



Public School Capital Outlay Oversight Task Force

2007 ANNUAL REPORT

*Legislative Council Service
411 State Capitol
Santa Fe, New Mexico
January 2008
202.171839*

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

**2007
ANNUAL REPORT**

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

Introduction

The "direct descendent" of several task forces that were created as a result of the *Zuni* lawsuit, the public school capital outlay oversight task force (PSCOOTF) is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act and the Public School Capital Improvements Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the public school facilities authority (PSFA); and to make annual recommendations related to the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

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

The current task force consists of 27 members, including members of the legislature and the executive; certain designated public members, some of whom have expertise in finance and education; and superintendents of school districts or their designees, two of whom must be from

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

districts that receive federal impact aid grants. Appendix 1 provides a listing of the members who served during the 2007 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the new, statewide standards-based public school capital outlay process that is now beginning its fifth implementation cycle. While this report focuses primarily on the work of the task force during the 2007 interim, the following background information is provided for perspective on the issues before the task force.

Background

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

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the forty-fourth legislature, second special session, in response to an order by *Zuni* lawsuit Judge Rich giving the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Many of this first public school capital outlay task force's recommendations, issued in December 2000, were adopted in Laws 2001, Chapter 338, including statutory authorization to continue its work.

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

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

In addition, this measure increased the Public School Capital Improvements Act state guarantee (also called "SB 9" or "the two-mill levy") from \$35.00 per mill per unit (the first such increase in almost 30 years) to \$50.00 per mill per unit and designated supplemental severance tax bonds

as the permanent revenue source for public school capital outlay.

In April 2001, Judge Rich appointed the Honorable Dan McKinnon, former state supreme court justice, as a special master to review the progress the state had made in correcting past inequities and in developing and implementing the new capital outlay process. Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the disparities..." in funding for school facilities and that "... at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions." Adopting the report of the special master in May 2002, Judge Rich reserved the right to hold status conferences to monitor and review the state's progress in addressing issues raised by the *Zuni* lawsuit.

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

Legislation enacted in 2004 made a number of improvements to the capital outlay process and provided \$57 million of additional funding for deficiency correction and continuation projects (Laws 2004, Chapter 125). It enacted many of the recommendations of the task force from the 2003 interim, including a recommendation to extend the life of the task force for an additional year, and added provisions relating to what are called "recalcitrant districts". These provisions would allow the public school capital outlay council (PSCOC) to bring a court action against a school district if it determines that a school district's facilities are below the minimum standard

required by the constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of the recalcitrant district provisions as another important step for ensuring that the new process will comply with the directives of the court in addressing the *Zuni* remedies.

Legislation enacted in 2005 added a number of refinements to the standards-based awards process as a result of experience gained during the pilot year, including many of the recommendations of the task force from the 2004 interim (Laws 2005, Chapter 274). Among those recommendations was completion of the deficiencies correction program with specific emphasis on the correction of serious roof deficiencies. In addition, this legislation created a separate two-year roof repair and replacement initiative and allocated up to \$30 million per year for fiscal years 2006 and 2007 for this initiative. The lease assistance program enacted in 2004 was modified to increase the maximum grant award from \$300 per member to \$600 per member and to extend this lease assistance to charter schools in their initial year of operation. In response to the task force's focus on improving maintenance of public school buildings, the SB 9 guarantee amount was increased from \$50.00 per mill per unit to \$60.00 per mill per unit with automatic yearly increases based upon the consumer price index. The legislation also established a framework to allow the PSCOC to waive a portion of the local share when funding a project.

Finally, the 2004 legislation required new charter schools to meet educational occupancy standards before being chartered and established guidelines to assist in the transition of charter schools to public facilities by 2009 (later amended to 2010).

During the 2005 interim, the first full year of the task force's existence in its current iteration, the members reviewed the statewide assessment of school facilities; the deficiencies correction program; the roof deficiency correction program; PSCOC awards; lease payment awards; the development of educational technology adequacy standards as directed by HB 511 from the

2005 legislature; and a number of issues related to charter schools. The task force also explored a number of new subjects, including high-growth districts and schools; issues related to rural and very small schools; alternative capital financing options, including tax increment financing and industrial revenue bonds; and opportunities for energy-efficient school buildings.

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

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

Additional legislation passed and signed into law:

- requires districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;
- eases restrictions on the limits on school district cash balances and allows the balances to be used for the local match required for PSCOC grant awards;
- creates a New School Development Fund to provide funding for school districts for one-time expenditures associated with the opening of new schools;
- amends the Procurement Code to allow the PSFA to be its own central purchasing office;

- appropriates funding to continue the development and implementation of the facility information management system (FIMS) Program, a uniform web-based system to manage maintenance for school district facilities; and
- allocates funding to improve the indoor air quality of public schools.

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

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

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

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

Since 2003, when all districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. The governor vetoed language in the "omnibus" bill that would have established a process to allow a school district to be eligible for an additional "beyond-adequacy" award if the PSCOC determined that:

1. the school district is otherwise eligible to apply for a grant under the Public School

Capital Outlay Act;

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

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

The recommendations contained in this PSCOOTF report represent the policy development work of the task force during the 2007 to interim and the ongoing monitoring of the standards-based capital outlay program to ensure success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there. During the 2007 interim, the work of the task force was assisted by a team of professional staff from the legislative council service, the legislative education study committee, the legislative finance committee, the department of finance and administration, the public education department and the PSFA. The task force expresses its appreciation for the assistance of the staff in furthering its work.

Work During the 2007 Interim

In addition to its June 4 organizational meeting, the Public School Capital Outlay Oversight Task Force (PSCOOTF) held four full task force meetings during the 2007 interim (as provided for in statute): July 6, September 6-7, October 1-2 and November 8-9, 2007.

The oversight task force began its fourth year overseeing the implementation of the public school capital outlay standards-based process with a review of the 2006 interim's work and a summary of the status of PSCOOTF-endorsed legislation. With passage of the final version of the PSCOOTF-endorsed "omnibus" capital outlay bill (Laws 2007, Chapter 366), a number of the task force's policy recommendations were enacted, including:

A. the following amendments to the Public School Capital Outlay Act:

- reductions from offsets by 50 percent from future project awards for special appropriations if the special appropriation is for a project that ranks in the top 150 projects on the New Mexico Condition Index (NMCI) ranking;
- shift of the offset for special appropriations for state-chartered charter schools from the local school district to the charter school itself;
- allowing grant assistance from the Public School Capital Outlay Fund to purchase a privately owned facility under certain circumstances;
- an increase in lease reimbursement payments from \$600 to \$700 per MEM with an annual increase for inflation and an extension of time for the lease payments until 2020 and an allowance for leased space to include administrative areas; and
- a requirement that the Public School Capital Outlay Council (PSCOC) must consider concepts that promote efficient but flexible utilization of space when

adopting criteria for grant assistance;

B. amendments to the Public School Buildings Act ("HB 33") to:

- allow a certain percentage of revenues to be used for project management;
- increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school elections;
- require that future local board bond resolutions contain the capital needs of charter schools based upon the appropriate five-year plans; and
- require that the proportional property tax revenue from future taxes approved by voters be distributed directly to charter schools;

C. an amendment to the Public School Buildings Act ("SB 9") to increase the state guarantee from \$60.00 to \$70.00 per mill per unit; and

D. an amendment to provide exemptions for school construction projects costing \$200,000 or less from the Public School Facilities Authority approval.

During the remainder of the interim, the PSCOOTF also heard testimony about the ongoing implementation of the standards-based process, including the incorporation of a degradation curve into the NMCI to mitigate immediate changes in life-cycle condition, public school district tax rates and an update on the modifications and additions to the statewide adequacy standards.

Continuing its monitoring of the implementation of the standards-based process, the task force heard testimony from the PSCOC on the 2006-07 funding cycle, including the rapid inflation currently associated with construction costs and its effect on the overall implementation

of the program.

The task force also heard testimony throughout the interim from several sources, including PSFA personnel, district personnel and the PSCOC, about the importance of effective master planning and preventive maintenance to safeguard the state's substantial investment in public school capital outlay.

Throughout the interim, the task force also continued to hear concerns from school district personnel and others about consistency in implementation of the adequacy standards and the Facilities Information Management System and balancing local control with cost-effectiveness and economies of scale. Task force members received testimony from the Gallup-McKinley and Zuni school districts about the effect of the governor's veto of PSCOOTF-endorsed legislation to establish an "opportunity fund" to provide additional funds to districts without a large enough tax base to build facilities that exceed adequacy standards. The task force also received testimony from the executive about its concerns with providing funding to exceed adequacy when some districts have not received and/or generated sufficient funding even to meet adequacy standards, let alone exceed them.

Another issue under consideration throughout the interim and one that sparked a great deal of discussion at each meeting was the inflation in construction costs coupled with declining revenues for severance tax bonds.

At one meeting, task force members participated in a round-table discussion with representatives from the Albuquerque, Rio Rancho and Deming districts and PSFA staff members on several issues related to choosing design professionals. At another meeting, the task force received testimony from school districts that seem to have successful relationships with other governmental entities that foster joint use of facilities. The task force also received testimony from the Public School Insurance Authority about possible statutory amendments to the Public School Insurance Authority Act that would facilitate more joint use agreements between districts and community members.

The issue of building "green schools" was examined by the task force during a number of meetings. The PSCOC provided testimony about the proposed expenditure of \$4 million in funding provided by the 2007 legislature for high performance, energy conservation grant awards to a number of districts.

Regarding standardization of reporting dates, the task force heard testimony from Public Education Department (PED) staff and school district personnel about problems with the current 40- and 80-day reporting dates. The task force learned that the 89 school districts have always had varying starting dates, but the creation of more than 60 charter schools has further complicated the data-gathering process for the PED with the fortieth day having fallen on calendar dates ranging from September 27 through November 1. As a consequence, the PED is having more difficulty providing consistent, accurate data in time for the legislative session each year.

At the November meeting, the co-chairs announced the appointment of a subcommittee, which would meet just prior to the beginning of the 2008 legislature to review the task force's final recommendations for legislative endorsements.

Highlights of Recommendations and Proposed Legislation

The 2007 recommendations of the Public School Capital Outlay Oversight Task Force (PSCOOTF) furthered the work of earlier task force groups in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit. PSCOOTF endorsements for consideration by the 2008 legislature are included in four separate bills. The majority of the recommendations, however, can be found in one particular, comprehensive "omnibus" bill, which proposes to amend the Public School Capital Outlay Act in the following manner:

- to create the "public school facility opportunity fund" to provide funding for Public School Capital Outlay Council (PSCOC) grants to qualifying districts;
- to modify certain requirements for expenditures incurred to inspect and permit public school capital outlay projects;
- to reduce the offset to a PSCOC grant award resulting from a direct legislative capital outlay appropriation if the direct appropriation has been made to another governmental entity for a capital project that will be jointly used with the school district; and
- to provide for an increase in a PSCOC grant award to a school district with an exemplary record of preventive maintenance.

In terms of amending other sections of statute, the "omnibus" measure proposes to amend the Public School Capital Improvements Act to authorize school districts to request voter approval for an additional "SB 9" mill and to exempt the additional mill from the SB 9 state guarantee and Indian gaming statutes to allow for an amount equal to the lesser of \$18 million or 30 percent of the net receipts of Indian gaming compact revenues to be transferred to the Public School Facility Opportunity Fund.

The bill also proposes to extend the \$2.5 million appropriation from the Public School Capital Outlay Fund to the Public School Facilities Authority through FY09 to continue to

develop and implement the Facilities Information Management System.

Other bills endorsed by the PSCOOTF for consideration by the 2008 legislature include:

- an amendment to the Charter Schools Act to provide that, under certain conditions, the chartering authority for a locally chartered charter school may be transferred outside the regular charter renewal cycle to the Public Education Commission;
- an amendment to the Public School Insurance Authority Act to provide for adoption of policies relating to volunteers and the private use of school facilities and to provide for limited insurance coverage, in certain circumstances, for liability related to the private use of school facilities (including a recurring \$200,000 appropriation); and
- repealing the requirement for the bonding of subcontractors.

Appendix A

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEMBERSHIP, 2007 INTERIM

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2007 INTERIM MEMBERSHIP

Representative Rick Miera, task force co-chair	House Education committee chair
Senator Cynthia Nava, task force co-chair	Senate Education committee chair
Senator Ben D. Altamirano	Senate President Pro Tempore
Senator Stuart Ingle	Senate minority member
Representative James Roger Madalena	Indian Affairs committee member
Senator John Arthur Smith	Senate Finance committee co-chair
Representative Larry A. Larrañaga	House minority member
Senator Carroll H. Leavell	Senate minority member
Representative Ben Lujan	Speaker of the House
Representative Henry “Kiki” Saavedra	House Appropriations and Finance chair
Representative W.C. “Dub” Williams	House minority member
Gary Bland	state investment officer
Don Moya for Dr. Veronica Garcia	secretary of education
Katherine Miller	secretary of finance and administration
Dr. Leslie Carpenter	Santa Fe public schools superintendent
vacant	Impact Aid district superintendent
Kilino Marquez	Grants-Cibola County Schools superintendent (Impact Aid district)
Leonard Haskie	Gallup-McKinley County Schools assistant superintendent, Support Services (Impact Aid district)
Elizabeth Marrufo	Las Cruces Public Schools administrator
Cecilia Grimes	Public member with experience in education and finance
Dr. Anna Lamberson	Charter school board member, City of Albuquerque Chief Budget Officer
James “Bud” Mulcock	Former business executive, current education lobbyist
Norman Suazo	Architect with expertise in school construction, division chief, Indian Affairs Department
Moises Venegas	Albuquerque Partnership director, public member
Senator Vernon D. Asbill (advisory member)	
Robbie Heyman (advisory member)	Bond counsel

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

STATUTORY AUTHORITY AND DUTIES

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

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

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

from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

- B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.
- C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.
- D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].
- E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

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

Annotations

The 2005 amendment, effective April 6, 2005, changes the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deletes the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; adds in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provides in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deletes the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provides in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provides in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provides in

Subsection B that the task force shall meet no more than four times per calendar year; deletes the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provides in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

Temporary provisions. — Laws 2006, ch. 95, § 13, effective March 6, 2006, provides that the legislative council service, in conjunction with the public education department, the department of finance and administration and the staffs of the legislative finance committee and the legislative education study committee, shall study the feasibility of allowing additional entities, including universities, tribal governments, the public education department and a separate chartering board, to approve the establishment of charter schools. No later than December 15, 2006, the results of the study shall be presented to the public school capital outlay oversight task force, the legislative finance committee and the legislative education study committee.

Laws 2007, ch. 366, § 24, adds a temporary provision that provides that, during the 2007 interim, the public school capital outlay oversight task force shall continue to work toward an equitable and fair system that addresses the inequities between public school facilities among various school districts in this state. Toward that end, the task force shall assess the current statewide adequacy standards, the need for changing those standards and the effect upon school districts of any proposed change in the standards.

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

22-24-8. Public school capital outlay oversight task force; duties.

The public school capital outlay oversight task force shall:

- A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978];
- B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [22-25-1 NMSA 1978];
- C. monitor the existing permanent revenue streams to ensure that they remain

- adequate long-term funding sources for public school capital outlay projects;
- D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;
 - E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and
 - F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

History: Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

Annotations

Bracketed material. — The bracketed word "recommend" was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

The 2005 amendment, effective April 6, 2005, adds Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deletes the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provides in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provides in Subsection D that the task force oversee the work of the council and the authority; adds Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

Appendix C

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2007 INTERIM WORK PLAN

2007 ADOPTED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

Membership

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Ben D. Altamirano
Gary Bland
Dr. Leslie Carpenter
Sec. Veronica Garcia
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Sen. Stuart Ingle
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell

Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Elizabeth Marrufo
Rep. W. Ken Martinez
Sec. Katherine B. Miller
James "Bud" Mulcock
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Norman Suazo
Dr. Moises Venegas
Rep. W. C. "Dub" Williams

Advisory Member

Sen. Vernon D. Asbill

Background

Created by Laws 2005, Chapter 274, Sections 10 and 11, the public school capital outlay oversight task force serves as the permanent entity overseeing the implementation of the work of the public school capital outlay council and the public school facilities authority as they implement the state's standards-based public school capital outlay funding mechanism. The task force consists of 27 members, including the respective secretaries of public education and finance and administration; the state investment officer; the speaker of the house; the president pro tempore of the senate; the respective chairs of the house appropriations and finance and house education committees and the senate finance and senate education committees; four minority party members, two from each house; a member of the Indian affairs committee annually alternating between the senate and house; a member of the house and a member of the senate, each of whom represents districts that are federal impact aid districts; seven public members, two appointed by the speaker, two appointed by the president pro tempore and three appointed by the governor; and three superintendents, two of whom must be from federal impact aid districts, appointed by the legislative council in consultation with the governor.

Proposed Work Plan

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

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
2. monitoring the existing permanent revenue streams to ensure that they remain adequate, long-term funding sources for public school capital outlay projects;
3. monitoring the overall progress of continuing to bring all public school facilities up to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act; and

4. overseeing the work of the public school capital outlay council and the public school facilities authority, particularly as they continue to implement the statewide process for making grant awards.

In addition, the task force will focus on:

1. an examination of funding issues for school districts to ensure that the process is fair and that districts have sufficient resources to provide their students with appropriate facilities, including both school districts with low valuation and school districts that must construct schools in high-growth and rapid-growth areas;
2. an examination of the public school capital outlay council's adoption of major revisions to the statewide adequacy standards and the associated funding needed for implementation of the changes;
3. a review of capacity and utilization issues; and
4. a review of capital outlay funding for charter schools.

Finally, the task force will report the results of its analyses and oversight and any recommendations to the governor and the legislature before the start of the 2008 regular legislative session.

Proposed Meeting Schedule

<u>Date</u>	<u>Location</u>
June 4	Santa Fe
July 6	Santa Fe
September 6-7	Santa Fe
October 1-2	Santa Fe
November 8-9	Santa Fe

Proposed Dates for Possible Subcommittee Meetings:

Date TBD	Santa Fe
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Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2007 MEETING AGENDAS and MINUTES OF 2007 MEETINGS

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

**June 4, 2007
Room 307, State Capitol
Santa Fe**

Monday, June 4

- 1:30 p.m. **Call to Order**
- 1:35 p.m. **Election of Co-Chairs**
- 1:40 p.m. **Review of 2006 Task Force Work and Summary of 2007 Legislation**
—Paula Tackett, Director, Legislative Council Service (LCS)
—Sharon Ball, LCS
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
- 2:30 p.m. **Public School Capital Outlay Council/PSFA Preliminary Data on Fourth
Cycle**
—Robert Gorrell, Director, PSFA
- 3:00 p.m. **Discussion of Work Plan, Possible Creation of Subcommittee(s) and
Items for Future Agendas**
—Task Force Members and Staff
- 4:00 p.m. **Adjourn**

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

**June 4, 2007
State Capitol
Santa Fe, New Mexico**

The eleventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava, co-chair, at approximately 1:45 p.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Cynthia Nava, Co-Chair
Veronica Garcia
Pancho Guardiola
Leonard Haskie
Senator Stuart Ingle
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Rep. W. Ken Martinez
Bud Mulcock
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Dr. Moises Venegas
Peter Winograd for Katherine B. Miller

Absent

Rep. Rick Miera, Co-Chair
Sen. Ben D. Altamirano
Gary Bland
Dr. Leslie Carpenter
Cecilia J. Grimes
Robbie Heyman
Sen. Carroll H. Leavell
Elizabeth Marrufo
Norman Suazo
Rep. W.C. "Dub" Williams

Advisory Member

Sen. Vernon D. Asbill

Staff

David Abbey, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Liz Holmes, LCS
Antonio Ortiz, Public Education Department (PED)
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, June 4

Election of Co-Chairs

On a motion by Senator Smith, seconded by Representative Larrañaga, the task force unanimously voted to confirm the Legislative Council's appointment of Senator Nava and Representative Miera as co-chairs of the task force.

Review of 2006 Task Force and Summary of 2007 Legislation

Ms. Tackett began the review of task force-endorsed legislation for the 2007 session. She noted that the task force recommended the following:

- an omnibus bill that she would be discussing shortly;
- a so-called "money" bill that included:
 - a total of \$81 million for educational technology infrastructure, the Educational Technology Deficiency Correction Fund and replacement of obsolete computers in schools (the bulk of which did not pass);
 - \$30 million for roof repair and replacement (which did not pass);
 - \$8 million for portables to be loaned to school districts (which did not pass); and
 - \$13.3 million to correct deficiencies at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf (\$5.5 million of which was appropriated in the capital outlay bill for each institution);
- a facility opportunity fund — which did not pass, but the bulk of which was amended into the omnibus bill and that portion was then vetoed;
- a state-chartered charter school capital funding bill, which did not pass, but the governor's charter school fund bill did pass with \$4.5 million appropriated in the capital outlay bill;
- a school district general obligation bond bill, which did not pass; and
- a contractor at risk bill, which did pass with a number of amendments.

Ms. Tackett added that the legislature and governor funded \$20 million for high-growth and adequacy standards enhancement, of which \$2 million is to be used for energy efficiency or a LEED-certified pilot project. The final version of the task force's "omnibus bill" contained the bulk of the task force's recommendations from the 2006 interim's work. She said that the amended committee substitute, which was the task force's omnibus bill as it evolved, was signed into law by the governor with some line-item vetoes. She added that task force recommendations in the omnibus bill attempted to address testimony that the task force had heard during the 2006 interim, particularly the effects and some unintended consequences of legislation enacted over the past six or seven years.

Directing task force members' attention to the signed, enrolled and engrossed version of Laws 2007, Chapter 366 (Senate Finance Committee Substitute for Senate Bill 395, as amended), Ms. Tackett discussed the following provisions of the final version of the "omnibus bill":

- exemption from PSFA approval of school construction projects costing \$200,000 or less. She noted that enactment of the bill also allows the Public School Capital Outlay Council (PSCOC) to exempt other classes or types of school construction from PSFA approval;
- the following amendments to the Public School Capital Outlay Act:
 - reduction of offsets from future project awards for special appropriations by 50 percent if the special appropriation is for a project that ranks in the top 150 projects statewide;
 - removal of offset against a local school district for special appropriations for state-chartered charter schools; instead, the offset will be taken against the state-chartered charter school;

- allowance of PSCOC grant assistance to purchase a privately owned facility that is already in use by a school district if the facility meets the statewide adequacy standards, attendance at the facility is at 75 percent of design capacity and attendance in the schools at which the students would otherwise attend is at 85 percent of design capacity, and the school district and project are otherwise eligible for funding;
- provision for additional time to correct outstanding deficiencies in the remaining deficiencies correction process, including some roofing projects;
- an increase in lease reimbursement payments from \$600 to \$700 per MEM with the provision that the per MEM amount and the total limitation are allowed to increase each year with inflation and an extension of the time for the lease payments to 2020 and allowing leased space for administrative use to qualify for the reimbursement; and
- a requirement that the PSCOC must consider concepts that promote efficient but flexible utilization of space when adopting criteria for grant assistance;
- an amendment to the Public School Capital Improvements Act ("SB 9") to increase the state guarantee from \$60.00 to \$70.00 per mill per unit; and
- amendments to the Public School Buildings Act (House Bill 33) to:
 - allow revenues to be used for project management;
 - increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school district elections;
 - require that future local board bond resolutions contain the capital needs of charter schools based upon the appropriate five-year plans; and
 - require that the proportionate revenue from future taxes approved by the voters be distributed directly to charter schools.

Ms. Tackett explained that the omnibus bill also amends the statute to allow school districts and charter schools to enter into lease agreements under which lease payments are made to the school districts with the proviso that the lease payments cannot exceed the lease reimbursement rate under the Public School Capital Outlay Act plus actual costs incurred by the districts. She explained that, under this change, lease payments may now be retained by the school district and do not have to be considered as cash balances.

Ms. Tackett said that the bill partially implements the constitutional amendment passed by the voters in 2006 whereby lease purchases are not considered debt in the constitutional sense and thus allow school districts to enter into lease-purchase agreements without having to take them to the voters for approval. She explained that the bill: (1) allows lease-purchase agreements to be funded as projects under the Public School Capital Outlay Act and allows SB 9 state guarantee distributions to be used for the local match; (2) requires the facility that is the subject of the lease payments under a lease-purchase agreement to meet the statewide adequacy standards if a school district seeks reimbursement (if not, the charter school or school district would have to apply for a grant); (3) allows tax revenue from the Public School Capital Improvements Act and the Public School Buildings Act to be used for the lease payments; (4) allows charter schools to be housed in a building subject to a lease-purchase agreement after July 1, 2010; and (5) requires that, upon termination of the charter of a state-chartered charter school, the facility must revert to the local school board rather than to the state if proceeds from local school district general obligation bonds were used to finance the facility.

Ms. Tackett also drew task force members' attention to Laws 2007, Chapter 173 (House Bill 843, as amended, carried by Representative Miera). She noted that, while this measure had not been endorsed by the task force, it essentially "fills in the gaps" in terms of enabling legislation called for

by passage of Constitutional Amendment 2, approved by voters in the November 2006 general election, allowing for school districts, charter schools and other government entities to enter into certain types of lease-purchase agreements without being in violation of the debt provisions of Article 9 of the Constitution of New Mexico.

Turning to the language in the bill that the governor had vetoed, Ms. Tackett noted that, since 2003, when all districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. In an effort to address this situation, she reminded task force members that they had recommended amendments to the Public School Capital Outlay Act to establish a process to allow a school district to be eligible for the additional award if the PSCOC determined that:

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

Ms. Tackett said that the additional award would have equaled anywhere from 10 to 25 percent of the original project cost. In order to fund these costs without using funding appropriated to the Public School Capital Outlay Fund, she reminded task force members that they had recommended an additional source of funding. She explained that enactment of this measure would have:

1. for the next five years, required that 20 percent of all unreserved, undesignated reverting balances be transferred to the Public School Facility Opportunity Fund at the end of each fiscal year;
2. beginning July 1, 2007, "shaved" three percent of all special legislative appropriations for school construction to be deposited in the Public School Facility Opportunity Fund; and
3. by October 1, 2007, required that 20 percent of unencumbered balances in agency accounts remaining at the end of fiscal year 2007 be transferred to the Public School Facility Opportunity Fund.

In response to a question from the task force regarding the reasons for the governor's veto of the language, Ms. Tackett said that the governor's veto message indicated that he believes that the issues related to establishment of an opportunity fund need additional study, particularly in light of the PSCOC's consideration of adequacy standards modifications.

Ms. Ball said that she would discuss two bills that were passed and signed into law that were not endorsed by the task force but were, nevertheless, very much in line with issues that the task force had supported. Directing task force members' attention to Laws 2007, Chapter 214 (which was Senate Bill 634, carried by Senator Nava), Ms. Ball explained that this measure establishes the Charter School Capital Outlay Fund and provides for distribution of funds for making grants to state-chartered charter schools to assist with meeting the local match for PSCOC projects. She noted that the legislature had appropriated \$4.5 million to fund this distribution. Laws 2007,

Chapter 102 (House Bill 1226, as amended), she said, provides the backing of the state for repayment of school district general obligation bonds. She explained that, with these additional procedures in place, school districts may be able to achieve better bond ratings, thereby allowing for lower interest rates. In response to a task force question, Ms. Ball stated that amendments placed on the bill in the House had addressed concerns about potential violation of the debt clause of the state Constitution of New Mexico (in Article 9, Section 8).

Mr. Gorrell directed task force members' attention to a bill endorsed by the task force, Laws 2007, Chapter 141 (House Bill 303, as amended, carried by Representative Larrañaga). This measure, he said, amends the state Procurement Code to provide for "construction manager at risk" contracts in the construction of education facilities. He explained that current law allows construction managers to serve only "not at risk" and therefore are not responsible to the school district for claims for project delays and extended overhead from one or more contractors. He said that passage of this legislation gives school districts an additional tool to choose from as they build their facilities and provides for the possibility of reduced risks assumed by school districts through guaranteed maximum price and delivery schedules.

PSCOC/PSFA Preliminary Data on Fourth Cycle

Mr. Gorrell and Tim Berry, PSFA deputy director, provided task force members with copies of the PSCOC/PSFA 2006 annual report and the PSCOC/PSFA 2006 reference guide, which provides detailed information on all sources and expenditures of public school capital outlay. Mr. Berry explained that the annual report contains information in particular about the 2006 PSCOC funding cycle. He said that, in 2006, state capital outlay funding for public school construction totaled \$259.2 million, the second-highest annual award. He added, however, that out-of-cycle awards relating to cost overruns and other cost increases totaled \$57.9 million of that amount.

Mr. Gorrell stated that the PSCOC and the PSFA are working closely with school districts to increase project delivery times and thereby minimize the amount of project budget increases due to inflation of construction costs. Mr. Berry added that, since 1999, just under \$1.5 billion has been allocated to a wide range of public school facilities funding programs from supplemental severance tax bonds, severance tax bonds, the general fund and state general obligation bonds.

Directing task force members' attention to two spreadsheets relating to school district rankings based upon the weighted New Mexico Condition Index (NMCI) after the completion of the appeals process for school districts to appeal their respective rankings. Task force members had a number of questions relating to the mechanism for establishing the NMCI and ranking school building needs based upon those rankings.

The task force entertained some discussion on the advance awarded to the Albuquerque Public Schools (APS) and information some of the members had received about APS's repayment of the advance.

Discussion of Work Plan, Possible Creation of Subcommittee(s) and Items for Future Agendas

Senator Nava directed task force members' attention to a copy of the PSCOOTF work plan included in the meeting materials. Members discussed the contents of the work plan in some

detail and expressed concerns about a number of issues included and not included in the work plan. In response to a member's question, Ms. Tackett explained that the use of the term "adequacy" was based upon the district court's decision. Representative Martinez raised the issue of uniformity relating to equality or fairness and the need to ensure fairness in the distribution of funds. Ms. Tackett indicated that staff would adjust the work plan to encompass that concern. Task force members also raised the issue of how to deal with developers.

After directing staff to incorporate suggested changes, the task force agreed to accept the proposed work plan and meeting schedule.

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

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

**July 6, 2007
State Capitol
Santa Fe, New Mexico**

The twelfth meeting of the Public School Capital Outlay Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 10:30 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair Sen.
Antonio Ortiz for Veronica Garcia
Cecilia J. Grimes
Leonard Haskie
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. W. Ken Martinez
Katherine B. Miller
Bud Mulcock
Dr. Moises Venegas

Absent

Sen. Cynthia Nava, Co-Chair
Sen. Ben D. Altamirano
Gary Bland
Dr. Leslie Carpenter
Pancho Guardiola
Robbie Heyman
Dr. Anna Lamberson
Kilino Marquez
Elizabeth Marrufo
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Norman Suazo
Rep. W.C. "Dub" Williams

Advisory Member

Sen. Vernon D. Asbill

Staff

David Abbey, Legislative Finance Committee (LFC)
Paul Aguilar, LFC
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Liz Holmes, LCS
Pauline Rindone, Legislative Education Study Committee (LESC)
Bill Sprick, PSFA
Paula Tackett, LCS
Peter Van Morsel, LESC
Peter Winograd, Department of Finance and Administration (DFA)

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Friday, July 6

Approval of the June Minutes

On a motion by Representative Larrañaga, seconded by Senator Leavell, minutes of the June meeting were approved as distributed.

Public School District Tax Rates

Antonio Ortiz, Capital Outlay Program director, Public Education Department (PED), provided task force members with several spreadsheets that he said would give the members some idea about the current status of school districts' bonded indebtedness and other property tax obligations, as well as the PED calculation of the percent of participation required for Public School Capital Outlay Council-funded projects.

Directing members' attention to the spreadsheet entitled "Public School Bonding Capacity Percentages as of June 30, 2007", Mr. Ortiz noted that almost all school districts in the state are making a substantial effort at the local level to fund their respective capital outlay programs. He noted several districts that are bonded to approximately 100% capacity: Chama (99.8%), Cuba (98.6%), Dexter (100.0%), Grady (108.6%) Gadsden (98.9%), Grants-Cibola (99.9%), Lake Arthur (100.0%), Los Lunas (99.5%), Pojoaque (95.8%), Roy (96.5%), Socorro (98.9%) and Zuni (99.9%).

In response to task force questions, Mr. Ortiz reminded members that "bonded capacity" amounts to 6% of a district's total property tax valuation. For example, he said, the Farmington district has a total property tax valuation of nearly \$1.2 billion and, at 6%, a bonding capacity of just over \$70.9 million. In response to additional questions, Mr. Ortiz directed task force members' attention to the "Assessed Valuation per MEM" column of the spreadsheet and pointed out that a true representation of a district's property tax wealth is the amount of assessed valuation per student (MEM). He noted that the extremes in New Mexico include a per MEM valuation of approximately \$1,546,000 for the Dulce district and \$1,722 per MEM for the Zuni district.

Mr. Ortiz then directed members' attention to the second spreadsheet, "2006 Final Assessed Valuations and Mill Levy Rates", which, he said, shows the total effort a district is making to support its capital outlay program. He pointed out that 84 of the state's 89 districts have the Public School Capital Improvements Act (also called "SB 9") two-mill levy in place. In response to a question, Mr. Ortiz explained that the spreadsheet shows some districts with less than the entire two mills in place because of the yield control provisions of the law. He explained that yield control is in place for both SB 9 and Public School Buildings Act (also called "HB 33") levies. He said that the effect of yield control is to lower the mill levy rate as a district's assessed valuation increases in order to protect homeowners against inflation of assessed valuations. In response to additional task force questions, Ms. Ball stated that a HB 33 levy can be as much as 10 mills, but that the law specifies that any district using HB 33 as a capital outlay funding mechanism is limited to a total millage from all sources of 15 mills. She

said that, generally, only districts with relatively high, broad-based property tax valuations (such as Albuquerque, Santa Fe, Artesia, Eunice, Hobbs and Los Alamos) tend to use HB 33 as a capital outlay funding mechanism.

In response to additional questions, Mr. Ortiz explained that his office uses the data on these spreadsheets to determine the proportional amount for school district participation for Public School Capital Outlay Act grant awards. He then directed task force members' attention to the third spreadsheet: "2007-2008 Percentage of Participation for PSCOC Projects". He added that these school district participation percentages can range from 0% (Zuni) to 90% (Artesia, Aztec, Bloomfield, Capitan, Cimarron, Cloudcroft, Corona, Dulce, Eunice, Jal, Jemez Mountain, Mosquero, Quemado, Santa Fe, Tatum and Vaughn). Task force members had several questions and expressed concerns about the district requirement for 90% participation for some districts, including Cimarron, Corona and Vaughn. In response, Mr. Ortiz stated that those particular districts, as well as Mosquero, have very few students but include a great deal of land.

Ms. Tackett reminded task force members that previously passed legislation endorsed by PSCOOTF had established criteria to allow the Public School Capital Outlay Council (PSCOC) to reduce or totally waive the local match required for PSCOC projects. In response to an additional question, Mr. Berry estimated that fewer than a dozen waiver requests had been granted since the law went into effect in 2006. He said that four districts received waivers during the regular funding cycle and the remaining were granted for supplemental awards based upon rapid increases in construction costs.

In response to a question from Co-Chair Miera, Mr. Ortiz stated that he is hoping that the task force would consider endorsing legislation for the 2008 session that would standardize PED reporting days from the current 40th, 80th and 120th (which occur on different calendar days in different districts) to a set calendar date for fall, mid-year and spring, which dates would roughly coincide with the current 40th, 80th and 120th days. Co-Chair Miera requested that staff work with the LESC staff on recommendations related to this issue.

A Bird's-Eye View of the Public School Capital Outlay Annual Standards-Based Awards Process — Ongoing Review and Monitoring

Mr. Gorrell and Mr. Berry provided task force members with copies of the updated 2007-08 NMCI, the statewide evaluation and ranking of school facilities. In response to task force members' questions, Mr. Gorrell explained that the original ranking was done by an outside contractor, 3-D International (3-D I). He explained that this outside contractor's initial statewide assessment, completed in 2002 and 2003, measured the costs of repairs or replacement needed to bring each school building up to nationally determined operating standards (the BOMA standards) as measured on a lifecycle basis using a nationally standardized methodology that resulted in the calculation of a "facility condition index" (FCI) for each school and the initial FCI ranking.

Mr. Gorrell went on to explain that, after the PSCOC adopted New Mexico's statewide adequacy standards in 2001 for implementation in 2003, the original assessment was updated to include the costs of meeting the state's adequacy standards, beyond the lifecycle repair and

replacement costs first measured. Using this new assessment, a New Mexico condition index (NMCI) was calculated for each school. This index reflects the relative needs of the school compared to the adequacy standards and continues to be used to prioritize funding for school projects requested by the districts.

Tanya DeLara, manager, PSFA Facilities Assessment Database (FAD), explained that, while the original FCI was simply a picture of a particular point in time, the current NMCI is dynamic and changeable. She said it is kept in a computerized database maintained by PSFA with continuous updates, by eliminating needs as funds are allocated to address identified needs and by adding new needs that arise from aging facilities. She added that, while PSFA has a role in the maintenance of the database, it is really a joint effort between PSFA and local districts and each district owns its respective data.

Directing task force members' attention to the handout she provided (included in the meeting file), Ms. De Lara explained that the FAD is now the standard tool to prioritize funding through PSCOC grant awards. She said that the data are sorted to generate a deficiency ranking list by applying a weighted NMCI score to each school's data. Each year, the PSCOC bases grant award decisions upon this ranking. Once funded (and before completed), the funded school drops to the bottom of the list, and those schools with lower level needs move up in priority accordingly.

In summarizing the information on the handout, Ms. DeLara pointed out the following deficiency categories and associated weight factors:

1.	adequacy — immediate code, life, health or safety issues	3.5
2.	degraded systems with potential mission impact	1.5
3.	mitigation of additional damage	2.0
4.	beyond expected life	0.25
5.	grandfathered or state- or district-recommended	0.5
6.	adequacy — facility related	1.0
7.	adequacy — space related	3.0
8.	adequacy — equipment	0.5
9.	normal — within cycle	0.25

Ms. DeLara said that, while the NMCI is calculated from the base formula for FCI, it also takes into account the cost to correct New Mexico adequacy standard deficiencies. She said that PSFA is working on programming changes to FAD that will allow the recognition of those districts that are able, through consistent, conscientious maintenance, to extend the life of their facilities. Mr. Gorrell added that he hopes the task force will consider providing an incentive to districts to extend the life of their facilities through good maintenance and that, in some ways, the past and current systems penalize districts for good maintenance practices.

Mr. Sprick provided the task force with information on the relationship between district facilities master plans (FMP) and district-wide standard curricula. He said that, currently 60%, as compared to 43% at this time last year, of the state's 89 districts have up-

to-date FMPs in place. He reminded task force members that the district FMP is composed of four main components — enrollment, facility condition, educational framework and cost — and that it should be the foundation for planning and design of all educational facilities. He noted that educational specifications and curricula describe the program's goals and outcomes, activities to be conducted, persons served, spatial relationships of the program area, equipment needs, technology needs and special considerations.

He said that the district's planner would facilitate a series of work sessions to develop the educational specifications, standards for each grade configuration, specifications to be overlaid onto each facility for comparison to existing facilities and a comparison to be used in the FMP recommendations. Noting that a good FMP transcends changes in various district school boards and administrations, he said that community buy-in occurs when the plan is developed on reliable, believable data, includes a clear road map for addressing the district's facility needs, uses the "ed specs" as the driving force of the plan, identifies financing for the projects and is the result of consensus and collaboration among stakeholders. He indicated that the PSCOC is finally getting the information it needs to make funding decisions.

Some task force members expressed concern that the standards-based process sometimes seems as if it is attempting to apply objective criteria to a subjective process. In response to a task force question about the definition of "classroom", Ms. DeLara explained that the adequacy standards define both a "general use" classroom (one configured for instruction in the areas of mathematics, social studies and language arts) and "specialty" classroom (one configured for instruction in a specific subject such as science, physical education, special education or the arts). She added that the size of a classroom is determined by its use and the square footage per student based upon national standards, such as those promulgated by the National Center for Education Statistics (NCES) and the Bureau of Indian Affairs (BIA).

In response to a question, Ms. DeLara explained that the glitch with the original program is that it did not incorporate a degradation curve; the system would move from okay one year and "beyond reasonable life" the next. The database has been corrected to capture the degraded cost more gradually, as it really occurs.

In response to questions about roof repairs and replacement, Mr. Gorrell stated that the PSFA has been implementing a standards-based roofing process, which was funded by the 2006 legislature. He noted that the program was not funded in 2007.

Task force members had a number of questions related to the standards-based process, including design professional selection, approval of design and architectural plans and application of the adequacy standards. In response to questions related to approvals, Mr. Gorrell stated that qualified PSFA staff, including the regional manager in whose region the project is located, review all plans before construction begins. Some task force members expressed concern about the qualifications of design professionals selected by school districts. In response to questions and comments, Mr. Gorrell stated that, because

of statutory local control of local boards of education, often PSFA can only raise awareness or influence a district's decision about the hiring of a particular design professional through the use of data.

In response to a question about whether to repair or replace a school, Mr. Gorrell said that the decision rests primarily with the local school board, but that PSFA generally applies a "60% rule", i.e., if the cost to repair a school is more than 60% of the cost to replace it, PSFA generally recommends replacement. In response to an additional question, Mr. Gorrell said that these cost estimates are generally generated by a licensed architectural firm.

Some task force members expressed concerns about the current trend in high schools to move toward career clusters, specifically, that building facilities for and equipping career cluster programs could be very expensive and might duplicate programs already available at nearby community colleges.

Task force members also expressed concerns and posed a number of questions about joint community-school district use of facilities. Ms. Tackett said that this issue could be very complicated, especially in terms of risk management issues, and that staff would do additional research and bring the issue back to the task force at a subsequent meeting during the 2007 interim.

Senator Leavell requested that PSFA provide a listing of all new schools that have been built since the *Zuni* lawsuit was filed.

Statewide Adequacy Standards: Update on Modifications and Additions

Lisa Martinez, director, Construction Industries Division, Regulation and Licensing Department, and chair, Adequacy and Maintenance Subcommittee, PSCOC, and Andre Larroque, building standards specialist, PSFA, and Ms. Santistevan provided the task force with an update on the progress of the update and modification of the statewide adequacy standards.

Made up of PSFA planning and design staff, representatives from school districts, PED and representative design professionals, the Adequacy Standards Advisory Group began meeting in August 2006 to develop modifications to the state adequacy standards for PSCOC consideration, Ms. Martinez explained. PSFA staff also worked with an ad hoc group of school superintendents appointed in October 2006 by the PSCOOTF after representatives of the superintendents' group presented a number of concerns to the PSCOOTF related to implementation of the adequacy standards and the PSFA planning reference guide.

Ms. Martinez said that, after analysis by and input from the PSCOC Adequacy and Maintenance Subcommittee, PSFA staff presented the proposed revisions to school districts during application training sessions provided to districts in February 2007. Ms. Martinez stated that the required public hearings (for New Mexico Administrative Code amendments) were held in Aztec, Pojoaque, Albuquerque and Roswell in February and

March with revisions based upon public comments incorporated into the new draft. She said that at its March meeting, the PSCOC requested staff to provide an analysis of the costs, benefits and consequences of the proposed changes as well as additional research on the cost of including the pre-kindergarten facilities at the current adequacy standards.

Mr. Larroque said that the PSCOC, at its June meeting, proposed a two-part phasing approach for enactment of the proposed revisions. He directed task force members' attention to the document labeled "Phase 1 Revisions". He indicated that the revisions in this document primarily include technical corrections and some increased space requirements. He said that the state share of the cost for implementing Phase 1 would be approximately \$27 to \$28 million.

Directing task force members' attention to the "Phase 2 Adequacy Standards Revisions" document, Mr. Larroque said that the PSCOC had deferred making changes recommended in this document pending further study and more detailed cost estimates.

Task force members indicated a number of concerns with the potential costs involved if the changes proposed in the Phase 1 document are adopted. Specifically, task force members had concerns with the addition of sinks to all kindergarten and first grade classrooms at a projected cost of \$3.6 million. Other task force concerns centered around adding space for administrative uses and proposed amendments to student health, special education, administrative, counseling and other student support spaces, all of which could cost more than \$15.0 million. Task force members asked staff to do some additional research and data gathering before committing the state to an additional \$20 million.

After continued discussion on the Phase 2 proposed changes, task force members requested PSFA to refine its funding requirement estimates and bring the proposed changes back to the task force at a later date.

Ms. Santistevan provided the task force with some explanatory notes on the Adequacy Standards Planning and Reference Guide. She said that an important element of the guide is flexibility in the planning process based upon the specific needs of the district for the facility. She said that some smaller districts, as well as other districts, prefer smaller classrooms to reduce operational costs for heating and cooling of the facility. She said that PSFA staff are available to meet with the district and its design professionals at any point in the planning of the project to ensure that plans meet adequacy standards and take advantage of the appropriate areas of flexibility.

What Do We Mean by "Capacity" and "Utilization"? A Brief Overview

In the interest of time, task force members agreed by consensus to address this issue at a later meeting.

Task Force Discussion of Meeting Dates

Ms. Tackett informed task force members that the Public School Funding Formula Study Task Force (FFSTF), because of the contractor's schedule of deliverables and

schedule conflicts, needs to schedule a meeting on August 30 and 31 to hear from the contractor regarding its preliminary recommendations and, thus, there is a conflict with the dates established for the August PSCOOTF meeting. Noting that several members of the PSCOOTF also serve on the FFSTF, she asked if the members of the PSCOOTF would be willing to reschedule the August meeting for September 6 and 7, pending approval of the Legislative Council. She then pointed out that the original date for the September PSCOOTF meeting was September 17 and 18 and that perhaps the task force should reschedule that meeting for October 1 and 2. Task force members agreed by consensus, pending Legislative Council approval, to reschedule the next two PSCOOTF meetings to the dates suggested by Ms. Tackett. Ms. Tackett noted that the November 8 and 9 dates originally approved by the council would stand.

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

Revised: September 5, 2007

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

**September 6-7, 2007
State Capitol, Room 307
Santa Fe**

Thursday, September 6

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of July Minutes**
- 9:10 a.m. **Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards, 2006-07 Funding Cycle, Including Awards for Energy-Efficient Schools Pilot Project**
—Paula Tackett, Chair, PSCOC
—David Abbey, Chair, PSCOC Awards Subcommittee
—Bob Gorrell, Director, Public School Facilities Authority (PSFA)
- 10:00 a.m. **Standardization of Public Education Department (PED) Reporting Dates: When Is the 40th Day Not the 40th Day?**
—Antonio Ortiz, Program Manager, Capital Outlay Bureau, PED
—Kathleen Forrer, Ed.D., Senior Fiscal Analyst II, Legislative Education Study Committee
- 11:00 a.m. **What Is Meant by "Capacity" and "Utilization"? A Brief Overview**
—Martica Santistevan, Planning and Design Manager, PSFA
—Bill Sprick, Master Planner, PSFA
- 12:30 p.m. **Lunch**
- 2:00 p.m. **Adequacy Standards Reports**
—Adequacy Standards for Charter and Alternative Schools: Appropriate Placement in the Queue
—Martica Santistevan, Planning and Design Manager, PSFA
—Bill Sprick, Master Planner, PSFA
—Updates on Proposed Changes to the Adequacy Standards
—Paula Tackett, Chair, PSCOC
—Martica Santistevan, Planning and Design Manager, PSFA
—Bill Sprick, Master Planner, PSFA
- 4:00 p.m. **Recess**

Friday, September 7

9:00 a.m. **Call to Order**

9:05 a.m. **Districts with Limited Property Tax Resources: Effect of Passed and Vetoed 2007 Legislation**

—Robert F. Rosebrough, Esq., Jordan & Rosebrough, PC, Legal
Counsel for Gallup-McKinley County Schools (GMCS)

—Ron Van Amberg, Esq., Van Amberg, Rogers, Abeita & Yepa, LLP, Legal
Counsel for Zuni Public Schools

—Bruce Boynton, Esq., Boynton Law Office, Legal Counsel for Grants-
Cibola County Schools

10:30 a.m. **Choosing Design Professionals: Roundtable Discussion**

—Karen Alarid, AIA, Director, Facilities Design and Construction, Albuquerque
Public Schools (APS)

—Kizito Wijenje, AICP, Director, Capital Master Plan, APS

—Alfred R. Sena, Facilities Executive Director, Rio Rancho Public Schools

—Brian Dunning, Director, Facilities and Construction Management, Deming
Public Schools

—Leonard Haskie, P.E., Assistant Superintendent, Support Operations, GMCS

—Task Force Members

1:00 p.m. **Adjourn**

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

**September 6-7, 2007
Room 307, State Capitol
Santa Fe, New Mexico**

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

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair (9/7)
Sen. Ben D. Altamirano
Cecilia J. Grimes
Leonard Haskie (9/6)
Robbie Heyman
Dr. Scott Hughes for Sec. Miller
Sen. Stuart Ingle
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Lynda M. Lovejoy
Rep. James Roger Madalena
Rep. W. Ken Martinez (9/7)
Sec. Katherine Miller
Bud Mulcock
Antonio Ortiz for Veronica Garcia
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Dr. Moises Venegas
Rep. W.C. "Dub" Williams
Dr. Peter Winograd for Sec. Miller

Absent

Gary Bland
Rep. Ben Lujan
Kilino Marquez
Elizabeth Marrufo
Norman Suazo

Advisory Members

Sen. Vernon D. Asbill

(Specific attendance dates are noted for members not present for both days of the meeting.)

Staff

David Abbey, Legislative Finance Committee (LFC)
Paul Aguilar, LFC
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Kathy Bilton, Department of Finance and Administration (DFA)
Dr. Kathleen Forrer, Legislative Education Study Committee (LESC)
Robert Gorrell, PSFA
Andre Larroque, PSFA
Frances Maestas, LESC
Dottie McKinney, PSFA
Pat McMurray, PSFA
Lisa Neal, LFC
Aldis Philipbar, LCS
Tom Pollard, LCS
Dr. D. Pauline Rindone, LESC
Martica Santistevan, PSFA
Bill Sprick, PSFA
Paula Tackett, LCS
Peter Van Moorsel, LESC

Guests

The guest list is in the meeting file.

Copies of all handouts and testimony are in the meeting file.

Thursday, September 6

Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards, 2006-07 Funding Cycle, Including Awards for Energy-Efficient Schools Pilot Project

Before beginning the presentation, Mr. Abbey acknowledged the hard work of the PSCOC Awards Subcommittee members—Dr. Kurt Steinhaus, Office of the Governor; Secretary Katherine Miller, DFA; and Vicki Smith, representing the New Mexico School Boards Association—who met four times to evaluate applications.

After providing task force members with several spreadsheets related to the presentation, Mr. Abbey directed their attention to the spreadsheet titled "PSCOC Financial Plan". He said that, for the 2006-07 awards cycle, the council had targeted between \$100 million and \$150 million for standards-based grant awards. Crediting consistently high oil and gas prices, Mr. Abbey said that the council was able to provide grants for the following:

Standards-based awards for 19 projects in 18 school districts	\$135.3 million
Lease assistance to 61 charters and 7 public schools in 21 districts	\$ 6.5 million
Demolition of old/abandoned buildings in 16 districts	\$ 1.9 million
Energy-efficient projects for 9 district applicants and pilot projects	\$ 2.0 million
Set-aside for school district master planning assistance	\$ 1.0 million
Cost increases for prior years' projects (since 8/7/06)	\$ 65.5 million

Tables detailing specifics about all awards are in the meeting file.

Mr. Abbey explained that, in determining grant awards, the council's objective is to stretch funding as far as possible, while retaining sufficient funding for required out-year expenditures. He added that, while worthwhile, "special-funding" type programs, such as those for roofs, facilities master plans and building demolition, divert funding and attention from core priorities, i.e., bringing all New Mexico public schools to adequacy. Citing the \$65.5 million in cost increases for projects funded in prior years, Mr. Abbey stated that the council's priorities are to fund projects requested by districts that have current master plans and effective pre-planning measures in place allowing them to use PSCOC grant funding expeditiously. He noted that schools built expeditiously are less expensive because they are affected less by construction inflation and the cost of capital. In response to task force members' questions, Mr. Gorrell said that the PSCOC will not assist districts with inflation costs that are caused by project delays that are the result of a lack of preparation and planning on the district's part. He observed that construction inflation has been running at about 10% per year and that those cost increases compound over time.

He added that some projects were awarded design funds if they were high on the NMFCI ranking list, but did not have the level of preparation in place to allow for expeditious use of funds. He said that these districts will not lose their place in "the queue" and will be eligible for grant awards in later cycles.

Directing members' attention to the spreadsheets entitled "Monthly status of PSCOC 04-05 Awards", Mr. Abbey explained that the PSCOC monitors adherence to project time lines at 30-day intervals. He said that the PSFA's simple color-coded report readily indicates whether projects are behind, ahead of or on schedule. Mr. Abbey added that the LFC is using a similar color-coded report to track all projects over \$1 million.

Mr. Abbey stressed that, in addition to effective master planning, preventive maintenance is a key to safeguarding the state's substantial capital investments. He noted that funding for the Public School Capital Improvements Act (SB 9) increased by nearly 30% between FY07 and FY08. Ms. Tackett added that, from passage of SB 9 in 1975 through 2000, the state guarantee had remained at essentially \$35.00 per mill per unit, but with passage of PSCOOTF-endorsed legislation in 2007, the state guarantee is now \$70.00 per mill per unit with yearly increases based upon the consumer price index (CPI) of each prior year. She also noted that the minimum \$5.00 per mill per unit granted to all districts that impose SB 9 has been indexed to the CPI since 2005, which is currently calculated at \$5.44 per mill per unit.

Task force members discussed concerns about what appear to be extraordinarily large increases in costs for three new high schools currently under construction, two of which are being built on Albuquerque's west side and a third in Rio Rancho. Mr. Gorrell acknowledged that some increases are the result of programmatic decisions by the respective districts, e.g., the "career pathways" concept. In response to a question about this concept, Dr. Rindone stated that career clusters are recognized by the U.S. Department of Education and focus on preparing students for work or post-secondary educational opportunities. She added that the purpose of this program is to offer students an aligned curriculum geared toward a specific career choice. Mr. Gorrell added that classrooms for career-technical type programs are often in laboratory classrooms, which are more expensive to construct and maintain than standard, traditional classrooms.

Mr. Gorrell directed members' attention to the handouts discussing aspects of the current trend encouraging the building of "green schools". He reported that the U.S. Department of Energy (DOE) estimates that nationwide, school district utility costs average approximately \$125 per student per year, including costs for water, wastewater processing and trash removal. He said that the DOE estimates that a high-performance "green" school can provide savings of as much as \$50.00 per student per year. Noting that designs for green schools generally take advantage of "daylighting", the use of natural light, he added that a California study funded by the state's primary gas and electric provider (PG&E) shows that students with the most daylighting in classrooms progressed up to 20% faster on math tests and 26% on reading tests than students with the least amount of daylighting. He also noted that a North Carolina study found that students in full-spectrum light were healthier and attended school 3.2 to 3.5 more days a year than students in environments without full-spectrum light.

Acknowledging the \$4.0 million in funding provided by the 2007 legislature, Mr. Gorrell reported on the following high-performance energy conservation grant awards made at the August 25, 2007 PSCOC meeting.

- Capital grants of \$1.0 million each to the Animas and Cobre school districts for pilot projects. Mr. Gorrell explained that these two districts could not otherwise afford energy conservation initiatives, and their respective administrations had expressed great interest in participating to generate data related to implementation of energy conservation. He added that these districts also had the full support of their respective communities.
- Small design and life cycle grants totaling \$1.39 million to Animas, Cobre, Las Cruces, Rio Rancho, Albuquerque, Los Lunas, Gallup, Deming, Portales and Gadsden school districts for complete life cycle analyses of intended building systems such as mechanical and daylighting and the associated modeling costs for comparisons of alternative systems.
- Small performance measure grants totaling \$380,000 to Animas, Cobre, Las Cruces, Rio Rancho, Albuquerque, Los Lunas, Gallup, Deming, Portales and Gadsden school districts for pre- and post-evaluations of effectiveness of facilities from the "people"

perspective, e.g., absenteeism levels, satisfaction with environment, gripes about facility space and academic achievement and "hard" measures such as lumens at work surfaces, temperature stability and fresh air exchange.

- A total of \$230,000 in training and database development to Animas, Cobre, Las Cruces, Rio Rancho, Albuquerque, Los Lunas, Gallup, Deming, Portales and Gadsden school districts for the training of school boards, communities, staff and students during the design and evaluation periods on the value of high-performance "green" schools and post-construction training to foster behavioral changes based upon hard data that support sustainable and functional schools. Mr. Gorrell explained that development of a database will include a web site library of associated school designs to allow statewide comparison of various schools' designs and systems related to energy use, maintenance and function.

Mr. Gorrell and task force members then discussed some concerns about the lack of qualified bidders for construction projects and concerns about the effect of inflation on construction costs. He noted that the PSCOC does not provide funding for inflation costs resulting from project delays caused by a lack of or poor planning. Task force members expressed concerns about some districts' apparent lack of concern about operational and transportation costs associated with issues such as site selection, program planning and building materials. In response to task force questions, Mr. Gorrell stated that the PSFA "manages by exception" through continuous, on-line monitoring of projects. Concern was also expressed about the effect of cost increases that have resulted from the implementation of subcontractor performance and payment bonding legislation passed in 2005.

He said that the PSFA has sent out a survey to various local contractors to find out their experiences and concerns associated with contracting for state-funded work. He noted that many contractors are not paid for their work for 45 days or more after billing. Task force members asked for a list of contractors who have not been paid and expressed concern that payment delays may be contributing, in some cases, to rising school construction costs.

In response to task force questions and comments, Mr. Mulcock stated that the Fort Sumner School District is the only district that has received a waiver for part of its local match. Mr. Abbey added that the district has used all of its bonding capacity and still is not able to fund its entire match.

In response to additional questions and comments, Mr. Gorrell explained that the PSCOC's 2005 award of nearly \$1.0 million for repairs and renovation to the San Diego Riverside Charter School in the Jemez Valley School District has gone unused because the school and the district are at a "standoff" regarding the district's contribution to meeting the match requirements. The school and its governing board wish to renovate the building located on the Pueblo of Jemez, and the district wants the school to relocate to underutilized facilities at the district's site, which is not on pueblo land.

Standardization of the Public Education Department (PED) Reporting Dates: When is the Fortieth Day Not the Fortieth Day?

By way of background, Mr. Antonio Ortiz, program manager, Capital Outlay Bureau, PED, explained that enrollment on the fortieth day of a district's school year became the basis for funding for the current year (except for special education, which was the higher of the fortieth or eightieth day enrollment) in 1984. Beginning with the 2000-01 school year, he said, the statute was amended to require the use of the prior year average of membership on the fortieth, eightieth and one hundred twentieth days, and beginning with the 2006-07 school year, districts and charter schools are now required to use the average of the prior year eightieth and one hundred twentieth day memberships in calculating program units. The use of count dates, such as the fortieth day count date, means that students in each district and charter school have attended school for approximately the same length of time prior to being counted for funding purposes. Theoretically, he said, this procedure places all school districts on a level playing field.

Mr. Ortiz said that, for the 2006-07 school year, the fortieth day reporting date for school districts on a traditional calendar ranged from September 27 to November 1. He noted that these discrepancies are exacerbated by the fact that each charter school operates on its own schedule. He said that Representative Miera had sponsored a bill during the 2007 session that would have standardized reporting dates to replace most references to the fortieth, eightieth and one hundred twentieth day reporting dates for school districts and charter schools with, respectively, the third Monday in October, the second Monday in December and the third Tuesday in February.

Representative Miera said that as HB 327 made its way through the legislative process, several organizations and individuals expressed concern that establishing three single, separate reporting dates might disadvantage districts or schools that either started early or late. Mr. Abbey stated that another problem stems from the lack of data received from STARS, a web-based, student-teacher accountability program. It is a "data warehouse" designed to track students in New Mexico public schools from kindergarten through higher education. These data are also important for funding.

What Is Meant by "Capacity" and "Utilization"? A Brief Overview

Ms. Martica Santistevan, planning and design manager, PSFA, stated that the PSFA is proposing multiple uses for single spaces, e.g., combining the library and computer labs in schools into one space in order to cut down on construction costs. She also suggested sharing school buildings like theaters, gymnasiums and pools with the community. She stated that some community use is already occurring, and the next step is to study the availability of these facilities. Bill Sprick, master planner, PSFA, stated that block scheduling in high schools reduces the efficiency of classrooms because there are longer periods of time when rooms are not being used. Task force members also expressed concerns about putting money into schools that are not being utilized, but they also do not want to get rid of any schools that might be of use in the future.

Task force members discussed the need for information on the movement of school populations. In response to task force comments and questions, Mr. Gorrell discussed the usefulness of a statewide geographic information system (GIS) for schools. He explained that a GIS links location information to buildings, vehicles and students, among other factors, and allows that information to be analyzed in various ways. He said, for example, appropriate use of a GIS could:

- address ways to improve student forecasting accuracy within and across districts without compromising student privacy or district autonomy;
- more accurately target adequate yearly progress (AYP) variance across a particular school, district and/or districts to allow for deployment of limited resources to greatest need areas;
- optimize school feeder patterns and transportation resources for maximum convenience to families and students while controlling costs; and
- determine the most effective locations for new schools based upon projected population flows.

In response to a task force question about the relationship of a GIS and STARS, Mr. Gorrell stated that a GIS has a different function from the STARS system.

Task force members expressed a number of concerns about the seeming unwillingness of local boards of education to make difficult choices regarding school closings, building new schools and limited use of classrooms (i.e., not allowing the use of school facilities during nonschool times).

Lunch

The committee recessed for lunch at 12:00 noon and reconvened at 1:30 p.m.

Adequacy Standards Reports

Adequacy Standards for Charter and Alternative Schools: Appropriate Placement in the Queue

Mr. Sprick began the discussion by stating that charter and alternative schools have smaller enrollments and therefore do not require as much square footage. He stated that charter schools, in particular, do not necessarily need the same standards as traditional public schools because they have different requirements that are specified in their respective charters. Charter schools often use community resources (e.g., public libraries and community centers).

Task force members expressed concerns that a charter school's charter must be approved before any facilities plans are developed or, in some cases, even considered. Mr. Gorrell pointed out that nothing in statute or rule — except for the statute requiring that they be in facilities that meet "E" code requirements — requires charter schools to have PSCOC approval of facilities before admitting students.

Alan Armijo, Albuquerque Public Schools (APS) lobbyist, stressed the importance of districts working with charter schools to assess and, if possible, assist in meeting the facilities needs of charter schools. He gave the example of Wilson Middle School in the APS, which has

a Native American charter on its campus. Ms. Tackett pointed out that PSCOOTF-endorsed legislation passed in 2007 provides incentives for districts and charters to work out lease agreements. Mr. Armijo stated that the APS is attempting to work with charter schools to encourage them to take advantage of available space in currently underpopulated schools.

Mr. Sprick explained that all charter schools whose charters have been renewed at least once will be evaluated in the next two months. He said that the review will be based on the current adequacy standards compared to facility requirements specified by the charter school's charter.

Updates on Proposed Changes to the Adequacy Standards

Ms. Tackett explained that the Adequacy Standards Advisory Group, assembled by the PSFA to begin its work in August 2006, included school district personnel, legislative staff, PSFA staff and architects and planners. Andre Larroque, PSFA, explained that the group had examined all of the adequacy standards, but because of concerns about costs associated with some of the changes under consideration, at the request of the PSCOC, the PSFA staff made suggested revisions to the adequacy standards, in two parts. The first part consists of revisions of a technical nature and those revisions that add clarity to the standards. Mr. Larroque directed task force members' attention to the handout headed "Phase 1-A Approved Revisions to Adequacy Standards" and reported that the PSCOC had adopted the changes represented therein in July.

In response to task force comments and questions, Ms. Tackett indicated that the revisions in Phase 1-A clarify technical issues and provide limited additional storage in science classrooms. She said that the statewide cost was just over \$6.0 million with an impact of approximately \$4.4 million for the current awards cycle. In response to task force members' comments, Ms. Tackett explained that, because the task force had earlier expressed concerns about additional costs included in Phase 2 of the revisions, the PSCOC and the PSFA would continue their study of the costs related to the issue and bring them back to the task force. In response to a task force question, Ms. Santistevan indicated that both school districts and charter schools could request waivers from the standards if the district or charter school has alternative methods to provide them.

Friday, September 7

Approval of the July Minutes

The July minutes were approved.

Districts with Limited Property Tax Resources: Effect of Passed and Vetoed 2007 Legislation

Robert Rosebrough, legal counsel for Gallup-McKinley County Schools (GMCS), explained that in the mid-1970s, a number of states were involved in litigation over school funding. He noted that, in 1974, New Mexico was among the first states to enact and implement an equalized distribution formula to fund school district operational costs and thereby avoided much litigation. In terms of capital outlay funding, however, he said that in

spite of enacting legislation in 1975 to provide a minimum guaranteed level of state funding and funding for critical capital outlay expenses, the state continued to rely primarily on local property tax wealth to fund school district capital outlay needs.

Ron Van Amberg, legal counsel for the Zuni Public Schools (ZPS), pointed out that since Judge Rich's findings in the *Zuni* lawsuit in 2000, state funding of school district capital outlay needs has increased by hundreds of millions of dollars. He added that the adoption and implementation of the state's adequacy standards — and the PSFA's interpretation that state funding covers only the adequacy standards — have, in essence, created a ceiling in districts with little property tax wealth because these districts have little or no resources to go beyond the adequacy standards. Mr. Van Amberg stated that the Zuni, Gallup-McKinley County and Grants-Cibola County schools had been very pleased that the task force had endorsed legislation that would have created the Public School Facility Opportunity Fund to allow the PSCOC to make grants to specific, qualifying districts to allow for construction of facilities that would exceed adequacy standards. He noted that the governor's veto of the language in the bill creating this fund had kept those qualifying districts from building beyond the standards.

Dr. Kaye Peery, ZPS superintendent, told the task force that her district had received an allocation of approximately \$2.2 million in deficiency correction funds approximately five years ago, but with changes in district leadership and concerns about meeting adequacy standards, the district has not been able to expend those funds to improve the building in which Zuni's Twin Buttes High School is located. In response to discussions with Dr. Peery and task force members, Ms. Tackett explained that the PSCOC has recently attempted to address this issue with the district and that she and the council would work to expedite a satisfactory resolution for the appropriate expenditure of these deficiency correction funds.

George Perea, Grants-Cibola County Schools (GCCS) budget and finance director, expressed his district's gratitude to the PSCOOTF and the PSCOC for the state support given to the district over the past five years. He reported that GCCS had received more than \$23.0 million in deficiency correction funding, as well as more than \$25.0 million to build additions and make renovations to Grants High School and address other needs at other schools in the district. He added that he believes that the GCCS have been treated fairly by the PSCOC but that the district, with its low property tax valuation, has difficulty finding the resources to exceed the adequacy standards.

In response to task force discussion, questions and concerns, Ms. Tackett explained that the governor's veto message had acknowledged the importance of addressing unique facility and financing issues in those qualifying districts but that the message added that the issue needed further study, in particular "[a] more thorough analysis of appropriate revenue sources, an overall budget impact analysis and additional research on funding above adequacy standards...". In response to additional task force questions, Mr. Ortiz stated that he would consult with the secretary of education and the secretary of finance and administration and work toward providing the task force with additional information that members would need before recommending legislation to address this issue for the 2008 session.

Choosing Design Professionals: Roundtable Discussion

Kizito Wijenje, AICP, director, capital master plan, APS, and Karen Alarid, AIA, APS Facilities Design and Construction Department, provided the task force with several handouts illustrating the district's architect and engineering (A&E) selection process. Ms. Alarid stated that APS follows the state procurement process for a qualification-based selection. Specifically, she said, the process works as follows.

- APS identifies, prioritizes and funds projects based upon the board-adopted capital master plan.
- The APS Procurement Department, together with the Facilities Design and Constuction Department, develops a scope of work and a request for proposals (RFP) that include the response format and evaluation criteria.
- The Facilities Design and Construction Department director than puts together and chairs a selection committee composed of the directors of the district Facilities Support and Operations Department and the capital master plan, a local independent design professional who is not responding to the solicitation, a parent with a child currently attending an APS school and a nonvoting ex-officio member from the district's Procurement Department.
- After a preliminary meeting to distribute proposals and the rules of evaluation, each selection committee member independently evaluates and scores the proposal.
- The selection committee meets to compile scores and to rank firms in order of their qualifications based upon the criteria in the RFP.
- Points are subtracted from the initial scores for firms that already have APS work in progress that is not yet 75% complete.
- The selection committee meets and approves the final scores and rankings.
- The selection committee may conduct interviews with the top-ranked firms. If interviews are held, the initial proposal comprises 60% of the possible score and the interview, 40%.
- The successful firm is notified, and a meeting is scheduled to discuss the preliminary scope of work and the fee.
- If the RFP is for multiple projects, the top-ranked firm selects one project from the entire list of projects available, the second-ranked firm selects from the remaining projects, and so on until all projects have been selected.
- After a firm is chosen, those that were not chosen are able to have exit interviews in which they are able to review feedback from the interviewers.

In response to task force questions, Ms. Alarid stated that the district's fee schedule is based upon the PSFA's pre-K-12 design professional fee schedule. She added that APS is attempting to require more durable materials in its projects, which may cost more initially but will save money in the long run. In response to a question from the task force, Ms. Alarid stated that APS now has a policy of eliminating objects, such as heating, ventilating and air conditioning systems, from roofs to reduce roof damage.

Alfred Sena, facilities executive director, Rio Rancho Public Schools and Brian Dunning, director, facilities and construction manager, Deming Public Schools, briefly outlined their respective districts' A&E procedures, both of which rely heavily upon adherence

to the Procurement Code and use a merit-based process and rely upon qualifications-based responses to RFPs.

Task force members discussed the pros and cons of establishing a statewide process that all districts must use. In response to the task force discussion, Mr. Heyman stated that achieving uniformity in capital outlay expenditures and implementation would be difficult given local districts' statutory autonomy and taxing authority.

In response to task force members' questions and comments, panel members discussed issues surrounding the development and implementation of effective preventive maintenance plans. Task force members stressed the importance of effective maintenance plans and procedures in order to protect the state's considerable investment in meeting public school capital outlay needs. Mr. Gorrell stated that districts applying for and receiving the PSCOC grants must have in place a preventive maintenance plan and must also have in place effective maintenance practices, all of which are monitored through the Facilities Information Management System. Panel members agreed, however, that districts that have in place and implement effective maintenance practices are not rewarded for doing so. They noted that these practices save the state and local districts money but, because of the criteria for qualification for the PSCOC grant awards based upon the New Mexico Facilities Condition Index, districts that have not attended appropriately to maintenance needs often have projects that rise to the top of the list for consideration before districts that have had good maintenance policies and practices in place.

In response to task force concerns and questions, Mr. Gorrell indicated that the PSFA has been working on developing procedures that would provide some sort of incentives or rewards for districts that have good maintenance records. He indicated that the PSFA would provide the task force with additional information and recommendations at a subsequent meeting during the 2007 interim.

There being no further business to come before the task force, members adjourned at 12:00 noon.

Revised: September 28, 2007

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

**October 1-2, 2007
State Capitol, Room 307
Santa Fe**

Monday, October 1

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Approval of September Minutes**
- 10:10 a.m. **Community/Educational Spaces: More Questions Than Answers About Their Use?**
—Sammy Quintana, Executive Director, New Mexico Public School Insurance Authority (NMPSIA)
—James Barfoot, Assistant Superintendent of Operations, Farmington Municipal Schools (FMS)
—Bob Gorrell, Director, Public School Facilities Authority (PSFA)
—Don Moya, Deputy Secretary, Public Education Department (PED)
—Alan Armijo, Government Liaison, Albuquerque Public Schools (APS); Chair, Bernalillo County Commission
—Danny Eaker, Athletic Director, Roswell Independent School District
- 12:00 noon **Lunch**
- 1:30 p.m. **Adequacy Standards Square Footage in Small Districts: Minimizing Operational Costs**
—Dr. Jim Holloway, Assistant Secretary, Rural Education Division, PED
—Patricia Miller, Superintendent, Fort Sumner Municipal Schools
—Lisa Martinez, Chair, Maintenance and Adequacy Standards Subcommittee, Public School Capital Outlay Council (PSCOC)
—Andre Larroque, Building Standards Specialist, PSFA
- 3:15 p.m. **Life-Cycle Design Improvements: Practices That Work Toward Containing Operational Costs**
—Bob Gorrell, Director, PSFA
—Bob Bittner, Maintenance Coordinator, PSFA
—Ron Rioux, Energy Conservation Coordinator, APS
—Martin Montaña, Capital Projects and Data Administrator, Rio Rancho Public Schools (Invited)
- 4:00 p.m. **Recess**

Tuesday, October 2

9:00 a.m. **Call to Order**

9:05 a.m. **Facilities Information Management System: Funding and Updates on Implementation, Including Equipment Inventory Progress**

—Bob Bittner, Maintenance Coordinator, PSFA

—Johnty Cresto, Maintenance and Operations, Gallup-McKinley County Schools

—Jack Wiley, Superintendent, Clayton Municipal Schools

—George McFall, Maintenance and Grounds Supervisor, Central Consolidated Schools

10:00 a.m. **Resolving Differences or Concerns That Impede PSCOC Grant-Funded Project Implementation**

—Paula Tackett, Chair, PSCOC

—Bob Gorrell, Director, PSFA

10:45 a.m. **Discussion of Potential Topics for PSCOOTF-Endorsed Legislation**

—PSCOOTF Members and Staff

1:00 p.m. **Adjourn**

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

**October 1-2, 2007
Room 307, State Capitol
Santa Fe**

The fourteenth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by the co-chairman, Representative Rick Miera, on Monday, October 1, 2007, at approximately 10:00 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair (10/1)
Cecilia J. Grimes
Robbie Heyman
Scott Hughes for Katherine B. Miller
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Ben Lujan
Rep. James Roger Madalena
Bud Mulcock
Antonio Ortiz for Veronica Garcia
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Ben D. Altamirano
Gary Bland
Leonard Haskie
Sen. Stuart Ingle
Sen. Lynda M. Lovejoy
Kilino Marquez
Elizabeth Marrufo
Rep. W. Ken Martinez
Dr. Moises Venegas
Rep. W.C. "Dub" Williams

Advisory Members

Sen. Vernon D. Asbill

(Attendance dates are noted for those not present for both days of the meeting.)

Staff

Sharon Ball, Legislative Council Service (LCS)
Bob Gorrell, Public School Finance Authority (PSFA)
Andre Larroque, PSFA
Aldis Philipbar, LCS
Pauline Rindone, Legislative Education Study Committee (LESC)
Bill Sprick, PSFA
Paula Tackett, LCS
Peter van Moorsel, LESC

Guests

The guest list is in the meeting file.

Copies of all handouts and testimony are in the meeting file.

Monday, October 1

Ms. Tackett read an email from Norman Suazo to staff indicating that he would no longer be able to serve on the PSCOOTF.

Community/Educational Spaces: More Questions Than Answers About Their Use?

Sammy Quintana, executive director, New Mexico Public School Insurance Authority (NMPSIA), explained that the NMPSIA has secured insurance coverage for special events liability through the Clarendon American Insurance Company. This tenant user liability insurance policy (TULIP) may be purchased for what he called a "very reasonable premium" by an individual or group asking a school district for the use of one or more of its buildings. He reported that from April 1, 2006 through June 30, 2007, a total of 55 policies were purchased, for an average premium of \$161. He indicated that the districts allowing the use of a school facility with the required TULIP coverage include Alamogordo, Artesia, Bernalillo, Central, Dulce, Gadsden, Gallup, Hatch, Jemez Mountain, Las Cruces, Los Alamos, Mesa Vista, Mora, Moriarty, New Mexico School for the Deaf, Peñasco, Rio Rancho, Springer, Wagon Mound and West Las Vegas.

In response to task force questions, Mr. Quintana said that premiums are based upon the risk classification of the event, the number of days of the event and the expected attendance. He said that the lowest premium (\$100) was charged for the use for a graduation or anniversary reception, and the highest premium (\$2,400) was for the use of school facilities for weekly basketball games for the months of April through June. Other event types, he said, include birthday celebrations, basketball practices, music concerts, car shows, volleyball tournaments and a country and western dance. In response to additional questions, he indicated that the state has not had many lawsuits filed against it, but the few that the state has settled or lost have been very costly.

James Barfoot, assistant superintendent of operations, Farmington Municipal Schools, discussed community use of school buildings in Farmington. He said that school facilities are used for powwows, concerts and church services and meetings. The district charges nominal rent for use of the space and requires insurance for all uses. He said that custodians and other staff must be paid time and a half for work outside their normal workdays. Each prospective renter must provide a certification of insurance coverage for \$500,000.

Mr. Barfoot said that principals among the various schools in the district are not always consistent in their rental rate schedules. In response to a task force question, he indicated that only the Farmington district school board has the authority to waive rental fees or insurance charges. He also said that the City of Farmington and the school district often have agreements to share spaces, costs for construction projects, stipends for coaches and the use of buses.

Danny Eaker, athletic director, Roswell Independent School District, discussed community use of school facilities in Roswell. He said that if the city uses school property, then school rules must be enforced and vice versa. He provided a listing of various properties owned by the school district and the way in which they are used by the community. Mr. Eaker brought examples of documents indicating the terms and quality of agreements between the city and the school district.

Alan Armijo, government liaison, Albuquerque Public Schools (APS), provided the task force with a school district document describing requirements and priorities for the use of school district facilities. He said that the district requires proof of liability insurance of \$1 million (with APS named as an additional insured) for all groups requesting the use of a school facility. Many nonprofit organizations have their own insurance or work it out through a contract with the city. He said that there are many community groups that use school facilities, especially elementary schools. He pointed out that APS is currently building a new school in southwest Albuquerque. The library is being built larger than most high school libraries so that it may also serve as the community library.

Responding to task force discussion, Mr. Gorrell said that rifts can sometimes develop in a community when an agreement is not reached between the school district and the community regarding costs for sharing facilities and liabilities. He stated that these agreements require good communication and a willingness to cooperate on both sides and can be spelled out in memoranda of understanding between two governmental entities.

Frank Koppler, contract attorney for the NMPSIA, said that during the 2007 session, he worked with Representative Joni Marie Gutierrez on developing legislation that would provide liability insurance only in cases of bodily injury and property damage. The proposed legislation, which did not pass, would have limited the amount of recovery to \$1 million.

In response to questions and comments about the differences between small school districts and large school districts, Julie Garcia, with NMPSIA contractor POMS and Associates, stated that small school districts sometimes have the only public buildings in a community and that sharing facilities is a matter of necessity and is handled as informally as by a verbal agreement or a handshake. School districts have the only facility big enough to house large events, such as weddings, receptions and funerals. The issue of community use often comes down to communication and how much people are willing to work together. The party wishing to use the facility may refuse to get TULIP coverage, and the school is then left with the decision of whether or not to rent out the facility. In response to a task force question, both Mr. Barfoot and Mr. Eaker said that their respective districts do not take advantage of the NMPSIA's TULIP coverage; organizations using their facilities usually have access to other sources for liability insurance.

In response to a task force question, Mr. Quintana said that the regular cost for \$500,000 in TULIP coverage is approximately \$200-\$300 per event. He noted that local organizations that are part of larger national organizations, such as the YMCA, have coverage from the national organization. Another comment was made that schools are not

providing as many extracurricular activities as they did in the past, and community and nonprofit organizations are providing services that schools no longer provide. Task force members expressed concern about requiring groups to pay insurance when they are providing a service that the school should be providing. The task force requested information from the National Conference of State Legislators about what other states are doing to utilize school facilities for community use.

In response to a question regarding liability for a community volunteer teacher, panel members agree that the school district should have a policy regarding the appointment of volunteers that would require the same type of background check to which school employees having direct contact with students are subject.

Task force members also discussed the possibility of endorsing legislation that might encourage shared responsibility and use of facilities by lowering the offset for direct legislative appropriations made for shared use between school districts and other governmental entities, such as municipalities and counties.

The task force recessed for lunch at 12:00 noon and reconvened at approximately 1:30 p.m.

Adequacy Standards Square Footage in Small Districts: Minimizing Operational Costs

Patricia Miller, superintendent, Fort Sumner Municipal Schools, explained that her district has a total enrollment of approximately 320 students with all three levels — elementary, middle and high school — on the same campus within the village limits of Fort Sumner. She said that the school district's boundaries include all of DeBaca County. Noting that the average age of the buildings on the campus exceeds 55 years, she said that some of the facilities need to be replaced, while others can be repaired and remodeled. For example, she said, the cost of remodeling the old gym (built in 1930) to make it a shared use facility with space to accommodate science labs and a library-media center would be more costly than building a new facility. On the other hand, the elementary school (built in 1965) has been well-maintained and is in relatively good condition. She noted that the layout of the building is not conducive to the efficient use of space, with more than 30 percent of the space lost to support areas and tare space. The current problems of a lack of Americans With Disabilities Act accessibility, sufficient electrical capacity, special education classroom space and storage space can be addressed through a partial remodel of the building.

Ms. Miller noted that the district's telephone and intercom systems are so antiquated that parts for repair are no longer available; when a unit breaks, service to that area is simply no longer available. She said that the boiler unit that supplies heat to one of the buildings has exceeded its life expectancy by 20 years and must be replaced for safety reasons. She explained that the district's enrollment has been declining slightly over the past five years, but appears to be stable for the next five years. She said that the Public School Capital Outlay Council (PSCOC) this year awarded the district a grant of nearly \$9.5 million to begin the work on phases 1 and 2 of its rebuilding and remodeling project. She noted that the district's taxpayers have fully supported the project by approving the maximum Public

School Capital Improvements Act (SB 9) levy and by bonding to capacity. She said that, even so, the district had to request a waiver for a portion of its 49 percent share on the standards-based sliding scale.

Ms. Miller said that she, her staff, the students and the community are doing everything they can to achieve the maximum benefit of the resources available to them both locally and from the state. She said that the academic and extracurricular activities create a feeling of achievement in the community. She noted that, because of its size, the district is not able to achieve the economies of scale possible in middle- to larger-sized districts. She talked about the fact that "at some point you just have to teach", meaning that certain classroom specifications will always be required.

Mr. Larroque, building standards specialist, PSFA, presented information on school size. He said that students do better in small learning environments, but that schools continue to be built larger to deal with issues of efficiency. Mr. Larroque stated that the total construction cost of the median elementary school in the smallest quarter of the United States last year was \$7.5 million, cost per square foot was \$158.45 and cost per student was \$22,426. These schools were designed to house 540 or fewer students. In the largest quarter, the total median cost was \$15 million, cost per square foot was \$133.33 and cost per student was \$16,000. These larger elementary schools were designed to house more than 800 students.

Mr. Larroque reported that the smallest quarter of high schools was constructed to house up to 800 students and cost a median total of \$16 million, \$156.71 per square foot and \$27,111 per student. The largest quarter of high schools constructed last year was designed to house 1,800 or more students. The total median construction cost was \$48 million, \$148.86 per square foot and \$22,861 per student. Mr. Gorrell commented that smaller schools retain students better and have a better record of graduating students.

Dr. Jim Holloway, assistant secretary, Rural Education Bureau, Public Education Department, reported that 46 of the state's 89 districts have fewer than 1,000 students. Of those, 33 have fewer than 500 students and, of those, eight have fewer than 100 students. He said that the special requirements of small school districts need to be examined closely because they often cannot fill a K-12 school building designed for 450 students, let alone an elementary school building designed for 450 students.

Lisa Martinez, director, Construction Industries Division (CID), Regulation and Licensing Department, and chair of the PSCOC Maintenance and Adequacy Subcommittee, said that those who worked on researching and developing the adequacy standards realized that there were going to be differences between districts when the adequacy standards were first being developed. She said that the PSCOC and the PSFA are now working toward continuing to research and complete the second phase of adequacy standards revision within the next year.

The panel then answered questions and discussed comments with the task force

members. The issue of transportation in rural communities was discussed. Ms. Miller stated that in the Fort Sumner district, the first child to get on the bus is a kindergartner who boards at 5:40 a.m. School does not start until 8:00 a.m. She advocated giving design and special needs attention to those things that students find interesting. She added that a small, rural school district like hers has teachers who know their students. Panel members agreed that pressures to make schools bigger are sometimes the result of the growing number of programs, such as social services for children and families, that are being housed in school buildings. Some panel members opined that perhaps the adequacy standards are working better for elementary schools than for secondary schools.

Life-Cycle Design Improvements: Practices That Work Toward Containing Operational Costs

Bob Bittner, maintenance coordinator, PSFA, presented the task force with a chart of districts with good maintenance programs. He pointed out that some districts are meeting standards, while spending less money than those that are not meeting standards. Mr. Gorrell stated that the utility cost per square foot was pretty comparable across the state.

In response to questions asked by the task force, Mr. Bittner stated that 82 districts are currently using the Facilities Information Management System (FIMS) to track their maintenance. He said that, as yet, the PSFA does not have comparable data from other states, but that he believes New Mexico is further ahead in the coordination of maintenance practices than other states. In response to task force questions about the way in which those with good maintenance and low costs are accomplishing that goal, he said that the PSFA is planning a presentation to the task force in November. The panel was asked how some districts are achieving good maintenance and low cost, and the suggestion was made to look at the effects of weather on maintenance. Panel members said they plan to suggest rewards of some sort for good, effective preventive maintenance. In response to a task force question, panel members stated that no correlation has been found between weather and the amount of maintenance required by a school.

In response to considerable discussion about the spreadsheet he provided, Mr. Bittner asserted that the spreadsheet is, at present, purely raw data, and no conclusions should be drawn from it.

Calvin Steckler, maintenance specialist, PSFA, stated that the PSCOC has funded a Conservative Alternative Student Habits (CASH) program in three districts — Clovis, Tularosa and Gadsden. He said that this program involves behavior modification of energy usage in schools and that the PSFA will provide a report to the council and the task force when more data become available.

Ron Rioux, energy conservation coordinator, APS, elaborated on his district's behavior modification program to save energy. He explained that the program involves having in place a motivated principal, a teacher to model behavior, one group of students who will perform the necessary tasks and a maintenance team to conserve energy. Mr. Rioux stated that one school was able to save more than \$57,000 through behavior

modification. As an incentive, schools receive one-third of the money saved on a quarterly basis. The schools are encouraged to spend the money on supplies for the participating teachers and maintenance team. No funds are used except those set aside to pay the utility bills.

Craig Bernard, Rio Rancho Public Schools, said that Rio Rancho uses systems within the building to save money, including automatic switching and lots of daylight lighting. Mr. Gorrell added that in most Rio Rancho schools, each teacher has individual control in the classroom over lighting and windows and over temperatures within a few degrees. Mr. Bernard explained that the new high school in Rio Rancho will utilize geothermal technology for heating and cooling. Senator Nava, superintendent, Gadsden School District, added that Gadsden was the first to use geothermal technology in its schools and that it really makes a noticeable difference in both costs and comfort. She said that its use also seems to reduce water usage. Mr. Bernard added that the use of geothermal technology reduces the number of heating and cooling units on a school roof and, therefore, reduces roof maintenance. In response to task force discussion, Mr. Gorrell stated that national school construction organizations, such as the Council for Educational Facilities Planning International, have been gathering data to demonstrate a correlation between the quality of a learning environment and improved student attendance and grades. It was suggested that the new technology in the schools could also be used as a learning opportunity for students.

The task force recessed at 4:00 p.m.

Tuesday, October 2

Chairman Miera called the task force to order at 9:03 a.m.

FIMS: Funding and Updates on Implementation, Including Equipment Inventory Progress

Mr. Bittner discussed using FIMS for better maintenance and elaborated on the three modules purchased for each district using funds appropriated by the legislature for that purpose. He said that the program began in 2005 with a pilot study, which resulted in the PSCOC requesting the legislature to give all of the districts in the state the option of using FIMS. He reported that currently, 82 districts use the system, including all districts receiving capital outlay grants. He said that the PSFA is relying on word-of-mouth and on peer pressure to get other schools to adopt FIMS to improve data quality.

Johnty Cresto, maintenance and operations director, Gallup-McKinley County Schools, lauded FIMS' automatic reporting system as a real time saver. He also said that currently, his school district is emphasizing preventive maintenance, which has already begun to reduce the number of weekly work orders in some schools.

George McFall, maintenance and grounds supervisor, Central Consolidated Schools, said that his work system has been computerized since 1989, but it relies on paper, which causes hold-ups. He said that every August, the maintenance department is inundated with

orders, but with FIMS, it is able to meet its completion goals in four months. He said he has designated two days a week for maintenance personnel to focus on work orders in the high schools.

In response to questions and comments by the task force, Mr. Bittner said that the PSFA cannot mandate the use of FIMS in school districts. Task force members expressed their gratitude to Mr. Cresto and Mr. McFall for reporting on their successes and emphasized how important it is to hear from staff in districts who actually are "in the trenches" using these systems.

Task force members also expressed concern that perhaps FIMS works best in middle-to large-sized districts and does not work as well in small districts, where the superintendent serves in multiple capacities. In response to those concerns, Ms. Ball stated that the superintendent of the Clayton Municipal Schools had been invited to discuss his concerns with the task force but had been unable to attend because he also serves as his district's Student Teacher Assessment Reporting System (STARS) coordinator and needed to be in Albuquerque for training on that system. Task force members expressed the hope that the superintendent would be able to attend a subsequent PSCOOTF meeting to present his concerns and indicated that they would like to hear from staff in other small districts.

Les Martinez, maintenance coordinator, PSFA, said that his parents were teachers and, as a result, he learned first-hand about the communication gap between the maintenance functions and staff and the educational functions and staff in schools. He said he believes that FIMS helps to bridge this gap.

Continuing the discussion, task force and panel members emphasized the need for technological literacy in just about all vocations. Task force members requested more information about school districts that have good maintenance programs but do not use FIMS.

In response to a task force question, Mr. Gorrell stated that portable classrooms are included in the preventive maintenance program. He said that portable classrooms have demonstrated a much longer life span than anyone anticipated; those that have been well maintained are still in use after 20 years or more. He noted, however, the recent decline in the purchase of portable classrooms. He said that new portables cost about \$80,000 for a single classroom, not including moving costs, and that with the increased costs of portables and with additional state support, districts are finding it more cost-effective to build "brick and mortar" buildings.

After considerable discussion about preventive maintenance and other maintenance practices, task force members requested that the secretary of education be invited to the next meeting to discuss policy implications associated with these issues.

Discussion of Potential Topics for PSCOOTF-Endorsed Legislation

Ms. Tackett, task force members and staff reviewed issues that members may wish to

consider in endorsing legislation, including the following:

- amendment to statute to remove the state investment officer from PSCOOTF membership because that position's input is no longer required with the current permanent funding stream in place;
- incentives for districts that exhibit good maintenance practices;
- standardization of school district reporting dates;
- FIMS implementation issues;
- new legislative language related to establishment and funding of an "opportunity fund" for districts without sufficient property tax wealth to fund projects above adequacy;
- incentives for joint use of school and community spaces;
- changes in chartering authority for charter schools;
- subcontractor bonding legislation; and
- clarification of statutory language related to CID payments for PSFA project inspections.

Ms. Tackett said that staff would prepare discussion drafts of potential legislation for the task force's consideration at its November 8 and 9 meeting.

There being no further business to come before the task force, members agreed by consensus to adjourn at 11:17 a.m.

Revised: November 6, 2007

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

**November 8-9, 2007
State Capitol, Room 307
Santa Fe**

Thursday, November 8

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Approval of September and October Minutes**
- 10:10 a.m. **Status Report on the Adequacy of Public School Facilities: Where Do We Go From Here?**
—Paula Tackett, Chair, Public School Capital Outlay Council (PSCOC),
Director, Legislative Council Service (LCS)
—Bob Gorrell, Director, Public School Facilities Authority (PSFA)
—Andre Larroque, Building Standards Specialist, PSFA
—V. Sue Cleveland, Ph.D., Superintendent, Rio Rancho Public Schools
—Stan Rounds, Superintendent, Las Cruces Public Schools
- 11:10 a.m. **Capital Outlay Funding for Charter Schools: The Effect of Legislation Passed in 2006 and 2007**
—Don Duran, Ed.D., Assistant Secretary, Charter Schools Division, Public Education Department (PED)
—Lisa Grover, Ph.D., Executive Director and Registered Lobbyist, New Mexico Coalition of Charter Schools
—Patricia Matthews, Esq., New Mexico Coalition of Charter Schools Contract Attorney
—Arthur Melendres, Esq., Modrall Sperling Roehl Harris & Sisk
—Kizito Wijenje, AICP, Director, Capital Master Plan, Albuquerque Public Schools
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Effective Maintenance Plans and Practices**
—*FIMS and Small Districts*
—Jack Wiley, Superintendent, Clayton Municipal Schools
—Bill Green, Superintendent, Quemado Independent Schools
—Patricia Miller, Superintendent, Fort Sumner Municipal Schools
—Lecil Richards, Regional Educational Cooperative #6 (Invited)

- Incentives for Effective School District Maintenance*
 - Bob Bittner, Maintenance Coordinator, PSFA
 - Tanya DeLara, Facilities Data Manager, PSFA
 - Dave Flood, Operations and Transportation Director, Alamogordo Public Schools
 - Gene Bieker, Executive Director of Operations, Clovis Municipal Schools
- Responsibility for FIMS Implementation*
 - Veronica Garcia, Ed.D., Secretary, PED (Invited)
 - Paula Tackett, Chair, PSCOC, Director, LCS

4:00 p.m. **Recess**

Friday, November 9

9:00 a.m. **Call to Order**

9:05 a.m. **Review of Adequacy of Current Long-Term Funding Revenue Streams for Public School Capital Outlay**
 —Norton Francis, Chief Economist, Legislative Finance Committee
 —Olivia Padilla-Jackson, Director, State Board of Finance

10:00 a.m. **The "Opportunity Fund": Where Do We Go From Here?**
 —Gary Carlson, Contract Drafter, LCS
 —Paula Tackett, Chair, PSCOC, Director, LCS
 —Katherine Miller, Secretary, Department of Finance and Administration
 —Don Moya, Deputy Secretary, PED
 —Bruce Boynton, Esq., Boynton Law Office, Legal Counsel for Grants-Cibola County Schools
 —Ernest Mackel, President, Zuni Public Schools Board of Education

11:30 a.m. **Resolving Differences or Concerns That Impede PSCOC Grant-Funded Project Implementation**
 —Paula Tackett, Chair, PSCOC, Director, LCS
 —Bob Gorrell, Director, PSFA

12:30 p.m. **Working Lunch**

1:00 p.m. **Discussion of Proposed Public School Capital Outlay Oversight Task Force (PSCOOTF)-Endorsed Legislation**
 —PSCOOTF Members and Staff

3:30 p.m. **Adjourn**

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

**November 8-9, 2007
State Capitol, Room 307
Santa Fe**

The fifteenth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 10:15 a.m. on Thursday, November 8, 2007, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair (11/9)
Sen. Ben D. Altamirano
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Sen. Stuart Ingle
Dr. Anna Lamberson
Rep. Larry A. Larrañaga (11/8)
Sen. Lynda M. Lovejoy (11/8)
Rep. Ben Lujan, Speaker of the House
Rep. James Roger Madalena
Bud Mulcock
Kilino Marquez
Elizabeth Marrufo
Rep. W. Ken Martinez
Secretary Katherine Miller
Antonio Ortiz for Secretary Veronica Garcia
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Dr. Moises Venegas
Rep. W.C. "Dub" Williams

Absent

Gary Bland
Sen. Carroll H. Leavell

Advisory Member

Sen. Vernon D. Asbill

Guest Legislator

Rep. Nathan P. Cote

(Attendance dates are noted for members not present both days.)

Guests

The guest list is in the original meeting file.

Staff

Paul Aguilar, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Robert Gorrell, Public School Facilities Authority (PSFA)
Scott Hughes, Office of Education Accountability (OEA)
Andre Larroque, PSFA
Don Moya, Public Education Department (PED)
Aldis Philipbar, LCS
Dr. D. Pauline Rindone, Legislative Education Study Committee (LESC)
Martica Santistevan, PSFA
Paula Tackett, LCS
Peter van Moorsel, LESC

Thursday, November 8**Status Report on the Adequacy of Public School Facilities: Where Do We Go From Here?**

Ms. Tackett reminded task force members that the PSFA's Adequacy Standards Advisory Group, which included school district personnel, legislative staff, PSFA staff and architects and planners, examined all adequacy standards during a series of meetings from August through December 2006 and made recommendations to the Public School Capital Outlay Council (PSCOC). She said that Mr. Larroque oversaw the process and would bring the task force up to date with the adequacy standards revisions.

Mr. Larroque explained that, once the advisory group had made its recommendations, the PSCOC's Adequacy and Maintenance Subcommittee analyzed various drafts of proposed changes. During this process, he said, an ad hoc subcommittee, made up primarily of superintendents who had addressed the task force, was formed to review the draft revisions. He said that the standards were then revised based upon their recommendations, and, in February 2007, the revised standards were presented to school districts for feedback during the PSFA application training sessions held in different regions of the state. Comments were taken at a public hearing in March 2007 and incorporated into a draft for PSCOC consideration. The PSCOC then requested an analysis of the cost, benefits and consequences of the proposed adequacy standards changes together with a discussion of the impact of preschool programs on facilities.

Mr. Larroque said that the council had adopted Phase 1-A of the adequacy standards revisions, which clarified technical issues and allowed for limited additional storage in science classrooms with a cost impact of \$4.4 million in the current awards cycle. Ms. Tackett said that, in response to task force concerns about additional costs included in adoption of Phase 2, the council was continuing its examination of those revisions.

Ms. Tackett then introduced Dr. V. Sue Cleveland, superintendent, Rio Rancho Public Schools (RRPS), and Stan Rounds, superintendent, Las Cruces Public Schools (LCPS), to present concerns about some specific issues related to the adequacy standards and possible consideration of modifications to meet changing needs.

Dr. Cleveland told the task force that she believes that technological connectivity is an economic development issue and perhaps should be considered from that broader perspective. She also noted that charter schools are often established when the local district is not fulfilling a community's perceived needs and opined that adequacy standards are so important because of equity issues, both among districts and between districts and charter schools. She said that, in her experience, parents' main interests are in academics and extracurricular activities. Extracurricular activities keep kids in school by allowing them to build connections with caring adults and one another. She expressed her gratitude to both the legislature and the council for the support provided to her rapidly growing district.

Dr. Cleveland also emphasized that, under federal Title IX legislation, school districts are required to provide equitable facilities for both male and female students, including recreation fields. She said that school districts do not want to build facilities that are unable to compete with facilities in other areas.

Mr. Rounds called Title IX a "sleeper issue". He said that LCPS's Oñate High School needs a 100-acre footprint to meet the requirements of Title IX, even though the adequacy standards do not require it.

During task force discussion and questions, some members expressed concerns that public schools are being built larger based upon the assumption that "larger is better", even though current research indicates that students tend to be more successful in high schools of smaller size rather than "mega" high schools of 2,000-3,000 students. It was also suggested that the public schools look to community colleges and other higher education institutions for shared use of expensive facilities, such as vocational education laboratories. Some task force members noted that a good opportunity exists within the master-planned communities of Mesa Del Sol and SunCal to build new schools.

In response to task force comments and questions, Dr. Cleveland said that RRPS is now working closely with Central New Mexico Community College to address many of these issues and that voters just approved a tax issue that will facilitate the shared use of facilities. Dr. Cleveland said that public school facilities in Rio Rancho are often used by the community, as well as the school district. She noted the district's single performing arts center at the high school is a venue that is used almost every single night. Dr. Cleveland noted that there are some advantages to building larger schools, including the ability to provide more programs for students. She said the need to build large schools is often driven by available funding and the cost of land.

Mr. Rounds told the committee about a regional education initiative in the southern part of the state in which a group of 25 members of various educational institutions deals with issues related to work force development. He praised New Mexico State University President Michael Martin for his leadership in bringing school and community leaders together to collaborate on many issues.

Capital Outlay Funding for Charter Schools: The Effect of Legislation Passed in 2006 and 2007

Don Duran, Ed.D., assistant secretary, Charter Schools Division, PED, described the PED's role relating to capital outlay funding for charter schools. Noting that voters approved a constitutional amendment in November 2006 to allow state agencies (including school districts and charter schools) to enter into lease-purchase agreements, he said that the enabling legislation (Section 22-26A-4B NMSA 1978) requires the PED to approve all proposed agreements for buildings or real property. Describing the process, Dr. Duran stated that the district or charter school must first submit an application for a lease to the PED's Capital Outlay Bureau. The Capital Outlay Bureau will then verify how much in property taxes are available from HB 33 and certify to the county treasurer the amount to be distributed to the district or charter school. The PED's Capital Outlay Bureau will also certify whether voters have approved ad valorem taxes for a bond issue to pay for the facility. From there, he said, the application will be forwarded to the PSFA to ensure the building meets E occupancy requirements and other code requirements and current adequacy standards.

Mr. Ortiz, PED, distributed a handout that illustrates the amount of HB 33 funding that would be available to each charter school, assuming the charter school's district voters had approved the levy. He also provided the task force with data showing which districts use SB 9 and HB 33 legislation as funding sources. In response to a task force question, Mr. Ortiz explained that legislation enacted in 2007, requires that, after July 1, 2007, any HB 33 resolution submitted to voters for approval must include capital improvements for charter schools located within the district's boundaries as long as the charter school provides required information in a timely manner.

Lisa Grover, Ph.D., executive director and registered lobbyist, New Mexico Coalition of Charter Schools, said that her organization coordinates and, in the appropriate context, provides resources for charter schools. She said that there are 67 approved charters in New Mexico, with 64 in operation and three more that will be operational in 2008. In response to task force questions, Dr. Grover said that 12 charters utilize public facilities, while half of the remaining school facilities are privately held. She said that three target service to at-risk youth and three are on tribal land. She said the lease assistance program, in place for the past four years, provides a source of funding to assist charters in acquiring their own facilities. Patricia Matthews, Esq., New Mexico Coalition of Charter Schools legal counsel, added that the lease-with-option-to-purchase bill calls for a 20-year loan. She suggested that it be changed to a 30-year loan.

Kizito Wijenje, AICP, director, Capital Master Plan, Albuquerque Public Schools (APS), said that he and the district have some concerns with the 2007 legislation requiring school districts to share proceeds of an HB 33 levy on a per-student basis with charter schools within their boundaries. He said that funding capital outlay needs on a per-student basis raises concerns about insufficient funding to charter schools as well as some unforeseen consequences to local school district capital outlay master planning. He discussed the following issues of concern to APS:

- Per-student distribution of capital funds is opposed to the process adopted in response to the *Zuni* lawsuit. He noted that this particular methodology (per-student distribution) might be equal, strictly speaking, but not equitable—i.e., based upon need. Per-student distribution assumes an equal need district-wide, but needs vary from school to school.
- Per-student distribution will not provide sufficient revenue to build new schools. He said, for example, the largest APS charter schools have an enrollment of about 300 students per school. Distribution of HB 33 dollars on a per-student basis would provide less than 10 percent of the funding required to build a new facility.
- Per-student distribution is not compatible with the APS capital master plan, which has been adopted by the district's duly elected board. He explained that the APS capital master plan is based on an independent assessment of capital outlay needs in each school facility in the district. The assessment takes into account health and safety issues, code compliance, growth, educational and programmatic requirements and facility renewal requirements. He pointed out that these criteria are much more thorough than the single criterion of the number of students.
- Implementing a per-student distribution of HB 33 revenues by the county treasurer to 38 entities within the district in Bernalillo County is problematic. He pointed out that charters have no independent taxing authority or publicly elected boards, a situation that raises concerns about capital oversight and public accountability.

Mr. Wijenje expressed his district's reservations about legislative mandates that usurp local board autonomy and local voter priorities. He said that APS is currently working with a charter task force to develop a plan to move charter schools into public buildings taking into account the following elements:

- partnerships with the five most stable charters in the district to begin a development process for new schools;
- investigation of multiple capital revenue sources such as lease revenues, special appropriations, mill levies and bond issues; and
- identification of surplus facilities within the district that would be potentially available for charter school incubation or location.

In response to task force questions and concerns, Mr. Wijenje discussed several options that are currently under consideration in discussions between the district and charter schools, all of which propose the use of state-provided lease revenues of \$700 per student as a funding source and APS SB 9 funding for maintenance expenses:

- leasing an APS facility using state-provided lease revenues;

- leasing other publicly owned facilities, assuming they meet appropriate education occupancy code requirements;
- lease-purchase agreements, with the charter school being responsible for any lease financing gap with APS credit backing;
- lease-purchase agreements, with APS responsible for any funding gap through capital master plan, direct appropriations and/or other revenue sources; and
- direct construction of facilities using lease reimbursement funds and other APS voter-approved capital outlay funding sources.

Tom Rutherford, registered lobbyist, representing Moreno Valley Charter High School, said that he represents a small, rural, isolated charter that was founded for safety reasons after a student was killed in a traffic accident on her way to a high school located more than 30 miles away. He noted that, while charter schools may have some characteristics in common, those that are small and are located in rural, isolated areas do not have the resources available to charter schools located in Albuquerque or Santa Fe, for example.

Effective Maintenance Plans and Practices

Facilities Information Management System (FIMS) and Small Districts

Patricia Miller, superintendent, Fort Sumner Municipal Schools, said that her district is having a difficult time implementing FIMS. She said that she currently serves as both the superintendent and the transportation director, but has also served, at one time or another, in all district administrative positions, including food service director. She indicated that she simply does not have the sufficient time to enter the required data. She added, however, that she has appreciated all the help she has received from PSFA maintenance and field staff and can see the usefulness of capturing the required data, but when the task falls to her, she can make only periodic attempts to enter and update the required data.

Jack Wiley, superintendent, Clayton Municipal Schools, said, as far as he is concerned, completing work orders takes much more time with FIMS than it does with the procedures he already has in place in his district. He said that the Clayton maintenance team is perfectly capable of working with FIMS, but that they simply have other priorities. He said that if he hires someone to track FIMS, then another position or something else will have to be cut. He said that he knows FIMS was designed to make maintenance jobs more efficient, but he is not sure that it works for small districts, especially a district like Clayton, which already has effective procedures in place.

Bill Green, superintendent, Quemado Independent Schools, reiterated FIMS needs modification for small districts. Like Clayton, he said, Quemado already has a system in place. He said that his maintenance man, who also functions as his custodial staff, is not computer literate. Mr. Green emphasized that it is expensive to take out time and money to implement the program. He noted the saying "one size does not fit all", and stated his belief that it is wrong to tell districts that they cannot apply for money from the PSCOC if they do not comply with the FIMS requirements.

Lecil Richards, Regional Education Cooperative (REC) #6, said that his organization came up with a program to help schools implement programs by going around and helping at different schools (e.g., once every 10 days, someone helps out at Fort Sumner). He said that he sees the validity of FIMS, but also understands the problems that small districts face as they stretch each non-classroom employee's time and abilities to the maximum. He said that being able to pay the salary of a data entry staff person out of SB 9 mill levy funds would be a big help.

Incentives for Effective School District Maintenance

Regarding incentives—or lack thereof—for development and use of effective school district maintenance, Tanya DeLara, facilities data manager, PSFA, reminded task force members that eligibility for PSCOC grant awards is based upon the weighted New Mexico condition index (NMCI) score that ranks schools. She explained that the situation, as it currently exists, is a kind of "Catch-22" because districts with exemplary maintenance programs find themselves lower on the NMCI specifically *because* of their effective maintenance. Ms. DeLara explained that a large part of the NMCI score is based upon systems' life cycles and that perhaps one option for an incentive would be to allow schools to determine their own expiration date for their systems.

Dave Flood, operations and transportation director, Alamogordo Public Schools, emphasized the importance of meaningful remuneration for maintenance staff. He pointed out that school districts must compete for the services of journeymen and other skilled trades and crafts people.

In response to questions from the task force, Mr. Bob Bittner, maintenance coordinator, PSFA, said that the PSFA is sensitive to the staffing issues in small districts and that FIMS is indeed scalable for districts of all sizes. Bob Gorrell, director, PSFA, added that FIMS keeps track of routine maintenance and notifies staff when maintenance is due. He said that the system can be set up to notify only maintenance personnel of maintenance tasks as they are due. Mr. Gorrell went on to explain that Mr. Richards is a kind of "circuit rider" who can offer help with non-routine maintenance activities to all of the districts that are members of that particular REC and can also serve as a resource for journeyman trades people.

Responsibility for FIMS Implementation

Veronica Garcia, Ed.D., secretary of public education, said that, according to her understanding, only a few districts have problems with FIMS, perhaps 15 of the state's 89. She said that she is not sure if keeping track of light bulbs is a good use of the state's investment in FIMS and that she would like to see FIMS' reporting down to large-ticket items for small districts. PSFA staff indicated their unwillingness to work with the small districts to scale FIMS for them more appropriately.

During discussion and questioning, it was suggested that perhaps a part-time employee could be contracted with SB 9 funds for FIMS implementation. It was also stated that it is important for the maintenance department to be recognized as a principal component of building and maintaining schools. Several task force members discussed the importance of quality maintenance to the overall mission of educating students and opined that, often, district maintenance people do not get the recognition they deserve. Some task force members commented on the PSCOOTF's primary responsibility to oversee the implementation of the standards-based process and make suggestions for overarching policy changes to facilitate improvements.

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

Friday, November 9

Approval of September and October Minutes

Co-chair Miera called the meeting to order at 9:15 a.m. On a motion by Senator Altamirano, seconded by Representative Williams, the task force unanimously approved the minutes for the September and October PSCOOTF meetings, respectively.

Review of Adequacy of Current Long-Term Funding Revenue Streams for Public School Capital Outlay

Norton Francis, chief economist, LFC, and Olivia Padilla-Jackson, director, State Board of Finance, provided the task force with information on the state's revenue outlook for FY09. Mr. Francis said that employment growth has slowed considerably. He said that while oil and gas revenues remain strong, overall revenues are down from FY06. He provided the task force with a chart that includes an update on the natural gas forecast and shows a significant divergence in the oil forecast for FY08. Mr. Francis also stated that production of oil and gas is declining despite high prices.

In response to questions from the task force, Mr. Francis explained that there are four periods of sales, including: the peak season, two shoulder seasons and the summer season. He noted that the weakness in revenues from the gross receipts tax is due to a decrease in construction. He said that problems with the subprime market and housing have had an impact on consumption. In response to a task force question about potential revenues from the resumption of uranium mining, he explained that uranium could be a significant revenue source, but not a major source. He compared it to coal. Mr. Francis added that there is a lot of exploration going on, but production has not increased, which is the reason the oil and gas industry has hit a plateau even though there is much activity. He also explained that income taxes were under-projected last year.

Ms. Padilla-Jackson discussed supplemental severance tax bond (STB) capacity. She said that it is a strong program because of its wide coverage, which is established by statute. In response to task force comments and questions, she explained that the senior STB capacity is based on an amount that allows the total senior STBs outstanding to be serviced with no more than 50 percent of the previous year's revenues. She said that supplemental STB capacity is based on an amount that allows the total supplemental notes, when added to all other STB debt service, to be serviced with no more than 95 percent of the prior year's revenues. She added that three to five years are usually allocated for funding on a project.

The "Opportunity Fund": Where Do We Go from Here?

Ms. Tackett reminded task force members that the governor had vetoed the section of the PSCOOTF-endorsed 2007 "omnibus" capital outlay bill (SB 395) that dealt with establishment and funding of an "opportunity fund" to allow districts without sufficient local resources to fund projects at a level above adequacy. She read the pertinent section of the governor's veto message regarding the opportunity fund to the task force in which he stated, "While I acknowledge the importance of addressing unique facility and financing issues in selected school districts, the funding sources and selection processes for the proposed Opportunity Fund presented in SB 395 need further study. A

more thorough analysis of appropriate revenue sources, an overall budget impact analysis and additional research on funding above adequacy standards is needed before implementing an opportunity fund."

Ms. Tackett said that an overriding issue is the concern that, without some type of mechanism in place like the proposed opportunity fund, small and/or property-tax-poor districts would not be able to provide the same resources to students as large districts with broader, more diverse property tax bases, thereby establishing a two-tiered system in which some districts can afford to go above adequacy with locally generated property tax revenues while others cannot.

In response to task force questions, Gary Carlson, contract drafter, LCS, explained that, under the provisions of the vetoed legislation, eight school districts would have qualified for enhanced funding: Cuba, Dexter, Gadsden, Gallup, Grants, Hagerman, Hatch, Tucumcari, West Las Vegas and Zuni.

Secretary of Finance and Administration Miller discussed the concerns of the executive with SB 395. She stated that the legislature's and executive's joint commitment to the standards-based awards process and a uniform system of public school capital improvements has been a success. She pointed out that the state's focus on building and monitoring educational facilities that promote student success is better than ever in the state's history, that the work of the PSFA is becoming a national model for capital planning, funding prioritization and facility maintenance and that the legislature and the executive have committed significant resources to increase the adequacy of school facilities statewide. She added, however, that the state has yet to meet adequacy standards in facilities statewide and that policymakers must consider the state's obligations to provide adequate public school facilities.

Secretary Miller outlined the executive's concerns with the opportunity fund provisions of SB 395.

1. A potential disequalization of the established system to bring schools up to adequacy standards—Secretary Miller expressed concerns that implementing opportunity fund legislation would create a precedent for circumventing the standards-based process and potentially open the state up to further litigation by providing additional state resources for projects above adequacy while those schools that have not yet reached adequacy go unfunded.
2. Basis for eligibility criteria—Secretary Miller expressed concerns about some of the eligibility criteria, particularly adequate consideration of a district's debt burden and what the executive sees as an unclear rationale for using three- and four-year averages as part of the criteria, especially when other criteria are based upon current amounts rather than averages.
3. Appropriateness of funding sources for the fund—Secretary Miller asserted that using reversions and a portion of the legislative capital outlay appropriations made to schools obscures the true fiscal impact of the bill and undermines efforts to ensure that capital projects are fully funded and expended in a timely manner.
4. The fund's 2013 sunset provision—Secretary Miller pointed out that the fund's sunset in

2013 would mean that relatively few schools would have access to the fund.

5. Its inclusion in an omnibus-type bill—Secretary Miller indicated some concern with having the provisions of such significant fiscal and policy implications included as part of an omnibus bill. She said that policy proposals using recurring general fund dollars or affecting other appropriations should be "stand-alone" bills that are evaluated along with HB 2 and the complete budget package.

6. It would tend to reduce incentive to address concerns with a statewide policy solution—Secretary Miller expressed the executive's concern that establishment of such a fund could potentially reduce the incentive to address concerns about adequacy standards through a comprehensive approach that would provide a statewide solution; e.g., including auditoriums in the adequacy standards.

Secretary Miller posed several policy questions that the executive believes should be addressed before the task force once again endorses legislation to establish an opportunity fund.

1. What are the policy goals that an opportunity fund would address?
2. Why allocate resources to bring selected schools above adequacy when existing resources are insufficient to bring all schools up to adequacy?
3. What is the legitimate role and responsibility?
4. What is the most effective methodology to address the policy holes, such as eligibility criteria and a valid and appropriate revenue stream?
5. How can potential problems be minimized?

She suggested that the legislature and executive should work together through the PSCOOTF to develop a comprehensive solution that considers:

1. a specifically defined policy goal;
2. a methodology for determining criteria that are driven by debt analysis;
3. a methodology that is fair and equitable across the state;
4. potential impacts to both eligible and non-eligible schools;
5. incorporating flexibility to adjust to future changes in adequacy standards; and
6. a structure that maintains the state's position in responding to the *Zuni* lawsuit.

Bruce Boynton, Esq., Grants-Cibola County Schools legal counsel, opined that establishment of an opportunity fund would not run afoul of Judge Rich's *Zuni* lawsuit findings and orders. He

said that the opportunity fund will drive the effort to fund unique projects that will fit the educational program.

Ron Van Amberg, Esq., Zuni Public Schools legal counsel, said that he had concerns over the position of the PED. He said that recent legislation that focused on bringing schools to adequacy was commendable, but that it did not fix the disparity between and among schools. He said there is not enough money up to bring all the districts up to standard. Poor districts are forced to wait. Mr. Van Amberg said that the purpose of the opportunity fund was to supply poor districts with alternatives, and it would not hamper efforts to bring schools to adequacy.

Ernest Mackel, president, Zuni Public Schools Board of Education, said that, with its negligible tax base, the district has difficulty providing resources to students. He said that the district sometimes must use operational funds for students for "bricks and mortar" projects.

Resolving Differences or Concerns That Impede PSCOC Grant-Funded Project Implementation

In the interest of time, task force members agreed by consensus that issues under the above topic that had not already been discussed could be brought up during the discussion of proposed legislation as appropriate.

Discussion of Proposed PSCOOTF-Endorsed Legislation

Ms. Tackett and Mr. Carlson directed task force members to discussion drafts of bills, the topics of which had been suggested by members at the October meeting. Since this is the last task force meeting of the 2007 interim, task force members agreed by consensus that the co-chairs will appoint a subcommittee of the task force to meet before the 2008 legislative session to consider draft copies of proposed bills for designation as having been recommended by the task force after discussion and action on the draft bills.

170511.2 proposes to amend the Public School Capital Outlay Act to create a school facility opportunity fund and to authorize grants for qualifying school capital outlay projects. After considerable discussion related to issues brought forth in the previous agenda item on next steps for the opportunity fund, upon a motion by Senator Altamirano, seconded by Senator Nava, the task force voted to adopt the bill in concept and forward it to the subcommittee for additional consideration. Representative Saavedra requested that the bill get a hearing in the LFC at the December meeting. Voting in the negative were Senator Smith, Secretary Miller and Mr. Moya for Secretary Garcia.

170513.3 proposes to amend the Public School Capital Outlay Act to reduce proportionally the offset from a grant award if a direct legislative appropriation that has been made to another governmental entity for a capital project will be jointly used with the school district. On a motion by Representative Martinez, seconded by Mr. Mulcock, the task force voted to move the bill to the subcommittee for further consideration.

170508.3 proposes to amend the Public School Capital Outlay Act to authorize adjustments to standards-based PSCOC grant awards to account for savings realized by the district because of prior preventive maintenance or because of effective design. After extensive discussion, the task

force voted to make substantial changes to the bill draft, focusing on examining criteria related to the authorization of adjustments, and to send it to the subcommittee for further consideration.

170507.1 proposes to amend the Public School Capital Outlay Act regarding payments to the Construction Industries Division and the State Fire Marshal's Office for expenses incurred to inspect and permit public school capital outlay projects. On a motion by Representative Saavedra, seconded by Senator Nava, the task force unanimously voted to adopt the bill, allowing staff to make editorial changes as necessary.

170506.2 would amend the Charter Schools Act to provide that, under certain conditions, the chartering authority for a locally chartered charter school may be transferred outside the regular charter renewal cycle to the Public Education Commission. On a motion by Speaker Lujan, seconded by Representative Madalena, the task force voted to adopt the bill, allowing staff to make editorial changes as necessary.

170510.1 would amend the Public School Insurance Authority Act to provide for adoption of policies relating to volunteers and the private use of school facilities and to provide for limited insurance coverage, in certain circumstances, for liability related to private use of school facilities. In response to task force questions and discussion, Ms. Tackett indicated that the bill had been drafted in response to task force examination of policies that need to be in place to encourage and provide incentives for joint use of school facilities. In response to task force questions, Frank Koppler, legal counsel for the Public School Insurance Authority (PSIA), indicated that he had worked with staff on the drafting of the bill and that the PSIA was grateful for the task force's willingness to collaborate on this issue. On a motion by Mr. Mulcock, seconded by Senator Altamirano, the task force voted to adopt the bill, allowing staff to make editorial changes as necessary.

170509.1 proposes to amend public works statutes to repeal the requirement for bonding of subcontractors because of the additional costs to PSCOC projects. On a motion by Representative Saavedra, seconded by Mr. Mulcock, the task force voted unanimously to send the bill to the subcommittee for further consideration.

170514.1 proposes to amend the Public School Capital Outlay Act to change the membership of the PSCOOTF by eliminating the state investment officer membership requirement. In response to a task force question, Ms. Tackett explained that this bill is in response to a request from state investment officer staff because they no longer have a role in permanent funds. On a motion by Representative Saavedra, seconded by Mr. Mulcock, the task force voted unanimously to adopt the bill, allowing staff to make editorial adjustments as needed.

There being no further business, the task force adjourned at 2:30 p.m.

TENTATIVE AGENDA
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON LEGISLATION
January 13, 2008
Room 326, State Capitol
Santa Fe

Sunday, January 13

- 3:00 p.m. **Call to Order**
 —Senator Cynthia Nava, Co-Chair
 —Representative Rick Miera, Co-Chair
- 3:05 p.m. **Review of Legislation**
 —Subcommittee Members and Staff
- 4:40 p.m. **Subcommittee Recommendations**
 —Subcommittee Members
- 5:00 p.m. **Adjourn**

**UNAPPROVED MINUTES
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON LEGISLATION**

**January 14, 2007
State Capitol, Room 326
Santa Fe**

The first meeting of the Subcommittee on Legislation of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on January 14, 2007 at approximately 4:15 p.m. in Room 326 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Ben D. Altamirano
Sen. Vernon D. Asbill
Sen. Carroll H. Leavell
Katherine B. Miller, Department of Finance
and Administration (DFA)
Don Moya for Veronica Garcia, Public
Education Department (PED)
Bud Mulcock
Rep. Henry Kiki Saavedra

Absent

Sen. Cynthia Nava, Co-Chair
Rep. Larry A. Larrañaga
Pancho Guardiola
Robbie Heyman
Dr. Anna Lamberson

Staff

Sharon Ball, Legislative Council Service (LCS)
Gary Carlson, LCS
Roxanne Knight, LCS
Frances Maestas, Legislative Education Study Committee (LESC)
Pauline Rindone LESC
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Copies of the draft legislation are in the meeting file.

Sunday, January 14

Review of Legislation

The subcommittee members reviewed discussion drafts of legislation prepared by staff per discussions at the December 22, 2006 PSCOOTF meeting and proposed for PSCOOTF endorsement:

- 164727.2, the omnibus PSCOOTF bill: Staff was directed to check the bill's title and rearrange as needed to improve the bill. Representative Miera expressed some concerns about schools exceeding adequacy standards, but Ms. Tackett explained that the schools have to demonstrate utilization in order to do so. Senator Altamirano requested a review of the fiscal impact of the bill and would like that information provided as soon as it is available.
- 164549.2, the public school facility opportunity fund bill: Approved as drafted.
- 164726.1, the appropriations bill for educational technology deficiencies, roof repair and replacement, portable facilities and deficiencies at New Mexico school for the blind and visually impaired and the New Mexico school for the deaf: Approved as drafted.
- 164266.1, construction manager at risk: Adopted in concept, but staff is to change the title and short title and consult with the Public School Facilities Authority before finalizing.
- 164547.2, state-chartered charter schools capital funding bill: Staff suggested this could be done as a bill for \$10 million from the general fund, which would be deposited into a new fund, rather than issuing charter schools bonds that would be backed by gross receipts tax revenue.
- 163917.4, school district general obligation bonds: Approved as drafted.

Secretary Miller mentioned that she had recommended to the governor that he support a general fund appropriation of \$20 million to fund improvements in charter school facilities.

On a motion by Senator Altamirano, seconded by Senator Leavell, the subcommittee agreed unanimously to move the bills forward with changes being made as directed to Ms. Tackett and staff. The subcommittee agreed by consensus that, in making the changes, staff could consult with the task force co-chairs as necessary.

The meeting was adjourned at 6:00 p.m.

Appendix E

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

**ENDORSED LEGISLATION
2008 LEGISLATURE**

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SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO CREATE THE PUBLIC SCHOOL FACILITY OPPORTUNITY FUND, TO AUTHORIZE GRANTS FROM THE FUND TO CERTAIN SCHOOL DISTRICTS FOR CERTAIN PURPOSES, TO PROVIDE SUPPLEMENTAL FUNDING FOR PROJECTS IN CERTAIN SCHOOL DISTRICTS, TO REDUCE THE OFFSET FROM A GRANT AWARD FOR CERTAIN APPROPRIATIONS MADE FOR JOINT USE WITH A GOVERNMENTAL ENTITY, TO CHANGE THE PROCEDURE FOR MAKING PAYMENTS FOR EXPENDITURES INCURRED TO INSPECT AND PERMIT PROJECTS, TO PROVIDE AN INCREASED GRANT AWARD TO THOSE SCHOOL DISTRICTS WITH AN EXEMPLARY RECORD OF PREVENTIVE MAINTENANCE AND TO CHANGE THE MEMBERSHIP OF THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO AUTHORIZE THE IMPOSITION OF AN ADDITIONAL MILL; PROVIDING FOR A DISTRIBUTION TO THE PUBLIC SCHOOL FACILITY OPPORTUNITY FUND FOR A LIMITED PERIOD;

.170876.3

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1 EXTENDING THE EXPENDITURE PERIOD FOR A CERTAIN APPROPRIATION;
2 MAKING AN APPROPRIATION.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 Section 1. A new section of the Public School Capital
6 Outlay Act, Section 22-24-12 NMSA 1978, is enacted to read:

7 "22-24-12. [NEW MATERIAL] PUBLIC SCHOOL FACILITY
8 OPPORTUNITY FUND--FINDINGS--GRANTS FROM THE FUND.--

9 A. The legislature finds that:

10 (1) for many years, until relatively recently,
11 educational facilities in a few school districts in New Mexico
12 were so inadequate, due to a lack of local resources, that the
13 quality of education offered to students in those school
14 districts could not match the quality of education provided by
15 districts with more resources;

16 (2) in response to these inequities, the
17 legislature has implemented a program to bring all public
18 schools up to statewide adequacy standards;

19 (3) most school districts in this state either
20 contain enough taxable property with sufficient assessed
21 valuation or have other additional local resources available
22 for schools so that their public school facilities can exceed
23 the minimum statewide adequacy standards;

24 (4) however, because of a low total assessed
25 property valuation and a continuing shortage in other available

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1 local resources, some school districts will not be able to
2 exceed statewide adequacy standards in the foreseeable future
3 and, therefore, will not have the opportunity to provide their
4 students with the same quality of educational facilities as
5 students in school districts that have available resources to
6 surpass the minimum standards; and

7 (5) a program is needed to provide state
8 support to those qualifying school districts that do not have
9 any other resources available to provide their students with
10 some of the educational facilities that school districts with
11 more available resources are able to provide.

12 B. The "public school facility opportunity fund" is
13 created in the state treasury. The fund shall consist of
14 transfers, appropriations, reversions, gifts, grants, donations
15 and bequests made to the fund. Income from the fund shall be
16 credited to the fund, and money in the fund shall not revert or
17 be transferred to any other fund at the end of a fiscal year.
18 Money in the fund is appropriated to the council for the
19 purpose of making grants so that the facilities of qualifying
20 school districts may, pursuant to the requirements of this
21 section, exceed statewide adequacy standards. Expenditures
22 from the fund shall be made on warrant of the secretary of
23 finance and administration pursuant to vouchers signed by the
24 director of the public school facilities authority.

25 C. A school district may apply for a grant from the

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1 public school facility opportunity fund if the council
2 determines that:

3 (1) the project is included in the school
4 district's five-year facilities plan and the school district
5 meets all qualifications to apply for a grant pursuant to
6 Section 22-24-5 NMSA 1978 and meets the requirements of
7 Subparagraphs (b), (c), (d) and (g) of Paragraph (9) of
8 Subsection B of that section;

9 (2) the value calculated for the school
10 district pursuant to Subparagraph (k), (m), (n) or (o) of
11 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 is
12 equal to or greater than seven-tenths;

13 (3) averaged over the previous four property
14 tax years, the school district had a residential property tax
15 rate of at least nine dollars (\$9.00) on each one thousand
16 dollars (\$1,000) of taxable value, as measured by the sum of
17 all rates imposed by resolution of the local school board plus
18 rates set to pay interest and principal on outstanding school
19 district general obligation bonds;

20 (4) at least seventy percent of the students
21 in the school district are eligible for free or reduced-fee
22 lunch;

23 (5) the school district does not have
24 sufficient resources nor projected resources in the next four
25 years to expend on school district facilities for the purpose

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1 of exceeding the statewide adequacy standards;

2 (6) the local community does not have adequate
3 infrastructure to compensate for the school district's lack of
4 resources; and

5 (7) the planned use of the additional grant
6 will enhance public school education in the school district,
7 will further the school district's educational plan for student
8 success and is a prudent use of state money.

9 D. Applications for grant assistance from the
10 public school facility opportunity fund shall be made by school
11 districts to the council in accordance with the requirements of
12 the council. The council shall, pursuant to criteria adopted
13 by rule, evaluate applications and prioritize those
14 applications most in need of a grant from the fund and, to the
15 extent that money in the fund is available, may award grants
16 for those prioritized applications. The evaluation criteria
17 for school district applications shall be based primarily upon
18 the school district's detailed description of how the proposed
19 facilities or improvements play an essential role in the
20 district's programmatic priorities and how they contribute to
21 meeting goals and objectives in the school district or the
22 school educational plan for student success.

23 E. All provisions of the Public School Capital
24 Outlay Act relating to the expenditure of grants awarded from
25 the public school capital outlay fund, including those relating

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1 to reporting, oversight, project access and accountability,
2 apply to the use and expenditure of grants made pursuant to
3 this section. In addition, in awarding grants pursuant to this
4 section, the council may require conditions and procedures
5 necessary to ensure that the money is expended in the most
6 prudent manner."

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

9 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
10 USE.--

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

14 B. Except as provided in Section 22-24-5.8 NMSA
15 1978 and in Subsections G through L of this section, money in
16 the fund may be used only for capital expenditures deemed
17 necessary by the council [~~necessary~~] for an adequate
18 educational program.

19 C. The council may authorize the purchase by the
20 public school facilities authority of portable classrooms to be
21 loaned to school districts to meet a temporary requirement.
22 Payment for these purchases shall be made from the fund. Title
23 and custody to the portable classrooms shall rest in the public
24 school facilities authority. The council shall authorize the
25 lending of the portable classrooms to school districts upon

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1 request and upon finding that sufficient need exists.
2 Application for use or return of state-owned portable classroom
3 buildings shall be submitted by school districts to the
4 council. Expenses of maintenance of the portable classrooms
5 while in the custody of the public school facilities authority
6 shall be paid from the fund; expenses of maintenance and
7 insurance of the portable classrooms while in the custody of a
8 school district shall be the responsibility of the school
9 district. The council may authorize the permanent disposition
10 of the portable classrooms by the public school facilities
11 authority with prior approval of the state board of finance.

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

20 E. The council shall review all requests for
21 assistance from the fund and shall allocate funds only for
22 those capital outlay projects that meet the criteria of the
23 Public School Capital Outlay Act.

24 F. Money in the fund shall be disbursed by warrant
25 of the department of finance and administration on vouchers

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1 signed by the secretary of finance and administration following
2 certification by the council that an application has been
3 approved or an expenditure has been ordered by a court pursuant
4 to Section 22-24-5.4 NMSA 1978. At the discretion of the
5 council, money for a project shall be distributed as follows:

6 (1) up to ten percent of the portion of the
7 project cost funded with distributions from the fund or five
8 percent of the total project cost, whichever is greater, may be
9 paid to the school district before work commences with the
10 balance of the grant award made on a cost-reimbursement basis;

11 or

12 (2) the council may authorize payments
13 directly to the contractor.

14 G. Balances in the fund may be annually
15 appropriated for the core administrative functions of the
16 public school facilities authority pursuant to the Public
17 School Capital Outlay Act and, in addition, balances in the
18 fund may be expended by the public school facilities authority,
19 upon approval of the council, for project management expenses;
20 provided that:

21 (1) the total annual expenditures from the
22 fund pursuant to this subsection shall not exceed five percent
23 of the average annual grant assistance authorized from the fund
24 during the three previous fiscal years; and

25 (2) any unexpended or unencumbered balance

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1 remaining at the end of a fiscal year from the expenditures
2 authorized in this subsection shall revert to the fund.

3 H. Up to thirty million dollars (\$30,000,000) of
4 the fund may be allocated annually by the council in fiscal
5 years 2006 and 2007 for a roof repair and replacement
6 initiative with projects to be identified by the council
7 pursuant to Section 22-24-4.3 NMSA 1978; provided that all
8 money allocated pursuant to this subsection shall be expended
9 prior to September 1, 2008.

10 I. The fund may be expended annually by the council
11 in fiscal years 2006 through 2020 for grants to school
12 districts for the purpose of making lease payments for
13 classroom facilities, including facilities leased by charter
14 schools. The grants shall be made upon application by the
15 school districts and pursuant to rules adopted by the council;
16 provided that an application on behalf of a charter school
17 shall be made by the school district but, if the school
18 district fails to make an application on behalf of a charter
19 school, the charter school may submit its own application. The
20 following criteria shall apply to the grants:

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

23 (a) the actual annual lease payments
24 owed for leasing classroom space for schools, including charter
25 schools, in the district; or

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1 (b) seven hundred dollars (\$700)
2 multiplied by the number of MEM using the leased classroom
3 facilities; provided that in fiscal year 2009 and in each
4 subsequent fiscal year, this amount shall be adjusted by the
5 percentage increase between the penultimate calendar year and
6 the immediately preceding calendar year of the consumer price
7 index for the United States, all items, as published by the
8 United States department of labor; and provided further that if
9 the total grants awarded pursuant to this paragraph would
10 exceed the total annual amount available, the rate specified in
11 this subparagraph shall be reduced proportionately;

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

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

19 (4) if the lease payments are made pursuant to
20 a financing agreement under which the facilities may be
21 purchased for a price that is reduced according to the lease
22 payments made:

23 (a) a grant shall not be made unless the
24 council determines that the leased facilities meet the
25 statewide adequacy standards; and

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1 (b) neither a grant nor any provision of
2 the Public School Capital Outlay Act creates a legal obligation
3 for the school district or charter school to continue the lease
4 from year to year or to purchase the facilities nor does it
5 create a legal obligation for the state to make subsequent
6 grants pursuant to the provisions of this subsection;

7 (5) the total amount expended from the fund
8 pursuant to this subsection shall not exceed:

9 (a) seven million five hundred thousand
10 dollars (\$7,500,000) in fiscal year 2007; and

11 (b) in fiscal year 2008 and each
12 subsequent fiscal year, the maximum amount for the previous
13 fiscal year adjusted by the percentage increase between the
14 penultimate calendar year and the immediately preceding
15 calendar year of the consumer price index for the United
16 States, all items, as published by the United States department
17 of labor; and

18 (6) as used in this subsection:

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

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

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

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

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1 for repayments back to the fund if the initial payments exceed
2 the actual expenditures.

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

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

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

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

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

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1 the demolition costs allocated to the district."

2 Section 3. Section 22-24-5 NMSA 1978 (being Laws 1975,
3 Chapter 235, Section 5, as amended) is amended to read:

4 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
5 APPLICATION--GRANT ASSISTANCE.--

6 A. Applications for grant assistance, [~~the~~]
7 approval of applications, [~~the~~] prioritization of projects and
8 grant awards shall be conducted pursuant to the provisions of
9 this section.

10 B. Except as provided in Sections 22-24-4.3,
11 22-24-5.4, [~~and~~] 22-24-5.6 and 22-24-5.8 NMSA 1978, the
12 following provisions govern grant assistance from the fund for
13 a public school capital outlay project not wholly funded
14 pursuant to Section 22-24-4.1 NMSA 1978:

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

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

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

24 (b) in an emergency in which the health
25 or safety of students or school personnel is at immediate risk

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1 or in which there is a threat of significant property damage,
2 the council may award grant assistance for a project using
3 criteria other than the statewide adequacy standards;

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

8 (a) the feasibility of using design,
9 build and finance arrangements for public school capital outlay
10 projects;

11 (b) the potential use of more durable
12 construction materials that may reduce long-term operating
13 costs;

14 (c) concepts that promote efficient but
15 flexible utilization of space; and

16 (d) any other financing or construction
17 concept that may maximize the dollar effect of the state grant
18 assistance;

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

22 (5) except as provided in Paragraph (6), [~~or~~]
23 (8) or (9) of this subsection, the state share of a project
24 approved and ranked by the council shall be funded within
25 available resources pursuant to the provisions of this

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1 paragraph. No later than May 1 of each calendar year, a value
2 shall be calculated for each school district in accordance with
3 the following procedure:

4 (a) the final prior year net taxable
5 value for a school district divided by the MEM for that school
6 district is calculated for each school district;

7 (b) the final prior year net taxable
8 value for the whole state divided by the MEM for the state is
9 calculated;

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

16 (d) the lowest value listed pursuant to
17 Subparagraph (c) of this paragraph is subtracted from the
18 highest value listed pursuant to that subparagraph;

19 (e) the value calculated pursuant to
20 Subparagraph (a) of this paragraph for the subject school
21 district is subtracted from the highest value listed in
22 Subparagraph (c) of this paragraph;

23 (f) the result calculated pursuant to
24 Subparagraph (e) of this paragraph is divided by the result
25 calculated pursuant to Subparagraph (d) of this paragraph;

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1 (g) the sum of the property tax mill
2 levies for the prior tax year imposed by each school district
3 on residential property pursuant to Chapter 22, Article 18 NMSA
4 1978, the Public School Capital Improvements Act, the Public
5 School Buildings Act, the Education Technology Equipment Act
6 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
7 is calculated for each school district;

8 (h) the lowest value calculated pursuant
9 to Subparagraph (g) of this paragraph is subtracted from the
10 highest value calculated pursuant to that subparagraph;

11 (i) the lowest value calculated pursuant
12 to Subparagraph (g) of this paragraph is subtracted from the
13 value calculated pursuant to that subparagraph for the subject
14 school district;

15 (j) the value calculated pursuant to
16 Subparagraph (i) of this paragraph is divided by the value
17 calculated pursuant to Subparagraph (h) of this paragraph;

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

24 (l) if the value calculated for a
25 subject school district pursuant to Subparagraph (j) of this

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1 paragraph is five-tenths or greater, then that value is
2 multiplied by five-hundredths;

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

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

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

19 (p) except as provided in Section
20 22-24-5.7 or 22-24-5.8 NMSA 1978 and except as adjusted
21 pursuant to Paragraph (6), ~~or~~ (8) or (9) of this subsection,
22 the amount to be distributed from the fund for an approved
23 project shall equal the total project cost multiplied by a
24 fraction the numerator of which is the value calculated for the
25 subject school district in the current year plus the value

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1 calculated for that school district in each of the two
2 preceding years and the denominator of which is three; and

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

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

18 (a) the total of all legislative
19 appropriations made after January 1, 2003 for nonoperating
20 purposes either directly to the subject school district or to
21 another governmental entity for the purpose of passing the
22 money through directly to the subject school district, and not
23 rejected by the subject school district, is calculated;
24 provided that: 1) an appropriation made in a fiscal year shall
25 be deemed to be accepted by a school district unless, prior to

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

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1 the grant award is made to the state-chartered charter school
2 or unless the appropriation was previously used to calculate a
3 reduction pursuant to this paragraph, the total shall exclude
4 appropriations made after January 1, 2007 for nonoperating
5 purposes of a specific state-chartered charter school,
6 regardless of whether the charter school is a state-chartered
7 charter school at the time of the appropriation or later opts
8 to become a state-chartered charter school;

9 (b) the applicable fraction used for the
10 subject school district and the current calendar year for the
11 calculation in Subparagraph (p) of Paragraph (5) of this
12 subsection is subtracted from one;

13 (c) the value calculated pursuant to
14 Subparagraph (a) of this paragraph for the subject school
15 district is multiplied by the amount calculated pursuant to
16 Subparagraph (b) of this paragraph for that school district;

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

22 (e) the amount calculated pursuant to
23 Subparagraph (p) of Paragraph (5) of this subsection shall be
24 reduced by the amount calculated pursuant to Subparagraph (d)
25 of this paragraph;

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1 (7) as used in [~~Paragraphs (5) and (6) of~~]
2 this subsection:

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

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

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

17 [~~(8)~~] (9) the council may adjust the amount of
18 local share otherwise required if it determines that a school
19 district has used all of its local resources. Before making
20 any adjustment to the local share, the council shall consider
21 whether:

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

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

19 (c) the school district [~~has~~]: 1) has
20 an enrollment growth rate over the previous school year of at
21 least two and one-half percent; 2) pursuant to its five-year
22 facilities plan, will be building a new school within the next
23 two years; and 3) for all educational purposes, has a
24 residential property tax rate of at least ten dollars (\$10.00)
25 on each one thousand dollars (\$1,000) of taxable value, as

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1 measured by the sum of all rates imposed by resolution of the
2 local school board plus rates set to pay interest and principal
3 on outstanding school district general obligation bonds; and

4 [~~(9)~~] (10) no application for grant assistance
5 from the fund shall be approved unless the council determines
6 that:

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

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

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

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

23 (e) the school district is willing and
24 able to pay any portion of the total cost of the public school
25 capital outlay project that, according to Paragraph (5), (6),

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

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

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

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

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

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

12 (1) no grant shall be awarded unless the
13 council finds that, prior to the purchase of the facility by
14 the school district or charter school, the facility will equal
15 or exceed the statewide adequacy standards and the building
16 standards for public school facilities;

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

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

25 (4) the portion of the total project cost to

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1 be paid from the fund may be awarded as one grant, but
2 disbursements from the fund shall be made from time to time as
3 lease payments become due;

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

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

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

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

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

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1 capacity; and

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

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

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

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

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1 council's work.

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

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

16 Section 4. Section 22-24-5.4 NMSA 1978 (being Laws 2004,
17 Chapter 125, Section 10) is amended to read:

18 "22-24-5.4. RECALCITRANT SCHOOL DISTRICTS--COURT ACTION
19 TO ENFORCE CONSTITUTIONAL COMPLIANCE--IMPOSITION OF PROPERTY
20 TAX.--

21 A. The council may bring an action against a school
22 district pursuant to the provisions of this section if, based
23 upon information submitted to the council by the public school
24 facilities authority, the council determines that:

25 (1) the physical condition of a public school

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1 facility in the school district is so inadequate that the
2 facility or the education received by students attending the
3 facility is below the minimum required by the constitution of
4 New Mexico;

5 (2) the school district is not taking the
6 necessary steps to bring the facility up to the
7 constitutionally required minimum; and

8 (3) either:

9 (a) the school district has not applied
10 for the grant assistance necessary to bring the facility up to
11 minimum constitutional standards; or

12 (b) the school district is unwilling to
13 meet all of the requirements for the approval of an application
14 for grant assistance pursuant to Paragraph [~~9~~] (10) of
15 Subsection B of Section 22-24-5 NMSA 1978.

16 B. An action brought pursuant to this section shall
17 be brought by the council in the name of the state against the
18 school district in the district court for Santa Fe county.

19 C. After a hearing and consideration of the
20 evidence, if the court finds that the council's determination
21 pursuant to Subsection A of this section was correct, the court
22 shall:

23 (1) order the council to expend sufficient
24 resources necessary to bring the facility up to the minimum
25 level required by the constitution of New Mexico;

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1 (2) order the school district to comply with
2 Paragraph ~~[(9)]~~ (10) of Subsection B of Section 22-24-5 NMSA
3 1978 and to take all other actions necessary to facilitate the
4 completion of the project ordered pursuant to Paragraph (1) of
5 this subsection; and

6 (3) enter a judgment against the school
7 district for court costs and attorney fees and the necessary
8 amount to satisfy the school district share, as determined by
9 the formula prescribed by Subsection B of Section 22-24-5 NMSA
10 1978, for the project ordered pursuant to Paragraph (1) of this
11 subsection.

12 D. The amount of a judgment entered against a
13 school district pursuant to Paragraph (3) of Subsection C of
14 this section is a public debt of the school district. If the
15 court finds that the debt cannot be satisfied with available
16 school district funds, other than funds needed for the
17 operation of the public schools and other existing obligations,
18 the court shall order the imposition of a property tax on all
19 taxable property allocated to the school district at a rate
20 sufficient to pay the judgment, with accrued interest, within a
21 reasonable time as determined by the court. After paying court
22 costs and attorney fees, amounts received pursuant to this
23 subsection shall be deposited by the council into the fund."

24 Section 5. A new section of the Public School Capital
25 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

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1 "22-24-5.8. [NEW MATERIAL] SUPPLEMENTAL FUNDING FOR
2 PROJECTS IN CERTAIN SCHOOL DISTRICTS.--

3 A. A school district receiving grant assistance
4 from the fund pursuant to Section 22-24-5 NMSA 1978 for a
5 public school capital outlay project shall receive an
6 additional grant from the fund if the school district and
7 proposed use of the additional grant qualify pursuant to the
8 provisions of Subsection B of this section.

9 B. A school district shall receive the additional
10 grant if the council determines that:

11 (1) in calculating the grant assistance from
12 the fund for the project pursuant to Section 22-24-5 NMSA 1978,
13 the value calculated for the school district pursuant to
14 Subparagraph (k), (m), (n) or (o) of Paragraph (5) of
15 Subsection B of that section is equal to or greater than seven-
16 tenths;

17 (2) averaged over the previous four property
18 tax years, the school district had a residential property tax
19 rate of at least nine dollars (\$9.00) on each one thousand
20 dollars (\$1,000) of taxable value, as measured by the sum of
21 all rates imposed by resolution of the local school board plus
22 rates set to pay interest and principal on outstanding school
23 district general obligation bonds;

24 (3) at least seventy percent of the students
25 in the school district are eligible for free or reduced-fee

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1 lunch;

2 (4) the school district does not have
3 sufficient resources to expend on the project so it is unlikely
4 that the project will ever exceed the statewide adequacy
5 standards;

6 (5) the local community does not have adequate
7 infrastructure to compensate for the school district's lack of
8 resources; and

9 (6) the planned use of the additional grant
10 will enhance public school education in the school district,
11 will further the school district's educational plan for student
12 success and is a prudent use of state money.

13 C. The amount of an additional grant awarded
14 pursuant to this section shall equal the total project cost
15 multiplied by the lesser of:

16 (1) the value calculated for the school
17 district pursuant to Subparagraph (k), (m), (n) or (o) of
18 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978
19 minus six-tenths; or

20 (2) twenty-five hundredths.

21 D. All provisions of the Public School Capital
22 Outlay Act relating to the expenditure of other grants awarded
23 from the fund, including those provisions relating to
24 reporting, oversight, project access and accountability, apply
25 to the use and expenditure of additional grants made pursuant

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1 to this section."

2 Section 6. Section 22-24-7 NMSA 1978 (being Laws 2001,
3 Chapter 338, Section 12, as amended) is amended to read:

4 "22-24-7. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK
5 FORCE--CREATION--STAFF.--

6 A. The "public school capital outlay oversight task
7 force" is created. The task force consists of [~~twenty-six~~
8 twenty-five] members as follows:

9 (1) the secretary of finance and
10 administration or the secretary's designee;

11 (2) the secretary of public education or the
12 secretary's designee;

13 [~~(3) the state investment officer or the state
14 investment officer's designee;~~

15 ~~(4)]~~ (3) the speaker of the house of
16 representatives or the speaker's designee;

17 [~~(5)]~~ (4) the president pro tempore of the
18 senate or the president pro tempore's designee;

19 [~~(6)]~~ (5) the chairs of the house
20 appropriations and finance committee, the senate finance
21 committee, the senate education committee and the house
22 education committee or their designees;

23 [~~(7)]~~ (6) two minority party members of the
24 house of representatives, appointed by the New Mexico
25 legislative council;

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1 [~~(8)~~] (7) two minority party members of the
2 senate, appointed by the New Mexico legislative council;

3 [~~(9)~~] (8) a member of the interim legislative
4 committee charged with the oversight of Indian affairs,
5 appointed by the New Mexico legislative council, provided that
6 the member shall rotate annually between a senate member and a
7 member of the house of representatives;

8 [~~(10)~~] (9) a member of the house of
9 representatives and a member of the senate who represent
10 districts with school districts receiving federal funds
11 commonly known as "PL 874" funds or "impact aid", appointed by
12 the New Mexico legislative council;

13 [~~(11)~~] (10) two public members who have
14 expertise in education and finance appointed by the speaker of
15 the house of representatives;

16 [~~(12)~~] (11) two public members who have
17 expertise in education and finance appointed by the president
18 pro tempore of the senate;

19 [~~(13)~~] (12) three public members, two of whom
20 are residents of school districts that receive grants from the
21 federal government as assistance to areas affected by federal
22 activity authorized in accordance with Title 20 of the United
23 States Code, appointed by the governor; and

24 [~~(14)~~] (13) three superintendents of school
25 districts or their designees, two of whom are from school

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1 districts that receive grants from the federal government as
2 assistance to areas affected by federal activity authorized in
3 accordance with Title 20 of the United States Code, appointed
4 by the New Mexico legislative council in consultation with the
5 governor.

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

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

12 D. The public members of the public school capital
13 outlay oversight task force shall receive per diem and mileage
14 pursuant to the Per Diem and Mileage Act.

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

21 Section 7. Section 22-25-1 NMSA 1978 (being Laws 1978
22 (S.S.), Chapter 5, Section 1, as amended) is amended to read:

23 "22-25-1. SHORT TITLE.--Chapter 22, Article 25 NMSA 1978
24 may be cited as the "Public School Capital Improvements Act"."

25 Section 8. Section 22-25-9 NMSA 1978 (being Laws 1975

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1 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

2 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
3 TAX UNDER CERTAIN CIRCUMSTANCES.--

4 A. Except as provided in Section 22-25-11 NMSA 1978
5 or in Subsection C or G of this section, the secretary shall
6 distribute to any school district that has imposed a tax under
7 the Public School Capital Improvements Act an amount from the
8 public school capital improvements fund that is equal to the
9 amount by which the revenue estimated to be received from the
10 imposed tax, at the rate certified by the department of finance
11 and administration in accordance with Section 22-25-7 NMSA
12 1978, assuming a one hundred percent collection rate, is less
13 than an amount calculated by multiplying the school district's
14 first forty days' total program units by the amount specified
15 in Subsection B of this section and further multiplying the
16 product obtained by the tax rate approved by the qualified
17 electors in the most recent election on the question of
18 imposing a tax under the Public School Capital Improvements
19 Act. The distribution shall be made each year that the tax is
20 imposed in accordance with Section 22-25-7 NMSA 1978; provided
21 that no state distribution from the public school capital
22 improvements fund may be used for capital improvements to any
23 administration building of a school district. In the event
24 that sufficient funds are not available in the public school
25 capital improvements fund to make the state distribution

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1 provided for in this section, the dollar per program unit
2 figure shall be reduced as necessary.

3 B. In calculating the state distribution pursuant
4 to Subsection A of this section, the following amounts shall be
5 used:

6 (1) the amount calculated pursuant to
7 Subsection D of this subsection per program unit; and

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

23 C. For any fiscal year notwithstanding the amount
24 calculated to be distributed pursuant to Subsections A and B of
25 this section, except as provided in Subsection G of this

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1 section, a school district, the voters of which have approved a
2 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a
3 distribution less than the amount calculated pursuant to
4 Subsection E of this section, multiplied by the school
5 district's first forty days' total program units and further
6 multiplying the product obtained by the approved tax rate.

7 D. For purposes of calculating the distribution
8 pursuant to Subsection B of this section, the amount used in
9 Paragraph (1) of that subsection shall equal seventy dollars
10 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year
11 shall equal the amount for the previous fiscal year adjusted by
12 the percentage increase between the next preceding calendar
13 year and the preceding calendar year of the consumer price
14 index for the United States, all items, as published by the
15 United States department of labor.

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

25 F. In expending distributions made pursuant to this

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1 section, school districts shall give priority to maintenance
2 projects, including payments under contracts for maintenance
3 support services. In addition, distributions made pursuant to
4 this section may be expended by school districts for the school
5 district portion of:

6 (1) the total project cost for roof repair or
7 replacement required by Section 22-24-4.3 NMSA 1978; or

8 (2) payments made under a financing agreement
9 entered into by a school district or a charter school for the
10 leasing of a building or other real property with an option to
11 purchase for a price that is reduced according to the payments
12 made, if the school district has received a grant for the state
13 share of the payments pursuant to Subsection D of Section
14 22-24-5 NMSA 1978.

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

24 H. In making distributions pursuant to this
25 section, the secretary shall include such reporting

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1 requirements and conditions as are required by rule of the
2 public school capital outlay council. The council shall adopt
3 such requirements and conditions as are necessary to ensure
4 that the distributions are expended in the most prudent manner
5 possible and are consistent with the original purpose as
6 specified in the authorizing resolution. Copies of reports or
7 other information received by the secretary in response to the
8 requirements and conditions shall be forwarded to the council."

9 Section 9. A new section of the Public School Capital
10 Improvements Act, Section 22-25-11 NMSA 1978, is enacted to
11 read:

12 "22-25-11. [NEW MATERIAL] AUTHORIZATION FOR ADDITIONAL
13 MILLAGE.--

14 A. In addition to the tax imposed pursuant to
15 Section 22-25-3 NMSA 1978, a local school board may adopt a
16 resolution to submit to the qualified electors of the school
17 district the question of whether a property tax should be
18 imposed upon the net taxable value of property allocated to the
19 school district under the Property Tax Code at a rate not to
20 exceed that specified in the resolution for the purpose of
21 capital improvements in the school district. The resolution
22 shall:

23 (1) identify the capital improvements for
24 which the revenue proposed to be produced will be used;

25 (2) specify the rate of the proposed tax,

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1 which shall not exceed one dollar (\$1.00) on each one thousand
2 dollars (\$1,000) of net taxable value of property allocated to
3 the school district under the Property Tax Code;

4 (3) specify the date an election will be held
5 to submit the question of imposition of the tax to the
6 qualified electors of the school district; and

7 (4) limit the imposition of the proposed tax
8 to no more than six property tax years.

9 B. All provisions of the Public School Capital
10 Improvements Act that apply to the tax imposition provided for
11 in Section 22-25-3 NMSA 1978 apply to the tax imposition
12 provided for in this section except that a tax imposed pursuant
13 to this section shall not be taken into account when
14 calculating the state distribution pursuant to Section 22-25-9
15 NMSA 1978."

16 Section 10. [NEW MATERIAL] TRANSFER OF AN AMOUNT EQUAL TO
17 A PORTION OF INDIAN GAMING REVENUE TO THE PUBLIC SCHOOL
18 FACILITY OPPORTUNITY FUND.--On July 15, 2009, July 15, 2010 and
19 July 15, 2011, an amount equal to the lesser of eighteen
20 million dollars (\$18,000,000) or thirty percent of the net
21 receipts of revenue paid to the state pursuant to Indian gaming
22 compacts during the immediately preceding fiscal year, as
23 determined by the secretary of finance and administration,
24 shall be transferred from the general fund to the public school
25 facility opportunity fund.

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1 Section 11. Laws 2006, Chapter 95, Section 14 is amended
2 to read:

3 "Section 14. APPROPRIATIONS.--

4 A. Two million five hundred thousand dollars
5 (\$2,500,000) is appropriated from the public school capital
6 outlay fund to the public school facilities authority for
7 expenditure in fiscal years 2006 through [~~2008~~] 2009 for
8 continuing the development and implementation of a uniform
9 web-based facility information management system for the public
10 schools pursuant to the provisions of Section 22-24-5.3 NMSA
11 1978. Any unexpended or unencumbered balance remaining at the
12 end of fiscal year [~~2008~~] 2009 shall revert to the public
13 school capital outlay fund.

14 B. Three hundred thousand dollars (\$300,000) is
15 appropriated from the public school capital outlay fund to the
16 public school facilities authority for expenditure in fiscal
17 years 2007 and 2008 for the purpose of improving the indoor air
18 quality of public schools by implementing the New Mexico indoor
19 air quality tools for schools program pursuant to criteria
20 developed by the public school facilities authority in
21 consultation with the department of environment, the public
22 education department, the department of health, the energy,
23 minerals and natural resources department and the children,
24 youth and families department. Any unexpended or unencumbered
25 balance remaining at the end of fiscal year 2008 shall revert

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to the public school capital outlay fund."

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL
INSURANCE AUTHORITY ACT TO PROVIDE FOR THE ADOPTION OF POLICIES
RELATING TO VOLUNTEERS AND THE PRIVATE USE OF SCHOOL FACILITIES
AND TO PROVIDE FOR LIMITED INSURANCE COVERAGE, IN CERTAIN
CIRCUMSTANCES, FOR LIABILITY RELATED TO THE PRIVATE USE OF
SCHOOL FACILITIES; MAKING AN APPROPRIATION.

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

Section 1. Section 22-29-7 NMSA 1978 (being Laws 1986,
Chapter 94, Section 7, as amended) is amended to read:

"22-29-7. AUTHORITY--DUTIES.--In order to effectuate the
purposes of the Public School Insurance Authority Act, the
authority has the power to:

A. enter into professional services and consulting
contracts or agreements as necessary;

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1 B. collect money and provide for the investment of
2 the fund;

3 C. collect all current and historical claims and
4 financial information necessary for effective procurement of
5 lines of insurance coverage;

6 D. promulgate necessary rules, regulations and
7 procedures for implementation of the Public School Insurance
8 Authority Act;

9 E. by rule, establish a policy to be followed by
10 participating members relating to the use of volunteers. The
11 policy shall be distributed to participating members and posted
12 upon the authority's web site;

13 F. by rule, establish a policy to be followed by
14 participating members relating to the use of school facilities
15 by private persons. The policy shall be distributed to
16 participating members and posted upon the authority's web site;

17 G. insure, by negotiated policy, self-insurance or
18 any combination thereof, participating members against claims
19 of bodily injury, personal injury or property damage related to
20 the use of school facilities by private persons; provided that
21 the coverage shall be subject to the following conditions:

22 (1) no more than one million dollars
23 (\$1,000,000) shall be paid for each occurrence; and

24 (2) the coverage shall only apply if the
25 participating member was following the policy adopted by the

.170510.4

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1 authority pursuant to Subsection F of this section;

2 ~~[E-]~~ H. negotiate new insurance policies covering
3 additional or lesser benefits as determined appropriate by the
4 authority, but the authority shall maintain all coverage levels
5 required by federal and state law for each participating
6 member. In the event it is practical to ~~[wholly]~~ self-insure
7 wholly a particular line of coverage, the authority may do so;

8 ~~[F-]~~ I. procure lines of insurance coverage in
9 compliance with the provisions of the Health Care Purchasing
10 Act and the competitive sealed proposal process of the
11 Procurement Code; provided that any group medical insurance
12 plan offered pursuant to this section shall include effective
13 cost-containment measures to control the growth of health care
14 costs. The board shall report annually by September 1 to
15 appropriate interim legislative committees on the effectiveness
16 of the cost-containment measures required by this subsection;
17 and

18 ~~[G-]~~ J. purchase, renovate, equip and furnish a
19 building for the board."

20 Section 2. APPROPRIATION.--Two hundred thousand dollars
21 (\$200,000) is appropriated from the general fund to the public
22 school insurance fund for expenditure in fiscal year 2009 to
23 obtain insurance against claims arising from the use of school
24 facilities by private persons as provided in Subsection G of
25 Section 22-29-7 NMSA 1978. Any unexpended or unencumbered

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1 balance remaining at the end of fiscal year 2009 shall revert
2 to the general fund.

3 Section 3. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2008.

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HOUSE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO CHARTER SCHOOLS; PROVIDING THAT, UNDER CERTAIN
CONDITIONS, THE CHARTERING AUTHORITY FOR A LOCALLY CHARTERED
CHARTER SCHOOL MAY BE TRANSFERRED TO THE PUBLIC EDUCATION
COMMISSION.

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

Section 1. Section 22-8B-16 NMSA 1978 (being Laws 2006,
Chapter 94, Section 29) is amended to read:

"22-8B-16. PUBLIC EDUCATION COMMISSION--POWERS AND
DUTIES.--

A. The commission shall receive applications for
initial chartering and renewals of charters for charter schools
that want to be chartered by the state and approve or
disapprove those charter applications.

B. The commission may approve, deny, suspend or

underscored material = new
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1 revoke the charter of a state-chartered charter school in
2 accordance with the provisions of the Charter Schools Act.

3 C. In addition to the commission becoming a
4 chartering authority pursuant to Subsection A of this section,
5 the chartering authority for a charter school existing on July
6 1, 2007 may be transferred to the commission at any time after
7 its charter has been renewed by the local school board if the
8 governing body, the local school board and the commission
9 agree to the transfer; provided, however, that ~~[if a school~~
10 ~~chartered under a previous chartering authority chooses to~~
11 ~~transfer its chartering authority, it]~~:

12 (1) the charter may be amended as agreed to by
13 the governing body, the local school board and the commission;
14 and

15 (2) after the transfer, the charter, as
16 amended, shall be deemed to be a contract between the
17 commission and the school, and the school shall continue to
18 operate under the provisions of that charter until its renewal
19 date unless it is suspended or revoked by the commission.

20 D. An application for a charter school filed with a
21 local school board prior to July 1, 2007, but not approved, may
22 be transferred to the commission on July 1, 2007."