



NEW MEXICO LEGISLATURE

**PUBLIC SCHOOL
CAPITAL OUTLAY
OVERSIGHT TASK FORCE**

2019 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
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INTERIM SUMMARY

Public School Capital Outlay Oversight Task Force 2019 Interim Summary

State statute allows the Public School Capital Outlay Oversight Task Force (PSCOOTF) to hold a maximum of four meetings during each interim, in addition to one organizational meeting. In 2019, meetings were held at the State Capitol in Santa Fe on May 30, July 29, August 20, October 11 and November 18, with Senator William P. Soules as chair and Representative G. Andrés Romero as vice chair.

During the May 30, 2019 organizational meeting, task force members proposed a work plan for the 2019 interim for approval by the New Mexico Legislative Council. Joe Guillen, executive director, New Mexico School Boards Association, and chair, Public School Capital Outlay Council (PSCOC), presented to the task force. Mr. Guillen testified that several years of declining revenues resulted in PSCOC standards-based awards reaching a low point in fiscal year (FY) 2018 with awards totaling \$37.6 million and that rebounding revenue from improved oil and gas receipts increased the FY 2019 capacity for standards-based awards to approximately \$136 million.

At the July 29 meeting, J. Placido Garcia, Jr., Ph.D., former director, Legislative Education Study Committee (LESC), recounted his experiences working with the legislature to address school funding needs prior to the *Zuni* lawsuit. Dr. Garcia testified that the state equalization guarantee formula that was developed had two purposes: to equalize education funding in an objective manner and to provide for distribution of the funding in a non-categorical way to preserve school district autonomy.

Paula Tackett, former director, Legislative Council Service, provided a detailed history and overview of the tenets of the *Zuni* lawsuit and the development of the standards-based public school capital outlay process.

David Abbey, director, Legislative Finance Committee, and member, PSCOC, provided a wide range of information on federal impact aid and public school capital outlay. Mr. Abbey reported on the use of \$24 million appropriated during the 2019 legislative session to address the need for teacherages in rural school districts and for assistance to federal impact aid districts to build beyond adequacy.

At the August 20 meeting, the PSCOOTF received testimony from Jonathan Chamblin, executive director, Public School Facilities Authority (PSFA). He presented an update on the capital funding formula for public schools in New Mexico and explained the history of the funding formula. Mr. Chamblin presented a summary of the new Phase 2 funding formula implementation and reported that in FY 2020, 62 school districts decreased their state match, 24 districts increased their state match and three districts experienced no change.

Ovidiu Viorica, senior technology projects manager, PSFA, presented an update of the PSFA's broadband program. Mr. Viorica explained that network equipment must be upgraded

every five years and that the PSFA expects to provide upgrades to batches of 200 schools every year for five years before starting the process again.

At the October 11 meeting, Antonio Ortiz, director, Capital Outlay Bureau, Public Education Department, provided members with a review of the Public School Capital Improvements Act. Mr. Ortiz noted that the original legislation contained a limited range of allowable capital improvement uses, but the act has been subsequently amended to allow for multiple current uses, including changes made to the state-local match formula.

Cassandra Cano, programs support manager, PSFA, and Mr. Chamblin provided information regarding legislative appropriations and offsets, local match reductions and local match advances. Mr. Chamblin explained the offset mechanism applied to direct appropriations made by the legislature to school districts, and he noted that the importance of the mechanism is to better equalize state funding of capital requests.

Mr. Abbey and Marit Rogne, senior fiscal analyst, LESC, reviewed the constitutional requirement for a uniform and sufficient public education system and the efforts made over time to enact such a system. PSCOOTF members discussed changes that have been made over time to the average Facility Condition Index (FCI) and whether the FCI is a complete indicator of the needs of federal impact aid districts.

At the November 18, 2019 meeting, the task force endorsed two draft bills. One of the endorsed bills would change the formula of maximum annual expenditures for core administrative functions of the PSFA from a three-year average to a five-year average of the previous year awards made by the PSCOC. The other proposed bill endorsed by the PSCOOTF would provide for a change in the state match to \$120 per program unit and would provide for an annual adjustment based on changes to the consumer price index.

WORK PLAN AND MEETING SCHEDULE

**2019 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Members

Sen. William P. Soules, Chair
Rep. G. Andrés Romero, Vice Chair
Rep. Eliseo Lee Alcon
Sen. Craig W. Brandt
Martha "Marty" Braniff
Rep. Jack Chatfield
Rep. Brian Egolf
Greg Ewing
Carl Foster
Rep. David M. Gallegos
Kirk Hartom
Mike Hyatt
Sen. Stuart Ingle

Rep. Patricia A. Lundstrom
Cindy Montoya
Antonio Ortiz
Sen. Mary Kay Papen
T.J. Parks
Richard A. Perea
Mike Phipps
Stan Rounds
Eugene Schmidt
Sen. William E. Sharer
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith

Advisory Members

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Michael Padilla
Sen. Cliff R. Pirtle

Sen. Sander Rue
Sen. Mimi Stewart
Rep. Christine Trujillo
Rep. Linda M. Trujillo
Sen. Pat Woods

Background

Created by statute (Sections 22-24-7 and 22-24-8 NMSA 1978), the Public School Capital Outlay Oversight Task Force (PSCOOTF) oversees the work of the Public School Capital Outlay Council (PSCOC) and the Public School Facilities Authority (PSFA) as they carry out the state's public school capital outlay program and other programs pursuant to the Public School Capital Outlay Act (PSCOA). Task force membership consists of 25 members (or their respective designees), with both legislative and public members determined by statute.

Work Plan

The task force will address the following statutory requirements during the 2019 interim:

1. oversee the work of the PSCOC and the PSFA as they perform functions pursuant to the PSCOA, particularly as the agencies implement the statewide process for making grant awards;
2. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

3. monitor the overall progress of bringing all public school facilities up to the statewide adequacy standards developed pursuant to provisions in the PSCOA; and
4. monitor the progress and effectiveness of programs administered pursuant to the PSCOA and the Public School Capital Improvements Act.

In addition, as time permits, the task force will:

5. evaluate the first-year implementation/phase-in of the Phase 2 funding formula;
6. receive testimony on program development for federal impact aid districts' teacher housing;
7. receive testimony on program development for awards to federal impact aid districts for projects with scopes of work outside of adequacy;
8. receive testimony on developments resulting from legislation pertaining to attendance in early childhood education programs in public schools and the effects on facility space needs;
9. receive an update on PSCOC school security program awards and district (non-PSCOC-funded) projects;
10. receive testimony on bonding cost reduction strategies employed by New Mexico school districts and other states' school districts by issuing bonds through a state bank;
11. evaluate the Broadband Deficiencies Correction Program's accomplishments and funding status;
12. consider the potential for project delays and project cost escalation resulting from construction material inflation and tariffs on building materials, the potential for fewer project bidders due to industry labor supply constraints and the level of statewide capital project activity;
13. receive testimony on PSCOC participation in community spaces (particularly in schools with school-based health centers and other community-school model areas);
14. receive testimony on the effect of the Navajo Business Activity Tax on PSCOC projects; and

15. evaluate the potential effect of the shutdown of the San Juan Generating Station on the state-local match formula and local property tax revenues.

**Public School Capital Outlay Oversight Task Force
2019 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
May 30	Santa Fe
July 29	Santa Fe
August 20	Santa Fe
October 11	Santa Fe
November 18	Santa Fe

AGENDAS AND MINUTES

Revised: May 22, 2019

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

**May 30, 2019
State Capitol, Room 322
Santa Fe**

Thursday, May 30

- 1:30 p.m. **Call to Order and Introductions**
—Senator William P. Soules, Chair
—Representative G. Andrés Romero, Vice Chair
- 1:40 p.m. (1) **[Brief Review: Public School Capital Outlay Oversight Task Force \(PSCOOTF\) 2018 Interim and 2019 Session](#)**
—Jeff Eaton, Research and Fiscal Policy Analyst, Legislative Council Service, PSCOOTF Staff
- 2:00 p.m. (2) **[Public School Capital Outlay Council \(PSCOC\) and Public School Facilities Authority \(PSFA\): Update of 2019 Awards Cycle and Programs](#)**
—Joe Guillen, Executive Director, New Mexico School Boards Association; Chair, PSCOC
—Martica Casias, Deputy Director, PSFA
- 3:00 p.m. (3) **[Proposed 2019 Interim Work Plan and Meeting Schedule](#)**
—PSCOOTF Members and Staff
- 4:00 p.m. **Adjourn**

MINUTES
of the
SEVENTIETH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

May 30, 2019
State Capitol, Room 322
Santa Fe

The seventieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator William P. Soules, chair, on May 30, 2019 at 1:38 p.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. William P. Soules, Chair
Rep. Eliseo Lee Alcon
Martha "Marty" Braniff
Rep. Jack Chatfield
Carl Foster
Rep. David M. Gallegos
Mike Hyatt
Sen. Stuart Ingle
Antonio Ortiz
T.J. Parks
Stan Rounds
Eugene Schmidt

Absent

Rep. G. Andrés Romero, Vice Chair
Sen. Craig W. Brandt
Rep. Brian Egolf
Greg Ewing
Kirk Hartom
Rep. Patricia A. Lundstrom
Cindy Montoya
Sen. Mary Kay Papen
Richard A. Perea
Mike Phipps
Sen. William E. Sharer
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith

Advisory Members

Sen. Michael Padilla
Sen. Mimi Stewart
Rep. Christine Trujillo

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Cliff R. Pirtle
Sen. Sander Rue
Rep. Linda M. Trujillo
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Lenaya Montoya, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, May 30

Welcome and Introductions

Senator Soules welcomed the task force members and asked members and staff to briefly introduce themselves.

Brief Review: PSCOOTF 2018 Interim and 2019 Session

Mr. Eaton acknowledged Public School Capital Outlay Council (PSCOC) members in attendance and presented a brief review of the PSCOOTF 2018 Interim Final Report. The two bills endorsed by the 2018 task force were introduced during the 2019 legislative session but did not pass: Senate Bill (SB) 624 — Ownership of Some Charter School Facilities; and SB 295 — School Facilities Authority Expenditures. SB 295 amended the maximum annual operating budget for the Public School Facilities Authority (PSFA). Because the bill did not pass, the fiscal year (FY) 2020 operating budget of the PSFA in the General Appropriation Act of 2019 was reduced by approximately \$700,000. In response to member questions, Jonathan Chamblin, executive director, PSFA, stated that the agency is leaving positions vacant and modifying operating expenditure schedules to minimize the impact to the agency of the necessary operating budget reduction. Mr. Chamblin reported that the agency will likely be requesting a supplemental appropriation during the 2020 legislative session.

Mr. Eaton described several appropriations made to the PSCOC and the PSFA. Senate Finance Committee Substitute for SB 280 (Chapter 277) authorized \$24 million from the General Fund to provide educational infrastructure improvements for school districts located in federal impact aid districts and \$10 million from the Public School Capital Outlay Fund to provide teacher housing for school districts located in federal impact aid districts. In both appropriations, the governor used her veto power to eliminate the requirement for local matching funds as well as the requirement that projects be approved by the PSCOC. A discussion followed among task force members and staff about the nature of the appropriations, federal impact aid districts and the program to be developed to distribute the appropriations. Staff was directed to continue to report to the task force as the programs are developed.

PSCOC and PSFA: Update of 2019 Awards Cycle and Programs

Joe Guillen, executive director, New Mexico School Boards Association, and chair, PSCOC, and Martica Casias, deputy director, PSFA, presented to the task force. Mr. Guillen noted that several years of declining revenues resulted in PSCOC standards-based awards reaching a low point in FY 2018 of \$37.6 million as indicated on slide 6 of the presentation. Rebounding revenue from improved oil and gas receipts increased the 2019 capacity for

standards-based awards to approximately \$136 million. Ms. Casias and Mr. Guillen alternated presenting in detail each of the other award programs of the PSCOC: systems-based (small projects), school security, broadband deficiencies correction, pre-kindergarten classroom facilities, facilities master plan, lease assistance and new programs under development (teacher housing and "outside of adequacy" awards). In the 2018-2019 award cycle, the PSCOC made 11 standards-based awards, 24 systems-based awards, 210 school security awards, nine facility master plan awards and 102 lease assistance awards for a total of 356 awards.

David Abbey, director, Legislative Finance Committee, and member, PSCOC, made closing remarks and offered that the task force may want to have presentations on the history and evolution of the standards over the course of the interim.

A member asked if vendors and contractors selected to complete the work on the awards made were predominantly in-state businesses or out-of-state businesses. Ms. Casias replied that vendors selected to complete work on the projects are predominantly in-state (local) vendors. Another member commented that it is important to hire local businesses when possible and stressed the importance of the Broadband Deficiencies Correction Program in that the federal match for information technology projects is nine-to-one and that the cost disparities for connectivity varied widely across school districts. Ovidiu Viorica, manager, Broadband and Technology Program, PSFA, replied by describing details of the Broadband Deficiencies Correction Program and the slow but steady rate of progress being made with the school districts.

In regard to the evolving facility standards, a member asked the presenters how newly included items in the adequacy standards would be funded. In response, Rachel Gudgel, director, Legislative Education Study Committee, suggested that consideration of newly included items, such as teacher housing, may initially be viewed as a new program of the PSCOC. The member suggested that the task force further investigate the policy question of prioritization of newly included items and other discrete items or programs. Citing the school security program as an example, more than 400 awards have been or will be made in the last two years in response to the high priority that school security was given in the aftermath of the school shooting at Aztec High School. The member suggested that other areas may be higher priorities at some point and that identifying the funding for new priorities and existing programs should be discussed by the task force. Another member commented that a subcommittee of the task force, formed during a previous interim to study the capital outlay formula, concluded that the formula was functioning as intended and that the addition of new appropriations for "outside of adequacy" changes the funding parameters and should be studied more closely during the 2019 interim. A discussion followed among members and staff about school capital outlay funding, and Mr. Abbey indicated that the Public Education Department was in the preliminary planning stages of forming a work group to study the issue.

Proposed 2019 Interim Work Plan and Meeting Schedule

Senator Soules asked members to review the interim work plan in their meeting folders. Several members expressed interest in prioritizing work plan items six and seven to be heard at

the meeting on July 29 and continuing discussion of those items at a subsequent meeting during the interim. Upon a motion for approval, the task force unanimously approved the amended work plan and meeting schedule.

Adjournment

There being no further business before the task force, the meeting adjourned at 3:30 p.m.

Revised: July 22, 2019

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

**July 29, 2019
State Capitol, Room 307
Santa Fe**

Monday, July 29

- 9:00 a.m. **Call to Order and Approval of Minutes**
—Senator William P. Soules, Chair
—Representative G. Andrés Romero, Vice Chair
- 9:10 a.m. (1) **Public School Capital Outlay Council (PSCOC) Financial Plan and Time Line**
—Randy Evans, Chief Financial Officer, Public School Facilities Authority (PSFA)
—Jonathan Chamblin, Executive Director, PSFA
- 10:00 a.m. (2) **The Origins of the State Equalization Guarantee Distribution Formula and Capital Outlay Prior to the Zuni Lawsuit**
—J. Placido Garcia, Jr., Ph.D., Former Director, Legislative Education Study Committee
- 11:00 a.m. (3) **The Zuni Lawsuit and the Development of the Standards-Based School Capital Outlay Process**
—Paula Tackett, Former Director, Legislative Council Service
- 12:00 noon **Lunch**
- 1:00 p.m. (4) **Evolution of the Standards-Based School Capital Outlay Process and Continuing Requests for PSCOC Program Expansion**
—Jonathan Chamblin, Executive Director, PSFA
—Martica Casias, Deputy Director, PSFA
- 2:30 p.m. (5) **Review of Public School Capital Outlay and Federal Impact Aid**
—David Abbey, Director, Legislative Finance Committee (LFC); Member, PSCOC
—Sunny Liu, Fiscal Analyst, LFC
- 4:00 p.m. **Adjourn**

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

**July 29, 2019
State Capitol, Room 307
Santa Fe**

The seventy-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator William P. Soules, chair, on July 29, 2019 at 9:00 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. William P. Soules, Chair
Rep. G. Andrés Romero, Vice Chair
Rep. Eliseo Lee Alcon
Martha "Marty" Braniff
Rep. Jack Chatfield
Carl Foster
Mike Hyatt
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Cinthia Martinez, designee for Secretary of
Finance and Administration Olivia
Padilla-Jackson
Sen. Mary Kay Papen
T.J. Parks
Mike Phipps
Stan Rounds
Eugene Schmidt
Sen. Benny Shendo, Jr.

Advisory Members

Sen. Michael Padilla
Sen. Cliff R. Pirtle
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Pat Woods

Guest Legislator

Rep. Willie D. Madrid

Absent

Kara Bobroff, Acting Secretary of Public
Education
Sen. Craig W. Brandt
Rep. Brian Egolf
Greg Ewing
Rep. David M. Gallegos
Kirk Hartom
Cindy Montoya
Richard A. Perea
Sen. William E. Sharer
Sen. John Arthur Smith

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Sander Rue
Rep. Linda M. Trujillo

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher II, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are posted online at www.nmlegis.gov.

Monday, July 29**Welcome and Introductions**

Senator Soules welcomed task force members and asked members and staff to introduce themselves. On a motion duly made and seconded, the minutes of the May 30, 2019 meeting were approved without objection.

Public School Capital Outlay Council (PSCOC) Financial Plan and Time Line

Jonathan Chamblin, executive director, Public School Facilities Authority (PSFA), presented background information on the PSCOC and the PSFA. He noted that the PSFA has four primary functions: providing staff support to the PSCOC; administering funding for public school capital projects; providing project management support and expertise; and managing a range of facility information. Mr. Chamblin reported that supplemental severance tax bond proceeds provide the funding stream for PSCOC projects and provided an overview of sources and uses for fiscal year (FY) 2019, including projections through FY 2023.

Mr. Chamblin updated members on the PSFA FY 2020 operating budget. The PSFA has adjusted the budget to accommodate a shortfall by leaving some staff positions vacant and making other cutbacks. The PSFA will be requesting supplemental funding during the next legislative session to meet the needs of the second half of FY 2020. According to Mr. Chamblin, legislation presented last year to mitigate budget shortfalls for the PSFA by modifying the calculation by which a budget ceiling is established for the PSFA died in the house but will be introduced again during the next legislative session. A large influx of funding for public school capital projects, combined with funding for several new programs and recent implementation of the building systems and security programs, has placed a severe strain on PSFA staff and has increased the need for contractual services as well. Mr. Chamblin reported that the PSFA will soon have more than 400 active school security improvement projects since the implementation of the new school security program in the last fiscal year.

Origins of the State Equalization Guarantee (SEG) Distribution Formula and Capital Outlay Prior to the *Zuni* Lawsuit

J. Placido Garcia, Jr., Ph.D., former director, Legislative Education Study Committee (LESC), recounted his experiences working with the legislature to address school funding needs prior to the *Zuni* lawsuit. Dr. Garcia testified that the SEG formula that was developed had two purposes: equalize education funding in an objective manner; and provide for distribution of the funding in a non-categorical way to preserve school district autonomy. Those concepts have since been eroded, he said. He cited mandated salary levels as a categorical appropriation, and the reduction in the state credit for federal impact aid distributions to school districts from 95% to 75% as dis-equalizing, but he acknowledged that the conceptual framework of the SEG is still intact.

Dr. Garcia observed that education is big business in rural areas and that school superintendents frequently act as lobbyists for their districts. He further observed that statewide, charter schools have been established essentially as autonomous administrative units, creating strains on the public educational system and its funding and creating a new educational industry around charter schools and their development.

Dr. Garcia questioned the accountability of charter schools and testified that charter schools should be accountable to local school districts. In response to members' questions, Dr. Garcia stated that organizational structure is lacking to ensure the accountability of charter schools but that the state seems to be incrementally approaching the concept of equity in charter school and traditional public school funding.

The *Zuni* Lawsuit and the Development of the Standards-Based School Capital Outlay Process

Paula Tackett, former director, LCS, provided an overview of the tenets of the *Zuni* lawsuit and the development of the standards-based public school capital outlay process. The *Zuni* lawsuit was filed in January, 1998, and in March of that year, the Public Education Department (PED) appointed a task force to study public school capital outlay issues. Representative Ben Lujan and Senator Linda M. Lopez co-chaired that task force. Ms. Tackett reported that MGT of America was hired by the department to conduct an initial inventory and assessment of school facilities in the state. In 1999, the state reduced the impact aid credit in the SEG formula from 95% to 75% with the reserved 20% earmarked for public school capital outlay needs. At that time, the state created new supplemental severance tax bonds and authorized \$100 million for public school capital improvements to be issued over a four-year period, limiting their issuance to 62.5% of previous year severance tax revenues.

Ms. Tackett reported that in October 1999, the Eleventh Judicial District Court ruled that the system in place at that time was unconstitutional and gave the state until July 28, 2000 to address the issue. At that point, the limit for issuance of supplemental severance tax bonds was increased to 87.5% of previous years severance tax revenues and issuance of an additional \$475 million of bonds was authorized for public school capital improvements to be issued over an

estimated 10-year period. A new 16-member Public School Capital Outlay Task Force was then created that included the former dean of the University of New Mexico (UNM) School of Law, the secretary of finance and administration, the state investment officer, the secretary of public education, the chairs of the Legislative Finance Committee (LFC), the Senate Education Committee and the House Education Committee and nine public members with expertise in education and finance, including two representing the federal impact aid districts.

In April, 2000, the court held a status conference, and the state asked the court for additional time — until December 2000 — to report on progress made by the newly created task force, chaired by the former dean of the UNM School of Law. The extension was granted and, in June, 2000, the new task force began its meetings to review the current and future needs for public school capital outlay projects; to develop and analyze funding options for a permanent revenue stream; to review the local participation formula enacted in the 2000 legislative session; and to review the issues relating to federal impact aid funds and other local and federal revenues received by the school districts.

According to Ms. Tackett, the task force recommended a multi-pronged approach that included a three-year, 100% state-funded program to correct health and safety and code deficiencies in order to correct "past inequities" per court order; an increase in the state match amount for the Senate Bill 9 (1975 S.S.) (SB 9) program (two mill levy funding mechanism); continuation of the critical public school capital outlay program to complete critical capital projects and to allow time for the PSCOC to complete a statewide needs assessment and develop adequacy standards; continuation of the \$20 million annual earmark for federal impact aid districts for three more years; a recommendation on permanent funding sources; and a revised state/local match formula.

In the 2001 legislative session, the state adopted a new, statewide public school capital outlay system based on facility adequacy standards and a state/local share formula to determine state grant amounts as the basis for a long-term funding system. In addition, the legislature appropriated funds for a statewide assessment of all school facilities to be used to rank schools under the new adequacy standards; established a short-term deficiency corrections program; appropriated \$200 million to correct the most serious facility life, safety and health deficiencies; and created a new state agency — the Deficiency Corrections Unit, now the PSCOC — to administer the changes.

Additional funding for maintenance was provided by increasing the state guarantee amount under the Public School Capital Improvements Act from \$35.00 to \$50.00 per unit per mill and expanding the existing critical public school capital outlay program to include more school districts. Supplemental severance tax bonds were designated as the permanent funding stream for the public school capital outlay program without the need for annual legislative approval.

In May, 2001, the court appointed a special master to review the state's progress in developing a uniform system for funding public school capital improvements. In October of that year, the special master held a three-day hearing on the state's progress. In January, 2002, the special master issued a report finding that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. However, the report also found that "because the use of direct appropriations necessarily removes substantial funds from the public school capital outlay process where merit and need on a priority basis dictate how funds are to be distributed, the state should take into account in its funding formula these appropriations as an element thereof". In May, 2002, the court adopted the report of the special master and agreed to continue to review the state's progress.

Ms. Tackett reported that in September, 2002, the PSCOC adopted newly developed adequacy standards as required by the law after two full years of development and public hearings around the state. During the 2003 legislative session, a revised state-share formula was adopted to include millage consideration along with bonded indebtedness in determination of local effort and also adopted an offset against state grant awards for direct appropriations for non-operating purposes. To address the issues related to direct appropriations to school districts for capital improvements, an offset formula was included that was calculated so that wealthy districts would have a greater offset percentage applied against their future state public school capital outlay grant awards from the PSCOC than less wealthy school districts. Additional funding for maintenance was provided by adding a \$5.00 per unit per mill minimum distribution to school districts through the SB 9 program. Up to \$40 million of additional funds was appropriated for the deficiencies correction program and a new, permanent PSFA agency was created to implement the prioritized funding process based on adequacy standards, commonly referred to as the "standards-based process".

In October, 2003, the PSCOC implemented the standards-based process for the 2003-2004 grant award requests. During the 2004 legislative session, the state increased the limit for issuance of supplemental severance tax bonds from 87.5% to 95% and designated \$67 million of additional funding for the deficiencies correction program and for projects begun under the critical public school capital outlay program but not yet completed. The Public School Capital Outlay Task Force was recreated to serve until January 1, 2005 to complete its work. Ms. Tackett stated that the PSCOC provided \$189 million of grant awards under the 2004 pilot year of the standards-based program. The permanent task force, the PSCOOTF, was created, and effective July 1, 2005, the PSCOOTF began its oversight and monitoring role.

Evolution of the Standards-Based Public School Capital Outlay Process and Continuing Requests for PSCOC Program Expansion

Mr. Chamblin provided a comparison of public school capital outlay funding in the state prior to and after implementation of the standards-based program. He elaborated on how the standards and state funding limits have evolved to continue to address school district concerns. He then provided a range of information on changes that have been implemented to the adequacy standards and a summary of changes that are currently under consideration. Mr. Chamblin

summarized the progress that has been made in the state toward improving facilities conditions and discussed the need for legislation to increase the funding ceiling for the PSFA. He listed a number of programs that the PSFA administers and those it has recently begun to administer, and he noted how funding for the agency has not kept up with the demands on its staff.

Review of Public School Capital Outlay and Federal Impact Aid

David Abbey, director, LFC, and member, PSCOC, provided a wide range of information addressing the issue of federal impact aid and public school capital outlay. He noted that funding availability drives some of the ability of the PSCOC to respond to district needs. Mr. Abbey reported on the \$24 million included in the public school capital outlay bill during the 2019 legislative session to address the need for teacherages in rural districts and for assistance to federal impact aid districts to build beyond adequacy. Members discussed a number of issues related to federal impact aid, funding formulas and needed legislation.

Adjournment

There being no further business before the task force, the meeting adjourned at 4:24 p.m.

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

**August 20, 2019
State Capitol, Room 322
Santa Fe**

The seventy-second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Mimi Stewart on August 20, 2019 at 9:09 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Eliseo Lee Alcon
Carl Foster
Mike Hyatt
Rep. Patricia A. Lundstrom
Antonio Ortiz
Olivia Padilla Jackson
Sen. Mary Kay Papen
T.J. Parks
Mike Phipps
Stan Rounds
Sen. William E. Sharer
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith

Absent

Sen. William P. Soules, Chair
Rep. G. Andrés Romero, Vice Chair
Sen. Craig W. Brandt
Martha "Marty" Braniff
Rep. Jack Chatfield
Rep. Brian Egolf
Greg Ewing
Rep. David M. Gallegos
Kirk Hartom
Sen. Stuart Ingle
Cindy Montoya
Richard A. Perea
Eugene Schmidt
Ryan Stewart

Advisory Members

Sen. Michael Padilla
Sen. Cliff R. Pirtle
Sen. Mimi Stewart
Rep. Christine Trujillo
Rep. Linda M. Trujillo

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Sander Rue
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Tabitha Enriquez, Research Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, August 20

Welcome and Approval of Minutes

Senator Stewart welcomed task force members, staff and guests. Task force members introduced themselves. Upon a motion duly made and seconded, the minutes of the July 29, 2019 meeting were approved without objection.

Public School Capital Outlay Council (PSCOC) Financial Plan

Jonathan Chamblin, executive director, Public School Facilities Authority (PSFA), and Randy Evans, chief financial officer, PSFA, presented the PSCOC financial plan and budget projections for fiscal year (FY) 2019 through FY 2024.

Mr. Evans began by providing an overview of the PSCOC and the PSFA. He explained that the current standards-based public school capital outlay program and the Public School Capital Outlay Fund (PSCOF) were developed and established in response to the 1998 *Zuni* lawsuit. The public school capital outlay process seeks to establish and implement a uniform funding system for capital improvements, he said. The PSCOC consists of nine members who manage the allocation of the PSCOF to public school facilities statewide, Mr. Evans explained. The PSFA provides funding administration, project management, facility information management and staff support to the PSCOC, he said.

Mr. Evans explained that the PSCOF has a dedicated funding stream from supplemental severance tax bonds (SSTBs), which are issued by the Board of Finance Division of the Department of Finance and Administration and paid for by revenue derived from taxes levied on natural resource products. These funds are then used for standards and system awards; the Public School Capital Improvement Act, known as SB 9; lease payment assistance awards; Broadband Deficiencies Correction Program (BDCCP) awards; pre-kindergarten (pre-K) capital appropriations; and the PSFA's operating budget. Mr. Evans pointed out that any unexpended funds remain in the PSCOF for future capital projects.

Mr. Evans reported that the PSFA's operating budget for FY 2020 is \$4,688,000, which is \$483,800 less than FY 2019. To compensate for the budget shortfall, the PSFA's operating costs will be reduced and six full-time employee positions will remain vacant. As a short-term fix, the PSFA will make an emergency supplemental request of \$500,000 in the 2020 legislative session, he said. This funding will allow the PSFA to restore its operating costs and fill vacant staff positions for the second half of FY 2020.

As a long-term fix to mitigate future risks, the PSFA would like to move from a three-year rolling average to a five-year rolling average, Mr. Evans said, which will level out the PSFA's operating budget. Under a three-year average, the PSFA's operating budget would

exceed the 5% statutory limit in FY 2020 and FY 2021, but with a five-year average, the operating budget can be maintained under the 5% statutory limit, Mr. Evans said. Based on a five-year average, the PSFA is requesting a budget appropriation of \$5,804,597 for FY 2021, which will allow the PSFA to fill five of the eight currently vacant positions for FY 2021, he said.

Mr. Evans then explained how the PSFA offers value through regional project management services. He reported that the PSFA has been able to catch errors and unnecessary charges to save the state and school districts \$242,639.

In response to questions, Mr. Chamblin stated that:

- the PSFA has over 400 new active construction projects statewide; 248 standards, systems and security projects were awarded last year and another 211 security projects were awarded in July 2019;
- the state awarded \$16 million last year and \$8.5 million this year for security projects; in FY 2020, 11 standards-based awards were made, totaling \$13 million of state obligation, with a future state obligation of \$136 million; and the systems program, which typically runs at \$20 million to \$25 million per year, had 24 awards in FY 2019, which represents \$15 million of state funding obligation;
- the PSCOC's goal is to make approximately \$125 million to \$150 million in awards every year to all of the programs: standards, systems, security, lease assistance, broadband and pre-K;
- the PSFA is not receiving much bid participation from local and state contractors; there is enough work statewide, specifically in the Albuquerque area and in the oil market in southern New Mexico, but with competition from Texas, the PSFA is not getting enough bidders or truly competitive bids; and
- the PSFA will write an op-ed article about recent security awards and offsets for the *Albuquerque Journal* to clarify the state's position and explain the process to the public.

The task force discussed whether maintenance workers' salaries could be drawn from SB 9 funds and concluded that the language in SB 9 would need to be explicitly changed if maintenance workers' salaries are to be included.

A member requested that the task force refer to House Bill 33 (1983) and SB 9 by their titles, the Public School Buildings Act and the Public School Capital Improvements Act, respectively.

Evaluation of the First-Year Implementation of the Phase 2 Funding Formula

Mr. Chamblin presented an update on the capital funding formula for public schools in New Mexico and explained the history of the funding formula. He said that in response to the *Zuni* lawsuit, the state formulated a new "standards-based" capital funding program between

1999 and 2004. During this time, administrative and oversight bodies were selected; the statewide adequacy standards were created; SSTB proceeds were assigned as the source of funding for the PSCOF; and the Phase 1 state-local match calculation was formulated, he said.

Mr. Chamblin said that in 2001, the state created the Deficiencies Correction Unit to identify and correct serious life, health and safety deficiencies in schools statewide. These projects were 100% state funded. In 2003, the legislature enacted the creation of the PSFA and the Phase 1 state-local funding formula, he explained, adding that the goal of the capital funding formula is to create a uniform and equitable system for capital improvements. The funding formula measures a school district's ability to pay for capital improvements for its facilities, Mr. Chamblin said. The state's match percentage is then reduced or increased, depending on the district's capacity to raise funds locally, he explained, and added that this adjustment allows the state to fund more projects by shifting more of the project cost to districts that can afford it.

In 2015, the PSCOOTF contracted with the University of New Mexico's Bureau of Business and Economic Research (BBER) to conduct a detailed assessment of the Phase 1 funding formula. Mr. Chamblin said that the BBER study found that while the formula was being correctly applied, the formula did not efficiently leverage state resources and did not provide the predictability that is necessary for long-term planning. The BBER study concluded that the Phase 1 funding formula had two problematic factors: 1) property tax valuations are subject to fluctuations and may not be the best measure of a district's ability to pay; and 2) the funding formula does not account for different facility construction and maintenance costs in different parts of the state.

Mr. Chamblin said that to address the issues with the Phase 1 funding formula, the legislature enacted Senate Bill 30 in 2018, which introduced the Phase 2 funding formula. The new funding formula adjusts the state-local match to more accurately reflect each school district's ability to pay for public school capital outlay projects and changes the proportion of state and local funding to potentially allow the state to fund more projects each year. Mr. Chamblin explained that between FY 2020 and FY 2024, the new funding formula will be gradually phased in as the old funding formula is gradually phased out.

Mr. Chamblin explained that the Phase 2 funding formula is based on three calculations. It first measures the local school district's capacity to raise funds, he said, then it measures the district's facility needs and, finally, it compares the first two calculations to see if the district can keep up with facility needs over time. Mr. Chamblin explained that the PSCOC may adjust the local share amount if it determines that a school district has made a good faith effort to use all of its local capital funding resources. Local match reduction waivers are granted to small districts, growth districts and districts with a high mill levy and insufficient bonding capacity, he said.

On the topic of direct appropriations and offsets, Mr. Chamblin explained that offsets reduce state award amounts based on the amount of direct legislative appropriations that the

district has accepted, adding that after the *Zuni* lawsuit, the legislature enacted offsets to better equalize state funding of capital requests across all of New Mexico's school districts. Mr. Chamblin pointed out that offsets apply to all PSCOC award allocations after January 2003. He added that the Public Education Department (PED) tracks direct appropriations and offsets for all of the school districts.

Mr. Chamblin presented a summary of the Phase 2 funding formula implementation and reported that 62 school districts decreased the state match, 24 districts increased the state match and three districts experienced no change in FY 2020.

The task force requested the names of the school districts that have experienced a change in the state-local match due to the Phase 2 formula. The task force discussed the use of capital outlay funds for noneducational spaces and how those funds are treated differently when calculating offsets versus the Phase 2 funding formula, and members expressed interest in seeing past examples of offsets.

Broadband Program Update

Ovidiu Viorica, senior technology projects manager, PSFA, and Richard Govea, technology projects manager, PSFA, presented an update on the BDCP in public schools.

Mr. Viorica defined broadband as a transmission technique that sends or receives zeros and ones at a certain speed. He stated that 1 megabit per second (Mbps) means that one million zeros and ones are being sent or received every second. Broadband is currently defined as at least 25 Mbps download speed and 3 Mbps upload speed.

Mr. Viorica said that the BDCP, established in 2014, allows the PSCOC to expend up to \$10 million annually to correct broadband deficiencies in public schools. He reported that for each of the last three years, the PSCOC has used approximately \$2 million from the PSCOF. Senate Bill 64 (2017) removed the original cap of five years, allowing schools to plan longer term improvements, he said.

Mr. Govea explained that the federal universal service Schools and Libraries Program, known as the E-Rate Program, provides funding to K-12 schools and public libraries, helping them to obtain wide area network (WAN) services and network equipment upgrades. He said that matching E-Rate funding with PSCOC funding covers 80% to 100% of the cost and takes the financial burden off of the schools.

Mr. Viorica pointed out that 2016 was the first year of BDCP projects and that E-Rate funding more than doubled. He believes that the need for funding will decrease as the infrastructure is brought up to par, he said.

E-Rate is a federal program, and a consultant is on contract to assist school districts with process, guidance and filing forms. Mr. Govea reported that the process can take one to three

years for full implementation. The PSFA offers technical consultations, procurement assistance and project management to school districts.

Mr. Govea reported that between 2016 and 2018, 130 projects have been funded. Currently, 80 projects are still open and 50 projects have been closed out. Mr. Govea stated that \$60 million worth of upgrades have been made in schools statewide.

Mr. Viorica explained that network equipment must be upgraded every five years, and the PSFA expects to do batches of 200 schools every year for five years and then start the process over again.

Mr. Viorica said that the network capacity available to schools is growing. He reported that in 2016, WAN bandwidth was under 500 gigabits per second (Gbps); in 2018, it was over 1,000 Gbps; and in 2019, it was over 3,000 Gbps. Mr. Viorica stated that the average broadband speed available per student in 2015 was under 100 kilobits per second (Kbps), but in 2019 it was over 500 Kbps. He pointed out that progress has been made in the last few years but bandwidth is still at one-half of the recommended speed.

Mr. Viorica pointed out that the West Central Consortium has provided a good model for other school districts. He said that seven school districts and libraries connected together in a regional WAN to share internet service and lower costs. Mr. Viorica said that the North Central Consortium, a collaboration of 20 school districts and libraries, is currently in the procurement phase. He noted that these consortiums can work together on specialized tasks and eliminate duplication of efforts in procurement, contracting and federal funding applications.

Mr. Viorica discussed network management and cybersecurity. He provided real-world examples of hacking and warned the task force that school networks are not secure. He said that schools are hacking targets and do not have adequate resources to deal with cybersecurity threats; the BDCP's focus is on infrastructure, and cybersecurity is not covered under the current program.

The task force discussed past funding for the BDCP and projections for the future.

Teacher Housing Needs in New Mexico

Mr. Chamblin presented an overview of teacher housing needs in New Mexico and explained that school districts provide subsidized teacher housing, or teacherages, when there is a lack of available housing or a lack of affordable housing near school campuses or when school districts need to incentivize teacher relocation to school districts in remote areas of the state. A school district pays for maintenance and repair of the housing through its operational budget.

The PSFA surveyed all school districts in February and March 2019 on the location, size and condition of their teacherages, Mr. Chamblin said. He provided a summary of the data and reported that there are currently 736 housing units statewide, of which 602 are permanent and

134 are modular. Based on condition, 349 housing units were rated as good, 200 as marginal and 187 as poor, he said.

Mr. Chamblin stated that an assessment of the existing housing stock shows that 343 units are over 50 years old, with 100 of these units reported to be in poor condition. The PSFA estimates that it will cost about \$8 million to replace these units, he said. Based on waiting lists and estimated demand, 14 school districts have requested a total of 89 new housing units, Mr. Chamblin reported, and he said that it will cost approximately \$15 million to build this housing.

Mr. Chamblin provided examples, floor plans and photos of existing teacher housing, which he described as simple, efficient and durable structures. He said that a two-bedroom unit averages 900 to 1,000 square feet and a three-bedroom unit averages 1,000 to 1,200 square feet.

Mr. Chamblin said that new housing sites need infrastructure, such as stormwater control, wastewater systems, utilities and roadway access. Building exteriors must be durable and energy efficient and use common building materials, and building interiors should be simple, durable and easily replaceable, he said.

Mr. Chamblin pointed out that Senate Bill 280 (2019) and the potential retroactive standards-based program could provide additional funds for new and renovated teacher housing.

In response to questions, Mr. Chamblin stated that rents for teacherages are subsidized and range from \$200 to \$700 per month. Task force members discussed the condition and maintenance of teacherages, the need for additional funding and the difference between replacement and repair costs.

School District Impacts of the Closure of the San Juan Generating Station (SJGS)

Terrian Benn, superintendent, Central Consolidated School District (CCSD), introduced Candice Thompson, director of operations, CCSD, and Kyle Archibeque, director of finance, CCSD. Ms. Benn also invited Arvin Trujillo, chief executive officer, Four Corners Economic Development (4CED), to join the presentation. Together, they explained the social, emotional and economic impacts on the CCSD of the closure of the SJGS.

Ms. Benn began by sharing information about the CCSD. The school district has eight elementary schools, three middle schools, three high schools, one early college high school, one alternative high school and area preschools. Ms. Benn reported that the CCSD has 1,200 staff members and 5,612 currently enrolled students, which is 200 fewer students than last year.

Ms. Benn noted that the region's economy is dependent on the coal, oil and gas industries. She then turned the presentation over to Mr. Archibeque, who provided the task force with an overview of the SJGS and Public Service Company of New Mexico (PNM). He said that the SJGS currently provides power to an estimated two million customers through PNM, Tucson Electric Power and the Farmington Electric Utility System.

Mr. Archibeque explained that in 2015, PNM shut down two of the four units at the SJGS and installed over \$150 million of pollution control equipment in the remaining two units to comply with the federal Clean Air Act of 1963. With the understanding that the SJGS would continue operating through 2053, the CCSD and San Juan College issued \$40 million of educational bonds secured by property tax revenues generated primarily by the SJGS and the San Juan Mine. In 2017, PNM announced that it would close the SJGS in 2022, about 20 years earlier than the end of its useful life. As a result, Mr. Archibeque reported, the SJGS is one of the most technologically advanced, operationally sound and cleanest coal-fired plants being retired in the United States.

A national survey found that New Mexico has one of the lowest monthly average electricity costs, Mr. Archibeque said. The closure of the SJGS will increase rates paid by customers, which undermines the state's ability to attract new businesses or keep them from leaving the state, he said. If businesses leave, the state's budget and funding for education will be severely impacted, he added. The CCSD has already seen a decrease in its student population and expects this trend to continue with the closure of the SJGS, he said, and the district will have to let go of staff or close schools. The closure of the SJGS and the mine may cause many people to leave the state, which will increase property tax rates in affected communities and school districts, he said.

Ms. Thompson provided information on school program, facility and infrastructure needs. She gave examples of how the CCSD has been aiding students, families and teachers and reported that more families are being separated, causing increased emotional issues within the community.

Mr. Archibeque reviewed the results of economic impact studies from 4CED and Economic Modeling LLC (Emsi). He stated that the closure of the SJGS will cause a loss of over 1,600 direct jobs and will indirectly affect up to 5,000 residents. Mr. Archibeque said that the 4CED report concluded that workers in San Juan County will lose \$56.6 million per year in wages and \$20 million per year in benefits. The report found that the CCSD will lose \$3.6 million in property taxes and up to \$1.5 million in student funding.

Mr. Archibeque discussed the tax impacts on San Juan County government. He reported that the county expects a loss of \$3.8 million per year in property taxes. He added that the closure of the San Juan Mine will reduce statewide severance tax revenues from \$16 million in FY 2014 to \$3 million annually. Mr. Archibeque said that the Emsi reports from 2017 and 2018 both showed that the CCSD will lose more than 1,457 jobs, \$105 million in earnings and \$19.9 million in state tax revenue if the SJGS closes.

Mr. Archibeque reported that the CCSD's legal capacity to issue additional debt is \$18 million but that its tax rate capacity is only \$4.2 million. He noted that if assessed property values are higher than projected, capacity could be higher.

In response to questions, the panel stated that:

- the CCSD has 110 teacherages; Ms. Benn said that there are 15 people on the waiting list for housing; and
- the community needs a plan for this painful transition; the panel expressed the need for economic development and time to explore future opportunities.

The task force discussed the CCSD's need for a revenue stream and its current bond debt, which is \$35 million. The task force also discussed federal impact aid funding and the need to replace the tax base in the CCSD. A member noted a need for funding for social issues.

Recap of Potential Facility Space Needs for Early Childhood Education

Mr. Chamblin and Martica Casias, deputy director, PSFA, presented an overview of potential facility space needs for pre-K programs. Ms. Casias explained that under the Pre-Kindergarten Act, funding for pre-K programs must be equally divided between the PED and the Children, Youth and Families Department (CYFD). She pointed out that licensing regulations require a minimum of 35 square feet of indoor educational activity space per child, but the PED and the CYFD require 50 square feet of learning space per child.

The PED administered the pre-K capital funding program from school years 2006 to 2016. The PSFA took over administration of the program in 2018. Ms. Casias reported that since 2006, 75 pre-K awards totaling \$26 million have been made to 36 school districts and one charter school. She explained that the awards only fund new or renovated classroom space for existing or planned pre-K programs; they do not apply to portable units, furniture, fixtures or equipment.

Ms. Casias stated that in addition to classroom space, pre-K programs require sites that have parent parking, monitored entry and a nearby enclosed playground. She explained that elementary schools are ideal locations for pre-K programs because they offer access to shared playgrounds, parking, cafeterias, gyms and libraries. Ms. Casias pointed out that these locations can offer continuity to pre-K students as they transition into elementary school. She added that many of the elementary schools also have existing developmental disabilities waiver programs for students.

Ms. Casias described a typical pre-K classroom floor plan and the minimum amount of space needed to accommodate various activity centers. She said that a classroom of 20 students would need 1,000 square feet of learning space, plus 80 square feet for an attached or nearby restroom with pre-K toilets. Ms. Casias noted that these classrooms could be reassigned between pre-K and kindergarten.

Mr. Chamblin then discussed the PSFA's kindergarten and pre-K enrollment projections. He explained that the number of statewide births is correlated to kindergarten enrollment five years later, less an average of 2,831 students each year. This difference is most likely due to

private school attendance, homeschooling, other educational alternatives or out-migration. Based on the PSFA's estimated statewide PED pre-K enrollment projection of 4,342 new students, 98 new classrooms and 103 renovated classrooms are needed.

Mr. Chamblin said that these needs could be met by filling the existing classrooms to capacity, renovating underutilized public school spaces into pre-K classrooms and building new classrooms. He explained that the upfront costs associated with modifying existing spaces makes renovation more expensive than new construction but that renovations save money over the long term through reduced maintenance costs.

As an alternative to building new classrooms, Mr. Chamblin said, the PSCOC has three portable units available for use. If the portable units are used, the total estimated cost would be reduced from \$74,471,400 to \$73,614,600. The PSFA estimates a cost to the state of \$42.5 million to meet maximum anticipated demand.

Mr. Chamblin reported that Senate Bill 230 was passed during the 2019 legislative session. He said that the PSFA plans on updating the statewide adequacy standards to integrate pre-K into the standards-based process and that the draft of the statewide adequacy standards is currently out for public comment.

Adjournment

There being no further business before the task force, the meeting adjourned at 3:06 p.m.

Revised: October 8, 2019

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

**October 11, 2019
State Capitol, Room 322
Santa Fe**

Friday, October 11

- 9:00 a.m. **Call to Order**
—Senator William P. Soules, Chair
—Representative G. Andrés Romero, Vice Chair
- 9:10 a.m. (1) **Public School Capital Outlay Council (PSCOC) Financial Plan**
—Randy Evans, Chief Financial Officer, Public School Facilities Authority
 (PSFA)
—Jonathan Chamblin, Executive Director, PSFA
- 9:30 a.m. (2) **PSCOC Time Line and Status of Various Program Awards**
—Joe Guillen, Chair, PSCOC
- 10:15 a.m. (3) **Capital Improvements Act (SB 9): Sources and Uses**
—Antonio Ortiz, Director, Capital Outlay Bureau, Public Education
 Department
- 11:00 a.m. (4) **Award Offsets, Local Match Waivers and Advances: History and
Application**
—Casandra Cano, Programs Support Manager, PSFA
- 12:00 noon **Lunch**
- 1:00 p.m. **Approval of Minutes**
- 1:05 p.m. (5) **Public School Capital Funding and Impact Aid**
—David Abbey, Director, Legislative Finance Committee
- 2:30 p.m. (6) **Charter Schools and Special Schools Unique Program Spaces and
Space Requirements**
—Martica Casias, Deputy Director, PSFA
- 3:45 p.m. **Public Comment**
- 4:00 p.m. **Adjourn**

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

October 11, 2019
State Capitol, Room 322
Santa Fe

The seventy-third meeting of the Public School Capital Outlay Oversight Task Force was called to order by Senator William P. Soules, chair, on October 11, 2019 at 9:09 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. William P. Soules, Chair
Martha "Marty" Braniff
Carl Foster
Mike Hyatt
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Antonio Ortiz
Sen. Mary Kay Papen
Debbie Romero, Designee for Secretary
 Olivia Padilla-Jackson
Stan Rounds
Eugene Schmidt
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith

Advisory Members

Rep. Harry Garcia
Sen. Michael Padilla
Sen. Mimi Stewart

Absent

Rep. G. Andrés Romero, Vice Chair
Rep. Eliseo Lee Alcon
Sen. Craig W. Brandt
Rep. Jack Chatfield
Rep. Brian Egolf
Greg Ewing
Rep. David M. Gallegos
Kirk Hartom
Cindy Montoya
T.J. Parks
Richard A. Perea
Mike Phipps
Sen. William E. Sharer

Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Cliff R. Pirtle
Sen. Sander Rue
Rep. Christine Trujillo
Rep. Linda M. Trujillo
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher, LCS
Erin Bond, Research Assistant, LCS
Shannon Rodriguez, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and posted online.

Friday, October 11

Welcome and Approval of Minutes

Senator Soules welcomed task force members, staff and guests. Task force members introduced themselves. On a motion duly made and seconded, the minutes of the August 20, 2019 meeting were approved without objection.

Public School Capital Outlay Council (PSCOC) Financial Plan

Jonathan Chamblin, executive director, Public School Facilities Authority (PSFA), and Randy Evans, chief financial officer, PSFA, presented an update to the PSCOC financial plan and budget projections for fiscal year (FY) 2019 through FY 2024. Mr. Evans provided background information on the PSCOC and the PSFA, noting that public school capital project funding is both a local and a state responsibility in New Mexico. Mr. Evans outlined the four primary functions of the PSFA and addressed staffing and budget shortfall issues for the PSFA. In answer to members' questions, Mr. Chamblin clarified budget information related to the emergency contingency reserve and stated that the PSCOC is looking at incorporating programs for retroactive standards-based improvements and teacher housing.

PSCOC Time Line and Status of Various Program Awards

Joe Guillen, executive director, New Mexico School Boards Association, and chair, PSCOC, and Mr. Chamblin provided an overview of the standards-based awards history and the PSCOC programs used to fund capital projects. Mr. Guillen reviewed the application and award schedules for the various programs and provided in-depth information for the standards-based, systems-based, school security, broadband, pre-kindergarten, facilities master plan, lease assistance, teacher housing and outside of adequacy programs now in operation. In response to members' questions, Mr. Chamblin stated that the 2019 appropriation of \$10 million for teacher housing has been used to pay off loans and bonds for teacher housing for three school districts and that the outside of adequacy awards funded with a 2019 appropriation of \$24 million will be made around October 18, 2019. Seventeen districts have applied for those funds. Task force members discussed the evolution of lease assistance payments and how the state can fairly continue to provide that assistance.

Public School Capital Improvements Act (SB 9): Sources and Uses

Antonio Ortiz, director, Capital Outlay Bureau, Public Education Department (PED), provided members a copy of the original legislation from 1975 that provided for imposition of a school district property tax to produce revenue for public school capital improvement projects. The legislation amended the existing Public School Capital Outlay Act and created the Public

School Capital Improvements Act. Mr. Ortiz noted that the original legislation contained a very limited range of allowable capital improvement uses but that the act has subsequently been amended to allow for all of the multiple current uses, including changes that have been made to the state-local match formula. Task force members discussed improving the reimbursement process for school districts; enacting changes to enable districts to use SB 9 funds for salaries for maintenance staff; and increasing the state share to a minimum percentage for each district as a means to achieve equity. Members asked for a variety of follow-up information from the PED, including projecting the effect of tying the funding formula to the Consumer Price Index, charting by district the dollars drawn from the two mill levy over time as a result of extending that funding to charter schools and developing a summary of proposed legislation arising from workshops conducted over the year for charter schools, including how charter schools would be affected by the proposed legislation.

Award Offsets, Local Match Waivers and Advances: History and Application

Cassandra Cano, programs support manager, PSFA, and Mr. Chamblin provided information regarding legislative appropriations and offsets, local match reductions and local match advances. Mr. Chamblin explained the offset mechanism applied to direct appropriations made by the legislature to school districts and noted that the importance of the mechanism is to better equalize state funding of capital requests. He reviewed the current offset balances by district, observing that districts carry forward any unpaid offset balances and that those balances may not be paid off if a district is not requesting funding from the PSCOC. Ms. Cano and Mr. Chamblin explained the processes for applying for local match reductions and waivers and provided a historical summary of roughly \$48 million in local match reductions that have been granted since 2006. Mr. Chamblin reported that local match reductions provide an opportunity to work with school districts to reorganize and consolidate their square footage, frequently providing a range of lasting benefits to the state and the district. The pros and cons of providing local match advances were also reviewed.

Public School Capital Funding and Impact Aid

David Abbey, director, Legislative Finance Committee, and Merit Rogne, Legislative Education Study Committee, reviewed the constitutional requirement for a uniform and sufficient public education system and the efforts that have been made over time to enact such a system. Mr. Abbey provided a summary of eligible and ineligible projects, noting how eligibility has changed over time with amendments to statutes and the relative availability of funding. According to Mr. Abbey, the state and local funding formula was amended in 2018 to reduce aid to districts with a significant tax base and increase the state match for districts with a limited base. Those changes will be phased in over the next few years. While significant improvements have been made over time to the average Facility Condition Index (FCI), a member reported that the PSCOC has heard testimony from federal impact aid districts that those districts have a significant need to catch up with improvements to facility conditions and that the FCI is an incomplete indicator of need. Mr. Abbey reported that the average district FCI is now at 52.27% and provided a comparison of funding and conditions in select districts.

Mr. Abbey presented options for the 2020 legislative session, including the following potential changes to the Public School Capital Improvements Act:

- increasing the state guarantee match and creating a separate funding tier or a multiplier for property-poor districts;
- adjusting the formula calculation to change from program units to MEM and reprioritize the minimum guarantee; and
- reprioritizing systems and security program funding.

With respect to facility uniformity, Mr. Abbey suggested retroactively updating "early standards-based" schools and continued targeting of appropriations to help districts to catch up. He also proposed developing standards for teacherages and other high-priority projects. Other options presented addressed providing support for federal impact aid districts, including training on completing impact aid applications to improve collections, providing assistance with administrative costs for those applications and providing state equalization guarantee advances to improve cash flow. Options presented to assist with operational funding support include:

- providing base operational funding increases for maintenance;
- adjusting the at-risk funding formula factor;
- reducing or eliminating the federal impact aid credit;
- establishing credit for other uncredited local revenues; and
- accelerating the Phase 2 local-state match formula adjustment.

Task force members discussed the disparity test, the relatively large dollar amounts reverting from impact aid funding to the General Fund and potential additional changes to the state-local match formula. One member noted that the formula changes enacted in 2018 are being phased in over time and suggested that the effect of those changes should be measured prior to adopting new formula changes. Mr. Abbey observed that roughly 46% of General Fund funding is used to support public education. A member stated that appropriations should go to the school districts where they were intended to go rather than being absorbed into the General Fund. Members requested follow-up information, including a rescaling of the charts detailing operational, categorical and grant revenue by student membership so that all districts can be more accurately compared, a summary of the credit contribution per student by district and a heat map or other charting over a select period of time showing dollars that have gone into above adequacy districts.

Charter Schools' and Special Schools' Unique Program Spaces and Space Requirements

Martica Casias, deputy director, PSFA, reviewed charter and special school definitions and discussed charter school exemptions from adequacy standards. She observed that adequacy standards have been developed to meet the special needs of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf. These standards address educational, medical and residential needs. Ms. Casias provided examples of vocational education spaces that may require different square footage arrangements. In addition, she

observed that classroom arrangement and size for special schools must allow for mobility equipment and one-on-one teaching for students with special needs. Hallways may be wider and walls angled to allow for ease of access. Similarly, special purpose schools often require specialized accessible playground equipment and play areas.

Adjournment

There being no further business before the task force, the meeting adjourned at 4:00 p.m.

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

**November 18, 2019
State Capitol, Room 307
Santa Fe**

Monday, November 18

- 9:00 a.m. **Call to Order and Introductions**
—Senator William P. Soules, Chair
—Representative G. Andrés Romero, Vice Chair
- 9:05 a.m. **Approval of October 11, 2019 Minutes**
- 9:10 a.m. (1) **Public School Capital Outlay Council Financial Plan**
—Randy Evans, Chief Financial Officer, Public School Facilities
 Authority (PSFA)
—Jonathan Chamblin, Executive Director, PSFA
- 9:30 a.m. (2) **PSFA Work Plan and Time Line: December 2019 to June 2020**
—Jonathan Chamblin, Executive Director, PSFA
- 10:00 a.m. (3) **Consideration of Bills for Public School Capital Outlay Oversight
Task Force Endorsement**
—Public School Capital Outlay Oversight Task Force Members and Staff
- 11:00 a.m. **Adjourn**

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

November 18, 2019
State Capitol, Room 307
Santa Fe

The seventy-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative G. Andrés Romero, vice chair, on November 18, 2019 at 9:03 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. William P. Soules, Chair
Rep. G. Andrés Romero, Vice Chair
Rep. Eliseo Lee Alcon
Martha "Marty" Braniff
Rep. Jack Chatfield
Carl Foster
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Antonio Ortiz
Sen. Mary Kay Papen
T.J. Parks
Stan Rounds
Sen. John Arthur Smith

Absent

Sen. Craig W. Brandt
Rep. Brian Egolf
Greg Ewing
Rep. David M. Gallegos
Kirk Hartom
Mike Hyatt
Cindy Montoya
Debbie Romero, Designee for Secretary
Olivia Padilla Jackson
Richard A. Perea
Mike Phipps
Eugene Schmidt
Sen. William E. Sharer
Sen. Benny Shendo, Jr.

Advisory Members

Rep. Harry Garcia
Sen. Michael Padilla
Sen. Cliff R. Pirtle
Sen. Mimi Stewart
Rep. Christine Trujillo
Rep. Linda M. Trujillo

Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan
Sen. George K. Munoz
Sen. Sander Rue
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Rebecca Griego, Records Custodian, 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

Handouts and other written testimony are in the meeting file and are posted online at www.nmlegis.gov.

Monday, November 18

Welcome and Introductions

Representative Romero welcomed task force members, staff and guests. Task force members introduced themselves.

Public School Capital Outlay Council (PSCOC) Financial Plan

Jonathan Chamblin, executive director, Public School Facilities Authority (PSFA), and Randy Evans, chief financial officer, PSFA, presented an update to the PSCOC financial plan. Mr. Evans reviewed the summary of the program sources and uses, new revenue projections and proposed changes that will be introduced in legislation in the next legislative session that will increase the amount of funding for the state guarantee match funding provided pursuant to the Public School Capital Improvements Act (SB 9). The distribution from the Public School Capital Outlay Fund for public school transportation is also projected to increase by \$8.9 million in fiscal year (FY) 2021. Another change highlighted by Mr. Evans is a proposed new program for retroactive standards-based awards and school teacherages. At this time, the new program is only being discussed by the PSCOC. Funding for the proposed new program is expected to be \$25 million in FY 2021.

Mr. Evans described the PSFA's current operating budget shortfall and indicated that the agency would be submitting a request during the next legislative session of \$500,000 for an agency operational expenditure in the current fiscal year (FY 2020). The agency request for supplemental operational funding in FY 2020 is in addition to a request for a legislative change to the funding formula statute that annually calculates the maximum amount allowed for the PSFA operating budget. The proposed change to the formula in statute would recalculate the maximum allowed for the PSFA operating budget as five percent of the average annual grant assistance authorized from the Public School Capital Outlay Fund during the five previous fiscal years. Current law calculates the agency maximum operating budget based on an average of the prior three fiscal years. Mr. Chamblin stated that this legislative change was requested in the last legislative session but the bill failed to pass. Because of the small amount of grants awarded in recent years, the PSFA's FY 2020 budget request exceeded the maximum allowed. Failure of the bill passage forced the agency to take operational cost-saving measures during the current fiscal

year. Continuing with the presentation, Mr. Evans described the FY 2020 awards made by the PSCOC to date, highlighting that there were 267 projects awarded totaling \$41,164,335 in state funding, with local school district match funding of \$20,190,273.

Inquiring about the change in the PSCOC financial plan to the SB 9 distribution, a member asked if it was "double" the current amount distributed. Mr. Chamblin replied in the affirmative but indicated that the amount in the PSCOC financial plan was an estimate only and a more precise amount would be known after analysis of the legislation that would be introduced that would change the distribution formula. Mr. Chamblin noted that currently there are 88 school districts that receive some funding from this program. Mr. Chamblin explained that the increase in SB 9 distributions corresponds to a decrease in the amount previously set aside for the systems-based awards program. A member asked how the PSCOC decided that the systems-based awards program would be discontinued. Mr. Chamblin replied that the programmatic change is not final and that it is under discussion only at this point. Mr. Chamblin noted that many of the systems projects are funded with SB 9 funds and the thinking of the PSCOC members is that it would be simpler to increase the funding for SB 9 instead of having a time-consuming application process. The member noted that the PSCOC financial plan showed that the increase to SB 9 is only for three years. Mr. Chamblin replied that the thinking of the PSCOC members is to try this as a strategy and then, after three years, gauge the effectiveness of the change. The member expressed concern that simply increasing the SB 9 distribution is not the best way to proceed and that the Legislative Education Study Committee is also looking at changes to the Public School Capital Improvements Act.

Approval of Minutes

On a motion duly made and seconded, the minutes of the August 20, 2019 meeting were approved without objection.

PSFA Work Plan and Time Line: December 2019 to June 2020

Mr. Chamblin presented a handout to the task force identifying major milestones and target dates for the PSCOC and the PSFA, including recently awarded projects, typical project time lines, the schedule of funding programs for calendar year 2020 and other funding program details.

A member asked Mr. Chamblin to provide a status update on a school in the Las Cruces Public School District where facility damage was discovered. Mr. Chamblin replied that the school was Columbia Elementary School, a school that was built by the district without assistance from the PSCOC or the PSFA. He said that the issues with the school were related to the improper installation of the weather barrier on the shell of the school facility and that the negligent installation was widespread throughout the school campus. The school's problems began almost immediately after construction was completed, but the symptoms did not immediately reveal the issue and water penetration into the school walls and interior persisted for several years. Only after an extensive exploratory investigation was the origin of the building's problems revealed. Unfortunately, much time had passed, and the contractor responsible for the

work is no longer in business. The school district is in discussions with attorneys and design professionals on how to best proceed. In the meantime, the school district is determining where to relocate students while a solution is being formulated. The member expressed concern that the students would be located at Centennial High School. Mr. Chamblin stated that he does not believe that will be the school district's intermediate solution and that the school district is exploring several options to accommodate the students that have been affected by the facility damage.

A member asked what might be awarded under a new program to readdress early standards-based projects. Mr. Chamblin said that there are a number of things that were not allowed by the PSCOC in the early years, such as play areas at elementary schools, artificial turf on playing fields and running tracks at high schools. Other examples are specialty spaces and vocational classrooms and equipment that were limited in the first year of the standards-based program. Mr. Chamblin said that the PSFA surveyed school districts last summer and compiled a list of such items. Items that were "above adequacy" included exterior lighting, lighting on athletic fields, bus barns and maintenance buildings. The PSCOC asked PSFA staff to look at different existing programs that would align with the funding requests. For example, the PSCOC previously would provide funding for evaporative cooling systems but would not provide funding for air conditioning.

A member asked how the agency managed the budget shortfall in the current fiscal year. Mr. Chamblin responded that most of the savings was from attrition of employees and that the positions were not filled or that the filling of positions has been delayed. The staff administering the program funding and performing project administration are currently affected.

A member inquired about requests for information from previous meetings in regard to charter school lease payments and school district offset calculations. Mr. Eaton indicated that staff had discussed these items with PSFA staff but was informed that there were not sufficient staff resources available at the time to complete the requests in time for the meeting. The member expressed frustration and had hoped that the material would be provided in time for the meeting so that possible legislation could be considered in response to the research request.

A member inquired about the PSFA's energy efficiency directives from previous years and what improvements the agency has been able to make to the types of facilities being constructed with the goal of being energy efficient. Mr. Chamblin replied that he would have to research the specific project mentioned by the member as an example but said that the agency can be more aggressive on energy savings and will look for ways to prioritize energy efficiency on future projects. The member also noted that a number of school districts, upon receiving an award, agreed to abandon the old school facilities, yet there are instances where this had not been done and the member asked Mr. Chamblin to comment. Mr. Chamblin replied that it is true that a number of schools were to be "abandoned" because they were functionally obsolete. He said that some school districts have kept facilities in order to offer them to charter schools in the district. Mr. Chamblin agreed to provide the task force with a list of facilities that were to be

demolished or otherwise disposed of but have not been. The member also asked staff to research how teacherages are managed and how much rent the school districts are asking. The member expressed concern that there may be violations of the Anti-Donation Clause and expressed concern that teacherages may be funded while educational performance metrics are low.

Consideration of Bills for PSCOOTF Endorsement

Mr. Eaton presented information on three bills proposed for endorsement by the task force.

.215907.1 — changes the formula of maximum annual expenditures for core administrative functions of the PSFA from a three-year average to a five-year average of the five previous year awards made by the PSCOC. A member moved for the task force to endorse the bill, the motion was seconded and the endorsement was approved without objection.

The second bill presented for endorsement by the task force proposes to amend the Charter Schools Act and the Public School Capital Outlay Act to require nonprofit organizations that are organized specifically to purchase facilities for a charter school to enter into a legally binding agreement with the charter school to transfer title to the facility to the charter school immediately upon the nonprofit's final acquisition of title. After lengthy discussion, members determined that more research was needed on the topic. The task force did not act to endorse the legislation.

.216073.1 — provides for a change in the state match to \$120 per program unit and continues the annual adjustment to the amount based upon changes to the Consumer Price Index. A member of the task force noted that the Legislative Education Study Committee is working on legislation that would address changes to the Public School Capital Improvements Act, including increasing the distribution in a more targeted way. A member of the task force moved to endorse the proposed legislation. The motion was seconded and passed, with several task force members voting no on the motion.

Adjournment

There being no further business before the task force, the meeting adjourned at 11:15 a.m.

ENDORSED LEGISLATION

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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL
OUTLAY ACT; CHANGING THE FORMULA FOR EXPENDITURES FOR CORE
ADMINISTRATIVE FUNCTIONS OF THE PUBLIC SCHOOL FACILITIES
AUTHORITY.

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

SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,
Chapter 235, Section 4, as amended by Laws 2019, Chapter 179,
Section 2 and by Laws 2019, Chapter 180, Section 1) is amended
to read:

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

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

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1 B. Except as provided in Subsections G and I
2 through Q of this section, money in the fund may be used only
3 for capital expenditures deemed necessary by the council for an
4 adequate educational program.

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

22 D. Applications for assistance from the fund shall
23 be made by school districts to the council in accordance with
24 requirements of the council. Except as provided in Subsection
25 K of this section, the council shall require as a condition of

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1 application that a school district have a current five-year
2 facilities plan, which shall include a current preventive
3 maintenance plan to which the school adheres for each public
4 school in the school district.

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

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

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

22 (2) the council may authorize payments
23 directly to the contractor.

24 G. Balances in the fund may be [~~annually~~]
25 appropriated annually for the core administrative functions of

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1 the authority pursuant to the Public School Capital Outlay Act,
2 and, in addition, balances in the fund may be expended by the
3 authority, upon approval of the council, for project management
4 expenses; provided that:

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

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

13 H. The fund may be expended by the council for
14 building system repair, renovation or replacement initiatives
15 with projects to be identified by the council pursuant to
16 Section 22-24-4.6 NMSA 1978; provided that money allocated
17 pursuant to this subsection shall be expended within three
18 years of the allocation.

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

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

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

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

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

17 (2) a grant received for the lease payments of
18 a charter school may be used by that charter school as a state
19 match necessary to obtain federal grants [~~pursuant to the~~
20 ~~federal Every Student Succeeds Act~~];

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

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

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

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

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

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

17 (6) as used in this subsection:

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

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

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

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

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1 construction industries division pursuant to this subsection
2 shall be used to supplement, rather than supplant,
3 appropriations to those entities.

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

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

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

19 (a) the school district has fewer than
20 an average of six hundred full-time-equivalent students on the
21 second and third reporting dates of the prior school year; or

22 (b) the school district meets all of the
23 following requirements: 1) the school district has fewer than
24 an average of one thousand full-time-equivalent students on the
25 second and third reporting dates of the prior school year; 2)

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

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

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

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

22 (3) the council may enter into an agreement
23 with the school district under which an amount equal to the
24 savings to the district in lower insurance premiums [~~are~~] is
25 used to reimburse the fund fully or partially for the

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1 demolition costs allocated to the district.

2 M. Up to ten million dollars (\$10,000,000) of the
3 fund may be expended each year for an education technology
4 infrastructure deficiency corrections initiative pursuant to
5 Section 22-24-4.5 NMSA 1978; provided that funding allocated
6 pursuant to this section shall be expended within three years
7 of its allocation.

8 N. For each fiscal year from 2018 through 2022,
9 twenty-five million dollars (\$25,000,000) of the fund is
10 reserved for appropriation by the legislature to the
11 instructional material fund or to the transportation
12 distribution of the public school fund. The secretary shall
13 certify the need for the issuance of supplemental severance tax
14 bonds to meet an appropriation from the public school capital
15 outlay fund to the instructional material fund or to the
16 transportation distribution of the public school fund. Any
17 portion of an amount of the public school capital outlay fund
18 that is reserved for appropriation by the legislature for a
19 fiscal year, but that is not appropriated before the first day
20 of that fiscal year, may be expended by the council as provided
21 in this section.

22 O. Up to ten million dollars (\$10,000,000) of the
23 fund may be expended in each of fiscal years 2019 through 2022
24 for school security system project grants made in accordance
25 with Section 22-24-4.7 NMSA 1978.

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1 P. The fund may be expended in each of fiscal years
2 2020 through 2024 for a pre-kindergarten classroom facilities
3 initiative in accordance with Section [~~1 of this 2019 act~~]
4 22-24-12 NMSA 1978.

5 Q. The council may fund pre-kindergarten classrooms
6 with a qualifying, awarded standards-based project; provided
7 that pre-kindergarten classroom space shall not be included in
8 the project prioritization calculation adopted by the council
9 pursuant to Section 22-24-5 NMSA 1978. The council shall
10 develop pre-kindergarten classroom standards to use when
11 funding pre-kindergarten space."

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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT; CHANGING THE STATE DISTRIBUTION TO SCHOOL DISTRICTS IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

"22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, using

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1 prior year valuations, at the rate certified by the department
2 of finance and administration in accordance with Section
3 22-25-7 NMSA 1978, assuming a one hundred percent collection
4 rate, is less than an amount calculated by multiplying an
5 average of the school district's prior year second and third
6 reporting dates' total program units by the amount specified in
7 Subsection B of this section and further multiplying the
8 product obtained by the tax rate approved by the qualified
9 electors in the most recent election on the question of
10 imposing a tax under the Public School Capital Improvements
11 Act. The distribution shall be made each year that the tax is
12 imposed in accordance with Section 22-25-7 NMSA 1978; provided
13 that no state distribution from the public school capital
14 improvements fund may be used for capital improvements to any
15 administration building of a school district. In the event
16 that sufficient funds are not available in the public school
17 capital improvements fund to make the state distribution
18 provided for in this section, the dollar per program unit
19 figure shall be reduced as necessary.

20 B. In calculating the state distribution pursuant
21 to Subsection A of this section, the following amounts shall be
22 used:

23 (1) the amount calculated pursuant to
24 Subsection D of this section per program unit; and

25 (2) an additional amount certified to the

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1 secretary by the public school capital outlay council. No
2 later than June 1 of each year, the council shall determine the
3 amount needed in the next fiscal year for public school capital
4 outlay projects pursuant to the Public School Capital Outlay
5 Act and the amount of revenue, from all sources, available for
6 the projects. If, in the sole discretion of the council, the
7 amount available exceeds the amount needed, the council may
8 certify an additional amount pursuant to this paragraph;
9 provided that the sum of the amount calculated pursuant to this
10 paragraph plus the amount in Paragraph (1) of this subsection
11 shall not result in a total statewide distribution that, in the
12 opinion of the council, exceeds one-half of the total revenue
13 estimated to be received from taxes imposed pursuant to the
14 Public School Capital Improvements Act.

15 C. For any fiscal year notwithstanding the amount
16 calculated to be distributed pursuant to Subsections A and B of
17 this section, except as provided in Subsection G of this
18 section, a school district, the voters of which have approved a
19 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a
20 distribution less than the amount calculated pursuant to
21 Subsection E of this section multiplied by the average of the
22 school district's prior year second and third reporting dates'
23 total program units and further multiplying the product
24 obtained by the approved tax rate.

25 D. For purposes of calculating the distribution

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1 pursuant to Subsection B of this section, the amount used in
2 Paragraph (1) of that subsection shall equal [~~seventy dollars~~
3 ~~(\$70.00)~~] one hundred twenty dollars (\$120) in fiscal year
4 [~~2008~~] 2021 and in each subsequent fiscal year shall equal the
5 amount for the previous fiscal year adjusted by the percentage
6 increase between the next preceding calendar year and the
7 preceding calendar year of the consumer price index for the
8 United States, all items, as published by the United States
9 department of labor.

10 E. For purposes of calculating the minimum
11 distribution pursuant to Subsection C of this section, the
12 amount used in that subsection shall equal five dollars (\$5.00)
13 through fiscal year 2005 and in each subsequent fiscal year
14 shall equal the amount for the previous fiscal year adjusted by
15 the percentage increase between the next preceding calendar
16 year and the preceding calendar year of the consumer price
17 index for the United States, all items, as published by the
18 United States department of labor.

19 F. In expending distributions made pursuant to this
20 section, school districts and charter schools shall give
21 priority to maintenance projects, including payments under
22 contracts with regional education cooperatives for maintenance
23 support services. In addition, distributions made pursuant to
24 this section may be expended by school districts and charter
25 schools as follows:

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1 (1) for the school district portion of the
2 total project cost for roof repair or replacement required by
3 Section 22-24-4.3 NMSA 1978; or

4 (2) for the school district portion of
5 payments made under a financing agreement entered into by a
6 school district or a charter school for the leasing of a
7 building or other real property with an option to purchase for
8 a price that is reduced according to the payments made, if the
9 school district has received a grant for the state share of the
10 payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

11 G. If a serious deficiency in a roof of a public
12 school facility has been corrected pursuant to Section
13 22-24-4.4 NMSA 1978 and the school district has refused to pay
14 its share of the cost as determined by that section, until the
15 public school capital outlay fund is reimbursed in full for the
16 share attributed to the district, the distribution calculated
17 pursuant to this section shall not be made to the school
18 district but shall be made to the public school capital outlay
19 fund.

20 H. A portion of each distribution made by the state
21 pursuant to this section on or after July 1, 2009 shall be
22 further distributed by the school district to each locally
23 chartered or state-chartered charter school located within the
24 school district. The amount to be distributed to each charter
25 school shall be in the same proportion as the average full-

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1 time-equivalent enrollment of the charter school on the second
2 and third reporting dates of the prior school year is to the
3 total such enrollment in the school district; provided that no
4 distribution shall be made to an approved charter school that
5 had not commenced classroom instruction in the prior school
6 year. Each year, the department shall certify to the school
7 district the amount to be distributed to each charter school.
8 Distributions received by a charter school pursuant to this
9 subsection shall be expended pursuant to the provisions of the
10 Public School Capital Improvements Act; except that if capital
11 improvements for the charter school were not identified in a
12 resolution approved by the electors, the charter school may
13 expend the distribution for any capital improvements, including
14 those specified in Subsection F of this section.

15 I. In determining a school district's total program
16 units pursuant to Subsections A and C of this section and a
17 school district's total enrollment pursuant to Subsection H of
18 this section, students attending a state-chartered charter
19 school within the school district shall be included.

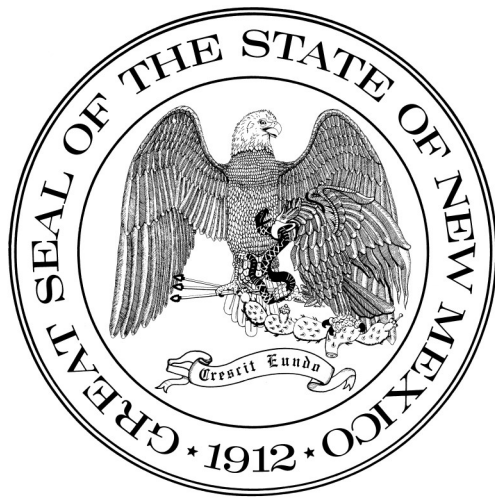
20 J. In making distributions pursuant to this
21 section, the secretary shall include such reporting
22 requirements and conditions as are required by rule of the
23 public school capital outlay council. The council shall adopt
24 such requirements and conditions as are necessary to ensure
25 that the distributions are expended in the most prudent manner

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1 possible and are consistent with the original purpose as
2 specified in the authorizing resolution. Copies of reports or
3 other information received by the secretary in response to the
4 requirements and conditions shall be forwarded to the council."

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