital Outlay Oversight Task Force
2014 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 20	Santa Fe
August 1	Santa Fe
September 3	Santa Fe Indian School
October 27	Santa Fe
November 10	Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2014 MEETING AGENDAS

Revised: June 19, 2014

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

**June 20, 2014
Room 307, State Capitol
Santa Fe**

Friday, June 20

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair
—Senator John Sapien, Vice Chair
- 9:05 a.m. (1) **Brief Review: Public School Capital Outlay Oversight Task Force (PSCOOTF) and 2014 Legislative Update**
—Sharon Ball, PSCOOTF Staff, Legislative Council Service (LCS)
- 10:05 a.m. (2) **Status of School Conditions and Public School Capital Outlay Standards-Based Funding Capacity**
—David Abbey, Director, Legislative Finance Committee; Chair,
Public School Capital Outlay Council
—Robert Gorrell, Director, Public School Facilities Authority
- 12:00 noon **Lunch**
- 1:30 p.m. (3) **Status of Zuni Lawsuit and Litigant Districts**
—Raúl E. Burciaga, Director, LCS
- 2:30 p.m. (4) **March 2014 Zuni Lawsuit Status Conference**
—Scott Fuqua, Esq., Director, Litigation Division, Office of the Attorney
General
—John T. Cresto, Director of Construction, Gallup-McKinley County
School District
- 3:30 p.m. (5) **Adoption of Work Plan and Strategies Moving Forward**
—Task Force and Staff
- 4:30 p.m. **Adjourn**

Revised: July 29, 2014

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

**August 1, 2014
Room 307, State Capitol
Santa Fe**

Friday, August 1

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair
—Senator John M. Sapien, Vice Chair
- 9:05 a.m. **Approval of June 20, 2014 Meeting Minutes**
- 9:10 a.m. (1) **Updates and Additions: Public School Capital Outlay Oversight Task Force (PSCOOTF) Reference Binder**
—Sharon Ball, PSCOOTF Staff; Senior Researcher, Legislative Council Service
- 9:30 a.m. (2) **Public School Capital Outlay Council (PSCOC) Fiscal Year 2014 Awards: Report to the PSCOOTF**
—David Abbey, Chair, PSCOC; Director Legislative Finance Committee
—Joe Guillen, Chair, Awards Subcommittee, PSCOC
- 10:30 a.m. (3) **Protecting the State's Investment: Maintenance of Public School Facilities**
—Les Martinez, Maintenance Manager, Public School Facilities Authority (PSFA)
- 11:30 a.m. **Lunch**
- 1:00 p.m. (4) **Status Report: Standardized Lease Development**
—Andre Larroque, Building Standards Coordinator, PSFA
—Ken Hunt, Esq., Contract Attorney, PSFA
—Robert Gorrell, Director, PSFA
- 1:30 p.m. (5) **Implementation of the Court's Order in the Zuni Lawsuit: Progress and Concerns**
—Frank Chiapetti, Superintendent, Gallup-McKinley County School District (GMCS D)
—Bob Roseborough, Esq., Contract Attorney, GMCS D
- 4:00 p.m. **Adjourn**

Revised: September 2, 2014

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

**September 3, 2014
Room 307, State Capitol
Santa Fe**

Wednesday, September 3

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair
—Senator John M. Sapien, Vice Chair
- 9:05 a.m. **Approval of August 1, 2014 Meeting Minutes**
- 9:10 a.m. (1) **Public School Capital Outlay Funding Stream: Report on the Severance Tax Permanent Fund and Issuance of Supplemental Severance Tax Bonds**
—Peter van Moorsel, Chief Economist, Legislative Finance Committee (LFC)
—Steven K. Moise, State Investment Officer, State Investment Council (SIC)
—Vince Smith, Deputy State Investment Officer, SIC
—Stephanie Schardin Clarke, Director, State Board of Finance
- 10:30 a.m. (2) **State Auditor's Risk Review: Ways to Increase Accountability over Public School Capital Outlay Act Education Funds**
—Evan Blackstone, Esq., Chief of Staff, Office of the State Auditor
—David Abbey, Chair, Public School Capital Outlay Council (PSCOC); Director, LFC
—Joe Guillen, Chair, Awards Subcommittee, PSCOC
- 11:30 a.m. (3) **Charter Schools and the Statutory Deadline to Occupy Public Buildings**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—David Abbey, Chair, PSCOC; Director, LFC
—Jeff Eaton, Director, PSFA Business Operations
- 12:00 noon **Working Lunch**

- 12:30 p.m. (4) **Prorated Proceeds from Education Technology Notes for Charter Schools**
—Paul J. Cassidy, Managing Director, Royal Bank of Canada Capital Markets, U.S. Public Finance
—Art Melendres, Esq., Albuquerque Public Schools (APS) Legal Counsel
—Carrie Robin Brunder, Director, Government Affairs and Policy, APS
- 2:30 p.m. **Discussion of Possible Legislation for Public School Capital Outlay Oversight Task Force (PSCOOTF) Endorsement and Direction to Staff**
—PSCOOTF Members and Staff
- 3:00 p.m. **Adjourn**

Revised: October 23, 2014

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

**October 27, 2014
Humanities Commons Room, Santa Fe Indian School
1501 Cerrillos Road, Santa Fe**

Monday, October 27

- 9:00 a.m. **Call to Order and Introductions**
—Representative Mimi Stewart, Chair
—Senator John M. Sapien, Vice Chair
- Approval of September 3, 2014 Meeting Minutes**
- 9:05 a.m. **Welcome and Introductions**
—Roy Herrera, Superintendent, Santa Fe Indian School
- 9:15 a.m. (1) **[Update on the Public School Capital Outlay Council's \(PSCOC\) Recommendations for Standards-Based Public School Capital Outlay Rule Changes and Possible Legislation](#)**
—David Abbey, Chair, PSCOC, and Director, Legislative Finance Committee
—Martica Casias, Planning and Design Manager, Public School Facilities Authority (PSFA)
—Responders (invited):
 Frank Chiapetti, Superintendent, Gallup-McKinley County Schools
 Marc Space, Superintendent, Grants-Cibola County Schools
 Hayes Lewis, Superintendent, Zuni Public Schools
- 11:00 a.m. (2) **[Report on the Effects of Possible Severance Tax Distribution Changes on Standards-Based Public School Capital Outlay Funding Formula Awards](#)**
—Jeff Eaton, Director of Business Operations, PSFA
- 12:00 noon **Lunch**

- 1:00 p.m. (3) [Public School Capital Outlay Funding Stream: Update on the State Investment Council \(SIC\) Legislation to Increase Distributions to the Severance Tax Permanent Fund and on the Issuance of Supplemental Severance Tax Bonds](#)
—Steven K. Moise, State Investment Officer, SIC
—Vincent Smith, Deputy State Investment Officer, SIC
- 2:00 p.m. (4) [Update on the Implementation of the Education Technology Infrastructure Deficiencies Correction Program](#)
—Robert Gorrell, Director, PSFA
- 2:30 p.m. (5) [Standardized Lease Agreements](#)
—Robert Gorrell, Director, PSFA
- 2:50 p.m. (6) [Tracking School District Maintenance Costs: Suggestions and Recommendations for Implementation](#)
—Robert Gorrell, Director, PSFA
- 3:15 p.m. (7) [Consideration of Possible Legislation for Task Force Endorsement and Direction to Staff](#)
—Task Force Members and Staff
- 4:15 p.m. **Adjourn**

Revised: November 6, 2014

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

**November 10, 2014
Room 307, State Capitol
Santa Fe**

Monday, November 10

- 9:00 a.m. **Call to Order**
—Representative Mimi Stewart, Chair
- 9:05 a.m. **Approval of October 27, 2014 Meeting Minutes**
- 9:10 a.m. (1) **Update on Progress of the Zuni Lawsuit**
—Sean Cunniff, Assistant Attorney General, Attorney General's Office
- 10:00 a.m. (2) **Severance Tax Distribution Changes**
—State Investment Council Staff (Invited)
—Jeff Eaton, Director, Business Operations, Public School Facilities
 Authority (PSFA)
- 10:30 a.m. (3) **Public School Capital Outlay Oversight Task Force (PSCOOTF)
Discussion of Legislation for Endorsement and Direction to Staff**
—PSCOOTF Members and Staff
—PSFA Staff
- 12:00 noon (4) **PSCOOTF Adoption of Legislation for Endorsement**
—PSCOOTF Members
- 1:00 p.m. **Adjourn**

Appendix E

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

**2014 MINUTES OF MEETINGS AND
RECOMMENDATIONS**

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

**June 20, 2014
Room 307, State Capitol
Santa Fe**

The first meeting of the 2014 interim of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on Friday, June 20, 2014, in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. Mimi Stewart, Chair
Paul Aguilar
Rep. Eliseo Lee Alcon
Tom Clifford, Secretary, Department of
Finance and Administration
Dr. Carl Foster
Cecilia Grimes
Kirk Hartom
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
T.J. Parks
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. James E. Smith

Advisory Members

Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff
Rep. Patricia Roybal Caballero
Sen. William P. Soules

Absent

Sen. John M. Sapien, Vice Chair
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Mary Kay Papen
Mike Phipps
Judy Rabon
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Allan Tapia

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 S. Ball, Senior Researcher, LCS
Michelle M. Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Friday, June 20**Welcome and Introductions**

The chair welcomed members, staff and guests and thanked everyone for their participation. Task force members and staff introduced themselves at the request of the chair.

2014 Legislative Highlights

Ms. Ball presented an overview of public school capital outlay-related bills from the 2014 legislative session. Task force members received a handout with a summary and copies of the 2014 legislation, including House Bills 68 and 280, House Appropriations and Finance Committee Substitute for House Bill (HB) 146, Senate Bills 159 and 6 and Senate Joint Memorial 4. The handout includes information regarding the 2014 Work New Mexico Act as well.

HB 68 amends the Public School Capital Outlay Act to allow funding to school districts to address building system needs, Ms. Ball reported. The bill would allow the Public School Capital Outlay Council (PSCOC) to provide funding from the Public School Capital Outlay Fund (PSCOF) for a public school repair, renovation and replacement initiative. In addition, the bill provides a definition of "building system" for the program. Ms. Ball noted that the bill, sponsored by Representative Stewart, and endorsed by both the PSCOOTF and the Legislative Education Study Committee (LESC), did not get a hearing in the Senate Finance Committee. Task force members discussed various provisions of the bill and noted that perhaps the legislation should be introduced in the senate during the 2015 session to allow it more opportunity for progress.

Ms. Ball proceeded to review HB 280, also sponsored by Representative Stewart, which provides for a return to statutory individual class size and teaching load requirements over a three-year period. The bill, passed and signed into law, also allows school districts to continue to apply to the Public Education Department (PED) for a class size or teaching load waiver. Questions arose among the membership about who is applying for waivers and how they are proceeding. The chair noted that some school districts are experiencing difficulties in developing a plan to return to class size limits as required by the statute and may still apply for waivers. She

further explained a provision of the bill that provides an initial \$6 million appropriation to hire new teachers in fiscal year 2015 to support the first year phase-in of the return to statutory teaching loads. In addition, she deemed it appropriate for the task force to think about future funding for the phase-in. Although funding has been provided for the first year to hire additional teachers, the chair pointed out that some school districts have empty teaching positions now and lack qualified personnel to fill those existing positions.

Task force members asked if there would be any interim updates regarding the new provisions of HB 280. Ms. Ball said that the task force will be coordinating with the LESC and will hear a report on this issue from the PED. The chair also noted that the issue will come before a joint meeting of the Legislative Finance Committee (LFC) and the LESC in the interim.

Ms. Ball reviewed major provisions of Senate Bill (SB) 159 for education technology infrastructure funding. Although the PSCOOTF declined to endorse the legislation, the bill was endorsed by the LESC and subsequently passed and signed into law. The bill provides for allocations from the PSCOF for education technology infrastructure and establishes an education technology infrastructure deficiency corrections initiative, similar to previously funded deficiency corrections programs for the public schools.

A number of important education-related appropriations were made from the PSCOF in provisions of the 2014 Work New Mexico Act, according to Ms. Ball. Appropriations included over \$7 million for the Cartwright Hall renovation at the New Mexico School for the Deaf and roughly \$14 million to the PED for pre-kindergarten classrooms, school bus replacement and education technology infrastructure. The New Mexico School for the Blind and Visually Impaired received appropriations in excess of \$9 million for various renovation and construction projects.

Ms. Ball also presented information regarding SB 6, a measure that would make charter schools eligible to receive a prorated share of education technology equipment purchased through issuance of education technology notes. Task force members discussed whether charter schools are now eligible to receive a fair share of funds coming into a school district and how the property tax mill levies affect charter schools and schools on Native American lands where property taxes are not assessed.

The chair noted that the members are discussing a bill that did not pass and suggested that individual school boards can move forward on education technology on their own so that all schools receive a fair portion of such funding. At present, the chair pointed out, charter schools are not included in statute to be eligible to receive this type of funding. Ms. Ball stated that a number of school boards are concerned about raising taxes without voter approval.

Continued discussion focused on school building maintenance and equipment repair and replacement needs. The chair noted that school districts are facing a situation wherein a school's exterior structure may be sound but the heating, ventilating and air conditioning or other building

systems may be compromised and existing capital outlay sources are insufficient or unavailable to address such needs. The task force was asked to delay further discussion of maintenance needs until after the planned presentation on the status of school conditions by Robert Gorrell, director of the Public School Facilities Authority (PSFA).

Ms. Ball went over the contents of the resource binder for task force members. The chair noted that all of the information included in the binder is available electronically on the New Mexico Legislature web site. Ms. Ball explained that Mr. Burciaga would be presenting an update on the status of the *Zuni* lawsuit, which was the impetus for the establishment of the PSCOOTF to oversee the standards-based process. Speaker Martinez thanked staff for including legal information related to the *Zuni* lawsuit and the report of the special master appointed as a result of the lawsuit in the resources. He noted that he had provided testimony in the original lawsuit, and he lauded the state's efforts over the past 15 years to fairly distribute public school capital improvement resources in the state. Representative Larrañaga was recognized as one of the original members of the task force that established the standards-based process now used for funding distribution.

Status of School Conditions and Public School Capital Outlay Standards-Based Funding Capacity

David Abbey, director, LFC, who also serves as the chair of the PSCOC, and Mr. Gorrell presented a progress report to the task force on the status of school conditions and public school capital outlay standards-based funding capacity. They provided a handout with a variety of sources of information on the progress of improving school facilities conditions, funding allocations and pressures and efforts to sustain appropriate facilities conditions.

Mr. Gorrell discussed with the task force the formula used to weight the Facility Condition Index (FCI) for public school buildings. Beyond a simple assessment of a facility's physical condition, the formula weighs curriculum needs, space requirements, life, health and safety priorities and related factors. Thus, the PSFA arrives at a weighted New Mexico Condition Index (wNMCI), which ranks facilities in order to prioritize funding needs. Mr. Gorrell asserted that the condition of facilities has a tremendous impact on students' ability to learn. He cited studies that show a correlation of poor facility conditions with higher truancy and suspension rates, behavioral problems and lower test scores. Further, Mr. Gorrell reported on the progress that has been made toward improving the statewide average facility condition over the past 15 years.

Noting a direct correlation between the amount of money spent and a better FCI, as well as a better wNMCI, Mr. Gorrell presented charts demonstrating how the increase in PSCOC awards subsequent to the directives of the special master in the *Zuni* lawsuit have resulted in improved facility conditions statewide. Members noted that certain areas or "outliers" continue to lag behind in the FCI and wNMCI as a result of smaller property tax bases or limited representation in the various funding processes. Mr. Gorrell agreed that the complicated problem of funding inequities can result in poorer facilities conditions in some areas. He asserted,

however, that over time the condition indices have reached more of an equilibrium. In some instances, he noted, communities may choose not to support school improvements or participate in the required processes.

Task force members raised questions regarding the efficacy of maintaining buildings that may need to be replaced. Mr. Abbey explained to the members that the PSCOC "rule of thumb" is to replace a facility with a wNMCI higher than 60 percent. He noted that the common denominator in all of these calculations is the replacement cost of the facility. While the FCI can never exceed 100 percent, he pointed out, the wNMCI could exceed 100 percent when factors of space or health and safety weigh heavily.

As Mr. Gorrell reported, the statewide average wNMCI is currently around 22 percent. Resource limitations require that those facilities with the worst conditions be prioritized for funding. Mr. Abbey related that the standards-based funding formula has now stabilized the differential between the best and worst facilities conditions. He noted the tremendous progress made since the turn of the century in moving toward the constitutionally mandated uniform system.

Mr. Gorrell reported that projections on the life of facilities and systems assume optimal maintenance efforts. He and Mr. Abbey indicated that if long-range planning and maintenance efforts could be significantly improved, funding for school systems could possibly be "peeled back" by 2019-2020, and more funding could remain in the Severance Tax Permanent Fund corpus. While good planning is a key to this whole process, Mr. Gorrell advised, so much variability enters into the equation during the full planning cycle that many times plans will change completely. He reported that a lot of plans are already in the works for repairs and replacements as far out as 2019-2020. The process begins with bonding and continues through extensive phases of architectural modifications and community involvement to culminate in the bidding and construction phases. Mr. Gorrell strongly advocated a focus on proper maintenance procedures as a means to avoid costly facilities replacement.

One task force member related the case of a new elementary school that upon completion required an immediate 50 percent expansion to accommodate additional students and new staffing needs. Mr. Gorrell acknowledged that it is extremely difficult to predict space and curriculum-mandated needs accurately given the lengthy planning processes involved, particularly in areas such as Carlsbad and Hobbs, which are currently undergoing a construction boom. Mr. Abbey noted again that the result of the standards-based program has been to lower the variance in school facilities conditions in the indices from over 70 percent to 35 percent.

Task force members asked what could be done for school districts that are still struggling and are not well served by the existing formula. Mr. Abbey responded that there is a need to revisit the formulas periodically, particularly for those school districts with an extremely high local matching share. He also acknowledged that some school districts with a high average wNMCI do seem to be receiving fewer dollars. Discussion ensued about the reasons for such

discrepancies and whether or not changes in the standards-based formula would require court approval, particularly changes that affect impact aid districts. The chair asked that members hold their questions in this regard until the lawsuit status update could be presented in the afternoon.

Some members noted that in the wake of nearly \$2 billion in capital improvement expenditures since the *Zuni* lawsuit was initiated, no facilities maintenance requirements or commitments have been negotiated with the school districts. Mr. Gorrell responded that conditions have been placed on PSCOC awards with regard to maintenance efforts but that the council has no other power to ensure that funding for maintenance is properly spent. Members discussed the difference between building maintenance and janitorial services and the difficulties in finding qualified maintenance staff. Determining how money is actually spent in the maintenance category at the local level is also a challenge, according to task force and panel members. Mr. Abbey noted that including maintenance "scores" as a condition of awards in the funding process is a huge step in the right direction.

Other concerns were expressed by members regarding erosion of the corpus of the Severance Tax Permanent Fund, with money being "intercepted" for other purposes before going into the fund. Mr. Gorrell and Mr. Abbey presented a summary of spending, state share funding and sources and uses of funds. Members further discussed the availability of maintenance "scores" for the use of the task force, the need for broadband expansion and the impact of school conditions and facilities on student success. Mr. Gorrell affirmed that school districts continue to be weak on facilities maintenance but noted that if the system could arrive at a model of predictive replacement, return-on-investment decisions would be facilitated. He also stated that the wNMCI is a dynamic measure, with assessment data continually being fed into the system, although a fixed result is published only once a year. None of the models can predict crisis or emergency response needs, Mr. Gorrell confirmed.

Mr. Abbey announced that the PSCOC would be hearing funding requests from various school districts in Albuquerque on June 25. He invited members to attend the hearing and noted that he would provide an agenda for the meeting during the afternoon session.

In response to task force questions regarding the scalability of the standards-based process to other areas of capital outlay, Mr. Abbey outlined the importance of "just in time" funding as a means to move the statewide process toward project readiness to eliminate tying up too much money for too long and to avoid overfunding of projects. Mr. Gorrell noted that increased data collection for scalability studies as suggested by some task force members would require additional staff.

Mr. Gorrell also responded to task force questions about how other states fund school capital improvements and about job creation. States have a variety of funding mechanisms, he reported, and no other state that he is aware of uses New Mexico's equalization formula. Discussion ensued regarding funding mechanisms. Mr. Gorrell stated that he could provide

information regarding the number of jobs created through school facilities development at a later date. A request was made to hold the September meeting at the Santa Fe Indian School.

Representative Gonzales pointed out that maintenance needs and building longevity can vary greatly between large and small schools. He lamented the fact that the State Investment Council has failed to propose an increase in the gasoline tax for the past 20 years, noting the serious infrastructure failures in roads and other areas that those taxes could and should address. These needs siphon funding from the Severance Tax Permanent Fund. Further, he asserted that in smaller areas, charter schools drain funding from existing buildings and school programs to the detriment of the entire system.

Secretary Clifford expressed concern with the percentages presented by the panel with regard to state share funding. He asserted that what is available to the legislature for appropriation each year is roughly equal to the public school capital outlay amount. Further, he stated that what is missing from the reports and presentations is the amount of money "in the pipeline" — millions of dollars according to Secretary Clifford — and information that could be useful to the task force about whether or not the money is moving through the pipeline.

Discussion ensued regarding provisions for charter schools on tribal lands. Members had questions about how that process would start, and without a tax base, what the funding process would be. Questions also arose regarding how to address conflicting views on the establishment of charter schools in these areas and whether or not charter schools have access to existing school buildings.

Mr. Abbey addressed the issue of charter school facilities, noting that some charter school facilities are being developed in school districts that have empty or excess facilities capacity. Charter schools have legal authority to build new facilities, resulting in funding conflicts for school districts. One member was under the impression that the Charter Schools Act requires charter schools to use existing facilities. Mr. Gorrell clarified that the school district must offer existing available facilities but that the charter school does not have to accept a district offer. Mr. Abbey suggested that the task force look at making use of existing facilities mandatory for charter schools. Members agreed that charter schools should be held to stricter requirements, and the chair noted that the task force would be looking at these issues during the interim. She indicated that she also apparently mistakenly believed that the mandate was clear for charter schools to use existing available buildings. Mr. Abbey indicated that the PSCOC is approaching this on a case-by-case basis at present and that perhaps a stronger legal mandate is required.

Discussion followed regarding how square footage reductions would benefit school districts and the changing capacity needs of districts, particularly in rural areas. Members questioned whether planning was adequate to avoid overbuilding in some areas. Mr. Gorrell responded that facilities funding generally follows students, and he noted the difficulties inherent in monitoring population size. Many members expressed concerns regarding maintenance needs and monitoring funding for building maintenance. It was noted that the way cost codes are set up

limits the PED's ability to verify maintenance versus operating expenditures, and that issues of local control are also at stake. Members asked that a discussion of how the task force can assist with maintenance issues be placed on a future agenda. The chair pointed out that existing funding sources do not allow for necessary maintenance salary expenses and that the task force needs to explore how to establish a funding mechanism for maintenance operating expenses.

Additional questions arose regarding the difference between school district and state-chartered schools, and the chartering process. Mr. Gorrell stated that ideally, school districts include charter schools in their master plans. The school district pays the local match for those schools, whereas state-chartered schools are their own districts with no bonding capacity. The PSCOC looks at those on a case-by-case basis. It was noted that the application process includes establishment of a founding board and public hearings and that no single individual or public official can charter a school without going through this process. Additionally, the application must identify where the school will be located, and authorization to move forward with the charter requires that eligible facilities be identified. Charter schools are not eligible for standards-based funding until they are reauthorized five years after having been established. The chair noted again that the task force would review the issue of charter schools during the interim.

One member addressed Secretary Clifford's assertion regarding funds tied up in "the pipeline" with a query about whether arbitrage fees apply to these millions of dollars. Secretary Clifford replied that fees generally do not apply to these dollars, only to long-term bonds. The member clarified that since these are taxable notes, arbitrage fees do not apply.

Adoption of Work Plan and Strategies Moving Forward

The chair asked members to review the proposed interim work plan. She verified with Ms. Ball that all of the items and issues raised by members were included in the proposed plan, and the chair clarified for members that agenda items could be added as the interim progresses. Senator Shendo moved that the work plan be adopted as proposed. Mr. Hartom seconded the motion, and the work plan was adopted unanimously.

Status of Zuni Lawsuit and Litigant Districts

Mr. Burciaga presented background information and a brief update on the status of the *Zuni* lawsuits and two new lawsuits that have been filed under similar premises that may relate to capital outlay issues coming before the task force.

Article 12, Section 1 of the Constitution of New Mexico provides that "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". Mr. Burciaga observed that New Mexico courts have yet to specifically construe the meaning of "uniform" or "sufficient" in this constitutional provision.

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 on an

equalized funding formula, rather than local property taxes. The formula produced a total program cost that determined the amount of the state equalization guarantee to a given school district. However, Mr. Burciaga noted, capital expenses, which remained largely dependent on property wealth, were not addressed at that time.

Mr. Burciaga further reported that because the state could take credit for 95 percent of federal impact aid — funds provided to school districts in lieu of local property taxes for children residing on federal lands or children having parents working on federal property — the affected districts were left with only five percent of impact aid funds for capital expenses. That formula was later modified to a 75 percent/25 percent allocation. Thus, the equalization of operating funds had resulted in an unequal effect on capital funding for school districts with little taxable property.

In 1998, Mr. Burciaga stated, 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". The Zuni Public School District filed a lawsuit on the premise that the state's financing of public schools violated those rights under the New Mexico and United States constitutions. The Gallup-McKinley County and Grants-Cibola County school districts subsequently joined the Zuni Public School District as plaintiffs in the lawsuit.

Subsequently, the district court ruled that the public school capital outlay funding system in use at that time was unconstitutional. Millions of dollars were allocated by the state beginning in 1999 to begin to correct school facilities deficiencies, and the PSCOOTF was established to oversee public school capital expenditures in 2000. In 2001, a school capital outlay system based on adequacy standards was implemented, and in 2002, a special master was appointed to review the state's progress in developing a "uniform system". At that time, the special master found that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. Mr. Burciaga also pointed out that the special master called the legislature's response "one of the most dramatic actions ever taken by the state to remedy disparities of capital funding".

In the constitutional debate over adequacy versus equity as the proper approach to achieve a "uniform system", New Mexico chose adequacy, which 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. Mr. Burciaga explained that the special master had endorsed nearly all of the task force's views with regard to "adequacy".

A status hearing on the *Zuni* lawsuit was held in 2006, and Mr. Burciaga reported that another status hearing is scheduled for this year. A subsequent presenter clarified that the status hearing would probably occur in mid-to-late 2015. Mr. Burciaga also reported that the separate

Zuni impact aid lawsuit involving the same school districts had been settled. He noted that federal law provides for four different kinds of impact aid, and though New Mexico qualifies for all four, it takes credit only for the basic "non-categorical" payment.

New Mexico is one of the few, and possibly the only, state that qualifies as a federal "equalized expenditures state" because the state relies on the tax wealth of the state as a whole rather than that of individual districts, Mr. Burciaga explained. The *Zuni* impact aid lawsuit took issue with the wording of the federal law determining whether or not the state meets the criteria to be designated an equalized expenditure state. After lengthy hearings and multiple appeals processes, the United States Supreme Court found that the federal Department of Education is correct in permitting New Mexico to pursue its equalization formula and retain its status as an equalized expenditures state.

Mr. Burciaga proceeded to address another lawsuit brought by the Mexican American Legal Defense and Educational Fund (MALDEF) seeking to establish education as a fundamental right and to ensure that New Mexico's at-risk children, later amended to include students with disabilities, are provided a sufficient education as required under the Constitution of New Mexico. The suit is separate from one filed by the New Mexico Center on Law and Poverty (NMCLP), he noted. The plaintiffs in the MALDEF suit claim denial of three rights in the Constitution of New Mexico:

- Article 12, Section 1, which requires a "uniform system";
- Article 2, Section 18, which requires equal protection under the laws; and
- Article 2, Section 18, which guarantees the right of due process.

The NMCLP suit is primarily based on funding, and violations of Article 12, Section 1 of the Constitution of New Mexico, specifically:

- violation of the sufficiency requirement;
- modification of the funding formula for public education; and
- below-the-line funding of education.

Mr. Burciaga reported that the impact of these suits on future capital outlay funding is unknown, but that they may help define "uniform" and "sufficient" in the long run.

A discussion surrounding the issue of "outliers", school districts with very limited student enrollment and/or funding means, ensued. Mr. Burciaga informed the task force members in response to their questions that the plaintiffs in the new lawsuits are the parents of the children in those districts and that the defendants are Secretary-Designate of Public Education Hanna Skandera and the PED. Further discussion was held about whether or not individual legislators can or will be held liable in these cases. It was noted that while members cannot be forced by the courts to vote a certain way, the courts do recognize that the states have the ability to tax and

spend and may be held accountable in that regard. The chair noted that the order in the original lawsuit was for the legislature to fund schools appropriately.

The chair updated task force members who arrived late regarding passage of the work plan and noted that Scott Fuqua, Esq., who was scheduled to give an update on the 2014 *Zuni* status conference, was reportedly en route to the meeting, and she asked for the members' patience in awaiting his arrival. Johny Cresto, facilities director, Gallup-McKinley County School District, was introduced by the chair and invited to comment on the facilities maintenance needs of the school system.

Mr. Cresto first related that task force member Mr. Haskie had asked him to express Mr. Haskie's deep regret to the members that he could not be present to say goodbye to his many friends and colleagues on the task force in person.

Speaker Martinez asked Mr. Cresto to please return the task force's regrets to Mr. Haskie and to thank him for his invaluable service to the state. Speaker Martinez lauded Mr. Haskie as both a good friend and an exceptionally skilled and knowledgeable member of the task force and observed that his expertise would be sorely missed.

Mr. Cresto proceeded to explain the important and frequently forgotten distinctions between custodial staff and maintenance workers. He pointed out that skilled personnel able to maintain the schools are also highly in demand in the private sector and that they require considerably more training and education than in the past to deal with today's complex building systems. He observed that there is a nationwide shortage of people with the skill level the schools are trying to attract, and he expressed his hope that the laws of supply and demand will again send people to train in these fields.

Frequently, the easiest place for school districts to make budget cuts is in the maintenance department, Mr. Cresto asserted, even though maintenance personnel are such an integral part of the public school process and how children experience their schools. Similarly, he reported, SB 9 funding cannot be used for operational expenses to support maintenance personnel salaries. He also commented that in his many years of experience in the maintenance field, school district leadership has made a huge difference in how maintenance issues are approached.

Members noted that with the shortage of skilled workers and concomitant high unemployment rates, there may be a failure among the two- and four-year institutions in identifying and meeting training needs. Mr. Cresto suggested that there is some general misinformation surrounding the trades. He noted that skilled tradespeople serve lengthy apprenticeships, but can then easily make upwards of \$70,000 a year. He lamented the fact that opportunities to try the skilled trades are no longer available in high school. Discussion ensued regarding the importance of providing job training opportunities as well as college readiness programs for young people. The chair and other task force members noted that failure to provide career readiness programs undermines educational capacity and limits job opportunities.

One member promoted "thinking out of the box", and tightening school district requirements for charter school facilities. He noted that with the money currently draining the system at two undercapacity high schools (including one charter school) in Taos, the school district could have a state-of-the-art vocational program. Another member put forward the idea of allowing children to decide at age 16 to leave school and pursue a trade. Another noted that the federal No Child Left Behind Act directives had led the system away from work study programs, but that perhaps funding could now be redirected to job readiness programs and existing but unused job training facilities. Mr. Cresto noted that there need be no mutual exclusions in the high schools between career and college readiness programs. Discussion followed on how to fund such programs, including possible legislative solutions, and school partnering.

March 2014 *Zuni* Lawsuit Status Conference

After considerable delay and numerous updates regarding Mr. Fuqua's whereabouts as he proceeded toward the meeting, Mr. Fuqua arrived to present an update on the upcoming *Zuni* lawsuit status conference.

Mr. Fuqua, director, Litigation Division, Office of the Attorney General, reported that there is not much to report with regard to the status conference. In response to member questions, he noted that trial dates for the two additional lawsuits would likely be set in mid-to-late 2015. He also stated that there is less to be resolved now than previously with regard to the new *Zuni* lawsuit. The chair requested additional details, and Mr. Fuqua offered that the new lawsuit is making the same claims as the original suit, with the same litigants, addressing the same issues for the same reasons.

Members questioned how this was narrowing the previous litigation and if capital outlay issues and the funding practices of the legislature would be addressed in the suit. Mr. Fuqua responded that the narrowing has to do with the manner in which things were resolved in the first lawsuit. The court has retained jurisdiction for the purpose of allowing the parties to come back and explain how they are doing. He also indicated that it was possible that legislative practices would be addressed. In response to further questions, Mr. Fuqua acknowledged that the manner in which the standards-based formula is being applied is at issue in the lawsuit. Members helped Mr. Fuqua determine which judge would likely preside over the case.

One member clarified that the Zuni Public School District had essentially reopened the lawsuit to force the issue of adequacy versus equity in the question of what is uniform. He described the two lines of case law previously argued in the case and explained that the deficiency correction approach only works to a certain point with a school district such as Zuni, with no tax base to address capital needs in the traditional ways. Most other school districts have means to move their systems beyond "adequate"; however, the Zuni Public School District is now saying that the district is frozen at "adequate".

This member further described the discrepancies in the amount of impact aid awarded to Los Alamos, for example, and the Pueblo of Zuni. Los Alamos is completely federally enclosed and receives significant amounts of federal Department of Energy funding. He raised the question of whether there should be additional impact aid for completely federally enclosed Pueblo of Zuni as well. He identified two remaining problems from the initial lawsuit: what the state should do to get litigant districts to a status beyond adequate; and what should be done to assist the very small school districts such as Corona and other "outliers" with no capacity to move beyond adequate by virtue of their status on federal lands or their very small tax base. It was felt that the legislature's continued exploration of means to resolve these issues should please the judge at the status conference.

The chair reported that the task force had not been aware of any of the developments in the new lawsuits. She asserted that because the legislature may be so directly affected by these cases, she would like the task force to be updated regularly with regard to all pleadings in the cases. Mr. Fuqua was asked to forward all relevant information to Mr. Burciaga, and members agreed that a formal written request for information should be submitted to the Attorney General's Office.

Another suggestion was made to invite the litigants in the lawsuits to come before the task force to express their concerns and to hear what the members are working on in this regard. At a minimum, it would indicate to the judge that establishment of a uniform system is an ongoing enterprise, members noted, and the litigants might decide that their funds are better spent on school buildings than on attorneys. The chair agreed that this was an excellent suggestion, and the membership quickly concurred.

Further questions arose regarding the use of gross receipts taxes to address the needs of "outliers" and those on Native American lands. A discussion ensued about various legislative measures that had been proposed over the years to enable the state to appropriately compensate school districts that lack local matching funds. It was noted that political considerations had killed most of those attempts. The discussion returned to the need to articulate again to the court that efforts are ongoing in all areas to meet local needs throughout the state. One member complained that while everybody understands the problem of inequity, there still has been no resolution.

Mr. Cresto again joined the discussion to further elucidate the issues that concern the litigants. He characterized the litigation as a revival of the old lawsuit that would hopefully move things beyond the regular reviews. Mr. Cresto extolled the changes that have been implemented as a result of the standards-based program. He argued, however, that many issues remain surrounding the adequacy approach, particularly the high cost to local school districts of maintenance. Mr. Cresto welcomed the task force's invitation to bring the litigants before the task force and mentioned his hope that positive action coming out of the next legislative session could forestall legal action. There are solutions, he stated, if the state can recognize and address the stalled issues surrounding "adequacy" and reach out to those at the ends of the system.

The chair reminded Mr. Fuqua to convey the task force's request for information to the Attorney General's Office and the invitation to appear before the task force to the litigants. Mr. Gorrell was asked to provide a summary of what public school capital outlay funding has accomplished over the last three years for review by the task force in the near future.

Adjournment

There being no further business, the task force adjourned at 3:15 p.m.

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

**August 1, 2014
Room 307, State Capitol
Santa Fe, NM**

The forty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on August 1, 2014 at 9:10 a.m. in Room 307 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Dr. Carl Foster
Tracy Hofmann, Esq.
Rep. Larry A. Larrañaga
Michael Marcelli, Designee for Tom Clifford, Secretary, Department of Finance and Administration (DFA)
Antonio Ortiz, Designee for Paul Aguilar, Deputy Secretary, Public Education Department (PED)
Sen. Mary Kay Papan
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith
Allan Tapia
Rep. Luciano "Lucky" Varela, Designee for Rep. Henry Kiki Saavedra

Advisory Members

Rep. Patricia Roybal Caballero
Sen. William P. Soules

Absent

Sen. John M. Sapien, Vice Chair
Rep. Eliseo Lee Alcon
Cecilia Grimes
Dr. Lisa Grover
Kirk Hartom
Leonard Haskie
Rep. James Roger Madalena
Rep. W. Ken Martinez
T.J. Parks
Judy Rabon
Sen. Sander Rue

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. Pat Woods

Guest Legislators

Rep. Patricia A. Lundstrom

Sen. George K. Munoz

Staff

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

Sharon Ball, Senior Researcher, LCS

Carolyn Ice, 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 introduced a new task force member, Tracy Hofmann, Esq., appointed by President Pro Tem Papan. Ms. Hofmann replaces Robbie Heyman, who is in the process of reducing his work load and working his way to retirement. Ms. Hofmann noted that she works at the Sutin Law Firm in Santa Fe and has been a colleague of Mr. Heyman's for a number of years. Representative Stewart asked the other task force members to introduce themselves.

Approval of June 20, 2014 Meeting Minutes

Without objection, the minutes of the June 20, 2014 meeting were approved on a motion by Representative Larrañaga, seconded by Senator Smith.

Updates and Additions: PSCOOTF Reference Binder

Ms. Ball asked task force members to open their reference binders to the information behind Tab 7 to make some additions. Ms. Ball described the first addition, a matrix showing the characteristics of most of the statutory funding sources for public school capital outlay. In response to members' discussion and comments, Ms. Ball agreed to add the statutory requirements for uses of the respective funding sources. The second addition, the text of Section 22-18-1 NMSA 1978 *et seq.*, provides the requirements that school districts must follow in order to seek voter approval and sell school district general obligation bonds.

Public School Capital Outlay Council (PSCOC) Fiscal Year 2015 Awards: Report to the PSCOOTF

Directing task force members' attention to handouts in their meeting folders, David Abbey, chair, PSCOC, and director, Legislative Finance Committee (LFC), indicated that he and Robert Gorrell, director, Public School Facilities Authority (PSFA), would provide the task force with the report of annual PSCOC grant awards.

By way of background, Mr. Abbey noted that the first year for standards-based awards was fiscal year 2004. He explained that this entirely new method of funding public school capital outlay projects in New Mexico utilizes measures of the condition of educational facilities for which all of the state's 89 school districts are eligible for state funding assistance. He noted that in the past few years, the legislature has also made charter schools and two of the state's special constitutional schools, the New Mexico School for the Deaf and the New Mexico School for the Blind and Visually Impaired, eligible for state assistance through the standards-based process.

Mr. Abbey explained that, to date, the PSCOC has awarded almost \$2 billion in state funds for more than 1,200 projects statewide. The total cost for these 1,200 projects, including local participation, is more than \$4 billion. Mr. Gorrell explained that, in addition to direct support of state-funded projects, the PSFA has technically supported another \$1 billion of projects funded entirely at the district level.

Mr. Gorrell explained that the PSCOC uses two measures to determine the condition of educational facilities: the Facilities Condition Index (FCI) and the weighted New Mexico Condition Index (wNMCI). The FCI reflects a ratio of the cost of repair over the replacement value and measures only bricks and mortar. The wNMCI reflects a ratio that combines building deficiency cost and educational adequacy deficiency costs divided by the current replacement value with weighting factors applied for prioritization. In both systems, the smaller percentage represents the more desirable score. As an example, Mr. Gorrell explained that in fiscal year 2003, the statewide average FCI was 70.58 percent compared with the fiscal year 2013 FCI of 35.25 percent, a reduction of almost exactly half.

Mr. Abbey and Mr. Gorrell went over the handouts illustrating the fiscal year 2015 awards. First, Mr. Abbey directed members' attention to the first page of the current version of the "PSCOC Financial Plan". He explained the "sources" and "uses". He noted that one PSCOC member in particular, Secretary Clifford, has been instrumental in making the document depict current funding needs and their effect in the future ("out years").

Working through the spreadsheet, Mr. Gorrell said that, for fiscal year 2015, the PSCOC made phase I awards to seven school districts and two special constitutional schools of \$33.7 million. Of that amount, the state match is \$15.1 million and the local match is \$18.6 million. The potential out-of-cycle state match is estimated to be \$81.9 million, and the local match is \$72.6 million. Task force discussion focused on the continued availability of supplemental severance tax bond proceeds, processes for determining school district rankings and the importance of addressing systems repair and replacements in addition to projects that involve an entire school or district. In response to task force comments and questions, Mr. Gorrell discussed the importance of including local community members in the planning phases of any project. A task force member commented on the fact that school districts often lack the technical expertise to make design- and construction-related decisions.

Moving on to roofing awards, Mr. Gorrell explained that fiscal year 2015 is the final year for roof repair and replacement projects because the enabling legislation authorizing \$10 million a year for roof repair and replacements is allowed for five years. Currently, roofing awards amount to approximately \$3.7 million in local match funds and \$7.4 million in state match funds. Task force members discussed the possibility of supporting legislation to continue the roofing awards as well as the importance of supporting legislation to establish a similar program for systems replacement and repair.

Taking a brief look at the lease assistance awards, the chair requested that this discussion be postponed until after the agenda item on the status report on the standardized lease development is heard.

Directing task force members' attention to a memorandum and its attachments from Mr. Gorrell to Representative Stewart regarding distribution of PSCOC awards since implementation of the standards-based process during the 2003-2004 school year, Mr. Gorrell explained that, from time to time, concern has been expressed that the standards-based process, with its match requirements, has unfairly treated the *Zuni* lawsuit litigants, which are the Zuni Public School District (ZPSD), Gallup-McKinley County School District (GMCSO) and Grants-Cibola County School District (GCCSD). He said that the attached table shows that, between 2002 and 2014, the three litigant districts have received a total of 54 awards amounting to a total of \$178.5 million (\$15,036 per student) for the GMCSO, \$9.8 million (\$7,621 per student) for the ZPSD and \$33.1 million (\$9,183 per student) for the GCCSD. By way of comparison, Mr. Gorrell noted that the Albuquerque Public School District has received a total of \$196.1 million (\$2,124 per student) during the same time period. Mr. Gorrell also noted that while the average district FCI statewide is currently 35 percent, down from 71 percent 11 years ago, the FCIs for the litigant districts are:

- GMCSO: 29 percent;
- ZPSD: 28 percent; and
- GCCSD: 23 percent.

At the close of Mr. Gorrell's discussion of his memorandum to the chair, Representative Stewart requested that the task force postpone discussion of the issue until after the litigant districts' presentation later in the agenda.

Protecting the State's Investment: Maintenance of Public School Facilities

Les Martinez, maintenance and operations support manager, PSFA, directed task force members' attention to his handout in the meeting folders on the maintenance of school facilities. He explained that state statute requires school districts to have functioning preventive maintenance plans in place if they expect to apply for and be granted a PSCOC funding award (Sections 22-24-5.3 and 22-24-5.5 NMSA 1978).

Mr. Martinez said that the PSFA's primary tool to evaluate maintenance practices in schools and districts is through the Facilities Maintenance Assessment Report (FMAR). He explained that the FMAR provides a sample overview of school maintenance conditions and performance. The FMAR process gathers data across the state and provides constructive feedback to districts on facility maintenance programs by establishing and updating a baseline score of facility maintenance programs and sharing best practices statewide. He indicated that the FMAR scores describe the following rankings:

- "outstanding" — 90.1 to 100 percent;
- "good" — 80.1 to 90 percent;
- "satisfactory" — 70.1 to 80 percent;
- "marginal" — 60.1 to 70 percent; and
- "poor" — below 60 percent.

He said that the PSFA has conducted 616 FMARs since 2011 and has reviewed a total of 88 of the state's 89 districts and both of the special constitutional schools. He directed task force members' attention to the large color spreadsheet in their meeting folders. He noted that 19 districts and both constitutional schools rank in the "satisfactory" category, meaning that their maintenance activities demonstrate a maintenance program sufficient to meet the needs of the district. He said that three districts rank in the "good" category, meaning that their maintenance activities demonstrate a focused and supported maintenance program. He added that this ranking indicates that assessors found the facility conditions to be of high quality and performing well but not at an excellent or outstanding level. Unfortunately, he continued, none of the state's districts achieved a ranking of "outstanding".

Mr. Martinez reported that the statewide average FMAR score is "poor" at 58.02 percent, with 20 districts scoring in the "marginal" range (above 60 percent). He discussed the results of a survey sent to members of the PSFA's Maintenance Advisory Group (MAG), who are leaders in districts throughout the state. With a response rate of approximately 80 percent, PSFA staff was able to collect data on several root causes of current maintenance conditions in the state's public schools. He discussed the survey results and resulting recommendations in four categories: people, methods, money and hardware.

Under the people category, Mr. Martinez said that respondents unanimously indicated that lack of district leadership accountability combined with rapid district leadership turnover is the primary problem with establishing and maintaining good maintenance practices. Also included were a lack of staff technical skills to maintain the complex systems now in schools and a school board's and district's leadership knowledge of facilities maintenance. In addition, survey respondents indicated that poor staffing levels ("maintenance is always the first area to be cut during a budget crisis") combined with restrictive licensure requirements of the Construction Industries Division (CID) of the Regulation and Licensing Department affected maintenance practices.

In terms of method factors, Mr. Martinez indicated that deferral of maintenance is common when district leaders are thinking short term. He also noted that commitment levels wane without good leadership, and in planning, "wants" supersede "needs" when leadership does not consider long-term issues and solutions. He also noted that almost all respondents to the survey agreed that reactive maintenance is at least three times the cost of preventive maintenance and that verbal, informal maintenance processes add no value: "If it doesn't get written down, it doesn't get done".

Survey results relating to funding factors found the following among at least 80 percent of the respondents:

- short-term thinking ends up costing more over the life of the facility;
- qualified personnel cannot be retained at current salaries;
- maintaining facilities is more cost-effective than replacing them; and
- technical services are more expensive and harder to access in rural areas.

Substantially more than half of the survey respondents indicated agreement with the following:

- maintenance staff does not get the financial support needed to maintain the facilities (73 percent); and
- the current chart of accounts allows for certain function codes, including "maintenance", to be "optional" (60 percent).

Survey results related to hardware and tool factors include the following:

- documentation gets lost due to informal processes or leadership turnover (83 percent);
- training on equipment takes effort and costs money (83 percent);
- old, unserviceable equipment continues to be used rather than upgrading to more efficient types (77 percent); and
- equipment is not appropriate for the task at hand (63 percent).
-

Moving forward in an effort to improve FMAR scores, Mr. Martinez said that the MAG, working with PSFA staff, has come up with the a number of suggestions.

In terms of moving forward with people, recommendations include: (1) including maintenance effectiveness as part of a superintendent's responsibilities to be included in the superintendent's evaluation; and (2) revising CID maintenance certification to allow maintenance staff to exchange parts that are alike; e.g., exchange one light bulb for another. A new category of certification could be based on an applicant's knowledge of what work the applicant cannot do and that must be done by a licensed contractor.

Recommendations relating to moving forward with methods include the following:

1. offering facility maintenance as a trade and providing a stipend for staff and students who can provide on-site services;
2. encouraging participation in a building operators' certificate program (level 1) that is currently available at local community colleges; and
3. outsourcing maintenance and custodial services.

Recommendations relating to moving forward with funding include the following:

1. revising the chart of accounts codes to support a better understanding of budgeting and expenditures for facilities, including planning, acquisition, maintenance and operations costs (including custodial costs);
2. defining the term "support services" at each school and budget as part of operational costs;
3. allowing volunteer services; and
4. developing appropriate salary levels to support the defined services.

Finally, recommendations relating to the use of hardware and tools include: (1) requiring that real-time utility consumption be included in measurement and verification; and (2) empowering and encouraging maintenance and custodial staff to look for better tools and methods.

Task force members had a thorough discussion of maintenance. Several members talked about root causes of the poor average score of 58.02 percent.

As part of the task force questions and comments on contracted maintenance, Mr. Martinez noted that some contracted maintenance funding can come from the proceeds of the Public School Capital Improvements Act (also called SB 9). Some task force members indicated concerns about oversight of contractor maintenance if districts were to go in that direction. In response to other comments and questions about sources of funding, Mr. Martinez said that, generally, custodial services are paid for from operational (i.e., state equalization guarantee) funds and are in competition with funding for teachers' salaries and other classroom costs.

Members also discussed the possibility of continuing the PSCOC roof repair and replacement program for an additional five years. In response to a task force discussion, Mr. Abbey noted that the program has been important in maintaining the state's investment in facilities.

In response to Mr. Gorrell's comments about the lack of funding for more direct PSFA oversight of maintenance practices in school districts, Representative Varela requested that he be provided with the PSFA's budget request for fiscal year 2016. Other comments related to funding formula adjustments for rural, isolated districts as opposed to charter schools in urban areas that purposely keep their enrollments low.

Status Report: Standardized Lease Development

Andre Larroque, building standards coordinator, PSFA, Ken Hunt, PSFA contract attorney, and Mr. Gorrell discussed the agency's efforts to establish a standardized lease document template for charter schools and school districts to use in implementing the optional lease assistance program in the Public School Capital Outlay Act. In November 2012, acting on instructions from the PSCOC, PSFA staff formed an in-house work group to review and analyze various examples of leases and lease-purchase agreements being used currently in the state. During the spring of 2013, the PSFA contracted with the Hunt and Davis law firm to assist in legal review and development of new lease templates.

Mr. Larroque indicated that by September 2013, the PSFA posted drafts of several new documents on the web site to begin the public review process. These new documents included templates for a facilities lease, a lease-purchase agreement, a sublease amendment and a repair and maintenance agreement. He reported that in October 2013, the PSFA work group and contract attorney conducted the first public review meeting to discuss the proposed content of the new templates. He said that the meeting was well-attended with representatives from 11 charter schools, the Public Education Department, the New Mexico Coalition for Charter Schools, attorneys working with charter schools, a real estate developer and charter school consultants.

Using input from the attendees at the September meeting, Mr. Larroque explained that the PSFA work group, working with the contract attorney, put together a revised set of documents for public review at the December 2013 meeting. This second public review meeting was also attended by representatives from 18 charter schools and at least one representative from each of the following: the PED; the Public Education Commission (PEC), which authorizes state-chartered charter schools; Cooperative Educational Services (CES); three school districts; four architectural and planning firms; one financial advisor; and several attorneys.

Mr. Larroque explained that during the interim periods between public review meetings, the PSFA and the contract attorney met with representatives of two law firms that frequently represent clients on charter school facility leases and lease-purchase agreements. The PSFA also collected public input via email. The PSFA held the third public meeting in April 2014 with representatives of three charter schools, the LFC and one attorney.

He noted that, at present, the latest versions of the proposed documents are posted on the PSFA web site and are still open for public comment. The templates include the following:

- modified gross public facilities lease draft (revised on March 4, 2014);
- modified gross private facilities lease draft (revised on March 4, 2014);
- charter school lease-purchase agreement draft (revised on March 4, 2014);
- standard sublease provisions amendment draft; and
- standard repairs and maintenance agreement draft (revised on November 26, 2013).

Mr. Larroque noted that comments from the PED on the standard lease-purchase agreement are still pending.

Mr. Hunt opined that the private facilities lease draft is not ready and could be used on a voluntary basis. In response to a task force question, Mr. Hunt indicated his impression that requiring the use of these templates for lease agreements would elicit some "push back" from some of those involved. He explained that the templates are flexible enough to be easily modified. He explained that the lease agreements are in three main parts: (1) lease provisions, which would include all of the variables in the lease agreement between the landlord and the lessee; (2) definitions, which would be consistent; and (3) standardized "boiler plate" language, which could not be changed. He noted that any differences should be included in the first, or "lease provisions", part.

Martica Casias, planning and design manager, PSFA, went over the table showing the 2014-2015 lease assistance awards, noting that while the program itself is optional, charter schools in particular have come to rely on these lease reimbursements. She noted that the PSCOC has established a maximum reimbursement of \$739.95 per full-time student or the actual cost of the lease, whichever is the lesser amount, and that the projected amount for fiscal year 2015 is a total of \$14.3 million. In response to a task force question, Ms. Casias reiterated that the lease assistance program is based on reimbursements on a quarterly basis; therefore, the PSFA will not have final numbers until after October. Task force members noted and expressed serious concerns over a number of inconsistencies, "outliers" and anomalies in the data on the table. For example, one task force member pointed out the vast difference in square feet per student: from a low of two square feet per student to a high of 348 square feet per student and a low cost of \$0.03 per square foot to a high of \$114.49 per square foot. After some discussion about "market value" of properties for lease, Mr. Hunt noted that leasing academic spaces does not necessarily mean the same thing that it does in terms of commercial leases. Members agreed that the issue may need to be addressed with legislation.

Task force members also had a discussion on issues related to the PSCOC's requiring the use of standardized lease forms in order to qualify for lease-purchase reimbursement under provisions of the Public School Capital Outlay Act. Again, members indicated that perhaps a legislative requirement will be necessary.

Implementation of the Court's Order in the *Zuni* Lawsuit: Progress and Concerns

Frank Chiapetti, superintendent, GMCSD, introduced the following representatives of the district: Bob Rosebrough, GMCSD contract attorney; Mike Hyatt, assistant superintendent for business services; Pauletta White, assistant superintendent for student services; Juana Hanks, chief financial officer; Johnty Cresto, director of construction; Ron Triplehorn, director of maintenance; and Jay and Matejka Sandillanes, GMCSD contract lobbyists.

Superintendent Chiapetti began the presentation by thanking the task force for providing an opportunity for the district to present its concerns. He praised the dramatic improvements in

the district's facilities since implementation of the standards-based process. He noted that before the status hearing on March 17, 2014, the court had no involvement in the process and that the progress in the face of a lack of judicial oversight speaks to the success of the program. He then turned the presentation over to Mr. Rosebrough to discuss the issues further.

Mr. Rosebrough told the task force that the district had requested a status conference with the new judge overseeing the *Zuni* lawsuit. The original judge, Judge Joseph Rich, who retired and then passed away, has been replaced by Judge Louis E. DePauli, Jr., who, noting no action in the case since the 2006 status conference, closed the case in 2013. That status conference was held on March 17, 2014 in Judge DePauli's court. After the status conference, Judge DePauli set a date in November for a five-day evidentiary hearing.

Mr. Rosebrough stated that at this time, both he and Dan Hill, PED general counsel, have agreed to postpone the November hearing and to work toward a political solution to the GMCS D's concerns in the 2015 legislative session. Noting that, in the past 11 years, the statewide FCI average has been reduced almost exactly by half, Mr. Rosebrough stated that the current standards-based process addresses the needs of the 80 percent of school districts whose scores fall in the middle of the bell curve and accurately ranks schools that need replacement. He added that the PSFA's Facility Information Management System allows data-driven decisions and emphasizes good maintenance of schools on a statewide basis.

Mr. Rosebrough said that the districts that are outliers on the low side of the bell curve have a particular problem that lies in the fact that the Public School Capital Outlay Act funding formula requires almost all districts, except ZPSD, to make a required contribution to receive a PSCOC grant award. He emphasized that Article 12, Section 1 of the Constitution of New Mexico requires the establishment and maintenance of "a *uniform* system of free public schools *sufficient* for the education of, and open to, all children of school age in the state...", giving emphasis to the words "uniform" and "sufficient". He noted that with the adoption of adequacy standards, the state's capital outlay funding system flies in the face of both uniformity and sufficiency. He expressed the concern that with only 20 percent of the property in McKinley County eligible to be taxed, 20 percent of the district's patrons are assuming 100 percent of the responsibility for the 19 percent local match required to receive a PSCOC grant award. Capping state aid at the "adequacy" level does not include certain necessary costs that are, in many cases, peculiar to the GMCS D. For example, he pointed out that the GMCS D has had to assume responsibility for the extension of utilities to school sites located in isolated, rural areas. He also noted that adequacy standards do not cover the cost of building clean, safe teacherages, which are necessary in isolated, rural areas.

Continuing, he also pointed out several other issues peculiar to the GMCS D and perhaps the ZPSD and the GCCSD:

- the GMCS D must pay a business activities tax to the Navajo Nation;
- adequacy standards include some furniture but not all fixtures and equipment;

- adequacy standards include a physical education multipurpose practice field but not competition fields, baseball fields, softball fields, tennis courts, bleachers, lights, restrooms and concession stands. He pointed out that even districts with average per pupil property tax valuations are able to provide these facilities without overburdening their district property tax patrons;
- adequacy standards provide only minimal landscaping;
- adequacy standards do not include water lines to fire hydrants; and
- adequacy standards do not pay for square footage per student in excess of 135 square feet per student. Originally, the square footage was a maximum of 150 square feet per student, but that number has since been lowered to 135.

Mr. Rosebrough went on to discuss the gap between the state's adequacy standards and the state's adopted educational standards, including the following:

- facilities for Navajo language and culture classes required by the Indian Education Act;
- athletic facilities for compliance with federal Title 9 requirements for equity between boys' and girls' facilities;
- facilities for pre-kindergarten classes, demonstrated as necessary in areas with high poverty and large numbers of English language learners;
- parent education rooms;
- classrooms for response-to-intervention programs, also necessary for districts with large numbers of at-risk students;
- computers and computer stations for mandated computer-based testing; and
- pull-out spaces for delivery of ancillary services such as speech and language therapy, physical therapy and occupational therapy.

Mr. Rosebrough indicated that the GMCSO currently needs replacements for six elementary schools: Juan de Oñate, Thoreau, Washington, Church Rock Academy, Jefferson and Ramah. He also noted that the district is not able to keep up with extensive repair and maintenance. With only 20 percent of property taxable in the district, proceeds from the Public School Capital Improvements Act does not equalize property tax wealth disparity. Comparing the GMCSO with the Artesia Public Schools, located in the oil-rich Permian Basin, he explained that the state guarantee provided by the Public School Capital Improvements Act does not begin to make up the difference between property tax values per student in both districts.

Superintendent Chiapetti brought up the impact aid issue and noted that the GMCSO is no longer able to receive 100 percent of the impact aid dollars that the district qualifies for, which go primarily for operational expenditures. He indicated that he just heard from the federal government that because of sequestration and other government cutbacks established to balance the budget, the GMCSO is scheduled to receive only 50 percent of the federal Impact Aid dollars for which it qualifies for fiscal year 2011. He noted that the GMCSO has been bonded to capacity for the past 25 years. He noted that the PSCOC does have a waiver of the state match

available in statute for those districts with low property tax valuations and high-poverty demographics, but the GMCSO has yet to be granted one of these waivers. He compared the GMCSO with the Lordsburg Municipal School District, which was granted a waiver the first time it requested one. He wondered if the formula in statute that determines the local and state shares is adequate or appropriate.

Mr. Abbey indicated that some of these issues can be resolved through the PSCOC's rulemaking authority and will not need to be addressed legislatively. Mr. Rosebrough commented that the district is hoping to resolve these issues through the existing process with the PSCOC.

Task force members indicated the need to stay close to the issue. Mr. Abbey noted that the next PSCOC meeting is on September 4, 2014 at 9:00 a.m. in Room 317 of the State Capitol. As chair of the council, he invited GMCSO representatives to attend the meeting and present their concerns. Representative Stewart opined that having legislation pass that would allow for building systems repair, upgrade and replacement would be helpful to the GMCSO. Task force members also mentioned several other issues the task force may wish to take up, including issues concerning Native American students who live in urban school districts, establishment of universal pre-kindergarten programs, the capital outlay funding formula and school districts' role in granting industrial revenue bonds.

Representative Stewart suggested that since the next task force meeting is September 3 in the State Capitol, members may wish to plan attend the PSCOC meeting on September 4. She also suggested that the task force may wish to take up the issue of off-the-top, categorical appropriations from supplemental severance tax bonds for colonias, water and tribal infrastructure, as well as allowed Public School Capital Outlay Act expenditure categories such as the SB 9 match, education technology set-aside and the five percent allowed for PSFA operations as they relate to the condition of the Severance Tax Permanent Fund corpus.

Adjournment

There being no further business to come before the task force, the forty-seventh meeting of the PSCOOTF for the 2014 interim adjourned at 3:49 p.m.

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

**September 3, 2014
Room 307, State Capitol
Santa Fe, NM**

The forty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on September 3, 2014 at 9:20 a.m. in Room 307 of the State Capitol.

Present

Rep. Mimi Stewart, Chair
Rep. Eliseo Lee Alcon
Tom Clifford
Dr. Carl Foster
Cecilia Grimes
Kirk Hartom
Tracy Hoffman
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
T.J. Parks
Sen. Sander Rue
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Allan Tapia
Rep. Jim R. Trujillo,
 Designee for Rep. W. Ken Martinez
Rep. Luciano "Lucky" Varela,
 Designee for Rep. Henry Kiki Saavedra

Absent

Sen. John M. Sapien, Vice Chair
Paul Aguilar
Dr. Lisa Grover
Leonard Haskie
Sen. Mary Kay Papen
Mike Phipps
Sen. Cliff R. Pirtle
Judy Rabon
Sen. John Arthur Smith

Advisory Members

Sharon Clahchischilliage
Rep. Sandra D. Jeff
Sen. John C. Ryan

Rep. Roberto "Bobby" J. Gonzales
Sen. Howie C. Morales
Rep. Patricia Roybal Caballero
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

Staff

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

Kathleen Dexter, Researcher, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, September 3

Welcome and Introductions

The chair welcomed members and guests and called the meeting to order.

Approval of August 1, 2014 Meeting Minutes

On a motion duly made and seconded, the minutes of the August 1, 2014 meeting were approved without objection.

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, Investment Office, provided an overview of returns from the Severance Tax Permanent Fund (STPF), observing that relatively high interest rates for bonds had lent stability to the portfolios early in the new century. He noted that, now that bond return rates have fallen below three percent, they afford little protection from volatility in the stock market. Current projections forecast a stock return rate of around seven percent, down by about five points from previous return rates. Mr. Moise reported that the State Investment Council (SIC) has successfully compensated for volatility in the markets by diversifying the state's portfolio to include private equity and hedge funds as well as real estate investments.

The SIC goes through an in-depth asset reallocation study every three years, according to Mr. Moise, and provides a management tool that has given the SIC a competitive investing edge. He further noted that there is a huge change in the types of revenue passing through the fund, and bond investments that formerly contributed as much as 50 percent to the fund's income now account for only around five percent of that income. The STPF will provide \$10 million less this year to the general fund because the fund still has not recovered from the major economic upheaval that began in 2008.

Vince Smith, deputy state investment officer, reviewed the impact of contributions and distributions on the permanent funds. He reported a record high close for fiscal year (FY) 2014 of over \$19 billion with a total assets investment return of 15.9 percent. He said that combined distributions from the Land Grant Permanent Funds (LGPF) and the STPF for FY 2015 total \$778.7 million. Mr. Smith projected that FY 2016 distributions from the funds will increase by

around \$65 million, and he emphasized the importance of growing the corpus of each of the funds.

Mr. Smith reported that assets have grown by about \$6 billion as a result of improved management of the funds, a stronger market and a more engaged and restructured council. The new council has diversified investments to improve returns and limit risks, and the fund returns are climbing. The LGPF have totally recovered from the steep market decline of 2008, while the STPF has almost returned to its 2007 value. Mr. Smith further detailed a recent steep increase in inflow to the STPF following years of inconsistent contributions, a result of increased oil and gas production in the state.

Peter van Moorsel, chief economist, Legislative Finance Committee (LFC), presented information on the August 2014 estimate of severance tax bonding capacity, including an overview of how that capacity is estimated from taxes derived from severing natural resources from the land and the types of severance taxes-backed debt offerings the state generally employs. Mr. van Moorsel provided a breakdown of capital outlay funding that will be available based upon the bonding forecast for the Water Project Fund, Tribal Infrastructure Project Fund, the Colonias Infrastructure Project Fund and the legislature's capital outlay projects. In addition, Mr. van Moorsel presented graphic information demonstrating the correspondence of greatly improved school facilities conditions with the expenditure of Public School Capital Outlay Council (PSCOC) awards since the beginning of the twenty-first century. The PSCOC reported awards of over \$256 million in FY 2013, an increase of over \$100 million from FY 2012.

Task force members and the panel discussed proposed legislation to phase in changes to STPF inflows, distributions and investment strategies. Task force members agreed that, ideally, such legislation would not single out any one of the current beneficiaries of the STPF distributions for funding cutbacks. Such legislation might also include provisions to enable the SIC to utilize other investment categories for the STPF, such as international equity funds that might encompass greater risks but could provide increased returns on investment.

Members discussed various means to grow the corpus of the STPF without reducing distributions, including increased taxation for oil and gas production. Discussion ensued regarding the percentage of current funding that would have to be cut back if a reduction in distributions is used to expand the corpus of the fund. One member reported that he had previously sponsored legislation to take money out of the LGPF to support early childhood education. This member asserted that solving public education problems now will result in benefits ranging from better jobs to improved behavioral health, saving money in the long run. Mr. Moise reported that draft legislation has not yet been completed, but he agreed with task force members that it is important to bring draft legislation forward soon to begin to address issues that have stymied the passage of previously proposed legislation.

State Auditor's Risk Review: Ways to Increase Accountability over Public School Capital Outlay Act Education Funds

Evan Blackstone, Esq., chief of staff, Office of the State Auditor (OSA), reported on findings from a comprehensive risk review of four Albuquerque-area charter schools that resulted in referrals to the Federal Bureau of Investigation (FBI) and subsequent FBI raids on those institutions. The focus of the OSA review fell on two of the state-chartered charter schools in question, Southwest Secondary Learning Center (SSLC) and Southwest Aeronautics, Mathematics and Science Academy (SAMS), and the schools' leases of aircraft and property from Southwest Educational Consultants, Inc. (SEC), also doing business as Diamond Aviation, a business co-owned by an instructor for the SSLC and Dr. Scott Glasrud, head administrator for all four charter schools. Mr. Blackstone noted that the significant amount of public funds paid by SSLC and SAMS to SEC/Diamond Aviation over numerous fiscal years, in addition to the conflict-of-interest concerns inherent to this business relationship, prompted the risk review.

Mr. Blackstone outlined numerous risks, internal control deficiencies and potential violations of law revealed by the OSA review, including the direct conflict of interest between Dr. Glasrud's personal financial interest in Diamond Aviation and his broad and influential authority as head administrator for the schools. The review found serious deficiencies in the procurement processes that the schools employed, possible manipulation of those processes and apparent subversion of the stated purposes of the Procurement Code. Mr. Blackstone noted that the FBI raids and intervening investigation have superseded the OSA's final investigation results.

Mr. Blackstone noted that the OSA strongly recommends that state authorities review and take appropriate oversight actions to safeguard funds. The Public Education Department (PED) last week suspended the boards for those schools and is attending governing council meetings to ensure communication with appropriate state and local agencies and auditors. David Abbey, director of the LFC and chair of the PSCOC, noted that it is important to understand that Public School Facilities Authority (PSFA) funds were not misused in this instance and that the PSFA has talked about next steps with state agencies and the governing councils to ensure accountability.

Due to the ongoing investigation by the FBI, Mr. Blackstone was not able to address members' questions regarding the FBI's involvement and possible indictments in the case. Members discussed how a standardized lease agreement might present both problems and solutions in the case of charter schools and outliers and reviewed provisions of the conflict-of-interest questionnaire and how that process might be strengthened. Joe Guillen, chair, Awards Committee, PSCOC, noted that one problem for charter schools in preventing conflicts of interest is the way that governing council members and school board members are recruited. Frequently, there is little oversight by members who have been recruited by school personnel. In addition, few requirements exist to spread the responsibility for conflict-of-interest certifications to governing council members or school board members. Mr. Guillen also affirmed that the PSFA has no current requirement to investigate the veracity of conflict-of-interest certifications.

Robert Gorrell, director, PSFA, noted that the charter schools under review by the OSA had received lease assistance from the PSCOC but not for any of the items questioned in the OSA review. The chair noted that there are currently 98 charter schools and some 800 public schools and concurred with other task force members that personnel and financial resources are insufficient to address the magnitude of the oversight task. Mr. Blackstone agreed that resources are critical to successful oversight but noted that some of the oversight problems are a result of the way the laws are structured. The OSA review pointed out a number of loopholes that were exploited. Task force members suggested that oversight agencies take note of audit findings that expose poor segregation of duties, potential conflicts of interest and procurement questions and then follow up quickly on such findings. In response to task force discussion and questions, it was later noted that audit findings are public once they have been released and that in some instances a finding will trigger notification of an oversight agency.

Mr. Guillen noted that more and more charter schools are seeking training for governing body members to let those members know the extent of their responsibilities as governing body members. He pointed out that because school board members are elected, and charter school governing council members are not elected, the community may not know whom to turn to when questions arise. The chair suggested that all charter schools be required to post information on web sites regarding governing councils, school founders, mission statements and other pertinent information and that such a requirement be included in legislation. One member noted that there was no evidence to suggest that PSCOC funds were actually misused and perhaps the task force should focus on standardized lease documents and investigating conflict-of-interest statements.

Discussion ensued regarding national performance frameworks for charter schools and what effect the suspension of the charter for SAMS would have on students. Mr. Blackstone reported that only 10 to 15 students are enrolled in the flight program at SAMS, that students do not graduate from the SAMS program with a pilot's license and that reports that they will be denied a license due to the suspension are inaccurate.

Visitors from over a dozen southwestern, Pacific and northwestern states who were attending a state fiscal directors conference hosted by New Mexico visited the task force meeting room and were welcomed by the chair and task force members.

Charter Schools and the Statutory Deadline to Occupy Public Buildings

Jeff Eaton, director, PSFA Business Operations, presented a spreadsheet showing charter school district affiliation and grade level, gross square footage, numbers of students and square feet per student, as well as information on facilities conditions and asset ownership. Much of the space utilized by charter schools is leased, and the schools receive lease assistance from the Public School Capital Outlay Fund. Mr. Eaton stated that the PSCOC has developed a standardized lease, although the instrument has yet to see much use. Mr. Gorrell outlined some of the obstacles that the PSCOC has encountered in getting charter schools on board with the standardized lease program, but he noted that the PSCOC does have the authority to require use of the standardized lease form.

The PSCOC is working to roll out use of the standardized lease agreement incrementally, starting with an information collection process. Mr. Gorrell stated that there is great value in having a standardized lease agreement that includes all of the PSCOC requirements in order to minimize costly review processes and noted that addenda to the standardized agreements can be used to clarify special conditions for outliers and charter schools.

Task force members discussed the possibility of conflicts of interests arising in lease-purchase agreements for school facilities. Mr. Abbey stated that conflict-of-interest disclosures should address that issue. Mr. Gorrell endorsed the idea of having all charter school board members sign off on the disclosures.

Further discussion addressed the relative merits of leasing public space as compared to privately owned space. Mr. Eaton explained that the intent of the charter schools legislation relative to the use of public facilities is to minimize costs and to alleviate constitutional concerns regarding antidonation issues. Some members suggested that public space is not necessarily less expensive than private space and that the quality and condition of the facility should be of primary concern.

Mr. Gorrell presented information comparing charter school lease costs per square foot with average market values of office space in the Albuquerque area. The analysis revealed that many charter schools appear to be "getting a helping hand" from the community with lower than average costs per square foot. Mr. Gorrell asserted that many lessors need help in understanding that maintenance costs are generally equal to the basic square footage cost of a lease. Operating costs may be much more than the basic value of the lease agreement, and that needs to be factored into a school's budget.

Mr. Eaton and Mr. Gorrell explained that the PSCOC supplemental severance tax bond fund balance now approaches \$0.5 billion because it includes new awards and a committed but unexpended balance for projects that are in process or under construction, as well as an uncommitted balance. The fund balance is large but not excessive given the average award amount and monthly expenditure activity.

The chair related that much thought has been given to the impending statutory deadline for charter schools to move into public facilities; however, the legislature has not yet come up with a solution that is agreeable to all of those who are affected. The rising cost of public school funds going to private owners leasing facilities to charter schools prompted the legislature in 2005 to create a 2010 deadline for charter schools to be located in public facilities. As the 2010 deadline approached, only a small percentage of charter schools had met the requirement, and the deadline was extended to 2015. The chair noted that the statute appears to be unworkable, as many schools will still not be in compliance in 2015. Further, the burgeoning population of charter schools was not anticipated when the statute was put into effect. The question arose of how to create incentives for both the public schools and charter schools to better utilize existing facilities.

Mr. Abbey explained that the current role of the PSCOC is to administer legislation and ensure effective and appropriate use of facilities. Mr. Gorrell directed task force members' attention to the issues paper prepared by the PSFA regarding charter schools. He pointed out that the paper identifies several problems related to charter school development, including a dearth of planning expertise for charter school facilities needs, the lack of an administrative procedure to encourage charter schools to use the available space that must statutorily be offered to them by the school districts and the need for a standardized lease with a mechanism to meet the facilities needs of charter schools' special curricula.

Task force members expressed frustration with the process, suggesting that a mandate should exist for charter and magnet schools to use existing district space regardless of the chartering authority. Mr. Abbey suggested that a statutory change to allow the PSCOC to arbitrate disputes might be of value. Mr. Gorrell asserted that charter schools are not rejecting district space as unsuitable because all of the facilities offered must be in above-average condition. He further noted that lease assistance for these schools is included in statute. While lease assistance starts at \$700 per student, Mr. Gorrell reminded the task force that the actual cost to operate the facility may be twice that amount if maintenance costs are included. He stated that the PSCOC is already looking at school district master plans to try to encourage effective use of building inventory.

The chair stated that clearly the wrong incentives are being applied if fewer than one-half of the charter schools will be in compliance with the public buildings requirement by the 2015 deadline. It was noted that some schools likely are ignoring the deadline for lack of enforcement and that there is no reward for compliance. While it was agreed that schools should be required to live up to their commitments, it was also argued that student well-being is the primary issue. Panel members suggested that fortifying the statute to steer charter schools into existing space that is maintained by a school district may be the best option.

Discussion ensued regarding the Facilities Condition Index (FCI) included on the charter school spreadsheet. The chair observed that some of the leased charter school facilities have a very high (bad) FCI. Mr. Gorrell emphasized that the PSCOC focuses its improvement efforts on those facilities with a high FCI and remarked that the PSCOC can pursue legal action against a local school district that fails to seek needed school bond funding. He pointed out that the recalcitrant district option of the law has never been invoked and that the PSCOC has chosen to work around such issues with the local school districts.

Prorated Proceeds from Education Technology Notes for Charter Schools

Paul Cassidy, managing director, Royal Bank of Canada Capital Markets, U.S. Public Finance Division, discussed education technology notes (ETNs) and the history of New Mexico's Education Technology Equipment Act with the task force members. He explained that ETNs may be used when a school district enters into a lease-purchase arrangement to acquire education technology equipment. Mr. Cassidy presented examples of ETN transactions and the widely varying costs of such transactions, especially as they relate to bond ratings of the school districts.

In the small school district of Vaughn, an ETN issuance of \$100,000 bore a true interest cost of around seven percent, while an \$11 million issuance in Santa Fe carried a true interest cost of less than one percent.

Mr. Cassidy explained that general obligation ETNs do not require voter approval; however, a public hearing process is required. ETNs may be sold or issued at public competitive sale, negotiated sale or private sale to the New Mexico Finance Authority (NMFA) or the Office of the State Treasurer. Mr. Cassidy reported that the notes provide a sustainable, predictable and equitable source for funding technology needs. Further, he asserted, technology and technology maintenance costs could be permanently shifted to an ETN program. Mr. Cassidy also recommended enabling legislation for staff support for technology projects, as well as a state guarantee for ETN issuances.

Art Melendres, Esq., legal counsel, Albuquerque Public Schools, pointed out the importance of improving bond ratings for smaller districts in order to lower costs. Task force members and the panel discussed provisions in proposed legislation to enable charter schools to receive a prorated share of funding from ETNs. Some task force members continue to object to state-chartered charter schools sharing in district technology funding. Mr. Cassidy observed that there should be a direct funding mechanism for state-chartered charter school technology needs, but resource limitations likely will preclude that possibility.

Members debated whether to include provisions in the proposed legislation to allow some of the proceeds to be used to purchase the services of training and technology specialists and software or cloud storage licenses. A question arose regarding whether or not using property tax levies to fund such items through ETNs blurs the lines of appropriate public school capital expenses. Further discussion addressed the importance of distinguishing between taxable and nontaxable bonds and what can be legally funded under those bonds in any proposed legislation.

Mr. Melendres affirmed that the draft of the proposed legislation includes a state guarantee of the bonding mechanism. The equalization formula entered into the discussion as members debated how the use of any funds generated from ETNs will be prioritized. Mr. Melendres acknowledged that ETNs are a tool to get technology funds if the voters turn down other means and that direct funding of such needs would be a more equitable and less expensive option.

Discussion of Possible Legislation for PSCOOTF Endorsement and Direction to Staff

The chair expressed concern that previously proposed legislation, in its form as proposed in the 2014 legislature, is perhaps unworkable because of changing the use of ETNs to mandate charter school sharing and including proposals to fund staff, support, licensing and other items. Charter schools are not currently included in statute to receive technology funding; however, the chair noted that a district may elect to share such funding with charter schools. The chair presented a short list of items to discuss to give direction to bill drafting:

- a building systems bill — a proposal to allow schools to use a portion of their funding to address FCI issues and try to expand the life of their buildings;
- a standardized lease agreement;
- extension of the deadline for charter schools to locate in public buildings;
- *Zuni* lawsuit litigant legislative concerns;
- development of improved maintenance cost codes for use and reporting by the Public Education Department and PSFA; and
- broadband service assessment and possible expansion.

Discussion surrounding these issues revealed that the *Zuni* lawsuit litigants had mentioned the building systems bill as one mechanism to prevent reintroduction of the *Zuni* lawsuit. One member characterized the bill as a means to find new uses for public school capital outlay funding that is no longer needed and said that local school districts should fund maintenance costs. The chair asserted that waiting to tear the buildings down rather than maintaining them is a waste of money and that the intent of the bill is to use the funding more effectively.

Another member noted that part of the bill provides for a recalculation of district square footage needs, addressing school district concerns about local share maintenance costs. Mr. Gorrell advised the task force that the provision was intended to allow schools to be proactive in reducing facility size, thereby increasing the funds available for local operating expenses. Ms. Ball noted that the bill is a deficiency-correction program modeled after the roofing deficiency bill that has been highly successful over a five-year period in helping districts to meet code compliance issues. Mr. Gorrell and Ms. Ball affirmed that a building systems definition is in place and that percentage limitations for certain categories of expenditures are included. Another task force member indicated that the executive branch seems to concur with the need for the building systems bill.

Mr. Gorrell reinforced the importance of knowing at least four years in advance the timing for any major funding changes. With approximately \$120 million to \$140 million in process at any time for planning and construction, projects are at risk of being abruptly cut off or underfunded if money is unexpectedly moved. A request was made to bring the PSFA budget to the task force for review.

The chair suggested the possibility that the task force should recommend going back into statute and requiring the agreement by charter schools. Mr. Gorrell explained the time and cost-saving advantages to using a two-part lease wherein the standard and variable items are separated. He noted that this approach increases accountability and provides multiple benefits to

the charter schools. Members also suggested adding language to the statute to help settle disputes between state-chartered and locally chartered charter schools and to extend the relocation deadline for two years.

One member suggested that establishing a new deadline is moot. Mr. Gorrell noted that public space does not equate to school facilities and that perhaps the task force should define more clearly what is expected of the charter schools and give the PSCOC more power to achieve that end. He further related that the PSFA had already been given direction to modify lease agreements to solicit more information on costs per square foot. Members also discussed lease-purchase agreements. It was noted that only one such lease-purchase agreement has come forward to the NMFA and that the NMFA is still evaluating its efficacy. It was reported that seven schools have lease-purchase agreements in effect.

Mr. Gorrell asserted that a big point for the PSFA in assessing lease agreements and school needs is understanding what is being spent, especially for maintenance. The current cost codes do not provide a sufficient level of detail to enable good management. He stated that although the PSFA now has a measure of maintenance effectiveness, the inaccuracy of current cost codes prevents effective targeting of funding. Further, effective cost codes could be easily developed and reported. Mr. Gorrell reminded the task force that enabling legislation for assessment and possible expansion of broadband service for schools throughout the state is pending.

Task force members discussed the need to revisit the equalization formula generally and for the purpose of addressing the current concerns of the litigant districts in the *Zuni* lawsuit. Mr. Gorrell advised the task force that the PSCOC will be hearing more from the Gallup-McKinley County School District and that other areas, such as Carlsbad and Hobbs, where property taxes have skyrocketed, have related concerns about local matching fund requirements. The *Zuni* litigants have agreed to stipulate to the judge that they will search for legislative solutions, but the issue may go to court anyway.

Mr. Moise was directed to work with the other parties at the meeting to develop draft legislation to be presented to the task force as soon as possible. The chair informed the members that the October meeting may be held at the Santa Fe Indian School.

With no further business before the task force, the meeting was adjourned at 3:15 p.m.

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

**October 27, 2014
Humanities Commons Room, Santa Fe Indian School
Santa Fe, NM**

The forty-ninth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on October 27, 2014 at 9:15 a.m. in the Humanities Commons Room at the Santa Fe Indian School (SFIS) in Santa Fe.

Present

Rep. Mimi Stewart, Chair
Sen. John M. Sapien, Vice Chair
Paul Aguilar
Rep. Eliseo Lee Alcon
Tom Clifford, Secretary, Department of
Finance and Administration
Dr. Carl Foster
Cecilia J. Grimes
Kirk Hartom
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. Mary Kay Papen
T.J. Parks
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Allan Tapia

Advisory Members

Sen. Howie C. Morales
Rep. Patricia Roybal Caballero
Sen. Pat Woods

Absent

Dr. Lisa Grover
Leonard Haskie
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Rep. James E. Smith

Rep. Sharon Clahchischilliage
Rep. Roberto "Bobby" J. Gonzales
Rep. Sandra D. Jeff
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules

Staff

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

Sharon S. Ball, Senior Researcher, LCS

Kathleen Dexter, Researcher, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, October 27**Welcome and Introductions**

The chair welcomed members and guests and asked members to introduce themselves. Superintendent Roy Herrera, SFIS, welcomed the task force and explained that the SFIS is owned and operated by the 19 pueblos in New Mexico and serves middle and high school students. Superintendent Herrera reported that about 680 students are enrolled in the Native Language Institute at the SFIS, with approximately 100 of those in the graduating class. Nineteen tribes are represented at the school at present and work with the SFIS to certify native language teachers. The SFIS is seeking to expand its native language programs and to build a teleconferencing center to facilitate instruction of the many variations among native languages.

Approval of September 3, 2014 Meeting Minutes

On a motion duly made and seconded, the minutes of the meeting of September 3, 2014 were approved without objection.

Update on the Public School Capital Outlay Council's (PSCOC's) Recommendations for Standards-Based Public School Capital Outlay Rule Changes and Possible Legislation

Martica Casias, planning and design manager, Public School Facilities Authority (PSFA), updated the task force on options identified by the PSCOC to address the litigant district concerns previously presented to the task force regarding adequacy standards. The PSCOC determined that nine of the 17 concerns identified can be addressed within the existing adequacy standards through administrative solutions.

David Abbey, chair, PSCOC, and director, Legislative Finance Committee, and Ms. Casias addressed four of the concerns that fall outside of the adequacy standards. Mr. Abbey informed the task force that funding is currently set aside from the Public School Capital Outlay Fund (PSCOF) for construction of pre-kindergarten (pre-k) classrooms, even though pre-k facilities are not currently addressed in the adequacy standards. Funding for pre-k classrooms is awarded by the PSCOC based on need. Mr. Abbey suggested surveying district needs next year to determine whether the current \$2.5 million pre-k set-aside for facilities is sufficient.

Ms. Casias informed the task force that the adequacy standards do not address the provisions of Title IX of the United States Education Amendments of 1972 that mandate equal opportunities in athletics for female and male athletes. The PSCOC position on the issue is that it is the district's responsibility to accommodate both sexes equitably with regard to the scheduled use of site recreation and outdoor physical education areas that are included in the adequacy standards. It was noted that concession stands for athletic facilities fall outside of the standards as the standards do not address athletic facility needs. Discussion ensued regarding the inequities of using "booster clubs" as the main source of funding for athletic facilities and playing fields, as well as the need to explore options for using artificial turf for playing fields. Ms. Casias also reported that while the PSCOC may pay for utilities infrastructure on-site, costs to extend utilities off-site continue to fall to the districts.

Mr. Abbey reported that the process for prioritizing PSCOF funding awards has prevented rural, isolated school districts from applying for and receiving PSCOC awards to build teacherages, i.e., residences for teachers. He suggested establishing a pilot program for teacherages, similar to the school facilities roof repair program previously funded by the legislature from the PSCOF, to address the specific needs of districts in which schools are located on federal lands. He further proposed that the PSCOC meet with the districts in need of teacherages and the PSFA to discuss issues related to establishing such a pilot program and to explore necessary qualifications on funding for teacherages.

Robert Gorrell, director, PSFA, addressed the litigant district concern regarding local matching requirements, noting that under current statute, the PSCOC can grant a waiver of the matching requirement to any district that demonstrates "prudent use" of its available resources. Mr. Abbey reported that historically the PSCOC has worked with the districts to review local fund balances when considering the granting of a waiver. He stated that the PSCOC does recognize the need for a reserve fund balance at the local level, and he suggested that applicant districts include a detailed plan for the use of their local funds when applying for a waiver.

Speaker Martinez noted that, with the exception of the Zuni Public School District (ZPSD), all other districts have at least a 10 percent local matching requirement that can be waived to give them financial relief. He suggested that perhaps the standards-based funding formula should be revised to include funding for the ZPSD at 110 percent of the state share to compensate for the lack of a local tax base and bonding capacity in that district. Speaker Martinez also noted the inequity inherent in the system for those outliers that the system was originally designed to assist. As priorities have changed over time, those school districts that initially received assistance have gone to the back of the line and are precluded from receiving funding for such things as native language classrooms, which have only recently been added to the standards. Speaker Martinez asked that the PSCOC explore means to right the former disallowances for those districts.

Ms. Casias noted that legislation may be required to address the following litigant district concerns: construction of softball and baseball fields; payment of the Navajo business activity

tax; provision of additional funding for facilities maintenance; and revision of the state-district match formula in statute. Speaker Martinez requested that the PSFA research whether or not there is a double taxation issue with respect to the Navajo business activity tax and report back to the task force. Maintenance of school facilities continues to be the major issue in the discussions with the litigant districts. Mr. Abbey observed that working with the Gallup-McKinley County School District (GMCS D) now on the identified issues and options provides an opportunity to avoid costly litigation.

Frank Chiapetti, superintendent, GMCS D, presented information to the task force comparing the amounts available in different school districts for maintenance on a per student basis. He reported that the amounts vary from more than \$216,000 per student in the Hobbs Municipal School District to less than \$80,000 per student in the GMCS D. Elaborating on the maintenance problem, he noted that the PSCOC has directed districts to reduce their square footage in an effort to reduce maintenance costs. This new requirement has resulted in problems with fitting children into fewer classrooms while trying to meet new curriculum needs.

Similarly, Superintendent Chiapetti noted that the high cost of issuance for school bonds in impoverished districts has a disequalizing effect on the districts' ability to build and support facilities that enhance education, such as libraries, occupational training and athletic facilities and fine arts spaces. Superintendent Chiapetti related the tremendous need for teacherages on federal lands to ensure that rural schools have trained teaching staff. Districts with such needs have to spend their local funds on teacherages with no state support. Superintendent Chiapetti asked for task force support to address safety issues related to poorly developed and maintained playing fields. Further, Superintendent Chiapetti expressed concern that opportunities for negotiation on local share match waivers and related issues governed by the PSCOC are not readily available. He asked that the state provide support for building schools based on educational specifications rather than adequacy standards and that the state reexamine the issue of how federal impact aid is credited in the funding formula.

Superintendent Hayes Lewis, ZPSD, reported that his district has experienced a decrease in federal impact aid funding of 27 percent over the past five years and that, at the same time, all of the expenses for teacherages have fallen to the district. Debt service on the teacherages as a percentage of the district's receipts has risen from 14 percent to 63 percent over the same five years. Superintendent Lewis asserted that virtually all local funds are going to debt service when the funds should be in use to provide educational services to children. He observed that adequacy standards and square footage restrictions are dictating how new buildings are developed rather than educational need.

Marc Space, superintendent, Grants-Cibola County School District (GCCSD), reported that the district has decided not to support teacherages and has notified staff that housing will no longer be available after June 2015. The GCCSD anticipates that many of the teaching staff members will opt to relocate and find jobs elsewhere, presenting other challenges for the district.

Superintendent Space and other panel members discussed the dynamic changes in enrollment in their districts and the challenge of building schools to the right capacity for student numbers.

Superintendent Space also addressed the serious need for expansion of broadband services to meet the requirements of the Partnership for Assessment of Readiness for College and Careers (PAARC) testing requirements. Task force members observed that the need for more bandwidth is a problem throughout the state and that the problem will likely intensify as PARCC testing ramps up. The problem affects other areas of school performance as well as the PARCC testing needs.

Update on the Implementation of the Education Technology Infrastructure Deficiencies Correction Program

Mr. Gorrell presented an update on the implementation of the Broadband Deficiencies Correction Program. Phase 1 of the project is now in effect to collect information to establish a baseline of the condition of the various broadband networks now in service for school systems statewide. The Estancia Municipal School District has volunteered to be the pilot district for measurement and analysis of bandwidth expansion options. The pilot program will then be expanded to some 30 additional schools to hone the validation and assessment tools and create recommendations for correction of broadband deficiencies. Options may include use of an outside contractor or new dark fiber technology. Phase 2 of the program will implement deficiencies corrections. Mr. Gorrell emphasized that decisions on the corrective measures chosen must include funding for recurring costs to keep the information technology systems operational. He cautioned that deferred maintenance is not possible on infrastructure that supports a statewide real-time system.

Report on the Effects of Possible Severance Tax Distribution Changes on Standards-Based Public School Capital Outlay Funding Formula Awards

Jeff Eaton, director of business operations, PSFA, presented a report on the effects of possible severance tax distribution changes on standards-based public school capital outlay funding formula awards. Mr. Eaton observed that over the next 18 months, the PSCOC is projected to award over \$400 million in state matching funds for school construction, creating a wealth of jobs and needed facilities improvements. At the request of the PSCOOTF, the PSFA developed scenarios to gradually reduce funding for public school capital outlay and increase distributions to the Severance Tax Permanent Fund (STPF).

Task force members discussed the four scenarios presented, observing that more immediate cutbacks as presented in one scenario could affect the completion of current projects in process. In analyzing the fiscal impact of the four scenarios developed, it was noted that all of the distribution cutbacks fall to the public schools and not to other beneficiaries of the STPF distributions. Mr. Eaton further reported that due to PSCOC priorities for the use of supplemental severance tax bond (SSTB) proceeds, the only area affected by the funding changes would be the school construction program.

Public School Capital Outlay Funding Stream: Update on the State Investment Council (SIC) Legislation to Increase Distributions to the STPF and on the Issuance of SSTBs

Steven K. Moise, state investment officer, SIC, presented proposed legislation to increase distributions to the STPF by phasing in reductions to the severance tax and supplemental severance tax bonding capacity. One of the proposed bills would hold harmless the Water Trust Fund, Tribal Infrastructure Trust Fund and Colonias Infrastructure Trust Fund. Under that proposal, school and legislative capital outlay funds would be reduced by about 12 percent over a 10-year period.

Task force members discussed the need to build the corpus of the STPF. One member observed that the precipitous drop in the STPF was due to the economic collapse that began in 2008. The member inquired about investment strategies that seem to vary between the Land Grant Permanent Funds, which have rebounded to 2007 levels, and the STPF, which has not. Vincent Smith, deputy state investment officer, SIC, asserted that there is no significant difference in investment strategies between the funds and that modeling for the STPF indicates that there is only about a 30 percent chance that the real dollar amount of the fund will endure over time if more funds do not go into the corpus.

One member pointed out that given the square footage of the schools that have been built (66 million square feet as reported by Mr. Eaton) and the size of the capital investment (roughly \$2 billion over the past 12 years), it would follow that some of the public school capital outlay funding should now be used for maintenance. The member noted that there will always be a need for public school facilities improvements and raised the issue of the constitutional amendment now before the voters that would modify the investment strategy for the STPF. Another member noted the volatility of the oil and gas industry revenues that feed the STPF and suggested making direct appropriations for certain educational needs.

Members generally agreed that increasing the inflow to the corpus of the STPF is necessary to preserve the health of the fund. Discussion ensued as to how to fairly apply reductions in distributions from the STPF to all of the current beneficiaries. Some members, as well as presenters, characterized the set-asides for water, colonias and tribal projects as sacrosanct and doubted that legislation that reduces funding for those projects will be passed by the full legislature.

One member pointed out that the Colonias Infrastructure Trust Fund receives a fixed percentage of funding and that reducing funding for that fund entails a loss of the SSTB proceeds as well. A task force member suggested using some of the revenue available to the state from gaming compacts to directly fund tribal water projects. Another member volunteered to explain to his constituency the need for equitable reductions in distributions to preserve future funding and restore the health of the STPF. Mr. Moise welcomed the member's involvement in explaining the need for changes to the management of the fund.

Standardized Lease Agreements

Mr. Gorrell presented an update on the utilization of the standardized lease agreements by the PSFA. The PSCOC has directed the PSFA to encourage but not require the use of the standardized lease agreements. Designed to be user-friendly for both the PSFA and the schools, the standardized agreements have been developed for leasing land and public and private facilities and for lease-purchase agreements. The agreements can accommodate any special needs but should guide users away from illegal activities and strengthen conflict of interest disclosure requirements.

Tracking School District Maintenance Costs: Suggestions and Recommendations for Implementation

Mr. Gorrell reported on the continuing need to improve tracking of school district maintenance costs. The current reporting structure for school district maintenance expenditures is too broad to appropriately inform the planning, acquisition, maintenance and operations functions. Proposed improvements to the system will establish detailed facility-related definitions aligned with new accounting cost codes necessary to protect public investments. The improvements afford an opportunity to improve facility life cycles through appropriate and efficient maintenance expenditures. Mr. Gorrell asserted that deferring needed maintenance triples costs in the long run.

One member expressed concern that the new system will burden personnel with new reporting requirements. Mr. Gorrell explained that once established, the new system will override some of the current difficulties experienced in pursuing an ongoing effective maintenance program, including frequent staff changes and poorly defined maintenance activities. The proposed improvements will assist in answering important facility management questions relative to repair, renewal and replacement needs. Mr. Aguilar, deputy secretary of finance and operations, Public Education Department, stated that he would like to meet with Mr. Gorrell to discuss the next steps that Mr. Gorrell has outlined for the task force to achieve an effective maintenance program.

Consideration of Possible Legislation for Task Force Endorsement and Direction to Staff

Ms. Ball presented proposed legislation for task force review. Task force members briefly discussed proposed legislation to extend the deadline requiring charter schools to be housed in public facilities. Members agreed to postpone further discussion of the proposed legislative items until the upcoming meeting on November 10, 2014.

Adjournment

There being no further business before the task force, the task force adjourned at 4:30 p.m.

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

**November 10, 2014
Room 307, State Capitol
Santa Fe, NM**

The fiftieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Mimi Stewart, chair, on November 10, 2014 at 9:15 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Rep. Mimi Stewart, Chair
Paul Aguilar
Rep. Eliseo Lee Alcon
Tom Clifford, Secretary, Department of
Finance and Administration*
Dr. Carl Foster
Cecilia J. Grimes
Tracy Hofmann
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. W. Ken Martinez
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith

Advisory Members

Rep. Roberto "Bobby" J. Gonzales**
Sen. Howie C. Morales

Absent

Sen. John M. Sapien, Vice Chair
Dr. Lisa Grover
Kirk Hartom
Leonard Haskie
Sen. Mary Kay Papen
T.J. Parks
Judy Rabon
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Allan Tapia

Rep. Sharon Clahchischilliage
Rep. Sandra D. Jeff
Rep. Patricia Roybal Caballero
Sen. John C. Ryan
Sen. William E. Sharer
Sen. William P. Soules
Sen. Pat Woods

* Michael Marcelli, director, State Budget Division, Department of Finance and Administration, was designated to represent Secretary Clifford for this meeting.

** Representative Gonzales was designated by Speaker of the House Martinez as a voting member for this meeting to constitute a quorum.

Staff

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

Sharon S. Ball, Senior Researcher, LCS

Kathleen Dexter, Researcher, LCS

Michelle Jaschke, Researcher, LCS

Minutes Approval

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

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, November 10

Welcome and Introductions

The chair welcomed task force members and guests and informed the members that Representative Gonzales was designated as a voting member for the meeting.

Approval of October 27, 2014 Meeting Minutes

On a motion duly made and seconded, the task force voted unanimously to approve the minutes of the PSCOOTF meeting of October 27, 2014.

Update on Progress of the *Zuni* Lawsuit

Sean Cunniff, assistant attorney general, Attorney General's Office (AGO), presented a brief overview of the history of the *Zuni* lawsuit and gave an update on where the litigation stands at present. Mr. Cunniff reported that the litigation has been inactive for years but that the judge retained jurisdiction in the case. This year, the plaintiffs, led by the Gallup-McKinley County School District, have successfully sought to reinstate the litigation to address the concerns that the litigant school districts maintain with regard to capital outlay funding and specific district needs. The litigation is on hold at present as discussions ensue regarding legislative solutions to litigant concerns.

Mr. Cunniff reported that the parties to the *Zuni* lawsuit have jointly asked the judge to postpone the hearing that was scheduled in November 2014. A new date of March 16, 2015 has now been scheduled for a full evidentiary hearing. He noted that the 2015 legislative session will

be wrapping up at that time and, therefore, discovery for the hearing will be concurrent with the political process.

Task force discussion ensued regarding what the litigants are seeking in the upcoming legislative session. Mr. Cunniff stated that one initiative involves that of teacherages. Other areas of concern relate to maintenance costs and athletic facilities. One task force member raised concerns regarding the impact that funding teacherages might have on the state equalization guarantee.

Task force members asked why the AGO had not objected to reopening the case. Mr. Cunniff further explained that when the case was administratively closed, the court made it clear that it was continuing its jurisdiction in the case. As a result, Mr. Cunniff observed, it was pro forma not to object as the matter will inevitably come before the court. Mr. Cunniff informed the task force that, technically and legally, the *Zuni* lawsuit has been reinstated. He noted that it is not uncommon for cases that involve a constitutional directive to require ongoing monitoring by the court. There has been no order closing the case, according to Mr. Cunniff, but the case has been reassigned to Judge Louis E. DePauli, Jr. Mr. Cunniff told the task force that legislators have the opportunity to shape what happens with the case during the upcoming legislative session, as the litigants have essentially yielded to that ongoing process.

Severance Tax Distribution Changes

Jeff Eaton, director of business operations, Public School Facilities Authority (PSFA), referred task force members to the severance tax distribution scenarios presented by the PSFA during the October 27, 2014 meeting and to the proposed legislation presented at that meeting by the State Investment Council (SIC). The PSFA outlined four scenarios at the October meeting that would gradually reduce funding for public school capital outlay and restore that funding to the Severance Tax Permanent Fund (STPF) instead. Each of those scenarios was projected to negatively affect the statewide school Facilities Condition Index (FCI) over the long term.

During the October meeting, the SIC presented two versions of proposed legislation to restore inflow to the STPF. One of the proposed bills would hold harmless the other beneficiaries of the current STPF distributions, including the Water Trust Fund (WTF), Tribal Infrastructure Trust Fund (TITF) and Colonias Infrastructure Trust Fund (CITF). Under that proposal, school and legislative capital outlay funds would be reduced by about 12% over a 10-year period.

Mr. Eaton stated that the PSFA had revisited these issues at the request of the task force to seek an equitable and workable solution that will not result in a degradation of public school facilities statewide. He presented the projected fiscal impacts of the SIC-proposed legislation and that of a "hybrid" proposal. The hybrid proposal would implement a 6% reduction in funding for all of the beneficiaries, excepting public school capital outlay, beginning in fiscal year (FY) 2016. A 16% reduction in funding would be applied to the public school capital outlay

funding under the hybrid plan beginning in FY 2019, allowing time for appropriate scaling of upcoming projects and completion of projects in process.

One member of the task force asked if information the member had requested regarding the amount of funding leveraged by the CITF was available. Charles Wollman, spokesman for the SIC, informed the committee that the SIC is in the process of setting up meetings with representatives of the TITF, CITF and WTF to gather information and discuss proposed legislation to enact changes in the STPF distributions. Robert Gorrell, executive director, PSFA, stated that state funding for public school capital outlay leverages local funds at the rate of 38% state funds to 62% local funds. The task force member maintained that the CITF leverages considerably more funding than the public school capital outlay program.

Another task force member questioned the "cone of certainty" surrounding the very long-range projections included in PSFA and SIC severance tax distribution scenarios, noting that many variables can change over a 20- or 30-year period. Mr. Eaton agreed, observing that even a few months ago, few were aware that the current oil glut was on the horizon. He stated that although there are many unpredictable factors that will influence STPF inflows and distributions, long-range analysis is valuable because many of these types of changes do take place over time. Mr. Eaton asserted that the contemplated revenue changes for public school capital outlay must also take place over time due to the primary importance of planning to that process.

The task force chair observed that with little apparent agreement among the stakeholders, the hybrid proposal may offer the most palatable alternative. Under that proposal, public school capital outlay would be subject to the heaviest budget cuts but would be granted a three-year delay of the proposed cuts. Most members agreed that the objective is to take action to increase the inflow into the STPF so that the fund is available for future use. The chair pointed out the complicating factor of threatened legal action if efforts are not made to meet litigant district requests for school facilities needs in the upcoming legislative session, and the chair suggested continued work to develop acceptable legislation.

Consideration of Possible Legislation for Task Force Endorsement

Ms. Ball presented proposed legislation to allow the Public School Capital Outlay Council (PSCOC) to provide temporary annual allocations to school districts to address building system needs in existing buildings. Mr. Gorrell reported that the proposed legislation is similar to the previously enacted roofing repair program for school buildings and, as a separate appropriation, will not compete with the Public School Capital Outlay Fund allocations. The bill addresses the need to avoid a return to the poor facilities conditions that instigated the *Zuni* lawsuit.

Mr. Gorrell reported that the proposed legislation will allow districts to address mechanical and other building system needs and will enable a cutback of some of the square footage that now increases maintenance costs. The intent is to use the requested \$15 million per year to address the most critical system needs, improving the weighted New Mexico FCI for

certain facilities and relieving the need for more costly facilities replacement. The proposed legislation has a sunset provision after five years and offers an opportunity to address building system needs on a trial basis and leave the districts with more sustainable facilities. Mr. Gorrell presented draft systems renewal ranking standards developed to identify the highest-risk areas and highest levels of need.

Ms. Ball observed that the proposed legislation takes the \$10 million in funding for the roof repair program that will sunset next year and adds \$5 million annually, for a total of \$15 million for building system repairs. Thus, the total new cost is \$5 million. Mr. Gorrell and Paul Aguilar, deputy secretary of finance and operations, Public Education Department, agreed that all of the \$15 million is needed by the districts for building system repairs and would be matched by some \$25 million in local dollars. At present, Mr. Gorrell observed, maintenance costs are draining local operating budgets, particularly where facilities have excess square footage. Mr. Gorrell asserted that this trial offers a means to change a currently failing statewide maintenance program and a means to illuminate options for continued maintenance program improvements.

Task force members discussed various options to finesse the language of the proposed legislation and to potentially allow more funding to flow to the maintenance of effort to meet the identified need for building system improvements and take advantage of the cost savings projected to result from system repairs instead of building replacement. One task force member asked if there is a way to determine the level of benefits that would flow to the litigant districts from the program. Mr. Gorrell and Ms. Ball agreed that, given the high level of maintenance needs and excess square footage in those districts, the program would likely be of direct benefit to the litigant districts. The task force decided not to make changes in the proposed legislation, and on a motion duly made and seconded, with one member objecting, the task force voted to endorse the proposed legislation.

Ms. Ball presented proposed legislation to allow the PSCOC to grant, under certain circumstances, a five-year extension of the deadline requiring charter schools to be housed in public buildings by July 1, 2015. Task force members and guests observed that the PSCOC lacks the statutory authority to grant such extensions, and a recommendation was made to propose separate legislation to clearly identify the statutory authority and to clarify the PSCOC's role in recommending extensions. Other members asserted that the charter schools should be well aware of the looming deadline for relocation and should be held to that deadline. One member observed that student safety is a primary issue in relocating charter schools into appropriate facilities and that there should be no compromise on that issue. Members deferred action on the proposed legislation.

The task force considered endorsing proposed legislation to make locally chartered and state-chartered charter schools eligible to receive a prorated share of education technology equipment purchased by a school district through a lease-purchase agreement under provisions of the Education Technology Equipment Act. Some task force members and guests stated that education technology equipment for state-chartered charter schools should be funded by the state

and not automatically taken out of the budgets and bonding capacity of districts. One member reminded the task force that parents are paying local property taxes that go to support school systems whether their children are enrolled in charter schools or public schools.

A representative of the Albuquerque Public School District asked that the task force give consideration to including a state guarantee of bond issuances for education technology notes in the proposed legislation to give issuers confidence that the notes will be covered. One member observed that language included in the proposed legislation that would cover salaries and benefits for technology support personnel could trigger taxable events with the bond issuances, increasing local costs. The proposed legislation was not endorsed by the task force, although four task force members voted for endorsement. The chair observed that the proposed legislation fails to target the greatest educational technology needs by universally granting equipment to eligible schools, and she suggested a stronger needs-based approach.

Ms. Ball presented proposed legislation requiring local government issuers of industrial revenue bonds to provide timely notice of the bond issuance to all local public bodies whose property tax base is affected by the issuance. One task force member noted that the importance of the legislation is in regard to sudden increases in student enrollment as a result of building booms or company relocations. The proposed legislation would give schools an opportunity to address their enrollment concerns with regard to the issuance of industrial revenue bonds. The chair stated that she will sponsor the proposed legislation in the upcoming legislative session.

Adjournment

There being no further business before the task force, the PSCOOTF adjourned at 12:25 p.m.

Appendix F

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

2014 ENDORSED LEGISLATION

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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 TEMPORARY ANNUAL ALLOCATIONS TO
SCHOOL DISTRICTS TO ADDRESS BUILDING SYSTEMS NEEDS IN EXISTING
BUILDINGS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.

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 makes up a single, nonportable or fixed component of
a facility and that, together with other building systems,

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1 makes up an entire integrated facility or property, including,
2 but not limited to, roofing, electrical distribution,
3 electronic communication, plumbing, lighting, mechanical, fire
4 prevention, facility shell, interior finishes and heating,
5 ventilation and air conditioning systems, as defined by the
6 council;

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

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

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

19 ~~[D-]~~ E. "education technology infrastructure" means
20 the physical hardware used to interconnect education technology
21 equipment for school districts and school buildings necessary
22 to support broadband connectivity as determined by the council;

23 ~~[E-]~~ F. "fund" means the public school capital
24 outlay fund; and

25 ~~[F-]~~ G. "school district" includes state-chartered

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1 charter schools and the constitutional special schools."

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

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

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

9 B. Except as provided in Subsections G and I
10 through M of this section, money in the fund may be used only
11 for capital expenditures deemed necessary by the council for an
12 adequate educational program.

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

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1 and insurance of the portable classrooms while in the custody
2 of a school district shall be the responsibility of the school
3 district. The council may authorize the permanent disposition
4 of the portable classrooms by the public school facilities
5 authority with prior approval of the state board of finance.

6 D. Applications for assistance from the fund shall
7 be made by school districts to the council in accordance with
8 requirements of the council. Except as provided in Subsection
9 K of this section, the council shall require as a condition of
10 application that a school district have a current five-year
11 facilities plan, which shall include a current preventive
12 maintenance plan to which the school adheres for each public
13 school in the school district.

14 E. The council shall review all requests for
15 assistance from the fund and shall allocate funds only for
16 those capital outlay projects that meet the criteria of the
17 Public School Capital Outlay Act.

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

25 (1) up to ten percent of the portion of the

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1 project cost funded with distributions from the fund or five
2 percent of the total project cost, whichever is greater, may be
3 paid to the school district before work commences with the
4 balance of the grant award made on a cost-reimbursement basis;
5 or

6 (2) the council may authorize payments
7 directly to the contractor.

8 G. Balances in the fund may be annually
9 appropriated for the core administrative functions of the
10 public school facilities authority pursuant to the Public
11 School Capital Outlay Act, and, in addition, balances in the
12 fund may be expended by the public school facilities authority,
13 upon approval of the council, for project management expenses;
14 provided that:

15 (1) the total annual expenditures from the
16 fund for the core administrative functions pursuant to this
17 subsection shall not exceed five percent of the average annual
18 grant assistance authorized from the fund during the three
19 previous fiscal years; and

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

23 H. Up to ~~[ten million dollars (\$10,000,000)]~~ of the
24 ~~fund may be allocated annually by the council for expenditure~~
25 ~~in fiscal years 2010 through 2015 for a roof repair and~~

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1 ~~replacement initiative with projects to be identified by the~~
2 ~~council pursuant to Section 22-24-4.3 NMSA 1978; provided that~~
3 ~~money allocated pursuant to this subsection shall be expended~~
4 ~~within two years of the allocation]~~ fifteen million dollars
5 (\$15,000,000) of the fund may be expended annually by the
6 council for expenditure in fiscal years 2016 through 2020 for a
7 building system repair, renovation or replacement initiative
8 with projects to be identified by the council pursuant to
9 Section 3 of this 2015 act; provided that money allocated
10 pursuant to this subsection shall be expended within three
11 years of the allocation.

12 I. The fund may be expended annually by the council
13 for grants to school districts for the purpose of making lease
14 payments for classroom facilities, including facilities leased
15 by charter schools. The grants shall be made upon application
16 by the school districts and pursuant to rules adopted by the
17 council; provided that an application on behalf of a charter
18 school shall be made by the school district, but, if the school
19 district fails to make an application on behalf of a charter
20 school, the charter school may submit its own application. The
21 following criteria shall apply to the grants:

22 (1) the amount of a grant to a school district
23 shall not exceed:

24 (a) the actual annual lease payments
25 owed for leasing classroom space for schools, including charter

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1 schools, in the district; or

2 (b) seven hundred dollars (\$700)
3 multiplied by the number of MEM using the leased classroom
4 facilities; provided that in fiscal year 2009 and in each
5 subsequent fiscal year, this amount shall be adjusted by the
6 percentage change between the penultimate calendar year and the
7 immediately preceding calendar year of the consumer price index
8 for the United States, all items, as published by the United
9 States department of labor;

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

14 (3) at the end of each fiscal year, any
15 unexpended or unencumbered balance of the appropriation shall
16 revert to the fund;

17 (4) no grant shall be made for lease payments
18 due pursuant to a financing agreement under which the
19 facilities may be purchased for a price that is reduced
20 according to the lease payments made unless:

21 (a) the agreement has been approved
22 pursuant to the provisions of the Public School Lease Purchase
23 Act; and

24 (b) the facilities are leased by a
25 charter school;

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

10 (6) as used in this subsection:

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

22 (b) "classroom facilities" or "classroom
23 space" includes the space needed, as determined by the minimum
24 required under the statewide adequacy standards, for the direct
25 administration of school activities.

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

23 K. Pursuant to guidelines established by the
24 council, allocations from the fund may be made to assist school
25 districts in developing and updating five-year facilities plans

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1 required by the Public School Capital Outlay Act; provided
2 that:

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

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

13 (a) the school district has fewer than
14 an average of six hundred full-time-equivalent students on the
15 eightieth and one hundred twentieth days of the prior school
16 year; or

17 (b) the school district meets all of the
18 following requirements: 1) the school district has fewer than
19 an average of one thousand full-time-equivalent students on the
20 eightieth and one hundred twentieth days of the prior school
21 year; 2) the school district has at least seventy percent of
22 its students eligible for free or reduced-fee lunch; 3) the
23 state share of the total cost, if calculated pursuant to the
24 methodology in Paragraph (5) of Subsection B of Section 22-24-5
25 NMSA 1978, would be less than fifty percent; and 4) for all

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1 educational purposes, the school district has a residential
2 property tax rate of at least seven dollars (\$7.00) on each one
3 thousand dollars (\$1,000) of taxable value, as measured by the
4 sum of all rates imposed by resolution of the local school
5 board plus rates set to pay interest and principal on
6 outstanding school district general obligation bonds.

7 L. Upon application by a school district,
8 allocations from the fund may be made by the council for the
9 purpose of demolishing abandoned school district facilities,
10 provided that:

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

14 (2) there is no practical use for the
15 abandoned facility without the expenditure of substantial
16 renovation costs; and

17 (3) the council may enter into an agreement
18 with the school district under which an amount equal to the
19 savings to the district in lower insurance premiums are used to
20 reimburse the fund fully or partially for the demolition costs
21 allocated to the district.

22 M. Up to ten million dollars (\$10,000,000) of the
23 fund may be expended each year in fiscal years 2014 through
24 2019 for an education technology infrastructure deficiency
25 corrections initiative pursuant to Section [~~4 of this 2014 act~~]

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1 22-24-4.5 NMSA 1978; provided that funding allocated pursuant
2 to this section shall be expended within three years of its
3 allocation."

4 SECTION 3. A new section of the Public School Capital
5 Outlay Act is enacted to read:

6 "[NEW MATERIAL] BUILDING SYSTEM REPAIR, RENOVATION OR
7 REPLACEMENT.--

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

11 B. A school district desiring a grant award
12 pursuant to this section shall submit an application to the
13 council. The application shall include an assessment of the
14 building system that, in the opinion of the school district,
15 the repair, renovation or replacement of which would extend the
16 useful life of the building itself.

17 C. The public school facilities authority shall
18 verify the assessment made by the school district and rank the
19 application with similar applications pursuant to a methodology
20 adopted by the council.

21 D. After a public hearing and to the extent that
22 money is available in the fund for such purposes, the council
23 shall approve building system repair, renovation or replacement
24 projects on the established priority basis; provided that no
25 project shall be approved unless the council determines that

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1 the school district is willing and able to pay the portion of
2 the total cost of the project that is not funded with grant
3 assistance from the fund.

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

8 F. A grant made pursuant to this section shall be
9 expended by the school district within three years of the grant
10 allocation."

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

13 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
14 APPLICATION--GRANT ASSISTANCE.--

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

18 B. Except as provided in Sections 22-24-4.3,
19 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
20 govern grant assistance from the fund for a public school
21 capital outlay project not wholly funded pursuant to Section
22 22-24-4.1 NMSA 1978:

23 (1) all school districts are eligible to apply
24 for funding from the fund, regardless of percentage of
25 indebtedness;

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

4 (a) the council shall apply the
5 standards to charter schools to the same extent that they are
6 applied to other public schools;

7 (b) the council may award grants
8 annually to school districts for the purpose of repairing,
9 renovating or replacing public school building systems in
10 existing buildings as identified in Section 3 of this 2015 act;

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

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

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

24 (a) the feasibility of using design,
25 build and finance arrangements for public school capital outlay

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1 projects;

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

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

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

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

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

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

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

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

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

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

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

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

24 (h) the lowest value calculated pursuant
25 to Subparagraph (g) of this paragraph is subtracted from the

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1 highest value calculated pursuant to that subparagraph;

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

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

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

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

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

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1 district;

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

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

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

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

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

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

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

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

25 (b) the applicable fraction used for the

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

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

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

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

17 (7) as used in this subsection:

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

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

24 (8) the amount calculated pursuant to
25 Subparagraph (p) of Paragraph (5) of this subsection, after any

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

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

12 (a) the school district has insufficient
13 bonding capacity over the next four years to provide the local
14 match necessary to complete the project and, for all
15 educational purposes, has a residential property tax rate of at
16 least ten dollars (\$10.00) on each one thousand dollars
17 (\$1,000) of taxable value, as measured by the sum of all rates
18 imposed by resolution of the local school board plus rates set
19 to pay interest and principal on outstanding school district
20 general obligation bonds;

21 (b) the school district: 1) has fewer
22 than an average of eight hundred full-time-equivalent students
23 on the eightieth and one hundred twentieth days of the prior
24 school year; 2) has at least seventy percent of its students
25 eligible for free or reduced-fee lunch; 3) has a share of the

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

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

19 (10) the local match for the constitutional
20 special schools shall be set at fifty percent for projects that
21 qualify under the educational adequacy category and one hundred
22 percent for projects that qualify in the support spaces
23 category; provided that the council may adjust or waive the
24 amount of any direct appropriation offset to or local share
25 required for the constitutional special schools if an applicant

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1 constitutional special school has insufficient or no local
2 resources available; and

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

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

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

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

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

21 (e) the school district is willing and
22 able to pay any portion of the total cost of the public school
23 capital outlay project that, according to Paragraph (5), (6),
24 (8) or (9) of this subsection, is not funded with grant
25 assistance from the fund; provided that school district funds

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1 used for a project that was initiated after September 1, 2002
2 when the statewide adequacy standards were adopted, but before
3 September 1, 2004 when the standards were first used as the
4 basis for determining the state and school district share of a
5 project, may be applied to the school district portion required
6 for that project;

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

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

17 C. After consulting with the public school capital
18 outlay oversight task force and other experts, the council
19 shall regularly review and update statewide adequacy standards
20 applicable to all school districts. The standards shall
21 establish the acceptable level for the physical condition and
22 capacity of buildings, the educational suitability of
23 facilities and the need for education technology
24 infrastructure. Except as otherwise provided in the Public
25 School Capital Outlay Act, the amount of outstanding deviation

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1 from the standards shall be used by the council in evaluating
2 and prioritizing public school capital outlay projects.

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

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

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

20 (3) the total project cost shall equal the
21 total payments that would be due under the agreement if the
22 school district or charter school would eventually acquire
23 title to the facility;

24 (4) the portion of the total project cost to
25 be paid from the fund may be awarded as one grant, but

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1 disbursements from the fund shall be made from time to time as
2 lease payments become due;

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

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

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

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

20 (2) at the time of application, attendance at
21 the facility to be purchased is at seventy-five percent or
22 greater of design capacity and the attendance at other schools
23 in the school district that the students at the facility would
24 otherwise attend is at eighty-five percent or greater of design
25 capacity; and

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

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

16 G. Upon request, the council shall work with, and
17 provide assistance and information to, the public school
18 capital outlay oversight task force.

19 H. The council may establish committees or task
20 forces, not necessarily consisting of council members, and may
21 use the committees or task forces, as well as existing agencies
22 or organizations, to conduct studies, conduct surveys, submit
23 recommendations or otherwise contribute expertise from the
24 public schools, programs, interest groups and segments of
25 society most concerned with a particular aspect of the

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1 council's work.

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

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

16 SECTION 5. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2015.

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