



NEW MEXICO LEGISLATURE

**PUBLIC SCHOOL
CAPITAL OUTLAY
OVERSIGHT TASK FORCE**

2017 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
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INTERIM SUMMARY

Public School Capital Outlay Oversight Task Force 2017 Interim Summary

State statute allows the Public School Capital Outlay Oversight Task Force (PSCOOTF) to hold a maximum of four meetings during each interim in addition to one organizational meeting. In 2017, meetings were scheduled to be held in Santa Fe at the State Capitol on June 13, August 14, September 18, October 20 and December 1, with Representative Stephanie Garcia Richard as chair and Senator William P. Soules as vice chair.

During the June 13 organizational meeting, members approved a work plan for the 2017 interim for approval by the New Mexico Legislative Council. In addition to the task force's statutory duties, members included the following issues:

- continued recommendations to update the state-local match of the Public School Capital Outlay Act and gradual implementation of a replacement formula;
- testimony on progress in charter school utilization of public buildings in compliance with the statutory deadline;
- receive testimony on uses and accounting of state-funded lease assistance payments, including lease payment expenses versus capital outlay needs;
- clarification of ownership of charter school facilities that have been purchased by a foundation with money from the Public School Capital Outlay Fund (PSCOF) and disposition of those facilities if the charter school closes;
- evaluation of the continued inclusion of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the standards-based process;
- testimony on issues related to the disposal of abandoned property; and
- a study and recommendations for updating the school district chart of accounts and an analysis of the amount of land available for taxing purposes versus non-taxable lands (such as federal lands).

The task force received a status report on Public School Capital Outlay Council (PSCOC) and Public School Facilities Authority (PSFA) activities in fiscal year 2016 and fiscal year 2017 to date presented by David Abbey, director, Legislative Finance Committee, and chair, PSCOC; and Rocky Kearney, deputy director, PSFA.

At its August 14 meeting, the task force received an update from the Attorney General's Office on the *Zuni* lawsuit. The state filed a motion to dismiss the current amended complaints and was granted a partial dismissal. The only remaining plaintiffs in the current lawsuit are four students named in the amended complaint. The assistant district attorney assigned to represent the state in the case does not believe that the remaining plaintiffs will proceed with further litigation but indicated that the plaintiffs can appeal the latest order to a higher court.

Task force member Senator Mimi Stewart, chair, Legislative Education Study Committee, presented on the bill introduced during the 2017 session to amend the current public

school capital outlay funding formula (Senate Bill 147). The task force chair said that the task force would consider a new, similar bill for endorsement for the next legislative session.

The task force heard testimony from PSFA staff about teacherages, which are school buildings that are eligible for public school capital outlay funding. Teacherages are built to provide residences for teaching staff, usually in school districts in remote areas of the state. Providing teacherages is an incentive for potential teachers to locate in remote areas.

At its meeting on September 18, the task force received a revenue update from PSFA staff that noted a decrease in the overall level of program funding for the PSCOC due to falling energy prices. The addition of uses of the PSCOF to pay for school buses and instructional materials also is a factor in reduced funds for other school capital outlay projects. Staff testified that the state may have only one-third of the state capital outlay funds estimated to be needed to maintain school facilities conditions as measured by the Facility Condition Index.

PSFA and school district staff described several completed or soon-to-be completed projects in various school districts. Staff described the project design development process and the user-centered and energy efficiency qualities of the finished facilities. It was noted by task force members that the project costs seem high in some cases. PSFA staff explained that project costs range widely for a variety of factors. Recently, demand for construction materials rose because of a recent hurricane and pushed up construction prices.

PSFA staff gave a presentation on the disposal of abandoned and "unusable" school facilities and provided a current list of vacant, unoccupied and abandoned school buildings. A member commented that in many rural areas, appraisers have no "comparables" to produce a fair market valuation. The task force directed staff to look into best practices in regard to the disposal of real property.

The state auditor reported on La Promesa Early Learning Center regarding the charter school's embezzlement of school funds and internal financial control deficiencies. In response to a task force member question, the state auditor outlined four general areas that continue to represent risk factors for charter schools:

1. selection of governing boards by founders or directors;
2. the use of a dedicated foundation or quasi-foundation to generate or move money for the school;
3. the use of the same auditors over time and general handling of auditing needs; and
4. having two family members serve as co-signatories on checks.

The task force met on October 20, at which the PSFA director presented an outline of a process to gather information from stakeholders throughout the state on proposed changes to the systems-based and standards-based capital outlay programs.

Staff from the Albuquerque Public School District (APS) presented on district capital investments and future planning for APS-authorized charter schools. APS staff testified that \$57.8 million has been expended at charter schools during the period from 2007 through 2016.

Fifty-six charter schools with more than 15,000 students are operating in the APS; 12 are located in public facilities. At its final 2017 meeting on December 1, the task force endorsed the following four pieces of legislation:

- .208826.1 proposes to change the state-local match formula and address cost disparities in rural school districts;
- .208838.1 proposes to clarify ownership of charter school facilities under lease-purchase agreements;
- .208825.2 proposes to use prior-year data to determine distribution amounts to school districts for capital improvement projects; and
- .208827.1SA proposes to require distribution of certain shares of property tax collections and charter school certification of receipt of same.

WORK PLAN AND MEETING SCHEDULE

2017 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

Members

Rep. Stephanie Garcia Richard, Chair	T.J. Parks
Sen. William P. Soules, Vice Chair	Mike Phipps
Deputy Sec. Paul Aguilar	Rep. Dennis J. Roch
Sen. Craig W. Brandt	Sec. Dorothy "Duffy" Rodriguez
Randall Earwood	Rep. G. Andrés Romero
Rep. Brian Egolf	Stan Rounds
Greg Ewing	Sen. Benny Shendo, Jr.
Carl Foster	Rep. James E. Smith
Kirk Hartom	Sen. John Arthur Smith
Sen. Stuart Ingle	Xochitl Torres Small
Rep. Patricia A. Lundstrom	Alan Webber
Sen. Mary Kay Papen	Vacant LC consult w/gov

Advisory Members

Rep. Eliseo Lee Alcon	Sen. Cliff R. Pirtle
Rep. Harry Garcia	Sen. Sander Rue
Sen. Daniel A. Ivey-Soto	Sen. Mimi Stewart
Rep. D. Wonda Johnson	Sen. Bill Tallman
Sen. Gay G. Kernan	Sen. Pat Woods
Sen. Howie C. Morales	

Background

Created in statute in 2005 (Sections 22-24-7 and 22-24-8 NMSA 1978), the Public School Capital Outlay Oversight Task Force oversees the work of the Public School Capital Outlay Council and the Public School Facilities Authority as they continue implementing the state's standards-based public school capital outlay funding program. Task force membership consists of 25 members (or their respective designees), with both legislative and public members determined by statute. Statute allows a maximum of five meetings (including one informational) each interim.

Work Plan

The task force will address the following statutory requirements during the 2017 interim:

1. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act (Chapter 22, Article 24 NMSA 1978) and the Public School Capital Improvements Act (Chapter 22, Article 25 NMSA 1978) in terms of the continued implementation of the district court's order in the *Zuni* lawsuit;

2. in light of implementation of Laws 2015, Chapter 63 (Section 7-27-14 NMSA 1978) and the judge's order in the *Zuni* lawsuit, monitor existing permanent revenue streams to determine whether they remain adequate long-term funding sources for public school capital projects;
3. monitor the overall progress of bringing all public school facilities to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act; and
4. review provisions of public school capital outlay legislation and related administrative rules and make recommendations for changes as necessary.

In addition, as time permits, the task force proposes to address the following related issues during the 2017 interim and make recommendations for appropriate legislation:

5. examine issues relating to charter school facilities, including:
 - A. progress in charter school utilization of public buildings in compliance with the statutory deadline;
 - B. accountability for charter school and school district use of state-funded lease payments, including ongoing lease payment expenses versus capital outlay needs, especially in light of drastically reduced funding available for public school capital outlay funding; and
 - C. consideration and clarification of ownership of charter school facilities that have been purchased by a foundation established for that purpose and paid for with Public School Capital Outlay Fund dollars that were allocated by the Public School Capital Outlay Council if the charter school occupying the facilities loses its charter or closes for any other reason;
6. consider the inclusion of teacherages in the standards-based process;
7. study and make recommendations to update the funding formula for calculation of the state-local match of the Public School Capital Outlay Act formula (Section 22-24-5 NMSA 1978) and for gradual implementation of the replacement formula over a period of several years;
8. evaluate the continued inclusion in the standards-based process of the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf;

9. examine issues related to public school district disposal of abandoned real property or real property that is no longer suitable for a school district's use as classroom spaces for students;
10. study and make recommendations for updating the chart of accounts in the area of maintenance in order to allow use of school district maintenance data to make informed policy decisions regarding expenditure of these funds; and
11. collect school district data that illustrate the amount of deeded land available for taxing purposes versus other lands, such as federal, that are not taxable.

**Public School Capital Outlay Oversight Task Force
2017 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 13	Santa Fe
August 14	Santa Fe
September 18	Santa Fe
October 20	Santa Fe
November 3	Santa Fe

AGENDAS AND MINUTES

Revised: June 8, 2017

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

**June 13, 2017
Room 307, State Capitol
Santa Fe**

Tuesday, June 13

- 10:00 a.m. **Call to Order and Introductions**
—Representative Stephanie Garcia Richard, Chair
—Senator William P. Soules, Vice Chair
- 10:05 a.m. (1) **Public School Capital Outlay Council (PSCOC) and Public School
Facilities Authority (PSFA) Fiscal Year 2016 Annual Report**
—David Abbey, Director, Legislative Finance Committee; Chair, PSCOC
—Rocky Kearney, Deputy Director, PSFA
- 10:50 a.m. (2) **Brief Review: Public School Capital Outlay Oversight Task Force
(PSCOOTF) 2016 Interim and 2017 Session**
—Sharon Ball, Researcher III/Drafter, Legislative Council Service,
PSCOOTF Staff
- 11:00 a.m. (3) **Proposed 2017 Interim Work Plan and Meeting Schedule**
—Task Force Members and Staff
- 12:00 noon **Adjourn**

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

**June 13, 2017
State Capitol, Room 307
Santa Fe**

The sixtieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on June 13, 2017 at 10:04 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Sen. William P. Soules, Vice Chair
Antonio Ortiz for Deputy Secretary Paul
Aguilar, Public Education Department
Dr. Carl Foster
Reinaldo Garcia
Sen. Mary Kay Papen
Mike Phipps
Rep. Dennis J. Roch
Secretary Duffy Rodriguez, Department of
Finance and Administration
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith

Advisory Members

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Sen. Mimi Stewart

Absent

Sen. Craig W. Brandt
Rep. Brian Egolf
Kirk Hartom
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
T.J. Parks
Rep. G. Andrés Romero
Stan Rounds

Rep. Eliseo Lee Alcon
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Howie C. Morales
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Bill Tallman
Sen. Pat Woods

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Sharon Ball, Researcher III/Drafter, LCS
Jeff Eaton, Legislative Fiscal Analyst, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Tuesday, June 13

Public School Capital Outlay Council (PSCOC) and Public School Facilities Authority (PSFA) Fiscal Year (FY) 2016 Annual Report

David Abbey, director, Legislative Finance Committee, and chair, PSCOC, and Rocky Kearney, deputy director, PSFA, co-presented the PSFA 2016 annual report to the task force. The presenters provided two additional handouts to the task force: "Public School Facilities Assessment Database Ranking Methodology" and "Facility Maintenance Assessment Report (FMAR) 5-Year Baseline".

Mr. Abbey presented highlights from the annual report. He noted that the PSCOC uses a metric called the Facilities Condition Index (FCI) to prioritize the needs of school facilities. Noting that the lower the score the better the facilities' condition, Mr. Abbey told members that the statewide average FCI score has improved from approximately 70 percent in 2003, when the standards-based process was implemented, to an average of 32.1 percent for FY 2016. He noted that the PSCOC anticipates ending FY 2017 with a state average FCI of 32.7 percent. A lower FCI indicates improvement in overall facility condition.

Mr. Abbey went on to explain that the FMAR score in FY 2015 increased by 4.79 percentage points, from an initial score in FY 2013 of 60 to 64.79 in FY 2015. He noted that a higher FMAR score is indicative of improved facility maintenance.

The PSCOC awarded \$150.1 million in state match funding in FY 2016. Prior years (FY 2011 through FY 2015) ranged between \$114.7 million in FY 2011 to a high of \$256.1 million in FY 2013. It is estimated that to maintain the FCI over the next six years, an average of \$433 million would need to be invested annually. The state share of this amount is \$168 million per year over the next six years. At lower funding levels, degradation exceeds renovation/repair, and the overall facilities condition starts to decline. PSCOC funding from supplemental severance tax bond (SSTB) revenue is currently forecast to range between \$110.9 million in FY 2019 to \$137.4 million in FY 2021. In addition to new project match funding awards, the uses of the PSCOC revenues include the PSFA operating budget, lease assistance awards and transfers to the Public Education Department for Public School Capital Improvements Act (SB 9) distributions and funding for transportation and instructional materials (a detailed list is on page 8 of the handout).

The presenters concluded by suggesting several possible strategic issues for task force consideration in the 2017 interim or in later years:

- charter school facilities issues, including lease assistance;
- consideration of adjustments to the state-local match capital funding formula, including possibilities in Senate Bill (SB) 147 (2017 regular session), which was vetoed by the governor;
- improving the maintenance of public schools to protect the state's considerable investment in public school facilities;
- the effect of the sunset of the broadband deficiencies correction program and possible responses; and
- establishing a pilot systems-based awards cycle.

In response to a member's question about the status of the *Zuni* lawsuit, Rachel Gudgel, director, Legislative Education Study Committee, and Ms. Ball responded that, currently, the lawsuit is still open and scheduled hearings have been postponed and not rescheduled.

In response to discussion and questions about whether teacherages are included as facilities eligible for PSCOC awards and the issue's relevance to the litigants' issues, Mr. Abbey explained that teacherages are eligible facilities but that their financing may be an issue.

In response to discussion and questions about the way in which a pilot of a systems-based awards cycle might be designed and implemented, Mr. Kearney explained that the system could possibly be based on points applied to weighting criteria and development of a ranking methodology so that the state-local share match funding would apply in the way it currently does to standards-based awards. Mr. Kearney said that the application deadline has just passed for this awards cycle, and four school districts applied for systems grants. He said that he would bring back more information to the task force as the process is developed and implemented.

During continued discussion, a member commented that the pilot phase of the systems-based awards cycle is currently experimental and has no sunset clause in statute. Another member noted that a possible modification of the application requirements might be not to require the systems-based projects to be in a school district facility master plan.

Representative Garcia Richard thanked the presenters, noting that progress needs to continue.

Brief Review: PSCOOTF 2016 Interim and the 2017 Session

Ms. Ball provided the task force with information on the 2016 interim activities in the 2016 interim final report and two bills endorsed by the task force for the 2017 regular session. Neither of the endorsed bills passed.

Mr. Eaton presented SB 147 (2017 regular session), which was sponsored by Senator Stewart. The bill proposed phasing in several changes to the current state-local match formula, including incorporation of state-local share adjustments for higher construction costs experienced in low-population school districts; incorporation of a moving average in calculating school

district property valuation; incorporation of a school district's facility space needs to adequacy; and a phase-in period from the current formula to the new formula over several years to allow school districts to adjust and respond to the formula changes gradually.

In response to task force members' discussion and questions, Mr. Eaton explained that the measure was not vetted in time to be considered for endorsement by the PSCOOTF but that the changes incorporated recommendations from an analysis contracted by the PSCOOTF through the LCS and performed by the University of New Mexico Bureau of Business and Economic Research. In response to additional discussion and questions, Senator Stewart noted that the bill passed both chambers with only one amendment. She said that the governor vetoed the bill, indicating in her veto message her concern that the task force had not studied and endorsed the bill during the 2016 interim.

Proposed 2017 Interim Work Plan and Meeting Schedule

Mr. Burciaga presented the interim work plan and meeting schedule. During the task force discussion, Ms. Ball reviewed proposed work plan discussion items, including hearing testimony about school districts' disposal of unused or unusable facilities. Ms. Ball noted that proposed work plan Items 4 and 7 are duplicates and suggested striking one or the other in the approval motion.

During the discussion, members suggested adding the current state-local share funding formula, continued monitoring of the systems-based awards cycle process, examining issues related to the lease purchase of charter schools and charter schools' leasing facilities from charter school foundations created solely for that purpose. Upon a motion duly made and seconded, the 2017 interim work plan and meeting schedule were approved with suggested changes.

Adjournment

There being no further business before the task force, the meeting adjourned at 11:48 a.m.

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

**August 14, 2017
State Capitol, Room 307
Santa Fe**

Monday, August 14

- 9:00 a.m. **Call to Order and Introductions**
—Representative Stephanie Garcia Richard, Chair
—Senator William P. Soules, Vice Chair
- 9:05 a.m. **Approval of June 13, 2017 Minutes**
- 9:10 a.m. (1) **Public School Capital Outlay Council (PSCOC) Financial Plan**
—David Abbey, Director, Legislative Finance Committee; Chair, PSCOC
—Denise Irion, Chief Financial Officer, Public School Facilities Authority (PSFA)
- 10:00 a.m. (2) **Zuni Lawsuit Update**
—Timothy Williams, Esq., Assistant Attorney General, Office of the Attorney General (OAG)
—Joshua Granata, Esq., Assistant Attorney General, OAG
- 10:30 a.m. (3) **Consideration of Possible Public School Capital Outlay Oversight Task Force-Endorsed Legislation, 2018 Session**
A. Senate Bill 147, "School Capital Outlay State-Local Matches", 2017 Session, Vetoed: Examination, Evaluation and Recommendation
—Senator Mimi Stewart, Chair, Legislative Education Study Committee
—Jeff Eaton, Fiscal Analyst, Legislative Council Service (LCS)
—Katie McEuen, Research and Policy Analyst, PSFA
- 12:30 p.m. **Lunch**
- 1:30 p.m. **B. Public School Capital Outlay Act Funding: Clarification and Eligibility for Inclusion of Teacherages**
—Rocky Kearney, Deputy Director, PSFA
—Martica Casias, Planning and Design Manager, PSFA

- 2:30 p.m. (4) [Progress Report: Charter Schools in Public Buildings](#)
—Martica Casias, Planning and Design Manager, PSFA
- 3:15 p.m. (5) [Public School Capital Outlay Oversight Task Force Resource Booklet Overview](#)
—Sharon Ball, Public School Capital Outlay Oversight Task Force Staff;
Researcher III/Drafter, LCS
- 4:00 p.m. **Adjourn**

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

**August 14, 2017
State Capitol, Room 307
Santa Fe**

The sixty-first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on August 14, 2017 at 9:04 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Deputy Secretary Paul Aguilar, Public
Education Department
Sen. Craig W. Brandt
Dr. Carl Foster
Kirk Hartom
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Sen. Mary Kay Papen
T.J. Parks
Richard A. Perea
Mike Phipps
Debbie Romero for Secretary Duffy
Rodriguez, Department of Finance and
Administration
Stan Rounds
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. John Arthur Smith
Xochitl Torres Small
Alan Webber

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Sen. Howie C. Morales
Sen. Mimi Stewart

Absent

Sen. William P. Soules, Vice Chair
Rep. Brian Egolf
Greg Ewing
Rep. Dennis J. Roch
Rep. G. Andrés Romero
Eugene Schmidt
Sen. Bill Tallman

Rep. Harry Garcia
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Pat Woods

Staff

Sharon Ball, Researcher, Legislative Council Service (LCS)

Jeff Eaton, Legislative Fiscal Analyst, LCS

Rebecca Griego, Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, August 14**Call to Order and Introductions**

Representative Garcia Richard called the meeting to order and welcomed task force members, guests and staff. She requested that task force members introduce themselves.

Approval of June 13, 2017 Minutes

The chair requested that members take a few minutes to review the June 13, 2017 meeting minutes. Upon a motion by Representative Smith, duly seconded by Senator Smith, the minutes were approved without objection.

Public School Capital Outlay Council (PSCOC) Financial Plan

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), and David Abbey, director, Legislative Finance Committee, and chair, PSCOC, presented the PSCOC financial plan. Ms. Irion reported that the State Board of Finance recently sold approximately \$26.5 million in supplemental severance tax bond (SSTB) notes and approximately \$81.4 million in long-term SSTBs.

Ms. Irion reported that, to date, the PSCOC has made no awards for fiscal year (FY) 2018. She noted that the financial plan has \$44.3 million in awards planned for the first quarter of calendar year 2017 and another \$37.6 million planned for awards in "out years", for a total FY 2018 award amount of \$81.9 million. The statewide measure of overall facility condition is the Facility Condition Index (FCI). Mr. Abbey reported that the FCI is up from 32 percent to 34 percent in the most recent estimate, which is a substantial improvement over the initial reported FCI of 70 percent in FY 2004.

Mr. Abbey pointed out that the plan now includes \$25 million for instructional materials and school transportation. Mr. Abbey also pointed out that the financial plan has \$12 million for lease payment assistance awards. At its most recent meeting, the PSCOC considered possible modification of the amount of funding allocated for lease assistance, but after hearing public comment from charter school representatives, the council proposed consideration of the issue at a future meeting.

As of July 14, 2017, the Public School Capital Outlay Fund balance was \$242.8 million, an amount that did not include a pending draw request of \$26.8 million (submitted in June 2017). Mr. Abbey reported that on August 8, 2017, the State Board of Finance approved the sale of \$81.4 million in long-term bonds for the Public School Capital Outlay Fund. Combined, these transactions would amount to a net Public School Capital Outlay Fund balance of approximately \$296 million. This balance is an improvement over prior year balances that were in the \$500 million range.

Zuni Lawsuit Update

Timothy Williams, Esq., assistant attorney general, Office of the Attorney General (OAG), and Joshua Granata, Esq., assistant attorney general, OAG, presented on the current status of the *Zuni* lawsuit. Mr. Williams presented a summary of the current iteration of the amended complaint of the original complaint filed more than 17 years ago. The state filed a motion to dismiss the current amended complaints and was granted a partial dismissal based on a "lack of standing by two plaintiffs, Zuni Public School District and Gallup-McKinley County Public School District". The only remaining plaintiffs in the current lawsuit are four students named in the amended complaint. Mr. Williams does not believe that the remaining plaintiffs will proceed with further litigation. A copy of the "Order Partially Dismissing Complaint" was provided to the task force members and is in the meeting file.

A member asked what "injury" was claimed in the original or amended complaint. Mr. Williams responded that the injury claimed was underfunding for school-related facilities and that the redress was a new system of funding with a new source of funding. A member commented that the language in the general appropriation act forbids public schools from using state equalization guarantee (SEG) funds to sue the state. A plaintiff who prevails, however, may be reimbursed.

A member asked staff to investigate how much money is currently budgeted and expended by school districts for legal services and the sources of those funds. Another member noted that this request may be difficult to fulfill because some expenditures categorized as "legal fees" may also reflect normal expenditures, such as defense in lawsuits filed against the school district.

A member asked if the *Zuni* lawsuit is now finished. Mr. Williams indicated that the plaintiffs can appeal the latest order to a higher court. The original lawsuit does not include criteria for the state to meet in order to end the court's jurisdiction over the current public school capital outlay system. Another member asked if Senate Bill (SB) 147 from the 2017 regular session, sponsored by Senator Stewart, which was passed by the legislature but vetoed by the governor, was discussed in the case proceedings. Mr. Williams replied that the bill was discussed tangentially but that the discussions were not substantive.

Consideration of Possible PSCOOTF-Endorsed Legislation for the 2018 Session

Senator Stewart, chair, Legislative Education Study Committee, Katie McEuen, research and policy analyst, PSFA, and Mr. Eaton presented on SB 147, which included amendments to

the public school capital outlay funding formula. Senator Stewart introduced the item, explaining that the task force in the 2016 interim convened a funding formula subcommittee that reviewed "white papers" prepared by PSFA staff on the topic of the funding formula and contracted with the University of New Mexico Bureau of Business and Economic Research (BBER) to do a formal study of the funding formula and report to the task force. SB 147 incorporated several changes recommended in the BBER study, as well as the PSFA white papers. Due to time constraints, SB 147 was not reviewed in time before the 2017 regular session and so it was not endorsed as a PSCOOTF bill. The bill made several changes to the existing funding formula and passed both the senate and the house of representatives but was vetoed by the governor.

Ms. McEuen provided step-by-step details of the current standards-based state-local match formula and the new formula proposed by SB 147. The new formula adds a new variable to account for higher costs incurred in more rural and remote school districts. Ms. McEuen also explained that a school district's existing enrollment and costs for bringing the existing facility spaces up to adequacy were factored into facility and funding needs. Higher facility space needs, lower property valuations and the level of "ruralness" increased a school district's state match funding over the current formula. Ms. McEuen explained that volatility in the property valuations and switching from the existing formula to a new formula were addressed by a gradual five-year smoothing of property valuations and a five-year phase-in period from the old state-local match calculation to the proposed calculation.

A member commented that he supported the legislation, which he felt was an improvement on the current formula because it increased the level of local participation overall and was a prudent move back to the way schools were traditionally funded. The member also said that this change was a good one because of the existing uncertainty about the level of financial support from the federal government and state-issued bonds.

A member commented that, prior to the current funding formula and establishment of a permanent funding stream in FY 2004, state funding for school capital outlay (called critical capital outlay) varied widely depending on the amount of funding available from available sources. These funds were appropriated each year by the legislature.

Another member commented that construction costs of \$320 per square foot seem to be rather high and asked the source of the data. Rocky Kearney, deputy director, PSFA, said that the data come from PSFA data files and indicated that the \$320 per square foot includes designing costs, demolition and furniture, fixtures and equipment, in addition to actual construction costs. He added that, in certain cases, a school site has conditions requiring extensive regrading and soil amendment where site soils are very loamy, have high clay content or require rock removal. He added that a specific building type (such as a gymnasium) also can vary in cost per square foot. He said that other issues, such as distances from area utilities and installation of on-site fire suppression systems and septic systems, must also be included in the overall project cost.

Mr. Kearney also said that the distance of the project from labor and material supply centers can raise the cost per square foot because the contractors factor in the cost of transporting materials and mobilizing labor. Additionally, school construction projects are public projects and have certain requirements and schedules that must be complied with regarding prevailing wage rates for similar public projects per the "little Davis Bacon Act". He concluded that these factors can combine to increase the cost per square foot.

A member commented that another reason the cost was higher was because there was a large number of projects coming online in a short period of time that, with a constrained demand for materials and labor, might have contributed to driving up the bids on public projects.

Another member asked how the formula treats charter schools. Ms. McEuen responded that charter schools are public schools, and their match requirement is determined by the physical location of the charter school campus. The charter school must use the data from the school district in which the school is geographically located. Ms. McEuen said that both the current formula and the formula proposed in SB 147 treat public schools and charter schools the same. The formula does not change a school's ranking relative to other schools in the PSCOC school ranking of priority facility needs.

A member commented that the issue for charter schools is not the ranking itself but the lack of resources for the required match, since a charter school has no tax base and cannot bond itself to raise capital for the required match. In response, a member asked if charter schools are included in a school district's five-year facility master plan. Martica Casias, planning and design manager, PSFA, responded that charter schools are often included in a school district's five-year facility master plan. The Albuquerque Public School District (APS) is an example in which many charter schools are included in the five-year facility master plan, but inclusion in the plan is contingent on the charter school agreeing to transfer all other state-distributed capital outlay provided by House Bill 33 to APS in exchange for inclusion in the district list of priority capital outlay projects in the five-year facility master plan.

A member asked if some school districts would receive a zero match under the new formula. Ms. McEuen responded that when the proposed formula in SB 147 was fully phased in after five years, several districts would no longer receive a state match. This outcome was due to the new formula determining that the school district would be able on its own to build and maintain its school facilities without assistance from the state based upon its relative ability to raise revenue through bonding and financing the bonds with property taxes allowed to be imposed by referendum by residents of the school district.

A member asked Mr. Eaton about yield control and how some school districts seem to be unable to pass bonds to support their local school facilities. Mr. Eaton replied that yield control was imposed for good reasons in that it allowed long-time residents of a school district with limited income to remain in their homes. Yield control, while distortive in its effects on the local property tax base, has outcomes that policymakers see as being socially beneficial and outweighing the negative tax base distortions. Mr. Eaton explained that another problem entirely

is what is called "the recalcitrant district problem". Mr. Eaton used an example where a number of homes in a school district may be second homes for the residents in the district, and those residents may possibly be only part-time residents in the district and may not have school-age children living in the school district. In that example, a taxpayer may not have enough personal incentive to support a tax increase for school construction. Mr. Eaton related that over the years, there appear to be situations where this occurred. The remedy available to the state is to file a cause of action against a school district and ask a presiding judge to order a school district to impose a tax on itself in order to provide revenue to construct or renovate educational facilities in support of providing an adequate education to the K-12 students in the school district, which is required by the Constitution of New Mexico. Mr. Eaton indicated that the state has not to date exercised this remedy upon any school district to his knowledge.

A member asked what options a school district has if it wants to build or renovate its school facilities but cannot afford the cost. Senator Stewart responded that, under current law, if good effort is made by a school district to raise funds, the state could waive all or part of a local match requirement and could pay the amount needed to make the project proceed to completion.

The chair thanked the presenters and said that the task force would consider a new, similar bill for endorsement for the next legislative session.

Public School Capital Outlay Act Funding: Clarification and Eligibility for Inclusion of Teacherages

Mr. Kearney and Ms. Casias co-presented and explained that teacherages are school buildings, but that there is ongoing debate about how to fund them. Subsection P of Section 22-1-2 NMSA 1978 defines a school building as "a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district". Teacherages are built to provide residences for teaching staff, usually in school districts in remote areas of the state. Some school districts have used federal impact aid funding to finance the issuance of bonds to build teacherages in very remote locations. The need to provide teacherages in these remote areas is because school districts have found that it is difficult to attract teachers to work in very remote locations, and providing teacherages is an incentive for potential teachers to locate in these areas. A member commented that in the case of the Santa Fe Public School District, teacherages were discussed because of the high land and housing cost in the Santa Fe area.

A member commented that it is very important to continue having the discussion of teacherages because the "where" and "how" nontaxable severance tax bonds are used have federal restrictions. A member commented that good, well-maintained teacherages are beneficial in attracting high-quality teachers. A member commented that it appears that the PSCOC and the PSFA currently have authority to approve contracts for construction of teacherages, and no change in law appears to be necessary to fund teacherages.

Progress Report: Charter Schools in Public Buildings

Ms. Casias presented on the status of getting charter schools into public facilities. Several handouts were presented to the task force and are included in the meeting file. Ms. Casias presented the relevant statute pertaining to charter schools occupying public facilities (Section 22-8B-4 NMSA 1978). Ms. Casias reported that there are more than 100 charter schools statewide and that the majority of the charter schools are located in the Albuquerque metropolitan area. At the time of the report, Ms. Casias said that there are 35 charter schools that are leasing nonpublic facilities, two that have entered into lease-with-purchase options that were approved by the Public Education Department (PED) and two that are in PED-approved lease-purchase agreements.

A member asked what remedy the authorizing agency or the state has if a charter school elects to lease a suboptimal facility. Deputy Secretary Aguilar, using the example in the list handed out by the presenters, pointed to a weighted New Mexico Condition Index of 49 percent. He commented that this particular score was due to overcrowding at the school. He noted that a facility with this score could still be in reasonably good shape and suitable for a charter school's needs.

A member asked at what point the PSFA communicates to a charter school that its facility is deemed to be inadequate, thus requiring the charter school to find another facility. Ms. Casias replied that the PSFA inspects a facility when the charter school locates or relocates to a new building and then visits the charter school site and performs an inspection every five years thereafter. The PSFA does not have authority to order a charter school not to locate in a facility or to move out of a school facility currently occupied by the charter school. The PSFA's authority extends only to making a recommendation to the PED. The PED has the authority to approve, renew or revoke a charter school's operating charter. The PSFA may only provide an opinion and communicate that opinion to the PED as to the suitability of the facility the charter school is occupying or intends to occupy.

Several members engaged in a discussion about the difficulty in determining the ownership of the facility being leased and whether the owner or owners are also on a charter school's governing board. The PSFA indicated that the PSCOC application for lease assistance requires a charter school board to certify and disclose some ownership details and potential conflicts of interest.

A member said that lease costs for charter schools in facilities that had renovations made for the tenant school may cause the lease cost per square foot to be high. The member also commented that costs for lease-purchase facilities that were built to suit the charter school tenant may also be high. A possible reason for the high lease costs may be due to the relatively higher risk involved in leasing to a charter school. These lease arrangements are risky for the landowner and building owner because charter schools have a potentially volatile student enrollment year over year, which impacts the amount of operating funds that the charter school receives through the SEG distribution. It is this distribution that supports paying the lease costs of the facilities. The member also added that there may be instances in which charter school foundation members

are involved in the day-to-day operations of the charter school and may not have an optimal level of expertise needed in performing the duties of the position but hold the position because of their status as a member of the charter school foundation.

A member commented that in Wisconsin, an entity similar to the New Mexico Finance Authority (NMFA) is establishing a way to sell bonds to finance charter school facility construction. Another member noted that this practice is occurring across the country in various other states as well.

A member asked staff to describe the process by which a charter school is waived from the requirement to be located in an existing and available public facility. Ms. Irion replied that the applicant for lease assistance from the PSCOC certifies in the application that no facilities exist. She added, however, that there is no validation process to confirm the certification, and neither the PSCOC or PSFA has the authority to do so.

A member raised several concerns, including possible violations of the "Bateman Act" (Section 6-6-11 NMSA 1978), which says that a public body cannot indebt itself beyond its reserve levels. An exception to this restriction includes borrowing from the NMFA. The member commented that it appears that charter schools have a legally questionable loophole around the Bateman Act restrictions. The member said that there is a misconception by some charter schools that they will "own" the facility at the end of the term of the lease when, in the cases of some lease agreements, the ownership is not clear. The member concluded by adding that between 60 percent and 66 percent of funding for traditional public schools comes from the SEG distribution. In the case of charter schools, the member asserted that 90 percent of the operational funding comes from the SEG distribution.

A discussion ensued regarding whether a charter school at its inception is part of the school district's five-year facility master plan. Ms. Casias responded that, at inception, the charter school typically is not part of the plan but that five-year facility master plans are "living" documents and are able to be amended to include charter schools at any time. A member commented that more collaboration between school districts and charter schools has been the norm more recently. One of the issues particular to charter schools and available facility space is that the charter school often serves a population of students grouped in a particular geographic area, and a public space offered by a school district may be geographically distant from the students the charter school serves, which is the reason a charter school may reject a space.

The chair thanked the task force members and staff for an informative discussion and asked staff to invite representatives from APS to a subsequent meeting to continue the discussion on charter schools and public facilities.

PSCOOTF Resource Booklet Overview

Ms. Ball went through the PSCOOTF resource booklet with the task force members and briefly described its contents, which include such items as a graphic illustration of the public school standards-based process and the source of funding from SSTBs, as well as the Severance

Tax Permanent Fund, a summary of task force work during the 2016 interim, various charts and graphs illustrating public school capital outlay issues and the latest edition of the Department of Finance and Administration-published booklet entitled "Property Tax Facts for Tax Year 2016". The chair and task force members thanked Ms. Ball and Michelle Jaschke, researcher, LCS, for their hard work in publishing the resource book and said that it is a welcome resource for new members and veteran members alike.

Adjournment

There being no further business before the task force, the meeting adjourned at 3:28 p.m.

Revised: September 15, 2017

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

**September 18, 2017
State Capitol, Room 307
Santa Fe**

Monday, September 18

- 9:00 a.m. **Call to Order and Introductions**
—Representative Stephanie Garcia Richard, Chair
- 9:05 a.m. **Approval of August 14, 2017 Minutes**
- 9:10 a.m. (1) **Consensus Revenue Projections and Public School Capital Outlay Council (PSCOC) Financial Plan**
—David Abbey, Director, Legislative Finance Committee (LFC); Chair, PSCOC
—Jeff Eaton, Fiscal Analyst, Legislative Council Service (LCS)
—Denise Irion, Chief Financial Officer, Public School Facilities Authority (PSFA)
- 10:10 a.m. (2) **What Happens to All of That Money? A Look at Completed Projects Opening This Fall**
—Edward Avila, Senior Facilities Manager, PSFA
—TBD, Albuquerque Public School District: Marie Hughes and Mountain View Elementary Schools
—Dr. Arsenio Romero, Superintendent, Deming Public School District: Deming High School
—Randy Piper, Superintendent, Lordsburg Municipal School District: Lordsburg High School
—Patricia Beecher, Acting Superintendent, New Mexico School for the Blind and Visually Impaired: Watkins Education Center
—Susan Sanchez, Interim Superintendent, Roswell Independent School District: Parkview Early Literacy Center
- 12:00 noon **Lunch**

- 1:00 p.m. (3) **What Happened to Old, Abandoned School Buildings? Examination of Issues Related to Realistic, Economical Disposal of Abandoned, "Unusable" School Facilities and Possible Solutions**
—Casandra Cano, Programs Support Manager, PSFA
—Martica Casias, Planning and Design Manager, PSFA
—Sharon Ball, Senior Researcher/Drafter, LCS
- 2:00 p.m. (4) **Charter School Risk Review**
—Timothy M. Keller, State Auditor
- 2:30 p.m. (5) **Who Owns Charter School Facilities?**
—Raúl E. Burciaga, J.D., Director, LCS; Member, PSCOC
—Rachel Gudgel, J.D., Director, Legislative Education Study Committee;
Member, PSCOC
—David Abbey, Director, LFC; Chair, PSCOC
- 3:00 p.m. (6) **Where Are All of the Children? A Look at the Background and Current Status of the State's Use of the Geographic Information System**
—Martica Casias, Planning and Design Manager, PSFA
—Andrew Martinez, Project Technician, PSFA
- 4:00 p.m. **Adjourn**

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

September 18, 2017
State Capitol, Room 307
Santa Fe

The sixty-second meeting of the Public School Capital Outlay Oversight Task Force was called to order by Representative Stephanie Garcia Richard, chair, on September 18, 2017 at 9:11 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Sen. Craig W. Brandt
Dr. Greg Ewing
Dr. Carl Foster
Kirk Hartom
Sen. Stuart Ingle
Antonio Ortiz for Deputy Secretary Paul
Aguilar, Public Education Department
Richard A. Perea
Mike Phipps
Rep. G. Andrés Romero
Stan Rounds
Dr. Eugene Schmidt
Rep. James E. Smith
Sen. John Arthur Smith
Sen. Mimi Stewart, Designee for Sen. Papen
Sen. Bill Tallman
Xochitl Torres Small
Alan Webber

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Sen. Gay G. Kernan

Absent

Sen. William P. Soules, Vice Chair
Rep. Brian Egolf
Rep. Patricia A. Lundstrom
Sen. Mary Kay Papen
T.J. Parks
Rep. Dennis J. Roch
Secretary Duffy Rodriguez, Department of
Finance and Administration
Sen. Benny Shendo, Jr.

Sen. Howie C. Morales
Rep. Harry Garcia
Rep. D. Wonda Johnson
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Pat Woods

Staff

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

Sharon Ball, Researcher, LCS

Jeff Eaton, Fiscal Analyst, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts are in the meeting file and are posted online.

Monday, September 18**Welcome and Approval of August 14, 2017 Minutes**

Representative Garcia Richard welcomed members and guests. On a motion duly made and seconded, the minutes of the August 14, 2017 meeting were approved without objection.

Consensus Revenue Projections and Public School Capital Outlay Council (PSCOC) Financial Plan

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), presented revised information for the sources and uses of funds included in the PSCOC financial plan. The plan shows uncommitted balances shrinking in the out years. Ms. Irion also provided members with details regarding the PSCOC project award schedule.

David Abbey, director, Legislative Finance Committee (LFC), and chair, PSCOC, presented the Consensus Revenue Estimating Group (CREG) General Fund recurring revenue outlook for fiscal year (FY) 2017 through FY 2020. Mr. Abbey reported that the preliminary FY 2017 recurring revenue estimate is \$5.7 billion, \$140.4 million higher than the December 2016 consensus estimate. He pointed out that this is just one of several examples of unusual and questionable data reported in recent months. The LFC has requested but has not received any information from the Taxation and Revenue Department (TRD) to explain certain data anomalies that present risks to the reliability of the CREG forecast.

Mr. Abbey reported that appropriations continue to exceed revenues over the course of FY 2015 through FY 2018. He further reported on continuing litigation regarding public school equalization guarantees and capital outlay as well as the food stamp program that combine with numerous other factors, most notably a reduced federal match for Medicaid and possible repeal of the Patient Protection and Affordable Care Act, to present serious spending pressures for the state. Senator Smith pointed out that current tax credit issues may represent a two percent to three percent potential drain on reserves as well.

Mr. Eaton presented information regarding the standards-based funding stream for public school capital outlay. The PSFA estimates that \$188.2 million is required annually to maintain the current condition of school facilities statewide. Mr. Eaton's analysis indicates that the state may have only 34 percent of the funding needed to maintain the current Facility Condition Index score over the next five to six years.

Members discussed line item five in the PSCOC financial plan, showing \$81.4 million in long-term bond funding as a source for PSCOC activities in FY 2018. A member questioned why the out years for that line item reflect zero dollars from that source. Ms. Irion and Mr. Abbey explained that, in the past, "sponge bonds" that provide a "pay as you go" type of financing have been used as that source, rather than assuming long-term debt. In this instance, \$81.4 million related to past General Fund capital improvement projects was swapped for the sponge bond capacity, essentially creating debt financing for the needs of the PSCOC as a means to prop up the General Fund. A member questioned the advisability of this approach, while other members stated that, given the drastic reductions in state funds and the threat of vetoes for any revenue enhancements, options for public school capital project funding were limited during the 2017 regular and special legislative sessions. Mr. Abbey noted that the PSCOC budget assumes a return to sponge bond financing in the future.

Task force members also discussed:

- a move to fund public school capital outlay projects through general obligation bonds;
- the shift of funding from standards-based awards to building systems awards; and
- a need to stabilize reporting mechanisms in the TRD with respect to tax credits and/or refunds owed to the oil and gas industry and municipalities.

What Happened to All of That Money? A Look at Completed Projects Opening This Fall

Superintendents or staff from the Albuquerque Public School District, the Deming Public School District, the Lordsburg Municipal School District, the New Mexico School for the Blind and Visually Impaired and the Roswell Independent School District reported on a wide range of school building projects scheduled to open this fall. The projects involve new construction as well as renovation and repurposing of existing facilities, but all share a focus on energy efficiency and meeting specific educational standards with user-centered design and the development of infrastructure that will enable flexibility over the long run. Many of the innovative features of these new and renovated facilities result in improved safety for staff and students, lower maintenance and energy costs and reduced staffing needs. All of the districts and schools reported the value and importance of community input in engineering a successful project.

Rocky Kearney, acting director, PSFA, responded to questions regarding the wide fluctuation in actual building costs per square foot, noting that it is almost impossible to tie those fluctuations to any one factor, given the varying conditions that influence construction throughout the state and the lengthy processes of planning, design and construction involved in

the projects. Mr. Kearney noted that construction costs are likely to rise in the wake of hurricanes Harvey and Irma, as demand for building materials increases. He further noted that the PSFA is in the process of producing a manual to describe many of the best practices illustrated in these and other successful projects throughout the state. The PSFA will distribute the manual to task force members when it becomes available.

What Happens to Old, Abandoned School Buildings? Examination of Issues Related to Realistic, Economical Disposal of Abandoned, "Unusable" School Facilities and Possible Solutions

Cassandra Cano, programs support manager, PSFA, and Martica Casias, planning and design manager, PSFA, described the existing statutory authority for demolition of abandoned buildings and presented a current list of unused school buildings and facilities classified in three categories: vacant, unoccupied and abandoned. It was noted that attempts have been made to address the issue of school districts having to continue to insure old abandoned buildings but that none of the statutory changes have addressed the continuing issue of districts having to divest themselves of unwanted or abandoned buildings by selling them at "fair market" value.

Senator Smith addressed the issue of fair market value, observing that in many rural areas appraisers have no "comparables" to produce a fair market valuation. He further noted that such valuations should factor in the length of time that a property has been on the market, among numerous other variables. Members discussed options for auctioning off such properties and asked that staff look into best practices in other states with regard to the disposal of real property.

Ms. Ball presented a modified draft of a bill intended to address some of the issues involved in the disposal of abandoned school buildings. She stated that she would incorporate the task force members' recommendations to strengthen the proposed legislation and present a new draft to the task force at a future meeting. Mr. Phipps observed that to his knowledge there are many more abandoned school buildings in the state than are included on the list provided by the PSFA.

Charter School Risk Review

Timothy M. Keller, state auditor, and Sanjay Bhakta, deputy state auditor, presented details surrounding their findings in the case of La Promesa Early Learning Center, a charter school whose former assistant business manager appears to have embezzled over \$600,000 from the school over the course of a six-year period ending in 2016, with the suspected complicity of the former executive director. The apparent ease of execution and lengthy duration of the mother/daughter duo's alleged escapades with respect to the charter school's funds again raise serious questions regarding what safeguards should be in place for charter schools to prevent such occurrences. In response to members' questions, Auditor Keller outlined four areas that continue to represent risk factors for charter schools:

- hand selection of governing boards by founders or directors;

- the use of a dedicated foundation or quasi-foundation to generate or move money for the school;
- the use of the same auditors over time and general handling of auditing needs; and
- having two family members serve as co-signatories on checks.

Mr. Bhakta reported that in this instance all of the required disclosures regarding familial relationships and other conflicts of interest had been completed but did not prevent the alleged embezzlement. Members discussed other guidance that might be needed by charter schools to ensure mutual exclusion of familial relationships and positions. A member asked how the Public Education Department's (PED's) audit process had missed the signs of misuse in the alleged scheme, asserting that the auditors are not chosen by the schools but rather by the PED at considerable expense to the state. Mr. Bhakta provided additional information regarding standard auditing procedures and observed that some supporting documents in this case appear to have been falsified.

Who Owns Charter School Facilities?

Mr. Burciaga presented a list of 12 charter schools with foundations deemed to be in lease-purchase agreements for the facilities in which the schools are located. Many of these agreements extend out over the course of the next 10 to 29 years. Mr. Burciaga reported that lease assistance awards will top \$15 million this year and that the requirement for charter schools to locate in public buildings remains. No standardized lease agreement has been developed thus far, according to Mr. Burciaga. He stated that with respect to those instances where a school's foundation owns the facility in which the charter school is located, proceeds from the sale of the facility would go first to any creditors and to cover outstanding obligations and then to the state through the Current School Fund.

Mr. Abbey reported surging and uncontrolled costs for lease assistance to charter schools and significant unused capacity in existing school facilities. He suggested establishing some authority, perhaps with either the PED or the PSFA, for limiting the development of new space for charter schools and for mediating disputes regarding school locations. Members discussed the feasibility of developing a standardized lease agreement or lease-purchase agreement. A member stated that it would be most important to establish what the requirements are for charter schools before they enter into lease agreements and suggested that a protocol be established for how charter schools locate in available public space.

Where Are All of the Children? A Look at the Background and Current Status of the State's Use of the Geographic Information System (GIS)

Ms. Casias and Andrew Martinez, project technician, PSFA, described a geocoding system that is now in-house with the PSFA that can provide a wealth of information to school districts by modeling where students live in a district and by tracking student migration patterns. This information can be particularly useful in "right-sizing" new facilities.

In addition, the GIS can show the location of critical infrastructure to assist in site location and can graphically illustrate the schools that have excess capacity, allowing the district to make boundary adjustments and rebalance its enrollment to better utilize all of its facilities. Mr. Martinez described a few of the many functions that he can use to create maps tailored to the specific needs of a school district, including modeling plans for student transportation.

Adjournment

There being no further business before the task force, the meeting was adjourned at 4:11 p.m.

Revised: October 18, 2017

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

**October 20, 2017
State Capitol, Room 307
Santa Fe**

Friday, October 20

- 9:00 a.m. **Call to Order and Introductions**
—Representative Stephanie Garcia Richard, Chair
—Senator William P. Soules, Vice Chair
- 9:05 a.m. **Approval of September 18, 2017 Minutes**
- 9:10 a.m. **Introduction of Recently Hired Public School Facilities Authority
(PSFA) Director**
—Jonathan Chamblin, Architect, CCCA, LEED AP, NABCEP PV,
Director, PSFA
—David Abbey, Director, Legislative Finance Committee; Chair,
Public School Capital Outlay Council
- 9:40 a.m. (1) **[Gathering Information: PSFA Proposed Changes to Systems-Based
and Standards-Based Capital Outlay Programs](#)**
—Jonathan Chamblin, Director, PSFA
- 10:00 a.m. (2) **[Albuquerque Public School District \(APS\): Capital Investments and
Future Planning for APS-Authorized Charter Schools](#)**
—Scott Elder, Chief Operations Officer, APS
—Kizito Wijenje, Executive Director, Capital Master Plan, APS
—Joseph Escobedo, Director, Charter Schools, APS
—Carrie Robin Brunder, Director of Government Affairs and Policy, APS
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **[Status Report: Broadband Deficiencies Correction Program](#)**
—Ovidiu Viorica, Broadband Program Manager, PSFA
—Richard Govea, Broadband Project Manager, PSFA
- 2:00 p.m. (4) **[Discussion of Legislation for Possible Task Force Endorsement](#)**
—Task Force Members and Staff
- 3:30 p.m. **Adjourn**

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

**October 20, 2017
State Capitol, Room 307
Santa Fe**

The sixty-third meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on October 20, 2017 at 9:08 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Sen. William P. Soules, Vice Chair
Sen. Craig W. Brandt
Dr. Carl Foster
Rep. Harry Garcia for Rep. Brian Egolf
Kirk Hartom
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Antonio Ortiz, designee for Secretary of Public
Education
Richard A. Perea
Mike Phipps
Rep. Dennis J. Roch
Secretary Duffy Rodriguez, Department of
Finance and Administration
Rep. G. Andrés Romero
Eugene Schmidt
Rep. James E. Smith
Sen. Mimi Stewart for Sen. Mary Kay Papen
Sen. Bill Tallman
Alan Webber

Absent

Rep. Brian Egolf
Greg Ewing
Sen. Mary Kay Papen
T.J. Parks
Stan Rounds
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Xochitl Torres Small

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Daniel A. Ivey-Soto
Sen. Howie C. Morales
Sen. Pat Woods

Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Cliff R. Pirtle
Sen. Sander Rue

Staff

Sharon Ball, Drafter/Senior Researcher, Legislative Council Service (LCS)
Jeff Eaton, Research and Fiscal Policy Analyst, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Friday, October 20

Call to Order and Introductions

Representative Garcia Richard called the meeting to order and welcomed task force members, guests and staff. She recognized David Abbey, chair of the Public School Capital Outlay Council (PSCOC), and introduced the newly hired Public School Facilities Authority (PSFA) director, Jonathan Chamblin. Mr. Chamblin told task force members that he is excited by the opportunity to move the PSFA forward and to work with the PSCOC and the PSCOOTF. Mr. Chamblin noted that he is a licensed architect and has lived in New Mexico since the mid-1990s. He holds a master's degree in architecture from the University of New Mexico and has worked most recently at Architectural Research Consultants in Albuquerque, where he worked with many school districts and higher education institutions. He has been Leadership in Energy and Environmental Design (LEED) certified since 2006. He explained that LEED certification is the most widely used green building rating system in the world. Among his other credentials, Mr. Chamblin noted his certification as a solar energy practitioner and also as a construction contract manager from appropriate certifying organizations.

On behalf of the task force, Representative Garcia Richard welcomed Mr. Chamblin and wished him well.

Approval of September 18, 2017 Minutes

Upon a motion made and duly seconded, the task force approved the minutes of the September 18, 2017 PSCOOTF meeting as presented.

Gathering Information: PSFA Proposed Changes to Systems-Based and Standards-Based Capital Outlay Programs

Mr. Chamblin described the process of gathering information from school districts and stakeholders regarding implementation of proposed changes to public school capital outlay programs. He said that the first step is to contact architects, builders and task force members for ideas about improvements to the PSCOC funding and application process, as well as what the PSFA could do to incentivize participation in systems-based awards. Task force members discussed that the issue currently confronting school districts is whether to make improvements to "small" systems that would "bump down" the district or building in the standards-based rankings and thus "freeze" them out of a larger renovation award.

A member asked what the eligibility cutoff is to apply for a systems-based award. Mr. Chamblin replied that only three awards were made this cycle but that eligibility is open to schools that can demonstrate a potentially significant reduction in a building's Facility Condition

Index (FCI) score. Mr. Abbey added that the PSCOC intends to refine the standards-based awards process and make changes by the beginning of 2018.

A member asked if the lower level of funding available reflects a new reality. Mr. Abbey noted that there are currently two application processes, one for standards-based awards and one for systems-based awards, but that the PSCOC is working to have only one application process. A member asked if the task force needs to be concerned about the FCI creeping back up, given the lower level of funding that has been projected. Mr. Abbey said that he does not foresee that happening.

Discussion ensued regarding issues related to the small systems project process that discourage applications because districts wait until they are eligible for a larger project to apply for funding. Task force members and PSFA staff discussed the possibility of including in the Facility Assessment Database (FAD) more detailed data that will inform decision making overall. Mr. Chamblin reported that the FAD is updated in a three-pronged approach utilizing a staff survey, Facility Master Plan (FMP) updates and PSFA site visits that are conducted on a three-year cycle. Mr. Abbey observed that consideration might be given to replacing the standards-based awards process, which seems to create the expectation that a school district will receive funding for a new school, with a model that focuses on modernization of existing facilities. Members noted the importance of addressing energy efficiency in the selection process and asserted that the impact of planned improvements on utility costs should be weighed in prioritizing projects.

Albuquerque Public School District (APS): Capital Investments and Future Planning for APS-Authorized Charter Schools

Kizito Wijenje, executive director, Capital Master Plan, APS, and Carrie Robin Brunder, director of government affairs and policy, APS, presented an overview of charter school planning processes in their district. They indicated that seven charter schools are currently participating in APS' Capital Master Plan program. Over \$57.8 million has been expended at these schools during the period from 2007 through 2016, with an additional \$58 million estimated to be distributed to charter schools through per membership distributions during the period from 2016 through 2022. Of the 56 charter schools located in APS, 12 are located in public facilities.

APS has memoranda of understanding (MOUs) with the seven charter schools as a pilot program designed to assist charter schools in acquiring suitable facilities. As a requirement of inclusion in the APS Capital Master Plan, the charter schools agree to turn over their distributions under the Public School Buildings Act (also called "HB 33") to APS. In return, the district has assisted charter schools in other ways as well, including, for example, acting as guarantor of a New Mexico Finance Authority (NMFA) loan for the Digital Arts and Technology Academy (DATA) charter school to purchase a facility. DATA could not, on its own, demonstrate that it could meet NMFA requirements for the loan. The panelists outlined a number of additional strategies available to assist charter schools with funding public facility needs.

Criteria for selecting charter schools to become participants in the APS pilot program include the schools':

- district-chartered status;
- demonstrated fiscal responsibility;
- stable leadership;
- continuing school improvement;
- suitability of facilities;
- voluntary entry into an MOU with APS regarding the schools' respective capital outlay funding sources; and
- the schools' retention of all programmatic, human resource and operational financial responsibility/authority unless otherwise agreed to previously by both parties to the MOU.

Observing that capital outlay funding is a limited resource available to all public schools (charter and non-charter alike), APS staff presented three possible ways forward in the face of funding cutbacks:

1. establishing a per membership distribution pool for state capital outlay;
2. establishing a revenue source for locally authorized and state-authorized charter schools; and
3. "carving out" a portion of available public school capital outlay funding to be used exclusively for charter school capital outlay.

A member asked about reasons that the unlikely partnership with charter schools works at APS. Ms. Brunder replied that more than 15,000 students attend charter schools in APS. The need for facilities, dating back to 2008, compelled charter schools to enter into MOUs, even if that meant the schools would have to "wait their turn" in the list of prioritized needs in the school district FMP.

A member commented that the work at APS was commendable, but at the end of the day, APS staff has a fiduciary duty to the school district and the taxpaying members of the district and perhaps risks having discontented parents of APS students in traditional schools if the allocation of resources to charter schools is disproportionate or viewed as disproportionate. The member noted that two percent of the state equalization guarantee (SEG) distribution from the state to charter schools is intercepted by the Public Education Department (PED), regardless of whether the charter school is in an APS facility. Members discussed the need to dedicate that two percent to specific administrative purposes.

A member asked what impact suspension of the lease reimbursement program would have on APS and its pilot project charter schools. Tami Coleman, chief financial officer, APS, replied that suspension of the PSCOC lease reimbursement program would create a financial burden for APS and threaten the viability of the charter school-APS partnership program. Ms. Brunder noted that when a charter school is in partnership with APS, APS receives two percent of the charter school's SEG distribution for its administrative purposes. Ms. Coleman observed

that the mortgage held by APS on behalf of the DATA charter school is paid in part from the school's SEG distributions and in part from PSCOC lease assistance.

A member asked if APS could do without one of those funding sources. Ms. Brunder said that it is important to keep in mind that the two percent of the SEG distribution payment to APS is to pay for administrative costs borne by the district as a result of the charter school being located in the school district. Ms. Brunder said that the school district is monitoring these funds much more closely as a result of an audit report issued by the Office of the State Auditor.

In response to a task force question about responsibility for insuring buildings, Ms. Brunder responded that it is the responsibility of APS. The member expressed concern that if a facility is not maintained properly by a charter school, the liability is assumed by APS. A member asked if any charter school within the APS boundary is eligible to enter into an MOU and partner with APS. Ms. Brunder replied in the affirmative but said that more points in the scoring criteria are awarded to charter schools that are chartered through APS than to state-chartered charter schools.

A member asked how APS has handled the numerous audit findings of years past and the way in which the district is able to reduce the number of audit findings for charter schools. Ms. Coleman responded that the latest financial audit for APS had approximately 10 findings for the school district and approximately two for each charter school, which she noted is an improvement over prior years when the number of findings exceeded 300. She added that the district uses the findings successfully to improve administrative processes.

Members commented that funding "cannibalization", limited resources and traditional school versus charter school competition will lead to financial problems driving policy decisions. This dynamic raises interesting questions that were recognized and articulated in the state auditor's report as "competition versus collaboration". Another member commented that charter schools serve public interests and that the children attending charter schools are a responsibility of the state. Approximately \$181 million is being spent on children attending charter schools across the state. It was noted that up to 30 percent of charter school students return to traditional public schools at APS annually.

Status Report: Broadband Deficiencies Correction Program (BDGP)

Ovidiu Viorica, broadband program manager, PSFA, presented a program status report. Mr. Viorica noted that the definition of "broadband" has changed as technology and demands on data throughput have changed. As recently as five years ago, broadband was defined as four megabits per second (Mbps), while today it is 25 Mbps. Mr. Viorica described telecommunications services, internal equipment and end-user device relationships and elaborated on the background of the federal E-rate program established 19 years ago and administered by the Federal Communications Commission. The E-rate program distributes approximately \$3.9 billion annually. Of this amount, approximately \$750 million is requested by public schools.

Mr. Viorica explained that PSFA dollars are used to match federal E-rate funds. In fiscal year (FY) 2016, the PSFA participated in approximately 60 projects, totaling \$25 million. In FY 2017, the PSFA participated in approximately 50 projects, totaling \$34 million. State funds amounted to approximately 10 percent of the cost, or \$2.5 million and \$3.4 million, respectively, in FY 2016 and FY 2017. A survey conducted by the PSFA in FY 2015 and FY 2016 showed that approximately 90 percent of schools were in need of fiber or equipment upgrades at a cost of approximately \$166 million.

Mr. Viorica testified that approximately 80 percent of schools are already connected to high-speed fiber-optic data connections, even though the costs vary considerably. Internet access costs have been falling steadily, but there are pockets in remote areas of the state where costs remain high, in part because long-term contract rates remain in effect. Mr. Viorica reported that hardware used in delivering internet access typically requires replacement every five years. He also reported that the PSFA is trying to fill the vacant BDCP project manager position but that it is difficult to find and attract qualified candidates because of a lack of resources in this highly competitive market.

Discussion of Legislation for Possible Task Force Endorsement

Ms. Ball presented draft bills for consideration by the task force with the following "202 tracking numbers" and brief descriptions:

1. .208826.1 — provides changes to the state standards-based capital outlay funding formula;
2. .208825.1 — requires the PED to use prior year enrollment data for determining state-district shares of SB 9 funds;
3. .208834.1 — extends the school bus replacement cycle;
4. .208827.1SA — requires county treasurers to distribute certain property tax revenues to charter schools; and
5. .208828.1SA — repeals statutory language requiring the PED to advise school districts regarding the use of capital outlay funding to purchase certain supplies.

Task force members discussed a number of issues related to the measure that would make changes to the public school capital outlay standards-based process statute (.208826.1). Senator Stewart explained that this measure passed during the 2017 regular legislative session but was vetoed by the governor. Senator Stewart added that the veto message indicated that the bill needed to be "vetted" by the PSCOOTF. In response to a question about the possible negative effects of the formula changes on both the Zuni Public School District and the *Zuni* lawsuit, Senator Stewart assured the task force that passage of the bill would not have a negative effect on either the school district or the lawsuit. Discussion included the issue of "have nots" in those districts with little or almost no taxable lands and the reduction in proceeds from the sale of supplemental severance tax bonds compared to "property tax rich" areas that allow for provision of more amenities beyond state standards.

Beginning the discussion on the proposed school bus replacement bill (.208834.1), Representative Roch pointed out that school buses that must travel on unpaved roads in isolated

rural areas wear out faster than buses that operate in more densely populated areas. Mr. Ortiz, transportation director, PED, and the secretary of public education's task force designee, explained that maintenance records are reviewed if a bus replacement request is made earlier than the typical 10-year replacement cycle. If regular maintenance has been performed and the bus still needs to be replaced, the school district is eligible for state bus replacement funds. However, he said, if maintenance is undocumented or proves to be insufficient according to standard industry practices, the school district may not be eligible for state replacement funds. Mr. Ortiz mentioned a possible issue with extending the maximum term that a bus can be used before retirement is the fact that current law stipulates that the school district's transportation contractor "owns" the school buses at the end of the term of the transportation contract or agreed upon useful life of the school bus.

Mr. Ortiz also noted two additional bills the PED requested for PSCOOTF endorsement consideration that were also requested last year. He said that the bill relating to property tax revenue distribution (.208827.1SA) clears up a "glitch" in responsibility for distribution of property tax revenues to charter schools based on SB 9 and HB 33 mill levies. The bill was introduced and amended in the 2017 regular session but did not pass.

Ms. Ball explained that the next bill (.208828.1) was not endorsed by the task force or introduced in the 2017 session. Mr. Ortiz explained that the PED was asking again for endorsement and a sponsor because the bill requires school districts and charter schools to submit proposed purchases with SB 9 funds to the PED for comment. He stressed that the PED has no authority over the way in which the school districts spend these funds and said that completing this task is time-consuming and is for information purposes only; therefore, the PED would like the requirement repealed.

In response to additional comments and discussion, Ms. Ball told the task force that she is working on two more bills for possible endorsement, one that would clarify ownership of charter school facilities under certain circumstances and one that may allow school districts to sell some abandoned school properties without a requirement for comparables. She noted that she was working with the National Conference of State Legislatures to examine relevant statutes in states that have them.

The task force did not endorse any of the proposed legislation so as to allow members time to review draft bills prior to possible endorsement motions to be made at the December 1, 2017 meeting.

Adjournment

There being no further business before the task force, the meeting adjourned at 3:28 p.m.

Revised: November 29, 2017

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

**December 1, 2017
State Capitol, Room 307
Santa Fe**

Friday, December 1

- 8:30 a.m. **Call to Order and Introductions**
—Representative Stephanie Garcia Richard, Chair
—Senator William P. Soules, Vice Chair
- 9:05 a.m. **Approval of October 20, 2017 Minutes**
- 9:10 a.m. (1) **[Consideration of Bills for Public School Capital Outlay Oversight Task Force Endorsement](#)**
—Public School Capital Outlay Oversight Task Force Members and Staff
- 11:00 a.m. **Adjourn**

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

**December 1, 2017
State Capitol, Room 307
Santa Fe**

The sixty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on December 1, 2017 at 8:48 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Stephanie Garcia Richard, Chair
Sen. William P. Soules, Vice Chair
Rep. Eliseo Lee Alcon, designee for Speaker
of the House of Representatives
Brian Egolf
Dr. Carl Foster
Sen. Stuart Ingle
Rep. Patricia A. Lundstrom
Antonio Ortiz, designee for Secretary of
Public Education
T.J. Parks
Mike Phipps
Rep. Dennis J. Roch
Secretary Duffy Rodriguez, Department of
Finance and Administration
Rep. G. Andrés Romero
Rep. James E. Smith
Sen. Mimi Stewart, designee for President
Pro Tempore Mary Kay Papen
Xochitl Torres-Small

Advisory Members

Sen. Gay G. Kernan
Sen. Howie C. Morales

Absent

Sen. Craig W. Brandt
Dr. Greg Ewing
Rep. Brian Egolf
Kirk Hartom
Sen. Mary Kay Papen
Richard A. Perea
Stan Rounds
Dr. Eugene Schmidt
Sen. Benny Shendo, Jr.
Sen. John Arthur Smith
Sen. Bill Tallman
Alan Webber

Rep. Harry Garcia
Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Sen. Cliff R. Pirtle
Sen. Sander Rue
Sen. Pat Woods

Minutes Approval

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

Staff

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

Sharon Ball, Researcher, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts are in the meeting file.

Friday, December 1

Welcome and Introductions

Representative Garcia Richard welcomed members and guests and asked members to introduce themselves.

Approval of Minutes

On a motion duly made and seconded, the minutes of the meeting of October 20, 2017 were approved with a correction to the attendance list to show that Representative Romero was in attendance.

Consideration of Bills for PSCOOTF Endorsement

Senator Stewart summarized the intent of the proposed legislation that she will sponsor again this year to change the formula for determining the ratio of state and local match percentages for capital outlay funding. The bill addresses inequities arising from the high cost of building in rural areas and the inability to build above adequacy standards in areas of the state that lack a sufficient tax base. She reported that the existing programs with the Public School Facilities Authority (PSFA) for new construction under the needs-based system and current adequacy standards, as well as the building systems program and the local match waiver program, will remain in place. Senator Stewart stated that the focus of the PSFA is now on the building systems program as a result of limited funding and the need to maintain the facilities that have been constructed over the past 15 years. The proposed legislation includes a mechanism for averaging a school district's land valuations over a five-year period to prevent dramatic fluctuations from one year to the next and is designed to adjust the formula for all districts. Changes to state and local match requirements would be phased in over a five-year period.

Members raised concerns for those school districts whose local match would increase significantly. Mr. Parks reported that his district has already tapped around 70 percent of its bonding capacity. He reported rapidly increasing enrollment and observed that, by the time the district has rebuilt its bonding capacity, the state match for the district will have largely disappeared under the proposed legislation. Senator Kernan agreed and pointed out that the southeastern part of the state has suffered the negative effects of extractive industries in that area to the benefit of the state as a whole. She remarked that the proposed legislation does not seem to fairly compensate the southeastern part of the state in that respect. Members discussed the impact of shrinking rural area school enrollment and how census and enrollment figures will factor into the new formula. It was noted that the proposed legislation does not represent a change for charter school rules.

In response to a member's question regarding where the savings from the proposed change to the funding formula will go, Representative Garcia Richard noted that the proposed legislation essentially shifts a funding burden from the state to local school districts rather than producing any savings. Senator Soules moved to endorse the proposed legislation, and the motion was seconded by Dr. Foster. The members voted to endorse the proposed legislation, with three members — Mr. Parks, Mr. Phipps and Senator Ingle — registering objections.

Representative Smith presented proposed legislation to amend the Public School Code to clarify final ownership of charter school facilities purchased under lease-purchase agreements by foundations established to secure facilities for those charter schools. The legislation further clarifies that a foundation is responsible for meeting adequacy standards in the facility in question until such time as the purchase is complete, at which time ownership accrues to the charter school itself. On a motion duly made and seconded, the task force voted without objection to endorse the proposed legislation.

Representative Roch provided an overview of proposed legislation to amend the Public School Capital Improvements Act to require that the Public Education Department (PED) use prior year data to determine distribution amounts to school districts for capital improvement projects. He reported that using prior year data will facilitate the budgeting process for school districts and improve accuracy in assessing and addressing district needs. On a motion duly made and seconded, the task force voted without objection to endorse the proposed legislation.

Representative Roch also presented proposed legislation to increase the length of the replacement cycle for school buses from 12 to 15 years. He reported that the proposed legislation adds a provision to replace buses regardless of their age once the odometer reading exceeds 300,000 miles. Representative Roch reported on the length of bus replacement cycles in neighboring states, noting that in some instances cycles are as long as 20 years. According to Representative Roch, bus safety has improved considerably since the 12-year replacement cycle was instituted in 1967. He observed that, for the past few years, funding from the Public School Capital Outlay Fund (PSCOF) has been used to purchase school buses and that savings realized under an extended replacement cycle would thus accrue to the PSCOF.

Representative Garcia Richard noted that many audience members were in attendance to comment on the school bus replacement cycle issue and requested that their testimony be heard prior to voting on endorsement of the proposed legislation. Billy Wyatt, Gallup-McKinley County School District, reported that the district's buses average 2.5 million miles a year, traveling over rough and unpaved roads that take a considerable toll on the vehicles. He stated that maintenance costs are very high on those buses at the end of 10 years in service, and at the end of a 12-year cycle, the district incurs more expenses in maintenance costs than it receives in state support to cover those expenses. John Laws, Aztec Municipal School District, reported that his district is working on a study regarding school bus maintenance costs and asserted that the state needs to subsidize those costs. He reported that covering these expenses already requires that the district take money out of funding that should go into classrooms.

Cristie Stuart, Boone Transportation, a contractor for the Gadsden Independent School District, voiced concerns about jeopardizing the safety of students by increasing the length of the school bus replacement cycle. She reported that, after 250,000 miles, school buses should be retired for safety reasons and problematic maintenance issues. Adam Greenwood, transportation manager, Albuquerque Public School District (APS), and former school bus inspector, PED, testified that, in his experience, school buses do not have a useful life of 12 years, particularly if traveling on dirt roads. He stated that reports detailing school bus inspections are available and can provide a look into the standards required for safety compliance. George Trujillo, also a school bus inspector for PED, stated that he inspects 200 to 400 buses each year, including those that are retired into "activity bus mode", which means that they can be used for up to 20 years, and elaborated on the serious safety and maintenance cost concerns he has for the use of those buses.

Royce Binns, senior director of transportation, APS, stated that he was previously employed for many years as a contractor for bus services. He asserted that the proposed bill should include funding to cover the increased maintenance costs resulting from a longer replacement cycle and cited the difficulty in meeting emissions standards established by the federal Environmental Protection Act as buses approach the end of the current 12-year cycle. Mr. Binns observed that, at the end of 12 years, many buses have problems related to transmission systems and frames, which are complicated and expensive systems to maintain or replace. He reported that APS currently has 60 buses at the end of the 12-year cycle that need replacement and that Type A buses are not addressed in the legislation. Type A buses will not last more than 12 years, according to Mr. Binns. He urged the task force to add funding for maintenance costs to the proposed legislation.

Glen Tillery, Tillery Bus Sales, stated that he shares the concerns already expressed by other audience members. He observed, however, that no one has yet mentioned the negative environmental impact of keeping the old buses on the road. He asserted that the diesel engines in the newest school buses are "infinitely" cleaner than those engines being considered for extension of service. Rose Blek, Follow the Sun transportation and touring company, stated that it is important to continue the 12-year cycle and noted that newer buses are more complex and require

more maintenance. She raised concerns for children's safety, including her own children, on school buses and stated that solid recordkeeping in the private sector over the past 16 years that she has worked in the transportation industry supports the need to maintain the 12-year cycle.

Lisa Montoya, assistant administrator, Los Alamos Public School District, reported that increasing the length of the school bus replacement cycle will take money from classrooms. She stated that the district already offsets bus maintenance costs at the rate of \$60,000 to \$80,000 annually from the district's classroom budget and that the district needs \$175,000 to meet current bus repair needs. Jesus Zavala, a School Transportation Division director for 22 years, observed that budget cuts have already taken a heavy toll on school district transportation and classroom budgets. With the extreme wear and tear on buses in rural areas, districts are struggling to meet maintenance needs. He noted that if a bus breaks down in one of these rural areas, children face long waits, and their safety may be compromised.

Representative Roch provided additional information on school bus safety and average mileage statistics collected at the national and regional levels, acknowledging that specific information regarding bus maintenance does not appear to be immediately available at the district or individual bus level for New Mexico. Members commented that it is important to ensure children's safety and to maintain local control over bus replacement and maintenance issues. It was noted that without sufficient data to assess the impact of the proposed replacement cycle change, school districts may well be subjected to a budgetary "double whammy" if the task force were to endorse this proposal on top of the funding formula change. In response to a member's question, Mr. Tillery reported that the cost of a new school bus is \$85,000 and that private bus operators pay gross receipts tax and are subject to a one-time federal excise tax when purchasing a vehicle but are not subject to state road taxes. Members discussed whether or not it is more cost-effective to purchase new vehicles than to continue to maintain older vehicles and concurred that more information is needed at the district and local levels to make that determination. Representative Roch indicated that he would ask the Legislative Education Study Committee (LESC) to compile information in that regard. Members deferred action on endorsing the proposed legislation.

Antonio Ortiz, designee for the secretary of public education, presented proposed legislation to require school districts to distribute certain shares of property tax revenues to charter schools and to require certification of the charter school shares in that regard. Members discussed whether or not this requires a statutory change, with some members stating that this should be accomplished administratively. Representative Smith agreed to sponsor the legislation, and, on a motion duly made and seconded, members voted without objection to endorse the proposed legislation. Mr. Ortiz also presented a proposal to repeal a requirement that the PED provide timely advice to charter schools on the validity of their proposed expenditures and reimbursement requests under both the Public School Capital Improvements Act and the Public School Buildings Act. The measure did not find sponsorship, and the task force deferred action on the proposal.

The chair noted that Ms. Ball, LCS researcher and drafter, plans to retire at the end of December 2017 after many years of service to the task force, the LESC, higher education and public education in New Mexico. Senator Stewart read a lengthy proclamation detailing Ms. Ball's many academic and professional achievements and accomplishments, observing that the proclamation will be published in the LESC newsletter. Ms. Ball received a standing ovation from task force members, audience and staff in recognition of her tremendous contributions to the task force and to educational development in the state.

Adjournment

There being no further business before the task force, the meeting was adjourned at 11:00 a.m.

ENDORSED LEGISLATION

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

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

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; CHANGING THE CAPITAL
OUTLAY FUNDING FORMULA FOR DETERMINATION OF STATE-LOCAL
MATCHES; ADDING DEFINITIONS.

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

SECTION 1. Section 22-24-3 NMSA 1978 (being Laws 1975,
Chapter 235, Section 3, as amended) is amended to read:

"22-24-3. DEFINITIONS.--As used in the Public School
Capital Outlay Act:

A. "authority" means the public school facilities
authority;

[A-] B. "building system" means a set of
interacting parts that makes up a single, nonportable or fixed
component of a facility and that, together with other building
systems, makes up an entire integrated facility or property,

underscored material = new
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1 including [~~but not limited to~~] roofing, electrical
2 distribution, electronic communication, plumbing, lighting,
3 mechanical, fire prevention, facility shell, interior finishes
4 and heating, ventilation and air conditioning systems, as
5 defined by the council;

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

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

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

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

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

24 H. "maximum allowable gross square foot per
25 student" means a determination made by applying the established

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1 maximum allowable square foot guidelines for educational
2 facilities based on type of school and number of students in
3 the current published New Mexico public school adequacy
4 planning guide to the department's current year certified first
5 reporting date membership;

6 I. "replacement cost per square foot" means the
7 statewide cost per square foot as established by the council;

8 ~~[G.]~~ J. "school district" includes state-chartered
9 charter schools and the constitutional special schools;

10 K. "school district population density" means the
11 population density on a per square mile basis of a school
12 district as estimated by the authority based on the most
13 current tract level population estimates published by the
14 United States census bureau; and

15 L. "school district population density factor"
16 means zero when the school district population density is
17 greater than fifty people per square mile, six-hundredths when
18 the school district population density is greater than fifteen
19 but less than fifty-one persons per square mile and twelve-
20 hundredths when the school district population density is less
21 than sixteen persons per square mile."

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

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

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underscored material = new
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1 A. Applications for grant assistance, approval of
2 applications, prioritization of projects and grant awards shall
3 be conducted pursuant to the provisions of this section.

4 B. Except as provided in Sections 22-24-4.3,
5 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
6 govern grant assistance from the fund for a public school
7 capital outlay project not wholly funded pursuant to Section
8 22-24-4.1 NMSA 1978:

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

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

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

18 (b) the council may award grants
19 annually to school districts for the purpose of repairing,
20 renovating or replacing public school building systems in
21 existing buildings as identified in Section [~~3 of this 2015~~
22 ~~act~~] 22-24-4.6 NMSA 1978;

23 (c) the council shall adopt and apply
24 adequacy standards appropriate to the unique needs of the
25 constitutional special schools; and

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underscored material = new
[bracketed material] = delete

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

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

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

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

16 (c) concepts that promote efficient but
17 flexible utilization of space; and

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

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

24 (5) ~~[except as provided in Paragraph (6), (8),~~
25 ~~(9) or (10) of this subsection, the state share of a project~~

.208826.1

underscored material = new
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1 ~~approved and ranked by the council shall be funded within~~
2 ~~available resources pursuant to the provisions of this~~
3 ~~paragraph] no later than May 1 of each calendar year, [a value]~~
4 the phase one formula shall be calculated for each school
5 district in accordance with the following procedure:

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

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

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

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

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

25 (f) the result calculated pursuant to

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

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

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

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

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

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

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

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

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

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

21 (p) except as provided in Section
22 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
23 Paragraph (6), [~~(8), (9) or~~] (10), (11) or (12) of this
24 subsection, the amount to be distributed from the fund for an
25 approved project shall equal the total project cost multiplied

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1 by a fraction the numerator of which is the value calculated
2 for the subject school district in the current year plus the
3 value calculated for that school district in each of the two
4 preceding years and the denominator of which is three; and

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

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

20 (a) the total of all legislative
21 appropriations made after January 1, 2003 for nonoperating
22 purposes either directly to the subject school district or to
23 another governmental entity for the purpose of passing the
24 money through directly to the subject school district, and not
25 rejected by the subject school district, is calculated;

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

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

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

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

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

24 (e) the amount calculated pursuant to
25 Subparagraph (p) of Paragraph (5) of this subsection shall be

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1 reduced by the amount calculated pursuant to Subparagraph (d)
2 of this paragraph;

3 (7) no later than May 1 of each calendar year,
4 the phase two formula shall be calculated for each school
5 district in accordance with the following procedure:

6 (a) the sum of the final prior five
7 years net taxable value for a school district multiplied by
8 nine ten thousandths for that school district is calculated for
9 each school district;

10 (b) the maximum allowable gross square
11 foot per student multiplied by the replacement cost per square
12 foot divided by forty-five is calculated for each school
13 district;

14 (c) the value calculated pursuant to
15 Subparagraph (a) of this paragraph divided by the value
16 calculated pursuant to Subparagraph (b) of this paragraph is
17 calculated for each school district;

18 (d) in those instances in which the
19 calculation pursuant to Subparagraph (c) of this paragraph
20 yields a value greater than one, the phase two formula value
21 shall be zero for the subject school district;

22 (e) in those instances in which the
23 calculation pursuant to Subparagraph (c) of this paragraph
24 yields a value greater than eighty-nine hundredths but less
25 than one, the phase two formula value shall be one minus the

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1 value calculated in Subparagraph (c) of this paragraph; and

2 (f) in those instances in which the
3 calculation pursuant to Subparagraph (c) of this paragraph
4 yields a value less than ninety-hundredths, the phase two
5 formula value shall be one minus the value calculated in
6 Subparagraph (c) of this paragraph plus the school district
7 population density factor;

8 (8) except as provided in Paragraph (6), (10),
9 (11) or (12) of this subsection, the state share of a project
10 approved by the council shall be funded within available
11 resources pursuant to the provisions of this paragraph. The
12 school district calculation for grant awards made in accordance
13 with this section shall be pursuant to the following procedure:

14 (a) for fiscal year 2020, the school
15 district calculation shall be the sum of eight-tenths
16 multiplied by the calculation in Paragraph (5) of this
17 subsection and two-tenths multiplied by the calculation in
18 Paragraph (7) of this subsection;

19 (b) for fiscal year 2021, the school
20 district calculation shall be the sum of six-tenths multiplied
21 by the calculation in Paragraph (5) of this subsection and
22 four-tenths multiplied by the calculation in Paragraph (7) of
23 this subsection;

24 (c) for fiscal year 2022, the school
25 district calculation shall be the sum of four-tenths multiplied

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1 by the calculation in Paragraph (5) of this subsection and six-
2 tenths multiplied by the calculation in Paragraph (7) of this
3 subsection;

4 (d) for fiscal year 2023, the school
5 district calculation shall be the sum of two-tenths multiplied
6 by the calculation in Paragraph (5) of this subsection and
7 eight-tenths multiplied by the calculation in Paragraph (7) of
8 this subsection; and

9 (e) for fiscal year 2024 and thereafter,
10 the school district calculation shall be the calculation
11 specified in Paragraph (7) of this subsection;

12 [~~(7)~~] (9) as used in this subsection:

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

15 (b) "subject school district" means the
16 school district that has submitted the application for funding
17 and in which the approved public school capital outlay project
18 will be located;

19 [~~(8)~~] (10) the amount calculated pursuant to
20 Subparagraph (p) of Paragraph (5) of this subsection, after any
21 reduction pursuant to Paragraph (6) of this subsection, may be
22 increased by an additional five percent if the council finds
23 that the subject school district has been exemplary in
24 implementing and maintaining a preventive maintenance program.
25 The council shall adopt such rules as are necessary to

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1 implement the provisions of this paragraph;

2 [~~(9)~~] (11) the council may adjust the amount
3 of local share otherwise required if it determines that a
4 school district has made a good-faith effort to use all of its
5 local resources. Before making any adjustment to the local
6 share, the council shall consider whether:

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

16 (b) the school district: 1) has fewer
17 than an average of eight hundred full-time-equivalent students
18 on the eightieth and one hundred twentieth days of the prior
19 school year; 2) has at least seventy percent of its students
20 eligible for free or reduced-fee lunch; 3) has a share of the
21 total project cost, as calculated pursuant to provisions of
22 this section, that would be greater than fifty percent; and 4)
23 for all educational purposes, has a residential property tax
24 rate of at least seven dollars (\$7.00) on each one thousand
25 dollars (\$1,000) of taxable value, as measured by the sum of

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

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

14 [~~(10)~~] (12) the local match for the
15 constitutional special schools shall be set at fifty percent
16 for projects that qualify under the educational adequacy
17 category and one hundred percent for projects that qualify in
18 the support spaces category; provided that the council may
19 adjust or waive the amount of any direct appropriation offset
20 to or local share required for the constitutional special
21 schools if an applicant constitutional special school has
22 insufficient or no local resources available; and

23 [~~(11)~~] (13) no application for grant
24 assistance from the fund shall be approved unless the council
25 determines that:

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1 (a) the public school capital outlay
2 project is needed and included in the school district's five-
3 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)~~] (10) or (11) of this subsection, is not funded
21 with grant assistance from the fund; provided that school
22 district funds used for a project that was initiated after
23 September 1, 2002 when the statewide adequacy standards were
24 adopted, but before September 1, 2004 when the standards were
25 first used as the basis for determining the state and school

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1 district share of a project, may be applied to the school
2 district portion required 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.

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

24 D. The acquisition of a facility by a school
25 district or charter school pursuant to a financing agreement

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1 that provides for lease payments with an option to purchase for
2 a price that is reduced according to lease payments made may be
3 considered a public school capital outlay project and eligible
4 for grant assistance under this section pursuant to the
5 following criteria:

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

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

16 (3) the total project cost shall equal the
17 total payments that would be due under the agreement if the
18 school district or charter school would eventually acquire
19 title to the facility;

20 (4) the portion of the total project cost to
21 be paid from the fund may be awarded as one grant, but
22 disbursements from the fund shall be made from time to time as
23 lease payments become due;

24 (5) the portion of the total project cost to
25 be paid by the school district or charter school may be paid

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1 from time to time as lease payments become due; and

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

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

12 (1) at the time of the initial use by the
13 school district, the facility to be purchased equaled or
14 exceeded the statewide adequacy standards and the building
15 standards for public school facilities;

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

22 (3) the school district and the capital outlay
23 project meet all of the requirements for grant assistance
24 pursuant to the Public School Capital Outlay Act; provided
25 that, when determining the deviation from the statewide

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1 adequacy standards for the purposes of evaluating and
2 prioritizing the project, the students using the facility shall
3 be deemed to be attending other schools in the school district.

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

12 G. Upon request, the council shall work with, and
13 provide assistance and information to, the public school
14 capital outlay oversight task force.

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

23 I. Upon the recommendation of the [~~public school~~
24 ~~facilities~~] authority, the council shall develop building
25 standards for public school facilities and shall promulgate

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1 other such rules as are necessary to carry out the provisions
2 of the Public School Capital Outlay Act.

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

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BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO
PROVIDE FOR OWNERSHIP OF CERTAIN CHARTER SCHOOL FACILITIES
UNDER CERTAIN CONDITIONS.

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

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

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

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

B. The facilities of a charter school whose charter
has been renewed at least once shall be evaluated, prioritized

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1 and eligible for grants pursuant to the Public School Capital
2 Outlay Act in the same manner as all other public schools in
3 the state; provided that for charter school facilities in
4 leased facilities, grants may be used to provide additional
5 lease payments for leasehold improvements made by the lessor.

6 C. On or after July 1, 2011, a new charter school
7 shall not open and an existing charter school shall not
8 relocate unless the facilities of the new or relocated charter
9 school, as measured by the New Mexico condition index, receive
10 a condition rating equal to or better than the average
11 condition for all New Mexico public schools for that year or
12 the charter school demonstrates, within eighteen months of
13 occupancy or relocation of the charter, the way in which the
14 facilities will achieve a rating equal to or better than the
15 average New Mexico condition index.

16 D. On or after July 1, 2015, a new charter school
17 shall not open and an existing charter shall not be renewed
18 unless the charter school:

19 (1) is housed in a building that is:

20 (a) owned by the charter school, the
21 school district, the state, an institution of the state,
22 another political subdivision of the state, the federal
23 government or one of its agencies or a tribal government; or

24 (b) subject to a lease-purchase
25 arrangement that has been entered into and approved pursuant to

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1 the Public School Lease Purchase Act; or

2 (2) if it is not housed in a building
3 described in Paragraph (1) of this subsection, demonstrates
4 that:

5 (a) the facility in which the charter
6 school is housed meets the statewide adequacy standards
7 developed pursuant to the Public School Capital Outlay Act,
8 ~~[and]~~ the owner of the facility is contractually obligated to
9 maintain those standards at no additional cost to the charter
10 school or the state and public buildings are not available or
11 adequate to meet the educational program needs of the charter
12 school; or

13 (b) ~~[either: 1) public buildings are~~
14 ~~not available or adequate for the educational program of the~~
15 ~~charter school; or 2)]~~ the facility in which the charter school
16 is housed meets the statewide adequacy standards developed
17 pursuant to the Public School Capital Outlay Act, the owner of
18 the facility is contractually obligated to maintain those
19 standards at no additional cost to the charter school or the
20 state and the owner of the facility is a nonprofit entity
21 specifically organized for the purpose of providing the
22 facility for the charter school; provided that a legal property
23 ownership document is executed and recorded that transfers
24 ownership of a facility that is being leased from a nonprofit
25 entity specifically organized for the purpose of providing the

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1 facility for the charter school to the nonprofit entity upon
2 final payment of the first mortgage by the nonprofit entity.

3 E. Without the approval of the public school
4 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
5 charter school shall not enter into a lease-purchase agreement.

6 F. The public school capital outlay council:

7 (1) shall determine whether facilities of a
8 charter school meet the educational occupancy standards
9 pursuant to the requirements of Subsection A of this section
10 or the requirements of Subsections B, C and D of this section,
11 as applicable; and

12 (2) upon a determination that specific
13 requirements are not appropriate or reasonable for a charter
14 school, may grant a variance from those requirements for that
15 charter school."

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

18 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
19 USE.--

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

23 B. Except as provided in Subsections G and I
24 through N of this section, money in the fund may be used only
25 for capital expenditures deemed necessary by the council for an

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1 adequate educational program.

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

20 D. Applications for assistance from the fund shall
21 be made by school districts to the council in accordance with
22 requirements of the council. Except as provided in Subsection
23 K of this section, the council shall require as a condition of
24 application that a school district have a current five-year
25 facilities plan, which shall include a current preventive

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1 maintenance plan to which the school adheres for each public
2 school in the school district.

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

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

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

20 (2) the council may authorize payments
21 directly to the contractor.

22 G. Balances in the fund may be annually
23 appropriated for the core administrative functions of the
24 public school facilities authority pursuant to the Public
25 School Capital Outlay Act, and, in addition, balances in the

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1 fund may be expended by the public school facilities authority,
2 upon approval of the council, for project management expenses;
3 provided that:

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

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

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

18 I. The fund may be expended annually by the council
19 for grants to school districts for the purpose of making lease
20 payments for classroom facilities, including facilities leased
21 by charter schools; provided that a charter school is in
22 compliance with Subsection D of Section 22-8B-4.2 NMSA 1978, as
23 determined by the council. The grants shall be made upon
24 application by the school districts and pursuant to rules
25 adopted by the council; provided that an application on behalf

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

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

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

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

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

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

25 (4) no grant shall be made for lease payments

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1 due pursuant to a financing agreement under which the
2 facilities may be purchased for a price that is reduced
3 according to the lease payments made unless:

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

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

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

18 (6) as used in this subsection:

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

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

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

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

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1 for repayments back to the fund if the initial payments exceed
2 the actual expenditures. Money distributed from the fund to
3 the state fire marshal or the construction industries division
4 pursuant to this subsection shall be used to supplement, rather
5 than supplant, appropriations to those entities.

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

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

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

21 (a) the school district has fewer than
22 an average of six hundred full-time-equivalent students on the
23 eightieth and one hundred twentieth days of the prior school
24 year; or

25 (b) the school district meets all of the

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

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

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

22 (2) there is no practical use for the
23 abandoned facility without the expenditure of substantial
24 renovation costs; and

25 (3) the council may enter into an agreement

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1 with the school district under which an amount equal to the
2 savings to the district in lower insurance premiums are used to
3 reimburse the fund fully or partially for the demolition costs
4 allocated to the district.

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

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

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO REQUIRE THE PUBLIC EDUCATION DEPARTMENT TO USE PRIOR YEAR DATA FOR DETERMINATION OF DISTRIBUTION AMOUNTS TO SCHOOL DISTRICTS.

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

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

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

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

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

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

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

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

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

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1 D. For purposes of calculating the distribution
2 pursuant to Subsection B of this section, the amount used in
3 Paragraph (1) of that subsection shall equal seventy dollars
4 (\$70.00) in fiscal year 2008 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 E. For purposes of calculating the minimum
11 distribution pursuant to Subsection C of this section, the
12 amount used in that subsection shall equal five dollars (\$5.00)
13 through fiscal year 2005 and in each subsequent fiscal year
14 shall equal the amount for the previous fiscal year adjusted by
15 the percentage increase between the next preceding calendar
16 year and the preceding calendar year of the consumer price
17 index for the United States, all items, as published by the
18 United States department of labor.

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

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

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

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

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

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

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

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

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

6 SECTION 2. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2018.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; REQUIRING SCHOOL DISTRICTS TO DISTRIBUTE CERTAIN SHARES OF PROPERTY TAX REVENUES TO CHARTER SCHOOLS; REQUIRING CERTIFICATION OF CHARTER SCHOOL SHARES OF CERTAIN PROPERTY TAX REVENUES TO SCHOOL DISTRICTS.

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

SECTION 1. Section 22-25-7 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

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

A. If as a result of an election held in accordance with the Public School Capital Improvements Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board requests by resolution that a

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1 rate be discontinued, by the department of finance and
2 administration at the rate specified in the resolution
3 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
4 required by operation of the rate limitation provisions of
5 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
6 resolution and be imposed at the rate certified in accordance
7 with the provisions of the Property Tax Code.

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

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

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1 school district shall be included. Each year, the department
2 shall certify to the county treasurer of the county in which
3 the eligible charter schools in the school district are located
4 and to each school district the percentage of the revenue to be
5 distributed to each charter school. The county treasurer shall
6 distribute the charter school's share of the property tax
7 revenue directly to the charter school. If a board of county
8 commissioners elects not to distribute the proceeds of a tax
9 due to a school district in the county, any amount distributed
10 by the secretary of finance and administration to a school
11 district that is due to a charter school shall be distributed
12 to the charter school by the school district."

13 SECTION 2. Section 22-26-9 NMSA 1978 (being Laws 2007,
14 Chapter 366, Section 23, as amended) is amended to read:

15 "22-26-9. CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY TAX
16 REVENUE.--If, in an election held after July 1, 2007, the
17 qualified electors of a school district have voted in favor of
18 the imposition of a property tax as provided in Section
19 22-26-3 NMSA 1978, the amount of tax revenue to be distributed
20 to each charter school that was included in the resolution
21 shall be determined each year and shall be in the same
22 proportion as the average full-time-equivalent enrollment of
23 the charter school on the first reporting date of the prior
24 school year is to the total such enrollment in the district;
25 provided that, in the case of an approved charter school that

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1 had not commenced classroom instruction in the prior school
2 year, the estimated full-time-equivalent enrollment in the
3 first year of instruction, as shown in the approved charter
4 school application, shall be used, subject to adjustment after
5 the first reporting date. Each year, the department shall
6 certify to the county treasurer of the county in which the
7 eligible charter schools in the school district are located and
8 to each school district the percentage of the revenue to be
9 distributed to each charter school. The county treasurer shall
10 distribute the charter school's share of the property tax
11 revenue directly to the charter school. If a board of county
12 commissioners elects not to distribute the proceeds of a tax
13 due to a school district in the county, any amount distributed
14 by the secretary of finance and administration to a school
15 district that is due to a charter school shall be distributed
16 to the charter school by the school district."



LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO