



Public School Capital Outlay Oversight Task Force

**2008
ANNUAL REPORT**

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

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

Introduction

As the "direct descendant" of several task forces that were created as a result of the 1999 *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 the 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 26 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 2008 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the statewide standards-based public school capital outlay process that is now beginning its sixth implementation cycle. While this report focuses primarily on the work of the task force during the 2008 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 M. 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 Joseph L. 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 the 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. At the time, the offset provision also applied to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Education Technology Equipment Act.

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

against a school district if it determines that a school district's facilities are below the minimum standard required by the constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of 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 the 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.

The 2005 legislation also required new charter schools to meet educational occupancy standards before being chartered and established guidelines to assist in the transition of charter schools to public facilities by 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 mills over the past three years;
4. at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and
5. for the next four years, because any local resources of the school district will be spent as the local match for projects, the school district will have no available resources from the state to exceed statewide adequacy standards.

The vetoed legislation would have equaled an amount from 10 to 25 percent of the original project cost and would have been funded through a five-year reversion of 20 percent of all unreserved, undesignated reverting balances to 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.

PSCOOTF recommendations to the 2008 legislature resulted in the passage of an omnibus measure (Laws 2008, Chapter 90, p.v.) that proposed to amend the Public School Capital Outlay Act to allow the PSCOC to make awards from a special public school facility opportunity fund to qualifying school districts in addition to their standards-based funding. This section of the legislation was vetoed by the executive and did not become law. Other provisions of the bill that managed to avoid the veto pen included provisions to reduce the offset from a PSCOC grant award for direct appropriations made for joint use with another governmental entity; to provide an increased grant award to districts with a demonstrable exemplary record of preventive maintenance; to reauthorize continuation of FIMS funding; and to appropriate funding to the already established new school development fund for fiscal year 2009 and subsequent fiscal

years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

Other PSCOOTF-recommended legislation did not receive executive messages and therefore were not considered by the 2008 legislature. They included measures to repeal the current statutory requirement for bonding of subcontractors; to allow for out-of-cycle transfer of charter school chartering authority from the local district to the state or vice versa if appropriate; and to amend the Public School Insurance Authority Act to provide for limited coverage in certain circumstances such as the community use of a public school building.

The recommendations contained in this PSCOOTF report represent the policy development work of the task force during the 2008 interim and the ongoing monitoring of the standards-based capital outlay program to ensure continued success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there. During the 2008 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 2008 Interim

In addition to its June 19 organizational meeting, the Public School Capital Outlay Oversight Task Force (PSCOOTF) held four full task force meetings during the 2008 interim (as provided for in statute): August 25, September 29, October 30-31 and December 1-2, 2008.

The PSCOOTF began its fifth year overseeing the implementation of the public school capital outlay standards-based process with a review of the 2007 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 2008, Chapter 90, p.v.), several of the task force's policy recommendations were enacted, including a reduction of the offset from a grant award for direct appropriations made for a joint-use facility with another governmental entity; provision for an increased grant award to districts with an exemplary record of preventive maintenance; reauthorization of continued funding for the Facilities Information Management System (FIMS); and an appropriation of \$3 million to the already established New School Development Fund for expenditure in fiscal year 2009 and subsequent fiscal years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

One of the task force's recommendations that was included in the omnibus bill was language to amend the Public School Capital Outlay Act to allow the Public School Capital Outlay Council (PSCOC) to provide a rural community credit to qualifying school districts in addition to their standards-based funding. The governor vetoed this language, stating that he "cannot support this end-run of the standards-based process we have worked so hard to create, especially while schools that have not yet reached adequacy are still waiting for funding".

The task force also endorsed three other bills to: (1) repeal the current statutory requirement for bonding of subcontractors; (2) allow for out-of-cycle transfer of charter school chartering authority from the local district to the state or vice versa, if appropriate; and (3) amend the Public School Insurance Authority Act to provide for limited coverage in certain

circumstances such as the community use of a public school building.

During the remainder of the interim, the PSCOOTF heard testimony about the ongoing implementation of the standards-based process, including work with the Energy, Minerals and Natural Resources Department on some of the issues related to building, converting and maintaining sustainable public school facilities. Among the issues discussed included building facilities that minimize operating costs; balancing the conflict between larger, more cost-effective schools and smaller schools with stronger learning outcomes; and green building initiatives.

In line with its statutory requirement to oversee implementation of the standards-based process, the task force heard a presentation on the way in which the PSCOC and Public School Facilities Authority (PSFA) get projects done. PSFA staff heard from task force members a number of concerns, including delay in payment to contractors; the apparent inflexibility of, as well as inconsistencies in, interpretation of the adequacy standards; and site selection for new schools.

The PSCOOTF also heard an informational presentation from staff on sources of public school capital outlay funding.

The chair of the PSCOC Awards Subcommittee provided the task force with its annual report on the current PSCOC awards cycle, which included \$93.4 million in state grants awarded through the standards-based process. Task force members heard testimony that the majority of projects receiving awards — 12 projects in 19 districts — received design funds, reflecting PSCOC emphasis on awarding construction funding at the time projects are actually ready to begin, thereby minimizing the cost of idle capital. The task force was also told that the Albuquerque Public Schools (APS) has reduced its advances and offsets by \$75.6 million, an amount that includes repayment of the advances made for two new high schools and that has reduced its direct appropriation offset to \$3.7 million. Members also heard testimony that, with the large number of projects APS has in the top 150 of the NMCI ranking, future APS

applications can have a significant effect on the number and size of awards in subsequent cycles. The task force also heard testimony that this awards cycle is the first to consider the needs of charter schools. The PSCOC reported that it had allocated only \$1.7 million (out of \$4.5 million) from the Charter School Capital Outlay Fund for projects in three charter schools in three districts. The task force heard that issues related to private ownership of property make awarding additional funds problematic at this time.

Members also heard testimony that the PSCOC is changing from a one-time annual funding cycle to an ongoing examination of project readiness and making grant awards only when a project is able to make expeditious use of funds. The PSCOC Awards Subcommittee is giving particular attention to a PSFA-developed "red flag" report that shows expeditious use of funds and sufficient progress in executing individual district projects.

Throughout the 2008 interim, task force members heard concerns about the 2010 implementation date for charter schools to be in public facilities. Other issues related to charter schools about which the task force heard testimony and had discussion included provisions of the Public School Lease Purchase Act, which was enacted in 2007 to implement the constitutional amendment passed by voters in the 2006 general election to essentially negate the effects of the state supreme court's 1989 *Montano* decision. Hearing concerns from both charter schools and school districts, the task force determined that the existing statute relating to public school lease purchases would need to be reexamined. The task force also heard testimony on concerns about charter school capital outlay funding sources, deadlines for applying for and renewing charters and incentives to support charter school capital outlay funding. The task force heard from the New Mexico Finance Authority on the possibility of using bond and mill levy funding for charter school capital outlay and statutory changes necessary to be able to access these funding sources.

At its August meeting, the task force heard a presentation from the Public Education Department (PED) and a representative of "SchoolDude's" Information Technology Asset Management (ITAM) software, which can provide the districts, the PED and other state agencies

with a cost-effective, scalable, on-demand method to allow for efficient management of district resources while providing consistent reporting to state entities. The PED representatives requested that the PSCOOTF consider a small, one-time allocation from the Public School Capital Outlay Fund to begin implementing the program statewide to support the state's efforts at inventorying all school district assets.

After hearing a PED presentation on concerns about how school districts were expending their "SB 9" state guarantee funds, the task force co-chairs appointed a work group made up of staff and school district personnel to make recommendations to the PSCOC on appropriate guidelines for establishment of rules to govern these expenditures. After meeting two times to discuss the issue, the work group recommended that expenditures from state guarantee dollars, which are funded through state-backed supplemental severance tax bond proceeds, should be considered differently from local district SB 9 funds, which are generated through a direct levy that has been approved by the district's voters. State guarantee funds should be expended for nonconsumable items, while locally approved levy funds can be spent in whatever way the local board and district believe is appropriate.

For the 2008 interim, the task force continued hearing testimony and discussing the requirement in statute that requires subcontractors on public projects over \$200,000 be bonded. Those opposed to the requirement asserted that subcontractor bonding increases public school building costs beyond their actual value and that, because the contractor itself is bonded, there is no need for separate bonding of subcontractors. Task force members also heard testimony and had discussion on its triggers for application and the way in which prevailing wages are determined. Representatives from the construction industry testified to the task force about the necessity and importance of keeping the subcontractor bonding requirement in place. Task force members also heard testimony that some districts are not receiving the same quality of service as others when it comes to hiring appropriately licensed and trained electricians, glazers, carpenters, plumbers and other craftspeople.

The PSCOOTF heard a report during the 2008 interim from Legislative Finance

Committee auditors on a performance audit of the Rio Rancho Public Schools (RRPS) that was critical of the way in which the district deals with its finances, especially in terms of building and opening new schools. The task force also heard from district officials, as well as the Rio Rancho mayor and the Sandoval County manager, expressing their respective concerns about the audit's methodology and results. Several task force members noted that RRPS students perform well and usually meet or exceed state standards.

One issue that received extensive examination by the PSCOOTF related to adequacy standards and school size. Members heard testimony that, because delivery systems for education are always changing, core requirements under the PED standards of excellence have often trapped the state into going in directions based upon the current way in which schools have changed. Additional testimony indicated that districts would have better control of design if the adequacy standards provided realistic maximum sizes rather than maximums and minimums when planners always choose maximums.

Two urban school district representatives testified about the importance of creating small learning communities within a large school to achieve economies of scale while taking advantage of the effectiveness of small learning communities.

Representatives from a local "think tank" provided testimony on the success of small schools and recommended that the state adopt standards that would limit the number of students per grade level in elementary school to 60, 120 per grade in middle schools and 225 per grade in high schools. With the state's predominate school level configuration at K-5, 6-8 and 9-12, those limits would mean elementary schools of no more than 360 students, middle schools of no more than 360 students and high schools of no more than 900 students. Think tank representatives argued that annual operational costs per high school would be lowest for schools with 500-900 students and that the operational cost per high school student goes up with size due to the need for heightened security counselors and middle-level administrators.

Other issues that the task force considered during the 2008 interim included liability

issues related to community use of educational spaces, the implications of yield control and property tax limitations on local districts' ability to raise public school capital outlay funds and roadblocks and impediments affecting implementation of the public school capital outlay standards-based process.

At its December meeting, task force members heard a report about expenditure of \$4 million in appropriations for the PSCOC to develop pilot programs to help determine appropriate energy-efficient and sustainable design standards for future schools. The task force learned that, as yet, the council had not allocated \$1 million of that amount. After a discussion of the issue, task force members agreed unanimously to recommend reversion of the unexpended and uncommitted \$1 million to go toward lowering the state's current shortfall in operational funding.

Also at its final meeting, the task force elected to form a subcommittee to meet the Sunday before the session to recommend legislation for PSCOOTF endorsement for the 2009 session. Co-chairs appointed six subcommittee members, but invited all interested members to attend and participate in the January 2009 subcommittee meeting.

Highlights of Recommendations and Proposed Legislation

The 2008 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 and the standards-based process for allocating PSCOC funds.

PSCOOTF endorsements for the 2009 legislature included seven bills that proposed the following:

.175195.4: Amend the Public School Capital Outlay Act to modify certain lease-payment criteria, to allocate up to \$10 million for expenditure in fiscal years 2010 through 2012 for a roof repair and replacement initiative and up to \$2.0 million for expenditure in fiscal years 2009 through 2011 for lights and bleachers for rural high school athletic fields that meet certain criteria, to provide an offset for certain federal receipts, to allow for adjustments for certain school facilities in rural areas and to limit annual expenditures for certain PSFA operating costs; amend the Charter Schools Act to extend the deadline for charter schools to be in public buildings and to revise standards required for charter school facilities; and amend the Public School Capital Improvements Act to require proportional distributions to charter schools and to expand the definition of "capital improvements". The bill makes an appropriation and has an emergency clause.

.174422.5: Amend the Property Tax Code to allow lease-purchase property used for school purposes to be exempt from property taxation; amend public school general obligation bond statutes to eliminate general obligation bond proceeds as a source of funding for lease-purchase agreements; and amend and enact new sections of the Public School Lease Purchase Act to make the provisions more workable, such as extending the lease-purchase time to 30 years, limiting the interest to the amount determined by the Public Securities Act, allowing a school district to require the owner to pay the current market value in excess of the outstanding principal due at the time of termination, allowing property acquired in a lease purchase to be considered public

property, requiring a local school board to comply with the Open Meetings Act when it enters into a lease-purchase agreement and requiring a local school board to include the tax revenue needed by a charter school if the charter school's charter has been renewed at least once.

.175806.3: Amend the Public School Capital Improvements Act to define maintenance uses for SB 9 (two-mill levy) proceeds and to provide that the state guarantee portion of the funds may be used in fiscal years 2009 and 2010 only to pay for maintenance staff salaries and to purchase property insurance. This bill includes an emergency clause.

.177427.1: Amend the Public School Insurance Authority statute to allow for joint use of school buildings and appropriate \$200,000 from the general fund for insurance claims.

.174428.2: Allow for out-of-cycle transfer of chartering authority.

.174435.1: Amend the Procurement Code to provide exceptions for bonding of subcontractors.

.174436.4: Appropriate \$575,000 from the Public School Capital Outlay Fund to develop and implement a geographic information system to be used by executive and legislative agencies to be located at the University of New Mexico's Bureau of Business and Economic Research.

Appendix A

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEMBERSHIP, 2008 INTERIM

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2008 INTERIM MEMBERSHIP

Representative Rick Miera, Task Force Co-Chair	House Education Committee Chair
Senator Cynthia Nava, Task Force Co-Chair	Senate Education Committee Chair
Senator Timothy Z. Jennings	Senate President Pro Tempore
Representative Ben Lujan	Speaker of the House
Representative Henry Kiki Saavedra	House Appropriations and Finance Committee Chair
Senator John Arthur Smith	Senate Finance Committee Co-Chair
Senator Vernon D. Asbill	Senate Minority Member
Senator Carroll H. Leavell	Senate Minority Member
Representative Larry A. Larrañaga	House Minority Member
Representative W.C. “Dub” Williams	House Minority Member
Representative James Roger Madalena	Indian Affairs Committee Member
Don Moya	Deputy Secretary of Education
Katherine Miller	Secretary of Finance and Administration
Mike Phipps	Superintendent, Artesia Public Schools
Ernesto Valdez	Superintendent, Peñasco Independent Schools
Kilino Marquez	Superintendent, Grants-Cibola County Schools
Leonard Haskie	Assistant Superintendent, Support Services Gallup-McKinley County Schools
Elizabeth Marrufo	Director of Elementary Instruction, Las Cruces Public Schools
Cecilia Grimes	Retired public school teacher, public member with experience in education and finance
Dr. Anna Lamberson	Acting Chief Financial Officer, City of Albuquerque
James “Bud” Mulcock	Former business executive, current education lobbyist
Robbie Heyman	Bond counsel, public member with expertise in education & finance
Dr. John Mondragon	Retired educator
Senator Stuart Ingle	Advisory member, Minority Floor Leader

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-five members as follows:

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

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

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

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

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

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

2008, ch. 90, § 5.

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.

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

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.

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

2008 INTERIM WORK PLAN

**2008 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Membership

Rep. Rick Miera, co-chair
Sen. Cynthia Nava, co-chair
Sen. Vernon D. Asbill
Veronica Garcia
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
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
Katherine B. Miller
John B. Mondragon
Bud Mulcock
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Rep. W. C. "Dub" Williams

Advisory Member

Sen. Stuart Ingle

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 methodology. The task force consists of 25 members, including the respective secretaries of public education and finance and administration; the speaker of the house of representatives; the president pro tempore of the senate; the respective chairs of the house appropriations and finance, house education, 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 include 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.

Additionally, the task force will focus on the following issues:

5. a study of equalization of capital outlay funding as promoted by the districts in the *Zuni* lawsuit;
6. an examination of the ramifications of the Public School Capital Outlay Act's requirement that charter schools must be located in public facilities by 2010 together with other charter school facility issues;
7. policies that encourage joint use of school facilities by other governmental, community and certain private entities, including disincentives for joint use with post-secondary educational institutions;
8. project costs related to implementation of the statutory subcontractor bonding requirement;
9. the relationship of funding to provide adequacy and space flexibility; and
10. major revisions to the statewide adequacy standards and funding needed for implementation of revisions to the standards.

Finally, the task force will report the results of its analyses and oversight, together with any recommendations, to the governor and the legislature before the start of the 2009 regular legislative session.

Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 13 (organizational meeting)	Santa Fe
August 25	Santa Fe
September 29	Santa Fe
October 30-31	Santa Fe
December 1-2	Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2008 MEETING AGENDAS AND MINUTES OF MEETINGS

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

**June 13, 2008
Room 307, State Capitol
Santa Fe**

Friday, June 13

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Election of Co-Chairs**
- 10:10 a.m. **Review of 2007 Task Force Work and Summary of 2008 Legislation**
 —Paula Tackett, Director, Legislative Council Service (LCS)
 —Sharon Ball, LCS
- 11:00 a.m. **PSCOC/PSFA Annual Report**
 —Robert Gorrell, Director, Public School Facilities Authority (PSFA)
 —Tim Berry, Deputy Director, PSFA
- 12:15 p.m. **Discussion of Work Plan, Items for Future Agendas and Other
Organizational Business**
 —Task Force Members and Staff
- 1:00 p.m. **Adjourn**

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

June 13, 2008
Room 307, State Capitol
Santa Fe

The sixteenth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 10:20 a.m. on Friday, June 13, 2008, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Timothy Z. Jennings
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Linda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Rep. W. Ken Martinez
Dr. John Mondragon
Antonio Ortiz for Secretary Veronica Garcia
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith

Absent

Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Cecilia J. Grimes
Leonard Haskie
Sen. Carroll H. Leavell
Elizabeth Marrufo
Bud Mulcock
Rep. W.C. "Dub" Williams

Advisory Members

Sen. Stuart Ingle

Guests

The guest list is in the original meeting file.

Staff

Sharon Ball, Legislative Council Service (LCS)
Robert Gorrell, Public School Facilities Authority (PSFA)
Aldis Philipbar, LCS
Paula Tackett, LCS
Peter van Moorsel, Legislative Education Study Committee (LESC)

Friday, June 13

Election of Co-Chairs

On a motion by Representative Martinez, seconded by Representative Larrañaga, members voted to re-elect Representative Miera and Senator Nava as PSCOOTF co-chairs.

Review of 2007 Task Force Work and Summary of 2008 Legislation

Ms. Tackett and Ms. Ball reviewed the work of the task force during the 2007 interim and summarized the task force's 2008 legislative recommendations and results from the 2008 session. Ms. Tackett reminded members that they had agreed to endorse a total of four bills for consideration by the 2008 legislature, including:

- HB 19, sponsored by Representative Miera, proposed to amend the Public School Insurance Authority Act to provide for limited insurance coverage, in certain circumstances, for liability related to the private use of school facilities and for volunteer. This change would be in conjunction with a commercial increase in the Public School Insurance Authority (PSIA) budget;
- HB 117, sponsored by Representative Madalena, proposed to amend the Charter Schools Act to allow, under certain conditions, for the chartering authority of a locally chartered charter school to be transferred outside the regular charter renewal cycle to the Public Education Commission (PEC);
- HB 173, sponsored by Representative Larrañaga, proposed to repeal the current statutory requirement for subcontractor bonding; and
- SB 146, sponsored by Senator Nava, an "omnibus" bill, proposed among its provisions to amend the Public School Capital Outlay Act to allow the Public School Capital Outlay Council (PSCOC) to make awards above adequacy to qualifying school districts in addition to their standards-based funding; to reduce the offset from a grant award for direct appropriations made for joint use with another governmental entity; to provide an increased grant award to districts with an exemplary record of preventive maintenance; to reauthorize continuation of facilities information management system funding; and to appropriate funding to the already established New School Development Fund for FY09 and subsequent fiscal years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

Ms. Ball said that of the four bills endorsed by PSCOOTF, HB 117 and HB 19, were not granted a message from the governor to be included in the 30-day session's constitutionally limited agenda. She said that HB 19 made it out of the House Rules and Order of Business Committee, but never left the House Appropriations and Finance Committee (HAFC). In response to task force members' questions, Mr. Gorrell surmised that a possible reason HB 19 did not receive a "do pass" recommendation from HAFC is the fact that the PSIA indicated a desire to amend the bill after the task force had already agreed upon what the bill would include.

Ms. Ball explained that SB 146 passed, but received a partial veto. Specifically, the governor vetoed all the language related to establishment and implementation of the opportunity fund. In his message, the governor said that he vetoed the opportunity fund because he felt it would be disqualifying. The remainder of the bill modified requirements for the fire marshal and the Construction Industries Division, reduced the offset against PSCOC grants and in certain circumstances increased the PSCOC grant award for exemplary maintenance.

During the task force's discussion about the legislation, Antonio Ortiz, capital outlay program manager, Public Education Department (PED), said that priority funding from the New School Development Fund would be directed toward new schools built because of fund growth.

PSCOC/PSFA Annual Report

Mr. Gorrell and Ms. Tackett reviewed the PSCOC/PSFA Annual Report with the task force. Mr. Gorrell said that the PSFA is working with the Energy, Minerals and Natural Resources Department on issues related to building, converting and maintaining sustainable public school facilities. Mr. Gorrell went over some of the issues discussed on page nine of the annual report, including building facilities that minimize operating costs, balancing the conflict between larger, more cost-effective schools and smaller schools with stronger learning outcomes, and green building initiatives.

Directing task force members' attention to page nine of the annual report, Mr. Gorrell pointed out the interviews with PSCOOTF members Representative Larrañaga and Mr. Mulcock and thanked them for their cooperation.

Several task force members expressed concern about continuing to use public school capital outlay standards-based funds to build flat-roofed school buildings. In response, Mr. Gorrell said that the PSFA continues to encourage local districts to consider the use of pitched roofs, which give more flexibility in building, but that it is too late to change the projects that are already underway. In response to task force discussion and questions about what might appear to be more efficient use of public school capital outlay funds in Arizona, Ms. Tackett said that the State of Arizona itself exercises much more control over school design and construction in Arizona. She said that New Mexico's policy commitment to control by local school boards does not always allow for the economies of scale that may seem to be available in Arizona schools. In response to a member's question, Mr. Gorrell said that Arizona budgets approximately \$100-\$130 per square foot for schools.

In response to task force questions, Ms. Ball affirmed that current research shows a positive correlation between student success and small school size. Task force members expressed concerns that if such a correlation exists between small schools and student success, perhaps the state should stop funding large schools simply because larger schools are seen as more cost-effective. Perhaps the state should be looking at the "final product" as opposed to the initial cost. Ms. Tackett said that many of the larger schools are addressing this issue by creating campuses within the main campus or creating smaller learning communities such as academies. In regard to issues related to increases in transportation costs, Ms. Tackett said that PSFA staff members take transportation costs into consideration as they advise local districts on specific projects.

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

Task force members reviewed the proposed work plan as presented by staff (see attached). Members expressed a number of concerns about the 2010 implementation date for charter schools to be in public facilities and indicated they are looking forward to examining the implications associated with meeting this deadline. In response to members' questions and comments, Ms. Ball directed members' attention to item six on the work plan and said that examination of this issue would include a report on the number of charter schools in public facilities and plans to meet the requirement.

Several items on the work plan were addressed specifically. Ms. Ball said that number five on the work plan involved a report on the charter schools that are already in public buildings, as well as those that are looking for space. She said that the task force may want to consider amending statutes to extend the time that charter schools have to find a facility and look at allowing charter schools to move under the public school authority sooner than the renewal date. The task force requested a report on charter enrollment from the PED.

Mr. Gorrell pointed out that distribution of higher education capital outlay funding is currently based on square footage per student numbers. He opined that this approach may serve as a disincentive for higher education institutions to participate in dual enrollment programs with local school districts. Ms. Ball added that both higher and public education operational funding formulas allow for dually enrolled students to be funded at both their respective higher and local school district institutions but no such dual funding option is available for facilities funding.

Task force members also requested looking at distance education for high school students and a status report on funding in terms of the relationship of funding for adequacy and space flexibility. They also requested specific data on additional costs related to the implementation of subcontractor bonding legislation.

Mr. Ortiz discussed some issues that had been shared with him by charter schools. He said that the charters are concerned that they do not have the ability to enter into lease-purchase agreements on their own. He also said that there is a concern about the 2020 deadline for lease payments, and the charters feel that they have no protection in statute regarding their leases from local districts.

In response to a question about the *Zuni* lawsuit, Ms. Tackett said that the court has the authority to determine when, or if, it will call for a status conference.

Representative Miera introduced Dr. John Mondragon, who was recently appointed to the task force by the governor, and welcomed him to the task force.

The committee adopted the work plan with suggested additions and modifications.

There being no further business, the task force adjourned at 12:20 p.m.

Revised: August 22, 2008

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

**August 25, 2008
State Capitol, Room 307
Santa Fe**

Monday, August 25

- 10:00 a.m. **Call to Order**
- Review of Agenda**
 —Sharon Ball, Legislative Council Service
- 10:05 a.m. **Approval of June Minutes**
- 10:10 a.m. **Auditing IT Hardware and Software Assets in Public Schools Statewide**
 —Jim Holloway, Ed.D., Assistant Secretary, Rural Education Division,
 Public Education Department (PED)
 —Andrew Rendón, Bureau Chief, Educational Technologies, PED
- 10:45 a.m. **Appropriate Uses for SB 9 Funds**
 —Antonio Ortiz, General Manager, Capital Outlay Bureau, PED
 —Rick Ferguson, Superintendent, Jal Public Schools
 —Dave Flood, Operations/Transportation Director, Alamogordo Public Schools
 —Yvonne Perez, Business Manager, Ruidoso Municipal Schools
 —Gene Bieker, Executive Director of Operations, Clovis Municipal Schools
- 11:30 a.m. **Improving Public Works Bidding for Public School Capital Outlay Projects**
 —Lisa Martinez, Director, Construction Industries Division,
 Regulation and Licencing Department
 —Bob Gorrell, Director, Public School Facilities Authority
 —Dave McCoy, Executive Director, New Mexico Sheet Metal
 Contractors Association
 —Steve Crespín, Executive Director, Mechanical Contractors Association,
 Member, Construction Industries Commission
 —Tom Montaña, Plumbers Local 412, Chair, Construction Industries
 Commission
 —Ardist Allen, President, New Mexico Roofing Contractors Association
- 12:45 p.m. **Lunch**

- 2:00 p.m. **Legislative Finance Committee (LFC): Rio Rancho Public Schools (RRPS)
Audit Report — Capital Outlay Issues**
—Charles Sallee, Program Evaluation Manager, LFC
—Craig Johnson, Program Evaluator, LFC
—V. Sue Cleveland, Ed.D., Superintendent, RRPS
—Representative Tom Swisstack, Mayor, City of Rio Rancho
—Debbie Hays, Sandoval County Manager
—Al Sena, Executive Director of Facilities, RRPS
- 3:30 p.m. **Public School Capital Outlay Council (PSCOC) Standards-Based Grant
Awards, 2008-09 Funding Cycle**
—David Abbey, Chair, PSCOC Awards Subcommittee
—Paula Tackett, Chair, PSCOC
- 4:30 p.m. **Adjournment**

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

**August 25, 2008
Room 307, State Capitol
Santa Fe**

The seventeenth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 10:00 a.m. on Monday, August 25, 2008, in Room 307 of the State Capitol, Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Cecilia J. Grimes
Leonard Haskie
Dr. Scott Hughes for Secretary Katherine B. Miller
Sen. Timothy Z. Jennings
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Sen. Lynda M. Lovejoy
Rep. James Roger Madalena
Kilino Marquez
Elizabeth Marrufo
Dr. John D. Mondragon
Don Moya and Antonio Ortiz for Secretary
Veronica Garcia
Mike Phipps
Rep. Henry Kiki Saavedra
Tom Sullivan for Bud Mulcock
Ernesto Valdez

Absent

Absent

Rep. Ben Lujan
Rep. W. Ken Martinez
Sen. John Arthur Smith
Rep. W.C. "Dub" Williams

Advisory Member

Sen. Stuart Ingle

Guests

The guest list is in the original meeting file.

Staff

Sharon Ball, Legislative Council Service (LCS)
Robert Gorrell, Public School Facilities Authority (PSFA)
Frances Ramirez-Maestas, Legislative Education Study Committee (LESC)

Aldis Philipbar, LCS
Dr. D. Pauline Rindone, LESC
Paula Tackett, LCS
Peter van Moorsel, LESC

Monday, August 25

Review of Agenda

To begin the meeting, Ms. Ball, LCS, reviewed each agenda item with task force members and provided brief background information where appropriate.

Auditing IT Hardware and Software Assets in Public Schools Statewide

Jim Holloway, Ed.D., assistant secretary of the Rural Education Division of the Public Education Department (PED), discussed the success of "SchoolDude", the software brand school district maintenance program. He noted that 88 of the 89 school districts in New Mexico participate in the PSFA's Facility Information Management System (FIMS) program, which is operated with SchoolDude software, and nearly half of the 89 have purchased additional SchoolDude modules or services.

Dr. Holloway said that the SchoolDude's Information Technology Asset Management (ITAM) software can provide the districts, the PED and other state agencies with a cost-effective, scalable, on-demand method to allow for efficient management of district resources while providing consistent reporting to state entities. Some of the benefits of the ITAM program include ease of implementation and maintenance. He said that he hoped the task force would be able to support some small allocations from the Public School Capital Outlay Fund to begin implementing the program statewide to support the state's efforts at inventorying all school district assets. He noted that participating districts would be provided with free access to SchoolDude technical support to implement the statutorily required audit. He said that participating districts will be able to provide accurate, consistent data to the PED and the legislature. In addition, Dr. Holloway provided the task force with some projected costs of implementing the ITAM program and examples of the raw data produced by the system.

In response to questions from the task force, Andrew Rendón, bureau chief, Educational Technologies Bureau of the PED, said that SchoolDude tries to do one-year contracts with school districts. He said that if after 90 days the district does not like the program, the district will receive a 100 percent refund. Mr. Rendón and Dr. Holloway answered additional questions from the task force stating that training is not contracted out and it is a one-time cost. There are 14 project management programs that focus on different areas and can be sold a la carte. The self-identifying reporting of the system prompts questions before problems start. The panel said that money for the program would come out of the general fund.

In response to additional questions, Eric Reeves, SchoolDude legal counsel, stated that the ability to add costs to the information collected and the reports is included in the current program; therefore, the system can capture the original purchase price and will estimate

replacement dates and replacement costs for planning purposes. He added that the system will also keep track of lease and rental payments as well as component cost fields.

Representative Miera welcomed two new members to the task force: Mike Phipps, superintendent of Artesia Public Schools, and Ernesto Valdez, superintendent of Peñasco Independent Schools.

Appropriate Uses for SB 9 Funds

Antonio Ortiz, general manager of the Capital Outlay Bureau of the PED, indicated that the PED is requesting some guidance from the task force regarding appropriate use of SB 9 funds generated through the state guarantee. He explained that the current statutory source for the SB 9 state guarantee and for the \$5.00 per mill per student is supplemental severance tax bonds. He indicated that the State Board of Finance staff had expressed concerns to the PED staff about the fact that districts may have been using the supplemental severance tax proceeds to purchase consumable items for maintenance, such as cleaning solutions and supplies. He added that, as the result of recent statutory changes, the PED's Capital Outlay Bureau is now responsible for processing the requests. Directing task force members' attention to the handout he had provided, Mr. Ortiz presented the committee with a proposed list of appropriate uses of SB 9 funds, including:

- HVAC repairs and replacement;
- roof renovation and replacement;
- facility master plans and maintenance plans;
- architectural services for erecting new buildings;
- lighting, electrical and sound system improvements; and
- floor refinishing.

He also included a list of questionable uses, which included some of the following:

- cleaning supplies, including Pine Sol, Windex, chlorine for swimming pools, work gloves, pest control sprays and mousetraps;
- flags;
- uniforms for sports teams and band members;
- maintenance tools, equipment and vehicles;
- contracts to pick up trash;
- painting a mascot on a wall;
- dry cleaning carpets; and
- moving portable buildings.

Mr. Ortiz said that he and his staff currently receive a very wide range of reimbursement requests, and they are not sure which are appropriately paid for with severance tax bond money, since most bond proceeds are repaid long after the items purchased have been used up. He added that he is requesting some direction from the task force, especially in terms of any required new legislation or drafting of PED rules.

Rick Ferguson, superintendent of Jal Public Schools, indicated that recently his district

has used SB 9 funds primarily for roof repair, as well as for HVAC repair and replacement. He also discussed the importance of schools being able to use SB 9 funds to buy activity buses and technology — both of which the statute allows. He stressed, however, the importance of respecting a local school board's ability to decide the appropriate use of the funds. However, he agreed that SB 9 funds should not be used for salaries.

Dave Flood, operation/transportation director of Alamogordo Public Schools, said that the maintenance definition from the PED is too brief given all the new technologies in the school districts. He said that he only agrees with three or four items on the "disallowed list" and added that districts should be allowed to purchase vehicles for school activities because SB 9 funds are the only source available for that. He also agreed that SB 9 funds should not be used for salaries.

Gene Bieker, executive director of operations of Clovis Municipal Schools, said that the decision of how to use SB 9 funds should stay at the district level. He said that the guidelines for appropriate expenditure of SB 9 funds are not clear and that, for several years now, districts have had to deal with tightening operational budgets, a situation that has caused more dependence on SB 9 to pay for expenditures that were formerly paid from general fund dollars.

Yvonne Perez, business manager of Ruidoso Municipal Schools, said that the focus of district expenditures should, of course, always be the classroom and the goal of educating children. She stressed that finances for a smaller district in comparison to a larger district are very different and often more challenging. She said that the Ruidoso district has been relying more heavily on SB 9 funding since needs are so great in other areas, such as teachers' salaries. She said that many small districts do not have the capacity to bond because they are already fully bonded. She said that funding from the state equalization guarantee has not been sufficient to maintain the district's budget "status quo". She noted that the district has been forced to eliminate, through attrition, several teachers and other staff positions over the past two years. All classes are at capacity for student-to-teacher ratios. Ms. Perez said that the district currently purchases \$60,000-70,000 of custodial supplies with SB 9 funds. If those funds were unavailable, the district would have to dip into its operational fund, which would have a negative effect on instruction.

Bob Bitner of the PSFA said that, as he sees it, the biggest need is clarification on how SB 9 funds can properly be used. He said the funds could be used for maintenance training. Mr. Gorrell, director of the PSFA, said that janitorial services are as important to maintaining facilities as are certain pieces of equipment.

Many task force members expressed their concern about restrictions on SB 9 funds, particularly "over regulating districts". Panel members discussed the difference in uses for both SB 9 funds and HB 33 funds, stating that uses for SB 9 funds are generally more flexible because they allow for expenditures, including maintenance, some training and activity buses.

In response to additional task force questions and discussion, Representative Miera noted that approval for expenditures from state guarantee dollars, which are funded through state-

backed supplemental severance tax bond proceeds, must be considered differently from local district SB 9 funds, which are generated through a direct levy that has been approved by voters. He reminded the group, however, that no matter their source, all SB 9 funds must be expended in accordance with the Public School Capital Improvements Act. By consensus, the task force requested that involved staff work with school district representatives to make recommendations to the Public School Capital Outlay Council (PSCOC) on appropriate guidelines for establishment of relevant rules.

Improving Public Works Bidding for Public School Capital Outlay Projects

Lisa Martinez, director of the Construction Industries Division (CID) of the Regulation and Licensing Department, began by discussing a survey that was sent out to various contractors regarding public works. Mr. Gorrell said that not a lot of money was spent on the survey, but that they received good feedback.

Mark Williams of the PSFA discussed the survey results, saying they found that subcontractors often have trouble finding out which contractors have public works contracts. He suggested that the task force look at the current laws and see if there are any steps that can be combined to make the process more efficient.

Dave McCoy, executive director of the New Mexico Sheet Metal Contractors Association, said that the construction industry is very technical and each person has a specialty or skill. Steve Crespino, executive director of the Mechanical Contractors Association, a member of the Construction Industries Commission, commented on the importance of apprenticeship programs in developing a work force trained and capable of meeting the construction industry's needs.

Ardist Allen, president of the New Mexico Roofing Contractors Association, said that the PSFA needs to know what an RFP is — it is not always the lowest bid. He said that costs go up because too many people get involved. Mr. Allen said that costs have gone up, but the quality remains the same.

Ms. Tackett, director of the LCS, said that the purpose of the presentation was to discuss the costs of construction and why the state has a hard time getting bids. She said the task force needed to get an idea of what the roadblocks are. Ms. Martinez said that they will have a limited number of bidders, but hopefully they will be qualified bidders. Mr. Gorrell added that they are trying to understand the difference in bids. For example, a new school for 100 students costs \$3.5 million in one area of the state and \$8 million in another. These differences are often due to location — rural versus urban — and a lack of commercial builders in those areas.

Task force members expressed their concern that some school districts are not receiving the same quality of service as others when it comes to electricians, carpenters, etc. There was also discussion about the Subcontractors Bonding Act, its triggers for application and the way in which prevailing wages are determined.

Legislative Finance Committee (LFC): Rio Rancho Public Schools (RRPS) Audit Report — Capital Outlay Issues

Charles Sallee, program evaluation manager of the LFC, gave an overview of the LFC auditing process. He explained that yield controls put a cap on how much RRPS can collect. He added that increased property values lead to increased bonding capacity and that districts need financial planning for new schools. As an example, he said that the RRPS is having trouble with library costs, but that if a plan was in place to address potential issues like this, it would relieve some stress.

Representative Thomas E. Swisstack, mayor of the City of Rio Rancho, said that Rio Rancho does not mind being the first school district to be audited by the LFC, but said that the district wants to set an example because every other district would be following suit. He thanked the legislature for its support during Rio Rancho's formative years and said that the growth spurt will continue. Representative Swisstack said that Rio Rancho is only 27 years old, but it is already the third largest city in the state. He added that the district has opened a new school almost every year. The city has been working with Hewlett Packard for the past four weeks to bring 2,000 jobs to Rio Rancho. In addition, two other companies are looking at moving to the city and both Central New Mexico Community College and the University of New Mexico will be opening campuses in Rio Rancho in 2009.

Dr. V. Sue Cleveland, Ed.D., superintendent of RRPS, said that she found several items in the LFC audit very helpful and that the process was very cordial. However, she also found some of the results of the audit to be wrong, but had no due process to challenge these results. Dr. Cleveland then addressed her concerns with the audit. She noted that one disagreement had to do with the scope of the audit, mainly that it only looked at a snapshot in time of work done by RRPS. She discussed prior-year funding with the task force, stating that the average per-student unit value in New Mexico is 1.9, but, under the current formula, RRPS's new students generate only .5 units for the first year. She said that the district's cash balance continues to disappear, which also requires a reduction in teacher salaries. Dr. Cleveland added that implementation of the three-tier system caused some teachers in the district to jump the full \$5,000 in pay.

Dr. Cleveland added that she believes that RRPS practices good management in regards to new school buildings and that projects often finish on time and within budget. She said that the district looked at schools in various other states and did not find one without a performing arts center. In fact, she said, the first thing Hewlett Packard inquired about when speaking with the district was whether it had a performing arts center and sports facilities and what extracurricular activities the district offered. The district has built 11 new schools in 14 years, and Dr. Cleveland added that the cost of portable classrooms often offsets any savings during growth periods. She stressed that when building a new school, a principal is needed at least one year in advance of completion to make on-site decisions, order supplies and set the new curriculum. RRPS is currently working with a very lean administrative staff.

Debbie Hays, Sandoval County manager, also addressed some concerns with the LFC audit of RRPS. Ms. Hays said that she had concerns with the methodology used by the LFC in that there was no way to correct the document before it was made public, and it will later be used as a reference in its uncorrected form. In reference to comments in the report about property assessments, she said the Sandoval County assessor has been working hard to implement new technology that will make property assessment more efficient. She noted that the county was not contacted prior to the publishing of the audit.

Mr. Sallee explained that the audit was part of the LFC work plan and that it informed the LESC of its methods. He also said that RRPS was notified and that the LFC met with Dr. Cleveland and briefed the school district delegation. He noted that RRPS raised concerns with how the funding formula treated them in terms of growth. He said that the LFC was in continuous contact with RRPS staff, held briefings to discuss findings and met with the LESC, the PED and the Office of Accountability staff. He added that changes were made to the final report based on new information from RRPS and that they would be happy to include a formal response from Sandoval County. Dr. Cleveland reiterated that the process was very cordial and added that it involved hundreds of man-hours on each side. She said that there were tight deadlines and the schedule was not always flexible.

Task force members then discussed various topics related to the presentation. In response to questions from the task force, the panel said that it is inaccurate to say that better planning is needed when it comes to building new schools because it is impossible to put such a large amount of money aside when a district is opening a new school every year. Cooperation is needed. The task force asked about the total cost of the new RRPS school versus the new school on the West Mesa in Albuquerque. The Revenue Stabilization and Tax Policy Committee is looking at yield control. The task force was especially interested in what was learned from the audit and whether it was worth the time and resources.

PSCOC Standards-Based Grant Awards, 2008-09 Funding Cycle

David Abbey, chair, PSCOC Awards Subcommittee, reported that the PSCOC had approved a total of \$93.4 million in state grants awarded through the standards-based process. He pointed out that a majority of the projects — 12 projects in 19 districts — received design funds, reflecting the continuing PSCOC emphasis on awarding construction funding at the time projects are actually ready to begin, thereby minimizing the cost of idle capital.

Mr. Abbey explained that, with this funding cycle, Albuquerque Public Schools (APS) has reduced its advances and offsets by \$75.6 million, an amount that includes repayment of the advances made for two new high schools. He said that, with awards in this cycle, APS will have reduced its direct appropriation offset to \$3.7 million. In response to a task force question, he said that he expected that the district would be able to retire all of its appropriations in the next cycle. He added, however, that with the large number of projects that APS has in the top 150 of the NMCI ranking list, the APS application can have a significant effect on the number and size of awards in the next cycle.

Mr. Abbey noted that this cycle is the first in which charter schools' needs have been

reflected in the NMCI ranked list, accounting for their needs along with the needs of other public schools. He explained that the PSCOC allocated only \$1.7 million from the Charter School Capital Outlay Fund for three charter schools in three districts. Two charter schools in two districts did not have requests funded at this time pending further study by the PSCOC. In response to a task force question, Mr. Abbey explained that these projects may be funded out of cycle if issues related to private ownership of facilities and/or property can be resolved. In response to additional questions, Mr. Abbey explained that state statute requires that charter schools must be in public buildings by 2010 at the time of their respective renewal dates. He agreed with task force members that a number of issues involving the charter schools in public buildings deadline still need to be resolved. In response to a question, Ms. Ball stated that these charter school facilities issues are tentatively scheduled for the October 31 PSCOOTF meeting. Mr. Abbey added that the council is considering increasing priority for awards to charter schools seeking to maximize the use of existing public facilities, including municipal, county and state facilities, before constructing completely new buildings.

Continuing the discussion, Mr. Abbey said that the council is changing from a one-time annual funding cycle to an ongoing examination of project readiness and making grant awards only when a project is able to make expeditious use of the funds. Directing members' attention to the handouts, he said that the PSCOC Awards Subcommittee is giving particular attention to PSFA's project time line "red flag" report, with consideration for funding given to districts that are making expeditious use of funds and sufficient progress in executing their respective projects. He said that the goal is for future PSCOC applications to be more fully advanced and to include credible project budgets, which should reduce out-of-cycle awards related to cost overruns.

In response to an additional question, Mr. Abbey indicated that next year's target for PSCOC funding should be between \$100 and \$150 million depending upon severance tax revenues of which the first \$18 to \$20 million goes to the SB 9 guarantee.

In response to a question about the Verde project to build a school for the Gadsden Independent School District, Mr. Abbey explained that, at first, the project was delayed because of the slowdown in the housing market. He added that, after passage of the constitutional amendment that allows for lease-purchase agreements, the Verde Group was considering using the lease-purchase mechanism to build the school but had some concerns about language in the enabling legislation. He said that the continuing slowdown in the housing market has reduced the need for an immediate solution to this issue.

There being no further business to come before the task force, the members agreed by consensus to adjourn at 4:50 p.m.

Revised: September 26, 2008

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

**September 29, 2008
Room 307, State Capitol
Santa Fe**

Monday, September 29

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **How the Public School Capital Outlay Council (PSCOC) and the Public School Facilities Authority (PSFA) Get the Projects Done — Ongoing Review and Monitoring**
—Bob Gorrell, Director, PSFA
—Pat McMurray, Senior Facilities Manager
—Jeffrey Eaton, Chief Financial Officer, PSFA
- 11:00 a.m. **School District Capital Funding Sources**
—Paula Tackett, Director, Legislative Council Service (LCS); Vice Chair, PSCOC;
—Antonio Ortiz, General Manager, Capital Outlay Bureau, Public Education Department
—Sharon Ball, Researcher III and Task Force Staff, LCS
—Mike Phipps, Superintendent, Artesia Public Schools
- 12:00 noon **Lunch**
- 1:30 p.m. **Community Use of Educational Spaces: Liability Issues**
—Sammy Quintana, Executive Director, New Mexico Public School Insurance Authority (NMPSIA)
—Julie Garcia, Poms & Associates
- 2:30 p.m. **Implications of Yield Control and Property Tax Limitations on Local Districts' Ability to Raise Public School Capital Outlay Funds**
—Thomas E. Clifford, Ph.D., Vice President and Research Director, New Mexico Tax Research Institute
- 4:30 p.m. **Adjournment**

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

**September 29, 2008
Room 307, State Capitol
Santa Fe**

The eighteenth meeting of the Public School Capitol Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:10 a.m. on Monday, September 29, 2008, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Scott Hughes for Secretary Katherine
B. Miller
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Kilino Marquez
Dr. John Mondragon
Bud Mulcock
Antonio Ortiz for Secretary Veronica Garcia
Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Ernesto Valdez

Absent

Sen. Timothy Z. Jennings
Dr. Anna Lamberson
Sen. Carroll H. Leavell
Rep. James Roger Madalena
Elizabeth Marrufo
Rep. W. Ken Martinez
Rep. W.C. "Dub" Williams

Advisory

Sen. Stuart Ingle

Staff

Sharon Ball, Legislative Council Service (LCS)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

September 29

How the Public School Capital Outlay Council (PSCOC) and the Public School Facilities Authority (PSFA) Get the Projects Done — Ongoing Review and Monitoring

Jeffrey Eaton, chief financial officer, PSFA, presented the task force with a chart of all the PSCOC and PSFA projects. He said that the PSFA wants to know the pulse of the projects and that a color coding system is used to gauge the progress of the projects, with links to the meeting minutes. The PSFA produces monthly and quarterly reports for the PSCOC to review. Mr. Eaton then reviewed a few of the projects with the task force, including one at Carlos Rey Elementary School, which showed a funding amount of \$6.9 million plus supplemental funding. Mr. Eaton also discussed the Reporting Matrix, which shows the different systems used and provides a record of requests by the districts.

Mr. Eaton, Bob Gorrell, director, PSFA, and Pat McMurray, senior facilities manager, PSFA, answered questions from the task force. In response to a question about why payment to contractors has taken so long, panel members explained that an application is required for payment and that there is a meeting each week for each project during which the payment application is reviewed. Payment is based on the percentage of the project that is completed, but if there is not an agreement between the district and the contractor of the percentage completed, then it takes time to resolve. Panel members said that contractors receive payment from the district and from the PSFA, and they are working on a new system for notifying contractors when the district has paid. Panel members also explained that uncommitted balances occur when the amount of the award is higher than the project costs. However, that balance reverts to the Public School Capital Outlay Fund. They also said that the PSCOC can only participate up to the adequacy standard and that PSFA contracts are very specific and only pay for equipment stored on site.

Mr. McMurray then discussed the process of completing school projects. He said that when a district requests a new school, the PSFA first asks the district to look at its utilization of existing space. He also said that defining the project up front gets better estimates. He said that the PSCOC generally requires projects to be 60 percent complete before the district can ask for more money. Mr. McMurray explained that the SIMS system is used once an architect is brought on, and, as the construction phase begins, different methods are considered. He added that after the walk-through inspection, the building can be occupied while the final touches are completed.

The task force members then brought up some concerns, including the apparent inflexibility of the adequacy standards; academies; and site selection for new schools. Panel members said that the PSCOC does not have condemnation authority, but the district does. The question of whether the same process applies to both small projects and large projects was also raised. Panel members said that a district can bring any issue about a decision made by the PSFA to the PSCOC. Also, adequacy standard issues continue to arise.

School District Capital Funding Sources

Paula Tackett, director, Legislative Council Service (LCS), explained SB 9 funding and restrictions. Antonio Ortiz, general manager, Capital Outlay Bureau, Public Education Department (PED), discussed the FY09 budget with the task force. He also presented a chart showing the 10-year history of SB 9 state matching funds. He pointed out that at one point the state match was 35 percent, but the gap between local funding and state match funding increases with the state putting in less money proportionally until the match is raised.

Sharon Ball, researcher, LCS, explained the purpose of levies, saying they were designed for communities with very large property tax bases. She said that when HB 33 was originally passed, it only allowed the use of 10 mills of HB 33 funds; however, that number grew to 15 mills in 1996. She added that no district has levied 10 mills, and, in fact, no district has levied more than five mills. Ms. Ball said the idea was to have pay-as-you-go capital outlay, but the idea does not work for districts with fast growth, as the Albuquerque Public Schools (APS) found in 1987. Eventually, the district had to go to SB 9 funds and general obligation bonds in addition to HB 33 funds.

Mike Phipps, superintendent, Artesia Public Schools, discussed the use of HB 33 funds in the Artesia public school system. He said that Artesia has had an HB 33 levy for almost 20 years with the purpose of having enough money on a pay-as-you-go basis. He said that Artesia has lots of oil and gas revenue. Mr. Phipps said that with the savings, the district put new roofs on all the schools. Having additional money allows it to plan ahead, and it has not applied for or asked for any additional money. He added that the last building the school district built cost \$191 per square foot and that the district is very open and honest with the public on how funds are spent.

In response to questions from the task force, the panel said that HB 33 requests are renewed every six years and that the tax burden is on property owners in the district. Ms. Ball clarified that HB 33 funds are only for building and grounds maintenance and renovation. The panel also said that the biggest difference in new school building costs is the limited competition in the construction industry in New Mexico.

Community Use of Educational Spaces: Liability Issues

Sammy Quintana, executive director, New Mexico Public School Insurance Authority (NMPSIA), said that under the current policy, non-school functions are not covered by the school's insurance. He said that a separate policy could be purchased and would not be very costly (except for high-risk functions like rodeos). Mr. Quintana discussed the current insurance options available, including having the district named as an additional insured party on a user's policy (i.e., Boy Scouts, Lions Club, etc.); having a tenant user liability insurance policy (TULIP); or having an annual liability policy that covers damage to school property and protects the event planner and district from liability. He also discussed HB 19, introduced during the 2008 session, which requires NMPSIA to establish a policy relating to use of volunteers. HB 19 limits liability to \$1 million per occurrence and only if a school usage policy is not followed. In

addition, HB 19 appropriated \$200,000 to buy TULIP for all school districts and charters. Mr. Quintana also suggested revisions to HB 19, including increasing the appropriation to \$308,000 to account for APS as 35 percent of the total.

Mr. Quintana and Julie Garcia, Poms and Associates, answered questions from the task force. They said that HB 19 died in the House Appropriations and Finance committee (HAFC).

Implications of Yield Control and Property Tax Limitations on Local Districts' Ability to Raise Public School Capital Outlay Funds

Thomas E. Clifford, Ph.D., vice president and research director, New Mexico Tax Research Institute, said that property taxes currently generate about \$1.3 billion in revenue annually from a taxable base of about \$47 billion. He explained that the taxable value is one-third of the assessed value less certain exemptions. Dr. Clifford said that rates vary by location, from a low of about 10 mills (\$1.00 per \$1,000 of taxable value) to a high of about 45 mills, with an average of about 27 mills. Dr. Clifford then reviewed some of the constitutional provisions related to levies. He said that the tax shall be levied against no more than 33.3 percent of the value of the property and that the total tax levy is limited to no more than 20 mills, except for payment of debt service on voter-approved debt issues. He pointed out that the state debt is limited to no more than one percent of the total assessed value, and the school district debt is limited to six percent of the assessed value in the district. He said that most property valuation is done by county assessors. He said that the maximum rates imposed for operating purposes are limited to 20 mills, divided as follows: 11.85 mills by the county, 7.65 mills by a municipality and 0.5 mills by a school district. Dr. Clifford said that residential taxable value has not kept pace with house price inflation, at least in part due to the three-percent limit on annual value growth. He said that yield control means that lower taxable value translates into higher tax rates and the impacts of the value limit on debt service levies depend on voter behavior. The value limit on residential property has driven a wedge between properties that are newly purchased, valuing them much higher than others so that they pay more in debt service and operating tax levies than those held for longer periods. Dr. Clifford also said that the SB 9 levy is subject to yield control, but, because the levy can be renewed after six years, yield-controlled rates are not significantly lower than the rates originally imposed. He said that, after yield control, the average SB 9 levy equals 1.9 mills. He added that the HB 33 levy is subject to yield control, but the limited time of imposition also limits the impacts of yield control.

There being no further business, the task force adjourned at 2:55 p.m.

Revised: October 29, 2008

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

**October 30-31, 2008
State Capitol, Room 307
Santa Fe**

Thursday, October 30

10:00 a.m. **Call to Order**

10:05 a.m. **Approval of September Minutes**

10:10 a.m. **Adequacy Standards Revisions and School Size**

- Bob Gorrell, Director, Public School Facilities Authority (PSFA)
- Winston Brooks, Superintendent, Albuquerque Public Schools
- V. Sue Cleveland, Ed.D., Superintendent, Rio Rancho Public Schools
- Stan Rounds, Superintendent, Las Cruces Public Schools

- Fred Nathan, Executive Director, Think New Mexico

11:45 a.m. **Lunch**

1:00 p.m. **Charter Schools Facilities Issues**

- Don Duran, Ed.D., Assistant Secretary, Charter Schools Division,
Public Education Department (PED)
- Sharon Ball, Legislative Council Service (LCS)
- Application Time Lines and Facility Requirements*
- Lease Reimbursements*
 - Tim Berry, Deputy Director, PSFA
 - Bill Sprick, Facilities Master Planning Manager, PSFA
 - Lisa Grover, Ph.D., Executive Director, New Mexico Coalition of
Public Charter Schools (NMCPCS)
- Lease-Purchase Agreements*
 - Antonio Ortiz, Director, Capital Outlay Bureau, PED
 - Roderick Ventura, Esq., General Counsel, PED
- Funding Sources and Deadlines for Charter School Facilities*

—*Incentives to Support Charter School Facility Funding*

—Lisa Grover, NMCPCS

—Patricia Matthews, Esq., Legal Counsel, NMCPCS

—Jeremy Turner, Chief Financial Advisor, New Mexico Finance
Authority

5:00 p.m. **Recess**

Friday, October 31

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

9:05 a.m. **Addressing Roadblocks and Impediments Affecting Implementation of the
Public School Capital Outlay Standards-Based Process**

—Katherine Miller, Secretary, Department of Finance and Administration;
Chairperson, Public School Capital Outlay Council (PSCOC)

—Paula Tackett, Esq., Director, LCS; Vice Chair, PSCOC

—Bob Gorrell, Director, PSFA

—Pat McMurray, Senior Facilities Manager, PSFA

10:00 a.m. **Discussion of Potential Task-Force Endorsed 2009 Legislation**

—Task Force Members and Staff

12:00 noon **Adjournment**

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

**October 30-31, 2008
Room 307, State Capitol
Santa Fe**

The nineteenth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 10:20 a.m. on Thursday, October 30, 2008, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Cecilia Grimes
Leonard Haskie
Robbie Heyman (Oct. 30)
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Linda M. Lovejoy (Oct. 31)
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Rep. W. Ken Martinez
Secretary Katherine B. Miller
Don Moya for Secretary Veronica Garcia
Bud Mulcock
Antonio Ortiz for Secretary Veronica Garcia
Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Ernesto Valdez

Absent

Sen. Vernon D. Asbill
Sen. Timothy Z. Jennings
Sen. Carroll H. Leavell
Elizabeth Marrufo
Dr. John Mondragon
Rep. W.C. "Dub" Williams

Advisory Member

Sen. Stuart Ingle

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Sharon Ball, Legislative Council Service (LCS)
Gary Carlson, LCS Contract Drafter
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Thursday, October 30

On a motion made by Senator Smith and seconded by Mr. Phipps, the September minutes of the PSCOOTF were unanimously approved.

Adequacy Standards Revisions and School Size

Bob Gorrell, director, Public School Facilities Authority (PSFA), reviewed the agenda and explained the adequacy standards. He said that because the delivery systems for education are always changing, the core requirements under the standards of excellence have often trapped the state in going in directions according to the way schools are evolving. The way education is being delivered is always changing. Mr. Gorrell said that districts generally lean toward larger spaces when given minimums and maximums for space. He added that utilization has been a common theme in PSCOOTF meetings. He said with 89 school districts and 800 schools in New Mexico, the Public School Capital Outlay Council (PSCOC) tries to be equitable while looking at all issues. Historically, he said, community and education were the same; in recent times, economies of scale have driven schools to become bigger and bigger. Although the current movement to create smaller learning environments attempts to address the issues related to students feeling a part of something within the school, Mr. Gorrell suggested identifying a maximum for the total size of a school rather than defining minimums and maximums for individual spaces. Thus, districts would have better control of the design and could better meet their needs.

Brad Winter, chief operations officer, Albuquerque Public Schools (APS), said that Winston Brooks, superintendent, APS, does not agree with most of what is in the small school report. He said that the city is lacking fields, community centers, etc., but APS is stepping up to fill that void. He said that smaller schools will not allow APS to do that. Mr. Winter said that parents want more fine arts facilities and pointed out that all APS schools have auditoriums, which also would not be possible with small schools. He also pointed out that APS students score higher on the ACT and SAT than the national average. He said that the goal is to create small learning communities within a large school.

V. Sue Cleveland, Ed.D., superintendent, Rio Rancho Public Schools (RRPS), said that smaller learning communities are semi-independent schools within Rio Rancho High School (RRHS). She said that each academy has 600 students with its own vice principal. All students have the same core classes with different career pathways based on the academy. However, she pointed out that students are not stuck in one academy. They can take elective classes in all academies. Dr. Cleveland said that RRHS does a "climate check" each year with parents and students. She added that a comparison was done between RRHS and a smaller school outside of

Seattle that was considered to be a good school; it was found that performance at RRHS was the same. She said that Rio Rancho has some schools that are a little big, but that is the result of growth. She also said that although the district needs to look at what the community wants, there is often a disconnect between what the community wants and what it is willing to pay for. She noted that it costs more to build four small schools than one large school and that there is an economy of scale with buying a large tract of land. She also pointed out that the high schools were the first thing Hewlett Packard executives wanted to see when they were considering a company move to Rio Rancho. She said that if New Mexico wants to have growth, it has to have competitive schools.

Mr. Gorrell asked Dr. Cleveland how virtual learning could be shared between RRHS and rural areas. Dr. Cleveland responded by saying that RRPS is a big proponent of cyber education. She said that the state has stepped forward with a cyber initiative. She said that cyber education can work for rural and urban areas and gave some examples of students involved in competitive sports who were able to go to school while traveling via cyber education. Dr. Cleveland added that cyber education has huge potential and can now be delivered to almost any school in the state.

Stan Rounds, superintendent, Las Cruces Public Schools (LCPS), said that his smallest school has 300 students and the new high school serves 2,200 students and is located on 100 acres at a cost of \$100 million. He said that if New Mexico continues on the "small school road", LCPS would need 13 more schools instead of one, plus infrastructure, counselors, teachers, administrators, playing fields, etc. Mr. Rounds said that LCPS would be looking at a 35 to 40 percent cost increase.

Fred Nathan, executive director, Think New Mexico, said that there is one new dropout every five minutes. New Mexico is forty-ninth in graduation rates with APS graduating 44 percent of its students. Mr. Nathan said that the dropouts from this class alone would cost taxpayers \$62 million in recurring costs (Medicare, incarceration, lost tax revenue, etc.). He said that many factors that relate to dropouts are out of the state's control, but the state can control the size of schools. Mr. Nathan cited a nationwide survey of dropouts conducted by Bill Gates. He said that 57 percent of those surveyed attributed violence in schools to their dropping out, and he pointed out that small schools have less violence. He said that 50 percent of those surveyed also attributed feelings of alienation to their dropping out, and he pointed out that there are more opportunities in small schools to participate in extracurricular activities. He also added that smaller schools have higher graduation rates and cited schools in New Mexico with student populations between 500-1,000 with the highest graduation rates. He said that low-income students benefit most from small schools because they receive more individual attention. Mr. Nathan said that Think New Mexico is proposing the following limits on school size: 225 students per grade in high schools, 120 students per grade in middle schools and 60 students per grade in elementary schools. He also encouraged large schools to move to smaller learning communities through funding. He pointed out that the annual operations cost per high school student was lowest for schools with 500-999 students. The operations cost per student goes up

with size due to heightened security, middle administrators, etc. He posited the question of whether the state is building big schools because of the needs of children or the needs of adults.

Mike May, PTA member, Amy Biehl Charter School, and several other members of the public gave testimony advocating for smaller schools.

In response to a question from the task force about the economic life of a school, the panel said that a school needs renovating after 30 years, but that the structure should last 100 years. It was stated that classroom size is the most important factor, regardless of the size of the school, and that it is incumbent upon the legislature to impose a solution to this problem. It was also stated that the first three years of school set the tone for later on and that perhaps the initial focus should be on the first three years instead of trying to change everything at once. It was also pointed out that small schools work well for some students, while others like what a large school has to offer.

Charter Schools Facilities Issues

Application Time Lines and Facility Requirements

Lease Reimbursements

Ms. Ball, researcher, Legislative Council Service (LCS), introduced the panel and said that she would be available to answer questions from the task force. Don Duran, Ed.D., assistant secretary, Charter Schools Division (CSD), Public Education Department (PED), discussed the charter school application process. He said that under the current law, a charter school must have a letter of intent submitted by January 1. A charter school founder must let the CSD know that the founder is interested. He said that the CSD goes over the application monthly with potential charters and that there is no funding from January 1 through July 1, when the application is due. The local authority then has 60 days to approve or deny the application. If approved, the charter has until July 1 of the following year to plan in order to open for that school year.

Bill Sprick, facilities master planning manager, PSFA, said that the PSFA pushed for education specifics because they are necessary for a successful school. He said that charters really need 16 to 18 months to hire and work with an architect and select a facility. He said that the PSFA wants to know what it is approving when the charter is approved. Mr. Gorrell added that the law requires a business plan (education specs) and any anticipated needs from the state for charter school approval. In response to a question from the task force about whether the statute or the application needs to be changed, Ms. Tackett, director, LCS, said that the task force would probably have to go back to the statute, but that staff should work with the PED to see what is actually needed.

Lease-Purchase Agreements

Lisa Grover, Ph.D., executive director, New Mexico Coalition of Public Charter Schools (NMCPCS), said that who hires the architect depends on the path the charter plans to take. Patricia Matthews, Esq., legal counsel, NMCPCS, said that the law is clear when it comes to lease-with-option-to-purchase agreements; the option to purchase goes away if no funding is

available. It does not become the obligation of the district or the state. She said that it is the founder who takes the risk.

Mr. Duran clarified that if a charter's application is approved, the charter is valid for five years. The charter does not have to open in 10 months; the 10-month time line only applies to those charters that are ready, and they must be ready 30 days prior to the scheduled opening. If the charter is not ready, then it must wait until the following school year to open.

Dr. Grover said that charters have lots of oversight and regulations to ensure the safety of students.

Tim Berry, deputy director, PSFA, discussed the history of PSCOC awards and PSCOC awards to charter schools. He said that charters have been awarded \$7,093,075 for the 2008-2009 school year and that charters are at \$719.60/MEM for the 2008-2009 school year.

Ms. Ball said that approximately 19 charter schools are in public facilities in some form, whether it be the land the school is located on or the actual building. In response to a question about what is included in the MEM, Ms. Ball said that the charter receives up to \$719.60 per student for the lease. Mr. Berry added that part of the application asks the charter to reduce utilities and maintenance costs from the lease. In response to a question about square footage, they said that the law only allows for administration space and classroom space to adequacy. Mr. Berry said that the PSCOC reimburses about 63 percent and that there is a big variation between square footage per MEM. He said that the average is 125 sq. ft./MEM.

Funding Sources and Deadlines for Charter School Facilities Incentives to Support Charter School Facility Funding

Dr. Grover said that New Mexico is one of 40 states with charter legislation. She said that 67 charter schools serve 11,700 students and that there are over 2,000 students on waiting lists to enroll in public charter schools. She added that the graduation rate is 91 percent (based on senior year only). She said that the lease assistance program is currently funded at \$7.5 million, or \$700/student, and is utilized by 75 public schools, 65 of which are charter schools. She added that in the 2008-09 school year, of the \$7,134,850 given in lease assistance, approximately \$1,557,624 was funneled back into the public domain through charter leases with districts, counties, tribes and the federal government. Dr. Grover also noted that a charter must demonstrate that it is offering a different academic approach than what is currently being offered.

Jeremy Turner, chief financial advisor, New Mexico Finance Authority (NMFA), said that charters do not have the ability to issue general obligation bonds. Ms. Matthews requested a change in the statute to require districts to put charters on a mill levy. Ms. Ball said that language in the Charter Schools Act is evidently not clear enough. She said that some districts voluntarily give charters SB 9 money, but the majority do not. Dr. Grover said that the coalition would welcome legislation to strengthen the ability to get charters into public facilities. Mr. Turner added that part of the loan agreement requires full operation and maintenance. He said

that the NMFA would not want the building to last for only the 20 years for which the loan is issued. The NMFA wants the state to have a decent asset. Ms. Ball said that HB 33 requires money to be shared with charters, but SB 9 is not as clear and APS does not share those funds with individual schools. She added that no one has taken the issue to court, so there is no case law. Ms. Matthews asked that the 20-year lease-purchase limitation be extended to 30 years to make it easier for charters to make their lease payments. She also asked that the 2010 deadline for charters to be in facilities be extended. Dr. Grover added that she would like it to be extended to 2015 or 2020 and that there are charter schools that would like to purchase the facilities they currently occupy.

Friday, October 31

The PSCOOTF meeting was called to order at 9:15 a.m. by Representative Miera.

Addressing Roadblocks and Impediments Affecting Implementation of the Public School Capital Outlay Standards-Based Process

Mr. Gorrell said that one thing the PSFA is looking at for the future is severance tax dollars. He said that the PSCOC has the authority to double the state match for SB 9 funds, and he pointed out that there is a five percent cap on PSFA operational funds in the law. Ms. Tackett added that the original thought was that as PSCOC projects were completed, there would be a reduction in staff, but, she noted that if staff reduction is due to a lack of funding, that creates a different problem. Mr. Gorrell said that the PSCOC has taken on a strategy where capital money is not awarded until the district can show it is ready. In response to a question about why some schools receive larger awards than others, Ms. Tackett explained that first the PSCOC determines what projects will be funded based on rankings in the list. Then staff and the district work to clarify what the project needs to be, and the PSCOC applies the equalization formula that adjusts what the state and local match will be based on valuation. She also said that the PSCOC can grant waivers only in certain cases. In response to a question about "recalcitrant" districts, Ms. Tackett said that if a district fails to pass a bond twice in succession, the PSCOC could take the district to court, and the court could impose an appropriate levy.

Mr. Gorrell discussed the roof initiative funded by the legislature for expenditure in fiscal years 2006 and 2007. He said that the PSCOC ranked schools based on the need for a new roof. He said it was very helpful, but also noted that heating, ventilation and air conditioning (HVAC) systems are important as well. Gene Bieker, Clovis Public Schools, added that if the PSCOC is going to replace roofs, HVAC systems need to be replaced as well. He said that it does not make any sense to replace a roof and then puncture it to put a 30-year-old HVAC system on top of it.

Mr. Gorrell also raised the need for certification programs for maintenance staff, but he noted that the Construction Industries Division (CID) of the Regulation and Licensing Department has concerns with that. He said that it is illegal for maintenance staff to repair roofs, electric lines, etc., without certification. He asked the task force to look at a legislative change. He also noted that good maintenance is not being rewarded. Mr. Gorrell then discussed SB 9 expenditures for maintenance and preventative maintenance equipment. In response to a suggestion that the school share equipment with local municipalities, Mr. Gorrell said that joint

use of district and community spaces could maximize utilization and minimize operational costs.

Mr. Haskie, public member, PSCOOTF, discussed some of the barriers his school district is facing. He said that the new high school is located out in the boondocks. He said that there is a lack of infrastructure; builders had to run the electric line 18 miles and the water line 22 miles to reach the new school. He also added that there is no place in the community for government officials to meet. Mr. Gorrell said that the schools are taking on more, but that there is a lack of long-range planning and coordination with the community to get things done.

Mr. Gorrell then discussed keeping the price of school projects down. He said that subcontractor bonding decreases competition. He said that the five percent residential preference and a lack of access to public works projects decrease competition. He also said that a number of districts have used cooperative educational services for procurement, which the districts feel cuts down on competition.

Mr. Gorrell also discussed the Geographic Information System (GIS) that could be used to maximize facility utilization and the availability of operational funds for non-facility use. GIS could also determine where declining populations are going and determine where increasing populations come from. The system could also provide demographic information for public bodies to use jointly in long-range planning.

Discussion of Potential Task Force-Endorsed 2009 Legislation

Ms. Ball said that the purpose of this agenda item is for task force members to discuss issues that would require drafting of legislation for task force continued consideration and/or approval at the next meeting. She and Ms. Tackett reviewed possible legislation topics, including:

- lease-purchase issues: cleanup and deadlines;
- SB 9: clarify uses appropriate for state funds as opposed to local funds and require districts to share SB 9 funds;
- charter school issues;
- distance education and online courses;
- subcontractor bonding;
- joint use issues: ways in which joint use can be recognized considering the fact that rural schools often provide infrastructure for the community and ways in which this use can be facilitated;
- energy efficiency: HVAC issues and roof initiative;
- maintenance;
- GB 98 Residential and GB 98 Commercial; and
- insurance.

Frances Maestas, director, Legislative Education Study Committee, said that New Mexico is recognized as one of the top states in education policy implementation, mostly due to IDEAL New Mexico, which was only funded for one year. She noted that some schools in other states are 100 percent virtual.

There being no further business, the task force adjourned at noon.

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

**December 1-2, 2008
State Capitol, Room 307
Santa Fe**

Monday, December 1

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Update on Energy-Efficient School Projects**
—Andre Larroque, Buildings Standards Specialist, Public School
 Facilities Authority
- 11:00 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
- 12:00 noon **Lunch**
- 1:00 p.m. **Discussion of Proposed Public School Capital Outlay Oversight Task Force
(PSCOOTF)-Endorsed 2009 Legislation**
—PSCOOTF Members and Staff
- 4:00 p.m. **Recess**

Tuesday, December 2

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of August and October Minutes**
- 9:10 a.m. **Discussion of Proposed PSCOOTF-Endorsed 2009 Legislation (continued)**
—PSCOOTF Members and Staff
- 12:00 noon **Adjournment**

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

**December 1-2, 2008
State Capitol, Room 307
Santa Fe**

The twentieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at approximately 10:08 a.m. on Monday, December 1, 2008, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Cecilia J. Grimes
Leonard Haskie
Robbie Heyman
Scott Hughes for Secretary Katherine B. Miller
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan (Dec. 1)
Rep. James Roger Madalena
Kilino Marquez
Elizabeth Marrufo
Dr. John Mondragon
Bud Mulcock
Antonio Ortiz for Secretary Veronica Garcia
Mike Phipps
Rep. Henry Kiki Saavedra
Ernesto Valdez (Dec. 1)

Absent

Sen. Timothy Z. Jennings
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. John Arthur Smith
Rep. W.C. "Dub" Williams

Advisory Members

Sen. Stuart Ingle

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Sharon Ball, Legislative Council Service (LCS)
Gary Carlson, LCS Contract Drafter
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The guest list is in the original meeting file.

Monday, December 1**Update on Energy-Efficient School Projects**

Andre Larroque, buildings standards specialist, Public School Facilities Authority (PSFA), explained that, in the 2007 legislative session, Senate Bills 710 and 827 were passed, both of which included a total of \$4 million to be allocated by the Public School Capital Outlay Council (PSCOC) to develop pilot programs to help determine appropriate energy-efficient and sustainable design standards for future schools. He said that in early 2007, the PSFA developed a list of 14 active or pending projects designated for the award of this money. Mr. Larroque added that 11 of these projects were required to meet certain elevated goals related to energy-efficiency and sustainability, including achievement of a reduction of 50 percent in energy use. He explained that these goals would be accomplished primarily during the design phase by performing enhanced life-cycle cost analysis work and using energy modeling. In response to questions from the task force, Mr. Larroque explained that, of the 14 projects, three were awarded grants only for post-occupancy evaluation, training and database development because of their advanced state in design at the time the pilot study was initiated. He noted that these pilot studies are complementary to the green building concept.

In response to questions from the task force, Mr. Larroque directed members' attention to the presentation handout and its three attachments. It was pointed out that most of the projects are located in temperate areas of the state, but Mr. Larroque said that those areas were selected because they already had projects underway.

In response to additional questions and discussion, Mr. Larroque stated that four projects have been removed from the original list of 14 in response to requests from districts based upon difficulties in incorporating the program into the late stages of an advanced project schedule. An additional project had its allocation reverted because of the district's inability to pass a bond election. Summarizing, Mr. Larroque stated that \$1.625 million had been reverted from projects in the study and that \$625,000 had been reallocated based on action of the task force at its October meeting.

After task force discussion, on a motion made by Representative Larrañaga and seconded by Representative Saavedra, the task force voted unanimously to recommend reversion of the \$1 million to the general fund.

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

Norton Francis, chief economist, Legislative Finance Committee (LFC), discussed oil and natural gas revenues. He said that the price of oil has fallen from \$147 per barrel in July to a current level of below \$50.00 per barrel. Similarly, he said, the price of natural gas fell from \$13.00 per 1,000 cubic feet (MCF) to less than \$7.00 per MCF. He added that despite the decline in prices, the state had a strong first quarter of the year. Mr. Francis said that shut-ins, increased production from the Rockies and mild temperatures all played a role in the decrease in natural gas prices. He also discussed drilling, stating that the rig count rose significantly in summer and fall but has returned to normal levels. He said that drilling will be affected by both low prices and access to credit, both of which raise concerns about volume forecasts. In response to questions from task force members, Mr. Norton said that two years ago, the average price for a barrel of oil was a little over \$90.00 and that New Mexico was \$1.00 to \$1.50 off of the Henry Hub index.

Olivia Padilla-Jackson, director, State Board of Finance, presented the task force with information about supplemental severance tax bonds (SSTBs). She said that senior STB capacity is based on an amount that allows total senior STBs outstanding to be serviced with no more than 50 percent of the previous fiscal year's revenues. However, she said, SSTB capacity is based on an amount that allows total supplemental notes, when added to all other STB debt, to total no more than 95 percent of the prior fiscal year's revenues. She said that the current capacity is \$240.4 million. In response to questions from the task force, Ms. Padilla-Jackson said that the state has about \$1 billion in outstanding debt and \$350 million in general obligation (GO) bonds. She also said that, as of October, the state revenue was down by about \$250 million for fiscal year 2009 and an additional \$100 million to \$150 million will probably be added to that from lost oil and gas revenue.

In response to a question about dipping into the reserve or lowering the reserve from 10 percent to make up for the lost revenue, Mr. Francis said that the solution will come from a mixture of things and that it helps to have high reserves. In response to other questions, he said that PNM is not a significant consumer of natural gas and that OPEC has reduced production until mid-December. He said that the LFC would like to see a target price of \$75.00 per barrel of oil and that the LFC is updating its estimates and will present its findings on December 8, 2008.

In response to other questions asked by task force members, Mr. Heyman, PSCOOTF public member, said that there is no legislative minimum or maximum attached to what the PSCOC can award per year. He said that the State Board of Finance advises the PSCOC on capacity for the year and that the PSCOC gives awards based on that information. Ms. Tackett added that the PSCOC identifies what the need is but provides grant awards based on capacity. Ms. Padilla-Jackson said that she doubts capacity would drop very much, although she also noted that exchanging general funds for severance tax funds would reduce the amount of money available for new projects.

Discussion of Proposed PSCOOTF-Endorsed 2009 Legislation

The task force discussed the following legislation for possible endorsement.

- Amend the Public School Lease Purchase Act to allow for 30-year leases; require districts to include charter schools in referenda to fund lease purchases; and make technical corrections to make the legislation more workable.
- Extend the deadline from 2010 to 2015 for charter schools to be in public buildings; and revise charter school facilities standards.
- Change lease payment criteria in the Public School Capital Outlay Act.
- Create a rural community credit; and allow for credits for specific public school facilities in remote rural areas.
- Create a program in the Public School Capital Outlay Act for grants to school districts for specified highly cost-effective projects.
- Provide exceptions for bonding of subcontractors.
- Amend the Public School Capital Improvements Act to clarify its use for the purchase or repair of maintenance equipment and for maintenance support by regional education cooperatives.
- Establish a training and licensing program for certain school district maintenance employees to do basic maintenance and parts exchange.
- Provide from the Public School Capital Outlay Fund \$2 million for lights and bleachers for certain athletic fields in rural areas.
- Amend the Public School Capital Outlay Act to limit total annual expenditures for PSFA core administrative functions to five percent.

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

Tuesday, December 2

On a motion made by Mr. Mulcock and seconded by Dr. Mondragon, the minutes of the August and October meetings of the PSCOOTF were approved.

Discussion of Proposed PSCOOTF-Endorsed 2009 Legislation (Continued)

The task force continued its discussion of legislation for possible endorsement.

Provide funding for a program for roof repair and replacement of \$10 million per year from the Public School Capital Outlay Fund.

- Require distribution of proportional SB 9 receipts to charter schools.
- Appropriate \$575,000 from the general fund for a geographic information system to be used by executive and legislative agencies.
- Amend the Public School Insurance Authority statute to allow for insurance for joint use of school buildings.
- Allow for out-of-cycle transfer of chartering authority.
- Authorize the state distribution under the Public School Capital Improvements Act to be expended in fiscal year 2010 for certain facility maintenance operating costs.
- Create a program under the Public School Capital Outlay Act for grants to school districts for building and equipping science laboratories in high schools.

The task force elected to form a subcommittee to meet the Sunday before session to decide on legislation for PSCOOTF endorsement for the 2009 session. Ms. Tackett stated that task force members' concerns and ideas would be taken into consideration in the bill drafting. Subcommittee members include Senator Nava, Representative Miera, Senator Asbill, Senator Leavell, Representative Larrañaga, Mr. Mulcock and Mr. Phipps. The co-chairs emphasized, however, that all task force members are welcome to attend the subcommittee meeting, which is tentatively scheduled for Sunday, January 18, at 4:00 p.m. in Room 326 of the State Capitol.

There being no further business, the task force adjourned at 11:55 a.m.

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
LEGISLATION SUBCOMMITTEE**

**January 18, 2009
Room 326, State Capitol
Santa Fe**

Sunday, January 18

- 4:00 p.m. **Call to Order**
—Senator Cynthia Nava, Co-Chair
—Representative Rick Miera, Co-Chair
- 4:05 p.m. **Review of Legislation**
—Subcommittee Members and Staff
- 5:40 p.m. **Subcommittee Recommendations**
—Subcommittee Members and Staff
- 6:00 p.m. **Adjourn**

**MINUTES
of the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
LEGISLATION SUBCOMMITTEE**

**January 18, 2009
Room 326, State Capitol
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) Legislation Subcommittee was called to order by Representative Rick Miera, co-chair, at 4:15 p.m. on Sunday, January 18, 2009, in Room 326 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Cecilia J. Grimes
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. James Roger Madalena
Dr. John Mondragon
Bud Mulcock
Mike Phipps

Staff

Sharon Ball, Legislative Council Service (LCS)
Bob Gorrell, Public School Facilities Authority (PSFA)
Aldis Philipbar, LCS
Paula Tackett, LCS

Guests

The **guest list is in the original meeting file.**

Sunday, January 18

Review of Legislation

The PSCOOTF Legislation Subcommittee began with some general discussion about the reversion of funds appropriated for a specific project. The subcommittee then discussed the comprehensive bill dealing with amendments to the Charter Schools Act, the Public School Capital Outlay Act and the Public School Capital Improvements Act (called "SB 9"). Paula Tackett, director, LCS, discussed the provisions of the bill while fielding questions. She said that the Public School Capital Outlay Council may choose to fund projects that are highly cost-

effective (e.g., HVAC systems) and that special projects do have local matches. In response to a question, Ms. Tackett said that the formula for funding is based on the local match and other criteria listed in the bill. Ms. Tackett discussed the rural community credit, issues with "incorporated" criteria and a training program for maintenance staff. In terms of capital improvements, the subcommittee expressed concern with setting the precedent of using capital outlay funds for operational expenditures. Ms. Tackett said that the bill clarifies what "maintenance" includes and allows charter schools to be included in receiving SB 9 funds, but pointed out that the burden is on the charter school to ask for and use the funds.

The subcommittee discussed a two-year sunset on the use of SB 9 money for operations and for training of regional education cooperative personnel who will be working in school districts. The subcommittee also discussed drafting a separate bill for the use of SB 9 funds for operation costs to gauge the reaction. If the reaction is negative, then the subcommittee would consider pulling that section from the larger bill.

Gary Carlson, drafter, LCS, reviewed the lease-purchase legislation with the subcommittee. He said that the bill would extend lease-purchase agreements from 20 years to 30 years and clarified that a property that is being used by a school is exempt from property tax. Mr. Carlson said that the bill amends the Public School Lease Purchase Act, but the major change occurs in Subsection G on page eight of the bill. The subcommittee suggested striking "exclusively" on page three, line three of the bill and inserting "primarily".

Ms. Tackett then reviewed and discussed legislation related to the following:

- amending the Public School Buildings Act to clarify the definition of "administration" to include, under certain circumstances, projects funded in whole or in part by the Public School Capital Improvements Act or by school district general obligation bonds and to eliminate the five percent of total project cost limitation for administration;
- providing for insurance for the private use of school facilities;
- providing certain exceptions to the bonding requirement for subcontractors; and
- funding the development of the Geographic Information System (GIS).

Bob Gorrell, director, PSFA, said that the funding of the GIS is very important to the PSFA in the long run. In response to a question about the minimum needed to get the system started, Ms. Tackett said that authorization is needed from the legislature in order to move forward and have access to funding. Mr. Gorrell added that this would allow the program to go statewide. With regard to the legislation that would provide exceptions to bonding requirements for subcontractors, Ms. Tackett said that the bill would not apply to contractors on public works projects using design build. She said that the prime contractor is the construction manager and is selected through competitive-qualifications-based proposals. The subcommittee suggested adding an emergency clause to the comprehensive bill of amendments to the Charter Schools Act, the Public School Capital Outlay Act and the Public School Capital Improvements Act

There being no further business, the subcommittee adjourned at 6:15 p.m.

Appendix E

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2009 ENDORSED LEGISLATION

1 SENATE BILL

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4
5
6
7
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC
12 SCHOOL CAPITAL OUTLAY ACT TO CHANGE CERTAIN CRITERIA FOR GRANTS
13 FOR LEASE PAYMENTS, TO ALLOW FOR CREDITS FOR CERTAIN SCHOOL
14 FACILITIES IN REMOTE RURAL AREAS, TO CREATE PROGRAMS TO FUND
15 HIGHLY COST-EFFECTIVE PROJECTS, IMPROVEMENTS TO ATHLETIC FIELDS
16 AND AUDITORIUMS OR PERFORMING ARTS CENTERS IN RURAL AREAS,
17 NEEDED SCIENTIFIC LABORATORIES IN CERTAIN SCHOOLS AND NECESSARY
18 ROOF REPAIRS AND REPLACEMENTS AND TO LIMIT ANNUAL EXPENDITURES
19 FOR CERTAIN OPERATING COSTS; REVISING THE STANDARDS REQUIRED
20 FOR CHARTER SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL
21 CAPITAL IMPROVEMENTS ACT TO REQUIRE CERTAIN DISTRIBUTIONS TO
22 CHARTER SCHOOLS, TO EXPAND THE DEFINITION OF "CAPITAL
23 IMPROVEMENTS" AND TO ALLOW THE STATE DISTRIBUTION TO BE
24 TEMPORARILY USED FOR CERTAIN OPERATING COSTS; ESTABLISHING A
25 TRAINING AND CERTIFICATION PROGRAM FOR CERTAIN SCHOOL DISTRICT

.175195.4

underscoring material = new
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underscored material = new
[bracketed material] = delete

1 MAINTENANCE EMPLOYEES; MAKING APPROPRIATIONS; DECLARING AN
2 EMERGENCY.

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

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

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

9 A. The facilities of a charter school that is
10 approved on or after July 1, 2005 and before July 1, ~~[2010]~~
11 2015 shall meet educational occupancy standards required by
12 applicable New Mexico construction codes.

13 B. The facilities of a charter school [~~that is in~~
14 ~~existence, or has been approved, prior to July 1, 2005]~~ whose
15 charter has been renewed at least once shall be evaluated,
16 prioritized and eligible for grants pursuant to the Public
17 School Capital Outlay Act in the same manner as all other
18 public schools in the state; provided that for charter school
19 facilities in leased facilities, grants may be used [~~as~~] to
20 provide additional lease payments for leasehold improvements
21 made by the lessor.

22 C. On or after July 1, [~~2010, an application for a~~
23 ~~charter shall not be approved]~~ 2015, a new charter school shall
24 not open and an existing charter shall not be renewed unless
25 the charter school:

.175195.4

underscored material = new
[bracketed material] = delete

1 (1) is housed in a ~~[public]~~ building that is:

2 (a) owned by the charter school, the
3 school district, the state, an institution of the state,
4 another political subdivision of the state, the federal
5 government or one of its agencies or a tribal government; ~~[and~~

6 ~~(b) subject to evaluation and~~
7 ~~prioritization and eligible for grants pursuant to the Public~~
8 ~~School Capital Outlay Act in the same manner as all other~~
9 ~~public schools in the state;~~

10 ~~(2) is housed in a building that meets the~~
11 ~~statewide adequacy standards developed pursuant to the Public~~
12 ~~School Capital Outlay Act and that is being leased by the~~
13 ~~charter school pursuant to a financing agreement that contains~~
14 ~~an option to purchase for a price that is reduced according to~~
15 ~~the lease payments made;] or~~

16 (b) subject to a lease purchase
17 arrangement that has been entered into and approved pursuant to
18 the Public School Lease Purchase Act; or

19 ~~[(3)]~~ (2) if it is not housed in a building
20 described in Paragraph (1) ~~[or (2)]~~ of this subsection,
21 demonstrates that:

22 (a) the facility in which the charter
23 school is housed meets the statewide adequacy standards
24 developed pursuant to the Public School Capital Outlay Act and
25 the owner of the facility is contractually obligated to

.175195.4

underscored material = new
[bracketed material] = delete

1 maintain those standards at no additional cost to the charter
2 school or the state; and

3 (b) either: 1) public buildings are not
4 available or adequate for the educational program of the
5 charter school; or 2) the owner of the facility is a nonprofit
6 entity specifically organized for the purpose of providing the
7 facility for the charter school.

8 D. The public school capital outlay council:

9 (1) shall determine whether facilities of a
10 charter school meet the educational occupancy standards
11 pursuant to the requirements of Subsection A of this section

12 [~~(2) shall determine whether facilities of a~~
13 ~~charter school meet~~] or the requirements of Subsections B and C
14 of this section, as applicable; and

15 [~~(3)~~] (2) upon a determination that specific
16 requirements are not appropriate or reasonable for a charter
17 school, may grant a variance from those requirements for that
18 charter school."

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

21 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
22 USE.--

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

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

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

23 D. Applications for assistance from the fund shall
24 be made by school districts to the council in accordance with
25 requirements of the council. Except as provided in Subsection

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1 K of this section, the council shall require as a condition of
2 application that a school district have a current five-year
3 facilities plan, which shall include a current preventive
4 maintenance plan to which the school adheres for each public
5 school in the school district.

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

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

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

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

25 G. Balances in the fund may be annually

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

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

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

15 H. Up to [~~thirty million dollars (\$30,000,000)~~] ten
16 million dollars (\$10,000,000) of the fund may be allocated
17 annually by the council [~~in fiscal years 2006 and 2007~~] for a
18 roof repair and replacement initiative with projects to be
19 identified by the council pursuant to Section 22-24-4.3 NMSA
20 1978; provided that [~~all~~] money allocated pursuant to this
21 subsection shall be expended [~~prior to September 1, 2008~~]
22 within two years of the allocation.

23 I. The fund may be expended annually by the council
24 [~~in fiscal years 2006 through 2020~~] for grants to school
25 districts for the purpose of making lease payments for

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1 classroom facilities, including facilities leased by charter
2 schools. The grants shall be made upon application by the
3 school districts and pursuant to rules adopted by the council;
4 provided that an application on behalf of a charter school
5 shall be made by the school district but, if the school
6 district fails to make an application on behalf of a charter
7 school, the charter school may submit its own application. The
8 following criteria shall apply to the grants:

9 (1) the amount of a grant to a school district
10 shall not exceed:

11 (a) the actual annual lease payments
12 owed for leasing classroom space for schools, including charter
13 schools, in the district; or

14 (b) seven hundred dollars (\$700)
15 multiplied by the number of MEM using the leased classroom
16 facilities; provided that in fiscal year 2009 and in each
17 subsequent fiscal year, this amount shall be adjusted by the
18 percentage increase between the penultimate calendar year and
19 the immediately preceding calendar year of the consumer price
20 index for the United States, all items, as published by the
21 United States department of labor [~~and provided further that if~~
22 ~~the total grants awarded pursuant to this paragraph would~~
23 ~~exceed the total annual amount available, the rate specified in~~
24 ~~this subparagraph shall be reduced proportionately];~~

25 (2) a grant received for the lease payments of

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1 a charter school may be used by that charter school as a state
2 match necessary to obtain federal grants pursuant to the
3 federal No Child Left Behind Act of 2001;

4 (3) at the end of each fiscal year, any
5 unexpended or unencumbered balance of the appropriation shall
6 revert to the fund;

7 (4) no grant shall be made for lease payments
8 due pursuant to a financing agreement under which the
9 facilities may be purchased for a price that is reduced
10 according to the lease payments made unless:

11 (a) the agreement has been approved
12 pursuant to the provisions of the Public School Lease Purchase
13 Act; and

14 (b) the facilities are leased by a
15 charter school;

16 [~~4~~] (5) if the lease payments are made
17 pursuant to a financing agreement under which the facilities
18 may be purchased for a price that is reduced according to the
19 lease payments made,

20 [~~(a) a grant shall not be made unless~~
21 ~~the council determines that the leased facilities meet the~~
22 ~~statewide adequacy standards; and~~

23 (b)] neither a grant nor any provision of
24 the Public School Capital Outlay Act creates a legal obligation
25 for the school district or charter school to continue the lease

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

4 ~~[(5) the total amount expended from the fund~~
5 ~~pursuant to this subsection shall not exceed:~~

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

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

15 (6) as used in this subsection:

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

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1 date; and

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

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

25 K. Pursuant to guidelines established by the

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1 council, allocations from the fund may be made to assist school
2 districts in developing and updating five-year facilities plans
3 required by the Public School Capital Outlay Act; provided
4 that:

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

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

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

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

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1 methodology in Paragraph (5) of Subsection B of Section 22-24-5
2 NMSA 1978, would be less than fifty percent; and 4) for all
3 educational purposes, the school district has a residential
4 property tax rate of at least seven dollars (\$7.00) on each one
5 thousand dollars (\$1,000) of taxable value, as measured by the
6 sum of all rates imposed by resolution of the local school
7 board plus rates set to pay interest and principal on
8 outstanding school district general obligation bonds.

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

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

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

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

24 M. Up to ten million dollars (\$10,000,000) of the
25 fund may be allocated annually by the council in fiscal years

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1 2009 through 2012 for highly cost-effective project grants
2 awarded pursuant to Section 22-24-4.5 NMSA 1978.

3 N. Up to five million dollars (\$5,000,000) of the
4 fund may be allocated annually by the council in fiscal years
5 2009 through 2012 for building, renovating and equipping high
6 school science laboratories pursuant to Section 22-24-4.6 NMSA
7 1978.

8 O. Up to two million dollars (\$2,000,000) of the
9 fund may be allocated by the council in fiscal years 2009
10 through 2011 for lights and bleachers for high school athletic
11 fields pursuant to Section 22-24-4.7 NMSA 1978.

12 P. Up to five million dollars (\$5,000,000) of the
13 fund may be allocated annually by the council in fiscal years
14 2009 through 2012 for auditoriums or performing arts centers
15 pursuant to Section 22-24-4.7 NMSA 1978."

16 Section 3. Section 22-24-4.3 NMSA 1978 (being Laws 2005,
17 Chapter 274, Section 6) is amended to read:

18 "22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--

19 A. The council shall develop guidelines for a roof
20 repair and replacement initiative pursuant to the provisions of
21 this section.

22 B. A school district, desiring a grant award
23 pursuant to this section, shall submit an application to the
24 council. The application shall include an assessment of the
25 roofs on district school buildings that, in the opinion of the

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1 school district, create a threat of significant property
2 damage.

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

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

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

23 F. A grant made pursuant to this section shall be
24 expended by the school district [~~prior to September 1, 2008~~]
25 within two years of the grant allocation."

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1 Section 4. A new section of the Public School Capital
2 Outlay Act, Section 22-24-4.5 NMSA 1978, is enacted to read:

3 "22-24-4.5. [NEW MATERIAL] GRANTS FOR HIGHLY COST-
4 EFFECTIVE PROJECTS.--

5 A. As used in this section, a "highly cost-
6 effective project" means a project for repair or correction of
7 site drainage, repair or replacement of water or wastewater
8 systems, repair or replacement of heating, ventilation or air
9 conditioning equipment, installation of energy efficiency
10 measures or similar projects that will:

11 (1) result in an immediate, identifiable
12 savings in operating costs that, over the lifetime of the
13 project, will greatly exceed the amortized cost of the project;
14 or

15 (2) prevent otherwise unavoidable future
16 property damage that, ultimately, would require much greater
17 expenditures.

18 B. The council shall develop guidelines for
19 prioritizing and awarding grants for highly cost-effective
20 projects pursuant to the provisions of this section.

21 C. A school district, desiring a grant award
22 pursuant to this section, shall submit an application to the
23 council. The application shall include an assessment of the
24 benefits that will result if the grant is awarded to the school
25 district.

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1 D. The public school facilities authority shall
2 verify the assessment made by the school district and rank the
3 application with similar applications pursuant to a methodology
4 adopted by the council.

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

18 F. The state share of the cost of an approved
19 project shall be calculated pursuant to the methodology in
20 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978."

21 Section 5. A new section of the Public School Capital
22 Outlay Act, Section 22-24-4.6 NMSA 1978, is enacted to read:

23 "22-24-4.6. [NEW MATERIAL] GRANTS FOR HIGH SCHOOL
24 SCIENCE LABORATORIES AND EQUIPMENT--STUDY REQUIRED.--

25 A. The legislature finds that:

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1 (1) tests show that an increasing number of
2 United States high school students are graduating without being
3 adequately trained in the physical sciences;

4 (2) in today's world economy, American workers
5 will need to compete with workers from other developed
6 countries who are receiving better scientific educations;

7 (3) high school students cannot receive an
8 adequate scientific education without adequate facilities;

9 (4) many New Mexico high schools do not have
10 and cannot afford the science facilities that are necessary for
11 a twenty-first century high school education; and

12 (5) the Public School Capital Outlay Act
13 should be used as a vehicle for building or equipping science
14 laboratories in New Mexico high schools.

15 B. The council shall develop guidelines for
16 awarding grants for building or equipping high school science
17 laboratories pursuant to the provisions of this section.

18 C. A school district, desiring a grant award for a
19 high school science laboratory pursuant to this section, shall
20 submit an application to the council. The application shall
21 include an assessment of the existing science laboratory and
22 equipment at the high school and the need for new laboratory
23 facilities or equipment.

24 D. The public school facilities authority shall
25 verify the assessment made by the school district and rank the

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1 application with similar applications pursuant to a methodology
2 adopted by the council.

3 E. After a public hearing and to the extent that
4 money is available in the fund for such purposes, the council
5 shall approve grants for projects on the established priority
6 basis; provided that no project shall be approved unless the
7 council determines that:

8 (1) the school district is willing and able to
9 pay the portion of the total cost of the project that is not
10 funded with grant assistance from the fund; and

11 (2) the high school facility in which the
12 science laboratory or equipment will be installed meets the
13 statewide adequacy standards and is therefore ineligible for a
14 grant pursuant to Section 22-24-5 NMSA 1978 or has a New Mexico
15 condition index, as determined by the council, below twenty and
16 therefore will not be eligible for funding for several years.

17 F. The state share of the cost of an approved
18 project shall be calculated pursuant to the methodology in
19 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

20 G. The public school capital outlay oversight task
21 force shall evaluate the need for science laboratories and
22 equipment at public schools other than high schools and report
23 its findings and recommendations to the second session of the
24 forty-ninth legislature."

25 Section 6. A new section of the Public School Capital

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1 Outlay Act, Section 22-24-4.7 NMSA 1978, is enacted to read:

2 "22-24-4.7. [NEW MATERIAL] GRANTS FOR ATHLETIC FIELD
3 IMPROVEMENTS, AUDITORIUMS OR PERFORMING ARTS CENTERS.--

4 A. Pursuant to the provisions of this section, the
5 council shall develop guidelines for awarding grants for:

6 (1) lights and bleachers for high school
7 athletic fields that were previously funded pursuant to the
8 Public School Capital Outlay Act; and

9 (2) auditoriums or performing arts centers at
10 schools in rural communities, which will be used jointly by the
11 school and the community.

12 B. A school district, desiring a grant award
13 pursuant to this section, shall submit an application to the
14 council, containing all information required by rule of the
15 council.

16 C. Pursuant to rules adopted by the council, the
17 public school facilities authority shall evaluate each
18 application and rank the application with similar applications.

19 D. After a public hearing and to the extent that
20 money is available in the fund for such purposes, the council
21 shall approve grants on the established priority basis;
22 provided that no project shall be approved unless the council
23 determines that:

24 (1) if the project is lights and bleachers at
25 a high school athletic field:

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1 (a) the athletic field was built or
2 acquired as part of a project that was previously funded
3 pursuant to the Public School Capital Outlay Act;

4 (b) the athletic field is in a rural
5 area; and

6 (c) there is no other athletic field
7 with lights and bleachers that is practicably available for use
8 by the high school;

9 (2) if the project is an auditorium or a
10 performing arts center:

11 (a) the school is in a rural area;

12 (b) the auditorium or performing arts
13 center will be used by both the school district and the
14 community; and

15 (c) there is no other facility
16 practicably available for use as an auditorium or a performing
17 arts center by the community or the school; and

18 (3) the school district is willing and able to
19 pay the portion of the total cost of the project that is not
20 funded with grant assistance from the fund.

21 E. The state share of an approved project shall be
22 calculated pursuant to the methodology in Paragraph (5) of
23 Subsection B of Section 22-24-5 NMSA 1978."

24 Section 7. Section 22-24-5 NMSA 1978 (being Laws 1975,
25 Chapter 235, Section 5, as amended) is amended to read:

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

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

6 B. Except as provided in Sections 22-24-4.3,
7 22-24-4.5 through 22-24-4.7, 22-24-5.4 and 22-24-5.6 NMSA 1978,
8 the following provisions govern grant assistance from the fund
9 for a public school capital outlay project not wholly funded
10 pursuant to Section 22-24-4.1 NMSA 1978:

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

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

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

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

25 (3) the council shall establish criteria to be

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1 used in public school capital outlay projects that receive
2 grant assistance pursuant to the Public School Capital Outlay
3 Act. In establishing the criteria, the council shall consider:

4 (a) the feasibility of using design,
5 build and finance arrangements for public school capital outlay
6 projects;

7 (b) the potential use of more durable
8 construction materials that may reduce long-term operating
9 costs;

10 (c) concepts that promote efficient but
11 flexible utilization of space; and

12 (d) any other financing or construction
13 concept that may maximize the dollar effect of the state grant
14 assistance;

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

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

25 (a) the final prior year net taxable

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1 value for a school district divided by the MEM for that school
2 district is calculated for each school district;

3 (b) the final prior year net taxable
4 value for the whole state divided by the MEM for the state is
5 calculated;

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

12 (d) the lowest value listed pursuant to
13 Subparagraph (c) of this paragraph is subtracted from the
14 highest value listed pursuant to that subparagraph;

15 (e) the value calculated pursuant to
16 Subparagraph (a) of this paragraph for the subject school
17 district is subtracted from the highest value listed in
18 Subparagraph (c) of this paragraph;

19 (f) the result calculated pursuant to
20 Subparagraph (e) of this paragraph is divided by the result
21 calculated pursuant to Subparagraph (d) of this paragraph;

22 (g) the sum of the property tax mill
23 levies for the prior tax year imposed by each school district
24 on residential property pursuant to Chapter 22, Article 18 NMSA
25 1978, the Public School Capital Improvements Act, the Public

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1 School Buildings Act, the Education Technology Equipment Act
2 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
3 is calculated for each school district;

4 (h) the lowest value calculated pursuant
5 to Subparagraph (g) of this paragraph is subtracted from the
6 highest value calculated pursuant to that subparagraph;

7 (i) the lowest value calculated pursuant
8 to Subparagraph (g) of this paragraph is subtracted from the
9 value calculated pursuant to that subparagraph for the subject
10 school district;

11 (j) the value calculated pursuant to
12 Subparagraph (i) of this paragraph is divided by the value
13 calculated pursuant to Subparagraph (h) of this paragraph;

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

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

24 (m) 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 the value calculated
2 pursuant to Subparagraph (l) of this paragraph is added to the
3 value calculated pursuant to Subparagraph (f) of this
4 paragraph. Except as provided in Subparagraph (n) or (o) of
5 this paragraph, the sum equals the value for that school
6 district;

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

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

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

24 (q) as used in this paragraph: 1) "MEM"
25 means the average full-time-equivalent enrollment of students

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

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

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

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

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1 purposes of a specific state-chartered charter school,
2 regardless of whether the charter school is a state-chartered
3 charter school at the time of the appropriation or later opts
4 to become a state-chartered charter school;

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

9 (c) the value calculated pursuant to
10 Subparagraph (a) of this paragraph for the subject school
11 district is multiplied by the amount calculated pursuant to
12 Subparagraph (b) of this paragraph for that school district;

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

18 (e) the amount calculated pursuant to
19 Subparagraph (p) of Paragraph (5) of this subsection shall be
20 reduced by the amount calculated pursuant to Subparagraph (d)
21 of this paragraph;

22 (7) as used in this subsection:

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

25 (b) "subject school district" means the

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1 school district that has submitted the application for funding
2 and in which the approved public school capital outlay project
3 will be located;

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

12 (9) the council may adjust the amount of local
13 share otherwise required if it determines that a school
14 district has used all of its local resources. Before making
15 any adjustment to the local share, the council shall consider
16 whether:

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

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

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

24 (10) no application for grant assistance from
25 the fund shall be approved unless the council determines that:

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

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

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

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

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

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1 project, may be applied to the school district portion required
2 for that project;

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

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

13 (11) the amount distributed from the fund to
14 the subject school district for an approved project shall be
15 increased by an amount equal to twenty-five percent of the
16 total project cost if:

17 (a) the public school facility to be
18 constructed, improved or replaced by the project has previously
19 qualified for a rural community credit pursuant to the
20 provisions of Section 22-24-5.8 NMSA 1978; and

21 (b) the council finds that the planned
22 use of the additional distribution will enhance public school
23 education at the facility, will further the subject school
24 district's educational plan for student success for students
25 attending the facility, is needed by and will benefit the

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1 community in which the facility is located and is a prudent use
2 of state money.

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

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

21 (1) no grant shall be awarded unless the
22 council [~~finds that, prior to the purchase of~~] determines that,
23 at the time of exercising the option to purchase the facility
24 by the school district or charter school, the facility will
25 equal or exceed the statewide adequacy standards and the

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1 building standards for public school facilities;

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

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

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

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

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

21 E. In order to encourage private capital investment
22 in the construction of public school facilities, the purchase
23 of a privately owned school facility that is, at the time of
24 application, in use by a school district may be considered a
25 public school capital outlay project and eligible for grant

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1 assistance pursuant to this section if the council finds that:

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

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

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

19 F. It is the intent of the legislature that grant
20 assistance made pursuant to this section allows every school
21 district to meet the standards developed pursuant to Subsection
22 C of this section; provided, however, that nothing in the
23 Public School Capital Outlay Act or the development of
24 standards pursuant to that act prohibits a school district from
25 using [~~local~~] other funds available to the district to exceed

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1 the statewide adequacy standards.

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

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

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

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

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1 study committee and the legislature."

2 Section 8. A new section of the Public School Capital
3 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

4 "22-24-5.8. [NEW MATERIAL] RURAL COMMUNITY CREDIT FOR
5 CERTAIN FACILITIES.--

6 A. Upon application by a school district pursuant
7 to rules adopted by the council, the council may decide if a
8 public school facility, located within that school district,
9 qualifies for a rural community credit.

10 B. The council shall qualify a public school
11 facility for the rural community credit if the council
12 determines that:

13 (1) the facility is located in an
14 unincorporated, rural area;

15 (2) the public school facility is the only
16 facility practicably available for community purposes and is
17 sharing its use with the community, primarily at the school
18 district's expense with little contribution from the community;

19 (3) the community served by the facility does
20 not have adequate infrastructure or resources to acquire its
21 own facilities or to compensate the school district for use of
22 the public school facility;

23 (4) in calculating the grant assistance from
24 the fund for a project pursuant to Section 22-24-5 NMSA 1978,
25 the value calculated for the school district in which the

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1 facility is located pursuant to Subparagraph (k), (m), (n) or
2 (o) of Paragraph (5) of Subsection B of that section is equal
3 to or greater than seven-tenths;

4 (5) averaged over the previous four property
5 tax years, the school district in which the facility is located
6 had a residential property tax rate of at least nine dollars
7 (\$9.00) on each one thousand dollars (\$1,000) of taxable value,
8 as measured by the sum of all rates imposed by resolution of
9 the local school board plus rates set to pay interest and
10 principal on outstanding school district general obligation
11 bonds;

12 (6) at least seventy percent of the students
13 in the school district in which the facility is located are
14 eligible for free or reduced-fee lunch; and

15 (7) the school district has complied with all
16 rules adopted by the council for the implementation of the
17 provisions of this section.

18 C. Upon the award of a capital outlay grant
19 pursuant to Section 22-24-5 NMSA 1978 for a public school
20 facility that has qualified for a rural community credit
21 pursuant to the provisions of this section, pursuant to
22 Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978,
23 the school district shall be eligible for an additional
24 distribution to benefit that facility."

25 Section 9. Section 22-24-9 NMSA 1978 (being Laws 2003,

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1 Chapter 147, Section 1, as amended) is amended to read:

2 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--
3 CREATION--POWERS AND DUTIES.--

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

15 B. The authority shall:

- 16 (1) serve as staff to the council;
- 17 (2) as directed by the council, provide those
18 assistance and oversight functions required of the council by
19 Section 22-24-5.1 NMSA 1978;
- 20 (3) assist school districts with:
 - 21 (a) the development and implementation
22 of five-year facilities plans and preventive maintenance plans;
 - 23 (b) procurement of architectural and
24 engineering services;
 - 25 (c) management and oversight of

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1 construction activities; and

2 (d) training programs;

3 (4) assist the construction industries
4 division of the regulation and licensing department in
5 developing a certification program for non-licensed school
6 district employees and regional education cooperative personnel
7 who perform basic and general facility maintenance and parts
8 exchange on existing electrical; mechanical; plumbing; and
9 heating, ventilation and air conditioning equipment;

10 (5) with the assistance of the construction
11 industries division, conduct a training program for school
12 district employees and regional education cooperative personnel
13 who desire to be certified to perform basic and general
14 facility maintenance and parts exchange on existing electrical;
15 mechanical; plumbing; and heating, ventilation and air
16 conditioning equipment;

17 [~~(4)~~] (6) conduct ongoing reviews of five-year
18 facilities plans, preventive maintenance plans and performance
19 pursuant to those plans;

20 [~~(5)~~] (7) as directed by the council, assist
21 school districts in analyzing and assessing their space
22 utilization options;

23 [~~(6)~~] (8) ensure that public school capital
24 outlay projects are in compliance with applicable building
25 codes;

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1 [~~7~~] (9) conduct on-site inspections as
2 necessary to ensure that the construction specifications are
3 being met and periodically inspect all of the documents related
4 to projects;

5 [~~8~~] (10) require the use of standardized
6 construction documents and the use of a standardized process
7 for change orders;

8 [~~9~~] (11) have access to the premises of a
9 project and any documentation relating to the project;

10 [~~10~~] (12) after consulting with the
11 department, recommend building standards for public school
12 facilities to the council and ensure compliance with building
13 standards adopted by the council;

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

21 [~~12~~] (14) maintain a database of the
22 condition of school facilities and maintenance schedules; and

23 [~~13~~] (15) ensure that outstanding
24 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA
25 1978. In the performance of this duty, the authority:

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

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

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

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

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

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

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

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

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

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

9 Upon filing of the notice:

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

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

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

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

21 Section 10. Section 22-25-2 NMSA 1978 (being Laws 1975
22 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

23 "22-25-2. DEFINITIONS.--As used in the Public School
24 Capital Improvements Act:

25 A. "program unit" means the product of the program

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1 element multiplied by the applicable cost differential factor,
2 as defined in Section 22-8-2 NMSA 1978; and

3 B. "capital improvements" means expenditures,
4 including payments made with respect to lease-purchase
5 arrangements as defined in the Education Technology Equipment
6 Act or the Public School Lease Purchase Act but excluding any
7 other debt service expenses, for:

8 (1) erecting, remodeling, making additions to,
9 providing equipment for or furnishing public school buildings
10 and for fiscal years 2010 and 2011, purchasing risk liability
11 insurance;

12 [~~(2)~~] ~~payments made pursuant to a financing~~
13 ~~agreement entered into by a school district or a charter school~~
14 ~~for the leasing of a building or other real property with an~~
15 ~~option to purchase for a price that is reduced according to~~
16 ~~payments made;~~

17 ~~(3)]~~ (2) purchasing or improving public school
18 grounds;

19 [~~(4)]~~ (3) maintenance of public school
20 buildings or public school grounds, including the purchasing or
21 repairing of maintenance equipment, participating in the
22 facility information management system as required by the
23 Public School Capital Outlay Act and including payments under
24 contracts with regional education cooperatives for maintenance
25 support services and expenditures for technical training and

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1 certification for maintenance and facilities management
2 personnel, but excluding salary expenses of school district
3 employees;

4 [~~(5)~~] (4) purchasing activity vehicles for
5 transporting students to extracurricular school activities; or

6 [~~(6)~~] (5) purchasing computer software and
7 hardware for student use in public school classrooms."

8 Section 11. Section 22-25-3 NMSA 1978 (being Laws 1975
9 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

10 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
11 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

12 A. A local school board may adopt a resolution to
13 submit to the qualified electors of the school district the
14 question of whether a property tax should be imposed upon the
15 net taxable value of property allocated to the school district
16 under the Property Tax Code at a rate not to exceed that
17 specified in the resolution for the purpose of capital
18 improvements in the school district. The resolution shall:

19 [~~A-~~] (1) identify the capital improvements for
20 which the revenue proposed to be produced will be used;

21 [~~B-~~] (2) specify the rate of the proposed tax,
22 which shall not exceed two dollars (\$2.00) on each one thousand
23 dollars (\$1,000) of net taxable value of property allocated to
24 the school district under the Property Tax Code;

25 [~~C-~~] (3) specify the date an election will be

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1 held to submit the question of imposition of the tax to the
2 qualified electors of the district; and

3 ~~[D-]~~ (4) limit the imposition of the proposed
4 tax to no more than six property tax years.

5 B. On or after July 1, 2009, a resolution submitted
6 to the qualified electors pursuant to Subsection A of this
7 section shall include capital improvements funding for a
8 locally chartered or state-chartered charter school located
9 within the school district if the charter school timely
10 provides the necessary information to the school district for
11 inclusion in the resolution that identifies the capital
12 improvements of the charter school for which the revenue
13 proposed to be produced will be used."

14 Section 12. Section 22-25-7 NMSA 1978 (being Laws 1975
15 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

16 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
17 EXPENDITURES.--

18 A. If as a result of an election held in accordance
19 with the Public School Capital Improvements Act a majority of
20 the qualified electors voting on the question [~~vote~~] votes in
21 favor of the imposition of the tax, the tax rate shall be
22 certified, unless the local school board requests by resolution
23 that a rate be discontinued, by the department of finance and
24 administration at the rate specified in the resolution
25 authorized under Section 22-25-3 NMSA 1978 or at any lower rate

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1 required by operation of the rate limitation provisions of
2 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
3 resolution and be imposed at the rate certified in accordance
4 with the provisions of the Property Tax Code.

5 B. The revenue produced by the tax and, except as
6 provided in Subsection F, G or H of Section 22-25-9 NMSA 1978,
7 any state distribution resulting to the district under the
8 Public School Capital Improvements Act shall be expended only
9 for the capital improvements specified in the authorizing
10 resolution.

11 C. For resolutions approved by the electors on or
12 after July 1, 2009, the amount of tax revenue to be distributed
13 to each charter school that was included in the resolution
14 shall be determined each year and shall be in the same
15 proportion as the average full-time-equivalent enrollment of
16 the charter school on the fortieth day of the prior school year
17 is to the total such enrollment in the school district;
18 provided that no distribution shall be made to an approved
19 charter school that had not commenced classroom instruction in
20 the prior school year and, provided further, that, in
21 determining a school district's total enrollment, students
22 attending a state-chartered charter school within that school
23 district shall be included. Each year, the department shall
24 certify to the county treasurer of the county in which the
25 eligible charter schools in the school district are located the

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1 percentage of the revenue to be distributed to each charter
2 school. The county treasurer shall distribute the charter
3 school's share of the property tax revenue directly to the
4 charter school.

5 D. Notwithstanding Subsection B of this section,
6 the distribution from local property tax receipts in fiscal
7 years 2009 and 2010 may be expended for school district or
8 charter school operating costs related to facility maintenance,
9 including salary expenses of school district maintenance
10 personnel."

11 Section 13. Section 22-25-9 NMSA 1978 (being Laws 1975
12 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

13 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
14 TAX UNDER CERTAIN CIRCUMSTANCES.--

15 A. Except as provided in Subsection C or G of this
16 section, the secretary shall distribute to any school district
17 that has imposed a tax under the Public School Capital
18 Improvements Act an amount from the public school capital
19 improvements fund that is equal to the amount by which the
20 revenue estimated to be received from the imposed tax, at the
21 rate certified by the department of finance and administration
22 in accordance with Section 22-25-7 NMSA 1978, assuming a one
23 hundred percent collection rate, is less than an amount
24 calculated by multiplying the school district's first forty
25 days' total program units by the amount specified in Subsection

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1 B of this section and further multiplying the product obtained
2 by the tax rate approved by the qualified electors in the most
3 recent election on the question of imposing a tax under the
4 Public School Capital Improvements Act. The distribution shall
5 be made each year that the tax is imposed in accordance with
6 Section 22-25-7 NMSA 1978; provided that no state distribution
7 from the public school capital improvements fund may be used
8 for capital improvements to any administration building of a
9 school district. In the event that sufficient funds are not
10 available in the public school capital improvements fund to
11 make the state distribution provided for in this section, the
12 dollar per program unit figure shall be reduced as necessary.

13 B. In calculating the state distribution pursuant
14 to Subsection A of this section, the following amounts shall be
15 used:

16 (1) the amount calculated pursuant to
17 Subsection D of this ~~[subsection]~~ section per program unit; and

18 (2) an additional amount certified to the
19 secretary by the public school capital outlay council. No
20 later than June 1 of each year, the council shall determine the
21 amount needed in the next fiscal year for public school capital
22 outlay projects pursuant to the Public School Capital Outlay
23 Act and the amount of revenue, from all sources, available for
24 the projects. If, in the sole discretion of the council, the
25 amount available exceeds the amount needed, the council may

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1 certify an additional amount pursuant to this paragraph;
2 provided that the sum of the amount calculated pursuant to this
3 paragraph plus the amount in Paragraph (1) of this subsection
4 shall not result in a total statewide distribution that, in the
5 opinion of the council, exceeds one-half of the total revenue
6 estimated to be received from taxes imposed pursuant to the
7 Public School Capital Improvements Act.

8 C. For any fiscal year notwithstanding the amount
9 calculated to be distributed pursuant to Subsections A and B of
10 this section, except as provided in Subsection G of this
11 section, a school district, the voters of which have approved a
12 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a
13 distribution less than the amount calculated pursuant to
14 Subsection E of this section multiplied by the school
15 district's first forty days' total program units and further
16 multiplying the product obtained by the approved tax rate.

17 D. For purposes of calculating the distribution
18 pursuant to Subsection B of this section, the amount used in
19 Paragraph (1) of that subsection shall equal seventy dollars
20 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year
21 shall equal the amount for the previous fiscal year adjusted by
22 the percentage increase between the next preceding calendar
23 year and the preceding calendar year of the consumer price
24 index for the United States, all items, as published by the
25 United States department of labor.

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1 E. For purposes of calculating the minimum
2 distribution pursuant to Subsection C of this section, the
3 amount used in that subsection shall equal five dollars (\$5.00)
4 through fiscal year 2005 and in each subsequent fiscal year
5 shall equal the amount for the previous fiscal year adjusted by
6 the percentage increase between the next preceding calendar
7 year and the preceding calendar year of the consumer price
8 index for the United States, all items, as published by the
9 United States department of labor.

10 F. In expending distributions made pursuant to this
11 section, school districts and charter schools shall give
12 priority to maintenance projects, including payments under
13 contracts with regional education cooperatives for maintenance
14 support services. In addition, distributions made pursuant to
15 this section may be expended by school districts [~~for the~~
16 ~~school district portion of~~] and charter schools as follows:

17 (1) for the school district portion of the
18 total project cost for roof repair or replacement required by
19 Section 22-24-4.3 NMSA 1978; [~~or~~]

20 (2) for the school district portion of
21 payments made under a financing agreement entered into by a
22 school district or a charter school for the leasing of a
23 building or other real property with an option to purchase for
24 a price that is reduced according to the payments made, if the
25 school district has received a grant for the state share of the

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1 payments pursuant to Subsection D of Section 22-24-5 NMSA 1978;
2 (3) for the school district portion of the
3 project cost for a highly cost-effective project for which the
4 school district has received an award pursuant to Section
5 22-24-4.5 NMSA 1978; or

6 (4) notwithstanding any other provision of the
7 Public School Capital Improvements Act, the distribution made
8 in fiscal year 2010 may be expended for school district
9 operating costs related to facility maintenance, including
10 salary expenses of school district maintenance personnel.

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

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

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

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

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

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

5 Section 14. A new section of the Construction Industries
6 Licensing Act is enacted to read:

7 "[NEW MATERIAL] ADDITIONAL DIVISION DUTIES--LICENSING
8 PROGRAM FOR SCHOOL DISTRICT AND REGIONAL EDUCATION COOPERATIVE
9 PERSONNEL.--

10 A. The division shall, with the assistance of the
11 public school facilities authority and after review by the
12 commission, develop and carry out a certification program for
13 school district and regional education cooperative personnel
14 who perform basic and general facility maintenance and parts
15 exchange on existing electrical; mechanical; plumbing; and
16 heating, ventilation and air conditioning equipment.

17 B. The division shall assist the public school
18 facilities authority in developing a training program for
19 individuals who desire to be certified pursuant to Subsection A
20 of this section."

21 Section 15. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING AND ENACTING
CERTAIN SECTIONS OF THE PUBLIC SCHOOL LEASE PURCHASE ACT;
CLARIFYING A PROPERTY TAX EXEMPTION; DELETING A PURPOSE FOR
WHICH SCHOOL DISTRICT GENERAL OBLIGATION BONDS MAY BE ISSUED.

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

Section 1. Section 7-36-7 NMSA 1978 (being Laws 1973,
Chapter 258, Section 15, as amended) is amended to read:

"7-36-7. PROPERTY SUBJECT TO VALUATION FOR PROPERTY
TAXATION PURPOSES.--

A. Except for the property listed in Subsection B
of this section or exempt pursuant to Section 7-36-8 NMSA 1978,
all property is subject to valuation for property taxation
purposes under the Property Tax Code if it has a taxable situs
in the state.

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1 B. The following property is not subject to
2 valuation for property taxation purposes under the Property Tax
3 Code:

4 (1) property exempt from property taxation
5 under the federal or state constitution, federal law, the
6 Property Tax Code or other laws, but:

7 (a) this does not include property all
8 or a part of the value of which is exempt because of the
9 application of the veteran, disabled veteran or head-of-family
10 exemption;

11 (b) this provision does not excuse an
12 owner from obligations to report the owner's property as
13 required by regulation of the department adopted under Section
14 7-38-8.1 NMSA 1978 or to claim its exempt status under
15 Subsection C of Section 7-38-17 NMSA 1978;

16 (c) this includes property of a museum
17 that: 1) has been granted exemption from the federal income
18 tax by the United States commissioner of internal revenue as an
19 organization described in Section 501(c)(3) of the Internal
20 Revenue Code of 1986, as amended or renumbered; 2) is used to
21 provide educational services; and 3) grants free admission to
22 each student who attends a public school in the county in which
23 the museum is located; ~~and~~

24 (d) this includes property that: 1)
25 pursuant to a lease purchase agreement entered into under the

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1 Public School Lease Purchase Act, is leased to a school
2 district or a locally chartered or state-chartered charter
3 school; and 2) is used primarily for public school educational
4 purposes; and

5 [~~(d)~~] (e) this includes property that is
6 operated either as a community to which the Continuing Care Act
7 applies or as a facility licensed by the department of health
8 to operate as a nursing facility, a skilled nursing facility,
9 an adult residential care facility, an intermediate care
10 facility or an intermediate care facility for the
11 developmentally disabled; and is owned by a charitable nursing,
12 retirement or long-term care organization that: 1) has been
13 granted exemption from the federal income tax by the United
14 States commissioner of internal revenue as an organization
15 described in Section 501(c)(3) of the Internal Revenue Code of
16 1986, as amended or renumbered; 2) donates or renders
17 gratuitously a portion of its services or facilities; and 3)
18 uses all funds remaining after payment of its usual and
19 necessary expenses of operation, including the payment of liens
20 and encumbrances upon its property, to further its charitable
21 purpose, including the maintenance, improvement or expansion of
22 its facilities;

23 (2) oil and gas property subject to valuation
24 and taxation under the Oil and Gas Ad Valorem Production Tax
25 Act and the Oil and Gas Production Equipment Ad Valorem Tax

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1 Act; and

2 (3) productive copper mineral property subject
3 to valuation and taxation under the Copper Production Ad
4 Valorem Tax Act; for the purposes of this section, "copper
5 mineral property" means all mineral property and property held
6 in connection with mineral property when seventy-five percent
7 or more, by either weight or value, of the salable mineral
8 extracted from or processed by the mineral property is copper."

9 Section 2. Section 22-18-1 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 228, as amended) is amended to read:

11 "22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO ISSUE.--

12 A. After consideration of the priorities for the
13 school district's capital needs as shown by the facility
14 assessment database maintained by the public school facilities
15 authority and subject to the provisions of Article 9, Section
16 11 of the constitution of New Mexico and Sections 6-15-1 and
17 6-15-2 NMSA 1978, a school district may issue general
18 obligation bonds for the purpose of:

19 (1) erecting, remodeling, making additions to
20 and furnishing school buildings;

21 (2) purchasing or improving school grounds;

22 (3) purchasing computer software and hardware
23 for student use in public schools;

24 (4) providing matching funds for capital
25 outlay projects funded pursuant to the Public School Capital

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1 Outlay Act; or

2 [~~(5)~~ making payments pursuant to a financing
3 agreement entered into by the school district or a charter
4 school located in the school district for the leasing of a
5 building or other real property with an option to purchase for
6 a price that is reduced according to payments made; or

7 ~~(6)~~] (5) any combination of these purposes.

8 B. The bonds shall be fully negotiable and
9 constitute negotiable instruments within the meaning and for
10 all purposes of the Uniform Commercial Code."

11 Section 3. Section 22-26A-1 NMSA 1978 (being Laws 2007,
12 Chapter 173, Section 1) is amended to read:

13 "22-26A-1. SHORT TITLE.--~~[Sections 1 through 20 of this~~
14 ~~act]~~ Chapter 22, Article 26A NMSA 1978 may be cited as the
15 "Public School Lease Purchase Act"."

16 Section 4. Section 22-26A-4 NMSA 1978 (being Laws 2007,
17 Chapter 173, Section 4) is amended to read:

18 "22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE ARRANGEMENT--
19 APPROVAL OF DEPARTMENT.--

20 A. When a [~~school district contemplates entering~~
21 ~~into a lease purchase arrangement for a building or other real~~
22 ~~property payable in whole or in part from ad valorem taxes, the~~
23 ~~local school board, before initiating any proceedings for~~
24 ~~approval of such a lease purchase arrangement]~~ local school
25 board determines, pursuant to Subsection B of Section 22-26A-6

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1 NMSA 1978, that a lease purchase arrangement is in the best
2 interest of the school district, the board shall forward to the
3 department a copy of the proposed lease purchase arrangement
4 and the source of funds that the local school board has
5 identified to make payments due under the lease purchase
6 arrangement.

7 B. A local school board shall not enter into a
8 lease purchase arrangement without the approval of the
9 department."

10 Section 5. Section 22-26A-5 NMSA 1978 (being Laws 2007,
11 Chapter 173, Section 5) is amended to read:

12 "22-26A-5. LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease
13 purchase arrangements:

14 A. may have payments payable [~~at intervals or at~~
15 ~~maturity as may be~~] annually or more frequently as determined
16 by the local school board;

17 B. may be subject to prepayment at the option of
18 the local school board at such time or times and upon such
19 terms and conditions with or without the payment of such
20 premium or premiums as [~~may be~~] determined by the local school
21 board;

22 C. may have a final payment date [~~or mature at any~~
23 ~~time or times~~] not exceeding [~~twenty~~] thirty years after the
24 date of execution;

25 [~~D. may be payable at one time or in installments~~

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1 ~~or may be in such other form as may be determined by the local~~
2 ~~school board;~~

3 ~~E. may be priced at, above or below par and at a~~
4 ~~price that results in a net effective interest rate that does~~
5 ~~not exceed the maximum permitted by the Public Securities Act;~~

6 ~~F. may be acquired or executed by public bid, by~~
7 ~~negotiated sale or placement or directly negotiated or placed~~
8 ~~with the owner of the building or other real property subject~~
9 ~~to the lease purchase arrangement;]~~

10 D. may be acquired or executed at a public or
11 negotiated sale;

12 E. may be entered into between the local school
13 board and the owner of the building or other real property who
14 may be a trustee or other person that issues or sells
15 certificates of participation or other interests in the
16 payments to be made under the lease purchase arrangement, the
17 proceeds of which may be used to acquire the building or other
18 real property;

19 F. shall specify the principal and interest
20 component of each payment made under the lease purchase
21 arrangement; provided that the net effective interest rate
22 shall not exceed the maximum permitted by the Public Securities
23 Act;

24 G. shall provide that, if the school district makes
25 capital improvements to the building or other real property,

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1 there shall be no change in the lease payments or final payment
2 without a written amendment approved by the department;

3 H. shall provide that, if state or school district
4 funds, above those required for lease payments, are used to
5 construct or acquire improvements, the cost of the improvements
6 shall constitute a lien on the real estate in favor of the
7 school district and then, if the lease purchase arrangement is
8 terminated prior to the final payment and the release of the
9 security interest or the transfer of title at the option of the
10 school district:

11 (1) the school district may foreclose on the
12 real estate lien; or

13 (2) the current market value of the building
14 or other real property at the time of termination, as
15 determined by an independent appraisal, in excess of the
16 outstanding principal due under the lease purchase arrangement
17 shall be paid to the school district;

18 ~~[G.]~~ I. shall provide that there is no legal
19 obligation for the school district to continue the lease
20 purchase arrangement from year to year or to purchase the
21 building or other real property; ~~and~~

22 ~~H.]~~ J. shall provide that the lease purchase
23 arrangement shall be terminated if sufficient money is not
24 available to meet any current lease payment;

25 K. shall provide that, with the prior approval of

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1 the lessor, which shall not be unreasonably withheld, the lease
2 purchase arrangement is assignable without cost to the school
3 district, if the lessee is a charter school, to a locally
4 chartered or state-chartered charter school or to the state or
5 one of its institutions, instrumentalities or other political
6 subdivisions. The assignee shall acquire all rights and
7 benefits of its predecessor in interest under the terms and
8 conditions of the lease purchase arrangement; and

9 L. shall provide that amendments to the lease
10 purchase arrangement, except amendments that would improve the
11 building or other real property without additional financial
12 obligations to the school district, shall be approved by the
13 department."

14 Section 6. A new section of the Public School Lease
15 Purchase Act, Section 22-26A-5.1 NMSA 1978, is enacted to read:

16 "22-26A-5.1. [NEW MATERIAL] TRANSFER OR ASSIGNMENT OF
17 LEASE PURCHASE ARRANGEMENT--DESIGNATION AS PUBLIC PROPERTY.--

18 A. A holder of a lease purchase arrangement,
19 including any public entity holding a lease purchase
20 arrangement, may secure financing by issuing certificates of
21 participation or otherwise assigning or transferring all or a
22 portion of the lease purchase arrangement.

23 B. A building or other real property subject to a
24 lease purchase arrangement that has been entered into and
25 approved pursuant to the Public School Lease Purchase Act shall

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1 be considered to be a public property."

2 Section 7. Section 22-26A-6 NMSA 1978 (being Laws 2007,
3 Chapter 173, Section 6) is amended to read:

4 "22-26A-6. AUTHORIZING LEASE PURCHASE ARRANGEMENTS--
5 RESOLUTION.--

6 A. If a local school board proposes to acquire a
7 building or other real property through a lease purchase
8 arrangement, it shall comply with the requirements of this
9 section and the provisions of the Open Meetings Act.

10 B. At a regular meeting or at a special meeting
11 called for the purpose of considering the acquisition of a
12 building or other real property through a lease purchase
13 arrangement, a local school board shall:

14 (1) make a determination of the necessity for
15 acquiring the building or other real property through a lease
16 purchase arrangement;

17 (2) determine the estimated cost of the
18 buildings or other real property needed;

19 (3) review a summary of the terms of the
20 proposed lease purchase arrangement;

21 (4) identify the source of funds for the lease
22 purchase payments;

23 (5) if obtaining all or part of the funds
24 needed requires or anticipates the imposition of a property
25 tax, determine the estimated rate of the tax and what, if any,

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1 the percentage increase in property taxes will be for real
2 property owners in the school district; and

3 (6) if the board [~~agrees~~] determines that the
4 lease purchase arrangement is in the best interest of the
5 school district, forward a copy of the arrangement to the
6 department pursuant to Section [~~4 of the Public School Lease~~
7 ~~Purchase Act~~] 22-26A-4 NMSA 1978.

8 C. After receiving department approval of the lease
9 purchase arrangement, the local school board may adopt a final
10 resolution approving the lease purchase of the building or
11 other real property.

12 D. If the local school board finds that obtaining
13 all or part of the funds needed for the lease purchase
14 arrangement requires the imposition of a property tax, the
15 board may also adopt a resolution to be presented to the voters
16 pursuant to Section [~~8 of the Public School Lease Purchase Act~~]
17 22-26A-8 NMSA 1978, provided that: [~~before adopting the~~
18 ~~resolution, the local school board shall consider, at a public~~
19 ~~meeting, requests by a charter school for funds needed for a~~
20 ~~lease purchase arrangement entered into by the charter school.~~
21 ~~If the local school board determines that the revenue from the~~
22 ~~proposed tax should also be used for the lease purchase~~
23 ~~arrangement entered into by the charter school, then]~~

24 (1) if a charter school that is located within
25 the school district has notified the local school board that

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1 the charter school has been approved to enter into a lease
2 purchase arrangement and has identified revenue from the
3 proposed tax as a source of needed funds, the local school
4 board:

5 (a) shall include the tax revenue needed
6 by the charter school in the resolution if the charter school
7 is a locally chartered or state-chartered charter school whose
8 charter has been renewed at least once; and

9 (b) may, in its discretion, include the
10 tax revenue needed by the charter school in the resolution if
11 the charter school is a locally chartered charter school prior
12 to its first renewal term; and

13 (2) if the tax revenue for a charter school is
14 included in the resolution and, if the tax is approved in an
15 election pursuant to Sections [8 through 12 of the Public
16 School Lease Purchase Act] 22-26A-8 through 22-26A-12 NMSA
17 1978, the local school board shall distribute an amount of the
18 tax revenue, as established in its [determination] resolution,
19 to the charter school to be used in the lease purchase
20 arrangement.

21 ~~[D-]~~ E. The local school board shall not adopt a
22 resolution for or approve a lease purchase arrangement for a
23 term that exceeds ~~[twenty]~~ thirty years."

24 Section 8. Section 22-26A-7 NMSA 1978 (being Laws 2007,
25 Chapter 173, Section 7) is amended to read:

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1 "22-26A-7. PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A
2 school district may apply any legally available funds to [~~the~~
3 ~~payments due on or any prepayment premium payable in connection~~
4 ~~with lease purchase arrangements as they become due]~~ acquire or
5 improve buildings or other real property subject to a lease
6 purchase arrangement or to the payments due under a lease
7 purchase arrangement, including any combination of:

8 A. money from the school district's general fund;

9 B. investment income actually received from
10 investments;

11 C. proceeds from [~~taxes imposed to pay school~~
12 ~~district general obligation bonds or]~~ taxes imposed pursuant to
13 the Public School Capital Improvements Act or the Public School
14 Buildings Act; [~~or the Educational Technology Equipment Act;~~

15 ~~D. revenues received from the sale of bonds or~~
16 ~~notes pursuant to the School Revenue Bond Act or the School~~
17 ~~District Bond Anticipation Notes Act;~~

18 ~~E.]~~ D. loans, grants or lease payments received
19 from the public school capital outlay council pursuant to the
20 Public School Capital Outlay Act;

21 [~~F.]~~ E. state distributions to the school district
22 pursuant to the Public School Improvements Act;

23 [~~G.]~~ F. fees or assessments received by the school
24 district;

25 [~~H.]~~ G. proceeds from the sale of real property and

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1 rental income received from the rental or leasing of school
2 district property;

3 ~~[F.]~~ H. grants from the federal government as
4 assistance to those areas affected by federal activity
5 authorized in accordance with Title 20 of the United States
6 Code, commonly known as "PL 874 funds" or "impact aid"; ~~[and~~

7 ~~[J.]~~ I. revenues from the tax authorized pursuant to
8 Sections ~~[8 through 12 of the Public School Lease Purchase Act]~~
9 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by the local
10 school board and approved by the voters; and

11 J. legislative appropriations."

12 Section 9. Section 22-26A-8 NMSA 1978 (being Laws 2007,
13 Chapter 173, Section 8) is amended to read:

14 "22-26A-8. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
15 QUESTION OF LEASE PURCHASE TAX.--A local school board may adopt
16 a resolution to submit to the qualified electors of the school
17 district the question of whether a property tax at a rate not
18 to exceed the rate specified in the resolution should be
19 imposed upon the net taxable value of property allocated to the
20 school district under the Property Tax Code for the purpose of
21 making payments under ~~[a specific]~~ lease purchase ~~[arrangement]~~
22 arrangements. The resolution shall:

23 A. specify the maximum rate of the proposed tax,
24 which shall not exceed ten dollars (\$10.00) on each one
25 thousand dollars (\$1,000) of net taxable value of property

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1 allocated to the school district under the Property Tax Code;

2 B. specify the date an election will be held to
3 submit the question of imposition of the tax to the qualified
4 electors of the district; and

5 C. limit the imposition of the proposed tax to no
6 more than [~~twenty~~] thirty property tax years."

7 Section 10. Section 22-26A-10 NMSA 1978 (being Laws 2007,
8 Chapter 173, Section 10) is amended to read:

9 "22-26A-10. CONDUCT OF ELECTION--NOTICE--BALLOT.--

10 A. An election on the question of imposing a tax
11 under Sections [~~8 through 12 of the Public School Lease~~
12 ~~Purchase Act~~] 22-26A-8 through 22-26A-12 NMSA 1978 may be held
13 in conjunction with a regular school district election or may
14 be conducted as or held in conjunction with a special school
15 district election, but the election shall be held prior to July
16 1 of the property tax year in which the tax is proposed to be
17 imposed. Conduct of the election shall be as prescribed in the
18 School Election Law for regular and special school district
19 elections.

20 B. The resolution required to be published as
21 notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978
22 shall include as the question to be submitted to the voters
23 whether a property tax at a rate not to exceed the rate
24 specified in the authorizing resolution should be imposed for
25 the specified number of property tax years not exceeding

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1 ~~[twenty]~~ thirty years upon the net taxable value of all
2 property allocated to the school district for payments due
3 under lease purchase arrangements.

4 C. The ballot shall include the information
5 specified in Subsection B of this section and shall present the
6 voter the choice of voting "for the lease purchase tax" or
7 "against the lease purchase tax".

8 Section 11. Section 22-26A-12 NMSA 1978 (being Laws 2007,
9 Chapter 173, Section 12) is amended to read:

10 "22-26A-12. IMPOSITION OF TAX--LIMITATIONS.--If as a
11 result of an election held in accordance with Sections [~~8~~
12 ~~through 11 of the Public School Lease Purchase Act~~] 22-26A-8
13 through 22-26A-11 NMSA 1978 a majority of the qualified
14 electors voting on the question votes in favor of the
15 imposition of the tax, the tax rate shall be certified, unless
16 the local school board directs that the tax levy not be made
17 for the year, by the department of finance and administration
18 at the rate specified in the authorizing resolution or at a
19 lower rate directed by the local school board and the tax shall
20 be imposed at the rate certified in accordance with the
21 provisions of the Property Tax Code. The revenue produced by
22 the tax shall be expended only for payments due under lease
23 purchase arrangements, as specified in the authorizing
24 resolution."

25 Section 12. Section 22-26A-15 NMSA 1978 (being Laws 2007,

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1 Chapter 173, Section 15) is amended to read:

2 "22-26A-15. AGREEMENT OF THE STATE.--The state does
3 hereby pledge to and agree with the holders of any lease
4 purchase arrangement, certificates of participation or other
5 partial interest in a lease purchase arrangement entered into
6 under the Public School Lease Purchase Act that the state will
7 not limit or alter the rights [~~hereby~~] vested in school
8 districts to fulfill the terms of any lease purchase
9 arrangement or related sublease arrangement or in any way
10 impair the rights and remedies of the holders of lease purchase
11 arrangements, certificates of participation or other partial
12 interests in lease purchase arrangements until the payments due
13 thereon, and all costs and expenses in connection with any
14 action or proceedings by or on behalf of those holders, are
15 fully met and discharged. School districts are authorized to
16 include this pledge and agreement of the state in any lease
17 purchase arrangement or related sublease arrangement."

18 Section 13. Section 22-26A-16 NMSA 1978 (being Laws 2007,
19 Chapter 173, Section 16) is amended to read:

20 "22-26A-16. LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND
21 FIDUCIARIES.--Lease purchase arrangements entered into under
22 the authority of the Public School Lease Purchase Act,
23 including certificates of participation and other partial
24 interests in such lease purchase arrangements, shall be legal
25 investments in which all insurance companies, banks and savings

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1 and loan associations organized under the laws of the state,
2 public officers and public bodies and all administrators,
3 guardians, executors, trustees and other fiduciaries may
4 properly and legally invest funds."

5 Section 14. Section 22-26A-17 NMSA 1978 (being Laws 2007,
6 Chapter 173, Section 17) is amended to read:

7 "22-26A-17. TAX EXEMPTION.--The state covenants with the
8 original holder and all subsequent holders and transferees of
9 lease purchase arrangements entered into by the local school
10 boards, in consideration of the acceptance of and payment for
11 the lease purchase arrangements entered into pursuant to the
12 Public School Lease Purchase Act, that lease purchase
13 arrangements, certificates of participation and other partial
14 interests in lease purchase arrangements and the interest
15 income from the lease purchase arrangements, certificates of
16 participation and other partial interests shall at all times be
17 free from taxation by the state, except for estate or gift
18 taxes and taxes on transfers."

19 Section 15. Section 22-26A-19 NMSA 1978 (being Laws 2007,
20 Chapter 173, Section 19) is amended to read:

21 "22-26A-19. LEASE PURCHASE ARRANGEMENTS FOR CHARTER
22 SCHOOLS.--A locally chartered or state-chartered charter school
23 may enter into a lease purchase arrangement pursuant to the
24 Public School Lease Purchase Act, provided that a governing
25 body of a charter school shall not adopt a resolution pursuant

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1 to Subsection D of Section 22-26A-6 NMSA 1978 and shall not
2 propose a tax or conduct an election pursuant to Sections [8
3 ~~through 12 of that act]~~ 22-26A-8 through 22-26A-12 NMSA 1978,
4 but nothing in this section prevents a charter school from
5 receiving revenue from a tax proposed by the local school board
6 for the district in which the charter school is located and
7 approved by the voters."

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO EXPAND THE DEFINITION OF "CAPITAL IMPROVEMENTS" AND TO ALLOW THE LOCAL DISTRIBUTION TO BE USED TEMPORARILY FOR CERTAIN SCHOOL DISTRICT OPERATING COSTS; DECLARING AN EMERGENCY.

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

Section 1. Section 22-25-2 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

"22-25-2. DEFINITIONS.--As used in the Public School Capital Improvements Act:

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and

B. "capital improvements" means expenditures,

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1 including payments made with respect to lease-purchase
2 arrangements as defined in the Education Technology Equipment
3 Act or the Public School Lease Purchase Act but excluding any
4 other debt service expenses, for:

5 (1) erecting, remodeling, making additions to,
6 providing equipment for or furnishing public school buildings;

7 ~~(2) [payments made pursuant to a financing~~
8 ~~agreement entered into by a school district or a charter school~~
9 ~~for the leasing of a building or other real property with an~~
10 ~~option to purchase for a price that is reduced according to~~
11 ~~payments made;~~

12 ~~(3)]~~ purchasing or improving public school
13 grounds;

14 [~~(4)]~~ (3) maintenance of public school
15 buildings or public school grounds, including the purchasing or
16 repairing of maintenance equipment, participating in the
17 facility management system as required by the Public School
18 Capital Outlay Act and including payments under contracts with
19 regional education cooperatives for maintenance support
20 services and expenditures for technical training and
21 certification for maintenance and facilities management
22 personnel, but excluding salary expenses of school district
23 employees;

24 [~~(5)]~~ (4) purchasing activity vehicles for
25 transporting students to extracurricular school activities; or

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1 [~~6~~] (5) purchasing computer software and
2 hardware for student use in public school classrooms."

3 Section 2. Section 22-25-7 NMSA 1978 (being Laws 1975
4 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

5 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
6 EXPENDITURES.--

7 A. If as a result of an election held in accordance
8 with the Public School Capital Improvements Act a majority of
9 the qualified electors voting on the question [~~vote~~] votes in
10 favor of the imposition of the tax, the tax rate shall be
11 certified, unless the local school board requests by resolution
12 that a rate be discontinued, by the department of finance and
13 administration at the rate specified in the resolution
14 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
15 required by operation of the rate limitation provisions of
16 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
17 resolution and be imposed at the rate certified in accordance
18 with the provisions of the Property Tax Code.

19 B. The revenue produced by the tax and, except as
20 provided in Subsection F of Section 22-25-9 NMSA 1978, any
21 state distribution resulting to the district under the Public
22 School Capital Improvements Act shall be expended only for the
23 capital improvements specified in the authorizing resolution.

24 C. Notwithstanding the provisions of Subsection B
25 of this section, the distribution from local property tax

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1 receipts in fiscal years 2009 and 2010 may be expended for
2 school district or charter school operating costs related to:
3 (1) purchasing property insurance; and
4 (2) facility maintenance, including salary
5 expenses of school district maintenance personnel."

6 Section 3. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

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

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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~~
21 ~~a local school board prior to July 1, 2007, but not approved,~~
22 ~~may be transferred to the commission on July 1, 2007.]"~~

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HOUSE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

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

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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 2010 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 2010 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, 2009.

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SENATE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PROCUREMENT; PROVIDING CERTAIN EXCEPTIONS TO THE
BONDING REQUIREMENT FOR SUBCONTRACTORS.

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

Section 1. Section 13-1-148.1 NMSA 1978 (being Laws 2005,
Chapter 99, Section 1, as amended) is amended to read:

"13-1-148.1. BONDING OF SUBCONTRACTORS.--

A. Except as provided in Subsection B of this section, a subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

B. The bonding requirement of Subsection A of this section does not apply to a subcontractor on a public works project:

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(1) that is a design and build project delivery system selected by the use of competitive sealed proposals;

(2) in which the prime contractor is a construction manager at risk selected pursuant to the Educational Facility Construction Manager At Risk Act; or

(3) in which the prime contractor was selected by the use of competitive qualifications-based proposals."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

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SENATE BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

MAKING AN APPROPRIATION FOR THE PURPOSE OF DEVELOPING A
GEOGRAPHIC INFORMATION SYSTEM TO BE USED BY EXECUTIVE AND
LEGISLATIVE AGENCIES.

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

Section 1. APPROPRIATION--GEOGRAPHIC INFORMATION SYSTEM.--

Five hundred seventy-five thousand dollars (\$575,000) is
appropriated from the public school capital outlay fund to the
public school facilities authority for expenditure in fiscal
years 2010 through 2012 for the purpose of contracting with the
bureau of business and economic research at the university of
New Mexico to develop, in conjunction with the public school
capital outlay council, the legislative finance committee, the
legislative education study committee, the taxation and revenue
department, the department of finance and administration and the

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1 public education department, a geographic information system to
2 be used by executive and legislative agencies and to be located
3 at and managed by the bureau of business and economic research
4 at the university of New Mexico. Any unexpended or
5 unencumbered balance remaining at the end of fiscal year 2012
6 shall revert to the public school capital outlay fund.