



NEW MEXICO LEGISLATURE

**PUBLIC SCHOOL  
CAPITAL OUTLAY  
OVERSIGHT TASK  
FORCE**

2018 INTERIM FINAL REPORT

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## INTERIM SUMMARY



## **Public School Capital Outlay Oversight Task Force 2018 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 2018, meetings were held in Santa Fe at the State Capitol on June 13, August 28, September 21, October 16 and November 26 with Representative Stephanie Garcia Richard as chair and Senator William P. Soules as vice chair.

During the June 13, 2018 organizational meeting, task force members proposed a work plan for the 2018 interim for approval by the New Mexico Legislative Council. An update of the 2018 Public School Capital Outlay Fund awards cycle and ranking methodology was presented by David Abbey, director, Legislative Finance Committee, and chair, Public School Capital Outlay Council (PSCOC), and Jonathan Chamblin, director, Public School Facilities Authority (PSFA). Mr. Abbey noted a \$42 million increase in available funding in fiscal year (FY) 2018 due to strong oil and natural gas revenue receipts in the Severance Tax Bonding Fund. Mr. Abbey said that FY 2019 severance tax bond receipts could also increase substantially.

Mr. Chamblin gave a presentation on the early progress of the PSFA on the new public school security initiative. While program development is in the early stages, the outcome of the process will be a set of deliverables including a security guidelines document, a security program with a set of processes for application, awards to school districts and an update of the statewide adequacy standards. Mr. Chamblin described a variety of security projects that may be developed.

Members of the public, including school safety advocates and students, presented to the task force and described their personal experiences and those of their friends with regard to threats of violence while in school. In response to questions from task force members about the best ways to help students and teachers, the panelists emphasized the importance of providing students with a platform to share concerns.

At its August 28, 2018 meeting, the task force received an update on the 2018 application cycle for the PSCOC, a follow-up progress report on the school security initiative and a presentation on pre-kindergarten (pre-K) classroom needs. Denise Irion, chief financial officer, PSFA, reviewed the PSCOC financial plan expenditures, including standards-based awards, awards for security projects, lease payment assistance, master plan assistance, broadband deficiencies correction, pre-K classroom awards and the PSFA operating budget.

Mr. Chamblin reported that the PSFA held school security workshops around the state that included presentations from security experts such as public safety agencies and local first responders. When surveyed on their top five security concerns, workshop participants identified active shooters; student mental health; bullying; security weaknesses that would allow campus access to unauthorized persons; and domestic disputes of students' parents occurring on campus. Mr. Chamblin reported that the security measures that some school districts have already

implemented include security camera and key card access systems; bulletproof windows; and gunshot detection systems.

Mr. Chamblin delivered a presentation on pre-K spaces in schools. He reported that pursuant to the Pre-Kindergarten Act, funding for pre-K programs is split equally between the Public Education Department (PED) and the Children, Youth and Families Department (CYFD), both of which administer pre-K programs. Since 2007, \$23 million has been awarded to build or renovate PED pre-K classrooms, many of which are housed in elementary school facilities. The CYFD, on the other hand, uses funding to pay private providers for pre-K services. The PSFA is currently assessing pre-K facilities to determine functional minimums for pre-K programs that need space not only for classrooms but also for playgrounds, secure entries and parent parking areas.

At its meeting on September 21, 2018, the PSCOOTF received a progress report on school facilities maintenance presented by Larry Tillotson, maintenance and operations support manager, PSFA. Mr. Tillotson described the early years of the program and reported that the Facility Maintenance Assessment Report process developed by the PSFA has successfully moved school districts toward better maintenance practices across the state.

A *Zuni* lawsuit update was presented by Joshua Granata, Esq., assistant attorney general, Office of the Attorney General (OAG). Mr. Granata reported that the OAG has filed a motion for partial dismissal of the lawsuit on the basis that the Grants-Cibola County School District has not been an active party to the lawsuit. He testified that the court has ruled that some of the individual plaintiffs who were students no longer have standing in the lawsuit since they are no longer students, but other student plaintiffs have been ruled to still have standing. Procedurally, Mr. Granata reported that the next steps are to finish the trial set for May 13, 2019, submit findings of fact and pursue the appeals process as necessary. Mr. Granata stated that there is no resolution in sight and that these steps are likely to be lengthy, with appeals from both sides.

Matthew Pahl, executive director, New Mexico Coalition for Charter Schools, gave a presentation on long-term charter school facility solutions. Mr. Pahl provided a history of charter school facilities, and he observed that larger school districts, including the Albuquerque Public School District and the Las Cruces Public School District, have begun to invest in long-term facilities and facility renovations for charter schools in exchange for state equalization guarantee or lease-assistance funds. Task force members discussed issues affecting co-location of charter schools with public schools and the potential to provide incentives for counties or other political subdivisions of the state to serve as fiscal agents for charter school loans from the New Mexico Finance Authority. Mr. Pahl concluded his presentation by suggesting the creation of a revolving loan fund to help charter schools meet their facilities needs and enhancement of charter school access to local mill levy bonds.

At its October 16, 2018 meeting, the task force heard an update on PSFA security awards and pre-K awards. Mr. Chamblin reported that of the 47 applicant districts for security awards, 46 received awards for 222 school campuses at an average awarded total project cost of \$144,947 per campus.

Mr. Chamblin testified that the PSFA had begun administering pre-K classroom construction projects that had, in the past, been administered by the PED. Members raised concerns about the sufficiency of the funding currently available (\$5 million), and Mr. Chamblin reported that the PSFA is working with the PED, the Legislative Finance Committee and the Legislative Education Study Committee to assess statewide needs in that regard.

PSFA staff made presentations covering topics such as charter school facility assessment processes and procedures; the powers and duties of the PED and the PSFA as they relate to charter school facilities and charter school facility leases; the use of standardized leases; and an update on the changes to statewide adequacy standards.

On November 26, the task force considered two pieces of draft legislation for task force endorsement, as follows.

.211710.2 — Provides for ownership of certain charter school facilities pursuant to lease-purchase agreements. The bill was endorsed by the 2017 task force and failed to pass during the 2018 legislative session. The task force endorsed the bill without objection.

.211699.2 — Includes provisions to allow for expenditures from the Public School Capital Outlay Fund for pre-K capital projects and for changing the formula of maximum annual operational expenditures of the PSFA. A member moved to strike the provisions related to funding for pre-K capital projects. The motion was seconded, and the motion to revise the bill was approved without objection. A member moved to endorse the proposed legislation as revised. The motion was seconded and passed, with two task force members objecting.



## WORK PLAN AND MEETING SCHEDULE



**2018 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**Members**

Rep. Stephanie Garcia Richard, Chair	Richard A. Perea
Sen. William P. Soules, Vice Chair	Mike Phipps
Sen. Craig W. Brandt	Rep. Dennis J. Roch
Martha "Marty" Braniff	Rep. Debbie A. Rodella
Rep. Brian Egolf	Sec. Duffy Rodriguez
Greg Ewing	Rep. G. Andrés Romero
Carl Foster	Stan Rounds
Kirk Hartom	Eugene Schmidt
Sen. Stuart Ingle	Sen. Benny Shendo, Jr.
Rep. Patricia A. Lundstrom	Sen. John Arthur Smith
Antonio Ortiz	Harry Teague
Sen. Mary Kay Papen	Minority Party House Member (Vacant)
T.J. Parks	

**Advisory Members**

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

**Background**

Created in statute in 2005 (Sections 22-24-7 and 22-24-8 NMSA 1978), the Public School Capital Outlay Oversight Task Force (PSCOOTF) oversees the work of the Public School Capital Outlay Council (PSCOC) and the Public School Facilities Authority (PSFA) as they carry out the state's public school capital outlay program and other programs pursuant to the Public School Capital Outlay Act (PSCOA). Task force membership consists of 25 members (or their respective designees), with both legislative and public members determined by statute.

**Work Plan**

The task force will address the following statutory requirements during the 2018 interim:

1. monitor the progress and effectiveness of programs administered pursuant to the PSCOA (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. monitor public school facility conditions and revenue streams and their long-term adequacy for public school capital projects;

3. monitor the overall progress of bringing all public school facilities up to the statewide adequacy standards developed pursuant to provisions in the PSCOA; and
4. 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 2018 interim and make recommendations for appropriate legislation:

5. review the PSCOC's and PSFA's progress in the development and implementation of a school security project grant program initiative pursuant to Section 22-24-4.7 NMSA 1978;
6. review implementation of pre-kindergarten programs and capital outlay funding needs;
7. evaluate the inclusion of teacherages in the standards-based process;
8. evaluate the successes, challenges and opportunities for improvement of the "systems" awards process;
9. review changes to the standards-based awards weight and ranking methodology;
10. review changes to the state-local match funding formula;
11. evaluate the progress of the Broadband Deficiencies Correction Program and discuss areas of the state still in need of information technology infrastructure improvement; and
12. examine issues relating to charter school facilities, including:
  - A. location or relocation of charter schools into existing school and public facilities — opportunities and obstacles;
  - B. pros and cons of requiring the use of standardized leases;
  - C. lease-with-option-to-purchase agreements — when to use them, best practices and lessons learned; and
  - D. governance of charter school foundations and facility/property ownership issues.

**Public School Capital Outlay Oversight Task Force  
2018 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 13	Santa Fe
August 28	Santa Fe
September 21	Santa Fe
October 16	Santa Fe
November 26	Santa Fe



# AGENDAS AND MINUTES



Revised: June 11, 2018

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

**June 13, 2018  
State Capitol, Room 307  
Santa Fe**

**Wednesday, June 13**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Stephanie Garcia Richard, Chair  
—Senator William P. Soules, Vice Chair
- 9:10 a.m.       (1)   **[Brief Review: Public School Capital Outlay Oversight Task Force \(PSCOOTF\) 2017 Interim and 2018 Session](#)**  
—Jeff Eaton, Research and Fiscal Policy Analyst, Legislative Council Service, PSCOOTF Staff
- 9:30 a.m.       (2)   **[Public School Capital Outlay Council \(PSCOC\) and Public School Facilities Authority \(PSFA\): Update of 2018 Awards Cycle and Ranking Methodology](#)**  
—David Abbey, Director, Legislative Finance Committee; Chair, PSCOC  
—Jonathan Chamblin, Director, PSFA
- 10:15 a.m.       (3)   **[PSCOC Public School Security Initiatives — Status Report](#)**  
—Jonathan Chamblin, Director, PSFA
- 11:00 a.m.       (4)   **[School Security Presentation](#)**  
—Julianna Koob, Legislative Advocate, Moms Demand Action  
—Miranda Viscoli, New Mexicans to Prevent Gun Violence  
—Student Guests
- 11:45 a.m.       (5)   **[Proposed 2018 Interim Work Plan and Meeting Schedule](#)**  
—PSCOOTF Members and Staff
- 12:00 noon       **Adjourn**



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

**June 13, 2018  
State Capitol, Room 307  
Santa Fe**

The sixty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on June 13, 2018 at 9:40 a.m. in Room 307 at the State Capitol in Santa Fe.

**Present**

Rep. Stephanie Garcia Richard, Chair  
Greg Ewing  
Dr. Carl Foster  
Sen. Stuart Ingle  
Sen. Mary Kay Papen  
Richard A. Perea  
Rep. Debbie A. Rodella  
Secretary Duffy Rodriguez, Department of  
Finance and Administration  
Eugene Schmidt  
Sen. John Arthur Smith

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. Harry Garcia  
Sen. Howie C. Morales  
Sen. Mimi Stewart

**Guest Legislators**

Sen. Ron Griggs  
Rep. Tim D. Lewis  
Rep. Linda M. Trujillo

**Absent**

Sen. William P. Soules, Vice Chair  
Sen. Craig W. Brandt  
Martha "Marty" Braniff  
Rep. Brian Egolf  
Kirk Hartom  
Rep. Patricia A. Lundstrom  
Antonio Ortiz  
T.J. Parks  
Mike Phipps  
Rep. Dennis J. Roch  
Rep. G. Andrés Romero  
Stan Rounds  
Sen. Benny Shendo, Jr.  
Harry Teague

Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Pat Woods

## **Staff**

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

Jeff Eaton, Research and Fiscal Policy Analyst, LCS

Rebecca Griego, Staff, LCS

## **Guests**

The guest list is in the meeting file.

## **Handouts**

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

## **Wednesday, June 13**

### **Welcome and Introductions**

Representative Garcia Richard welcomed task force members and asked members and staff to introduce themselves.

### **Brief Review: PSCOOTF 2017 Interim and 2018 Session**

Mr. Eaton presented a brief history of the *Zuni* lawsuit, the establishment of the task force and the creation of the standards-based awards process and the Public School Facilities Authority (PSFA). Mr. Eaton presented highlights of the 2018 legislative session and PSCOOTF-endorsed bills, some of which were passed and signed into law and others that had action postponed indefinitely, as follows.

- Senate Bill 30, "CHANGE CAPITAL OUTLAY FUNDING FORMULA" (Chapter 66), as amended, co-sponsored by Senator Stewart and Representative Roch, changes the state-local match formula that is used to calculate the amounts contributed by the state and by school districts for standards-based public school capital outlay projects.
- House Bill 41, "CHARTER SCHOOL FACILITY OWNERSHIP", co-sponsored by Representative James E. Smith and Senator Ivey-Soto, proposed to clarify ownership of charter school facilities under lease-purchase agreements; the bill passed the house of representatives but did not pass the senate prior to adjournment.
- House Bill 48, "PRIOR YEAR DATA FOR SCHOOL DISTRIBUTIONS" (Chapter 38), sponsored by Representative Roch, requires the Public Education Department to use property valuation data from the previous year in calculating the amount of funding distributed to a school district whose taxpayers have approved a property tax for public school capital improvements through the program established by the Public School Capital Improvements Act. The change will reportedly improve the timeliness of those distributions to school districts.

## **Public School Capital Outlay Council (PSCOC) and PSFA: Update of the 2018 Awards Cycle and Ranking Methodology**

David Abbey, director, Legislative Finance Committee, and chair, PSCOC; and Jonathan Chamblin, director, PSFA, presented the PSCOC financial plan and past awards, and they also discussed potential project awards.

Mr. Abbey presented highlights in the financial plan. He noted a \$42 million increase in available funding due to strong oil and natural gas revenue receipts in the Severance Tax Bonding Fund, and he said that fiscal year (FY) 2019 receipts could also increase substantially. In contrast, Mr. Abbey said that only \$24.2 million was awarded during the 2017-2018 awards cycle. Mr. Abbey noted that the *Zuni* lawsuit is still open and that the school districts can still sue the state, but currently, there appears to be no activity toward doing so at this time. Mr. Abbey noted recent legislation appropriating \$5 million in funding from the Public School Capital Outlay Fund for pre-kindergarten, and he reported that approximately \$6 million in applications were submitted. Mr. Abbey concluded his remarks by saying that the PSFA is redoubling its efforts in reviewing charter school lease assistance grant applications to ensure compliance by charter schools with legal and regulatory requirements.

Denise Irion, chief financial officer, PSFA, presented a project award spreadsheet and described some specific projects in progress.

A task force member expressed concern that the legislature appropriated \$16 million for school security projects for expenditure in FY 2019, but the financial plan presented shows only \$10 million allocated. Another member was concerned that over a period of years, the state is going to spend \$50 million on school security, and the task member asked what the PSCOC and the PSFA are doing to make sure that the money is spent on effective systems. Mr. Chamblin responded that the PSFA is doing extensive research at both local and national levels to ensure that the types of security measures planned for school project awards maximize effectiveness and minimize cost.

A member noted that the financial plan emergency reserve for contingencies is only \$1 million and does not seem to be enough to cover project cost inflation and other contingencies. Ms. Irion responded by saying that the PSFA believes construction costs are going to be increasing, and it has discussed increasing the contingency reserve amount.

## **Public School Security Initiatives — Status Report**

Mr. Chamblin gave a presentation on the early-stage progress of the PSFA on the public school security initiative. Mr. Chamblin reviewed program objectives and the process of collecting information, including conducting workshops throughout the state, and he invited school staff members, parent-teacher organizations and local police and sheriff's offices to attend. The PSFA used a survey instrument to gauge school districts' preference of security features and other concerns at the local level. The outcome of this process, Mr. Chamblin said, will be a set of deliverables that include a security guidelines document (completed), a security program set of

processes for application and award (in development) and an update in the statewide adequacy standards (in development). Mr. Chamblin noted that many school districts are already partnering with local law enforcement to "walk" the school site and become familiar with the school from a security standpoint. Mr. Chamblin described a variety of security projects that may be formed, depending on the specific school security improvements needed. Security layers and priorities include the site, the building exterior and the building interior. Mr. Chamblin continued by showing examples of the types of security that could be used in each of the three priority areas to improve school security. The schedule of implementation is as follows: application/assessment period (June-July); site visits (August); receipt of final applications (September); application scoring (September-October); and project awards (October).

A task force member asked what the number and cost of the proposed applications are expected to be. Mr. Chamblin replied that the PSFA is not certain, but given the interest in the initiative, it could encompass several hundred different school sites.

A member noted that slide 12 of the handout included fencing, which is already a requirement. Mr. Chamblin acknowledged that fencing at schools is typically required, but some school sites need improvement by limiting ingress and egress points and, in some cases, providing locking gates and security checkpoints at the school's perimeter.

A task member asked about windows and how they can be secured. Mr. Chamblin explained that windows can be fortified for intruder resistance with various tempered and shatter-resistant glass. He noted, however, that the entire door and window system, including the frame, needs to be fortified. The weak point of a window or door is typically at the frame, he said. Experience has demonstrated that window and door failures typically occur where the window glass meets the frame. Not fortifying the frame causes the glass to fail and fall out of the frame. Mr. Chamblin added that other window treatments can increase security through the application of decals and stickers that limit visibility. In other considerations, a window can be modified for easy egress so that students can quickly exit through the window if necessary to avoid a threat inside the building.

Task force members discussed whether the funding appropriated by the legislature is sufficient for all needs and further analysis by using site visits rather than a survey instrument. Two members asked that an effort be made to ensure that all 33 county sheriff's offices are invited to workshops on the subject. Mr. Chamblin said he believes that all local sheriff's offices were sent emails inviting them to their respective local workshops, but he would follow up with the members by providing a list of law enforcement departments that were contacted. Mr. Chamblin commented that many school districts are pleased to know that free security training is available. He also noted that the school districts' staff often mention that licensed health care providers and school counselors are not free, and there may be a gap in funding for in-school mental health providers. A member commented on this issue and said that a school counselor can have a caseload of 700 people, and he believes additional mental health counseling funding is needed in schools. Another member commented that the award funding made available by the

legislature is the "state match" funding and that school districts are required under the current law to provide a local match in the same way as standards-based project awards. Mr. Chamblin acknowledged this and added that the \$6 million appropriation provided in House Bill 306 (2018) (Chapter 80) for school security has fewer strings attached. Representative Garcia Richard thanked Mr. Chamblin for the presentation and thanked staff for working hard to move the process forward.

### **School Security Presentation**

Julianna Koob, legislative advocate, Moms Demand Action, and Miranda Viscoli, New Mexicans to Prevent Gun Violence, introduced themselves and three student presenters. Each student addressed the task force. They described their personal experiences and those of their friends of threats of violence against them. They described cases of violence, including one that ended in the death of a student, and the problem of suicide. One of the students said that approximately one of every two homes in New Mexico has a firearm. The students stressed that it is important to address the issue of school violence with timely intervention and prevention by mental health providers at the schools. Ms. Koob provided a handout to the task force on child access prevention laws that have been adopted in 12 states.

Ms. Viscoli provided a handout to the task force of red flag laws implemented in five states. Red flag laws empower law enforcement and immediate family members to petition a court for an extreme risk protection order that temporarily prohibits a person from purchasing or possessing guns while the order is in effect. The task force thanked the presenters for their information and their courage. A member asked what the legislators and teachers can do to help the students. Panelists replied that making students feel listened to by providing them a voice and a platform to share concerns is an important and effective way to help them.

### **Proposed 2018 Interim Work Plan and Meeting Schedule**

Mr. Eaton discussed the PSCOOTF's interim work plan and meeting schedule. A date in September was moved at the request of a member due to a scheduling conflict. At the request of a member, an item on disposing of unused school property was added to the interim work plan. A task force member then moved to approve the amended work plan and meeting schedule, and the motion passed unanimously.

### **Adjournment**

There being no further business to come before the task force, the meeting adjourned at 12:04 p.m.



Revised: August 22, 2018

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

**August 28, 2018  
State Capitol, Room 307  
Santa Fe**

**Tuesday, August 28**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Stephanie Garcia Richard, Chair  
—Senator William P. Soules, Vice Chair
- 9:10 a.m.       (1)   **[Public School Capital Outlay Oversight Task Force \(PSCOOTF\) 2018 Resource Document](#)**  
—Jeff Eaton, PSCOOTF Staff
- 9:30 a.m.       (2)   **[Public School Capital Outlay Council \(PSCOC\) Financial Plan](#)**  
—Denise Irion, Chief Financial Officer, Public School Facilities Authority (PSFA)
- 9:45 a.m.       (3)   **[PSCOC Public School Security — Status Report](#)**  
—Jonathan Chamblin, Director, PSFA
- 11:00 a.m.       (4)   **[School Insurance](#)**  
—Sammy Quintana, Executive Director, Public School Insurance Authority (PSIA)  
—Ernestine Chavez, Deputy Director, PSIA  
—James Vautier, Senior Manager, Risk Services Safety and Security, Poms and Associates
- 12:00 noon       **Lunch**
- 1:00 p.m.       (5)   **[Decommissioning and Disposal of Schools](#)**  
—Martica Casias, Deputy Director, PSFA
- 2:00 p.m.       (6)   **[Pre-Kindergarten Status Report and Capital Outlay Funding Needs](#)**  
—Jonathan Chamblin, Director, PSFA

3:00 p.m. (7) [Broadband Deficiencies Correction — Progress Report and Remaining Needs](#)  
—Ovidiu Viorica, Senior Technology Projects Manager, PSFA

4:00 p.m. **Adjourn**

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

**August 28, 2018**  
**State Capitol, Room 307**  
**Santa Fe**

The sixty-sixth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on August 28, 2018 at 9:10 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Stephanie Garcia Richard, Chair  
Sen. Craig W. Brandt  
Martha "Marty" Braniff  
Greg Ewing  
Carl Foster  
Rep. Harry Garcia, designee for Rep. Brian Egolf  
Sen. Stuart Ingle  
Rep. Rick Little  
Rep. Patricia A. Lundstrom  
Antonio Ortiz, designee for the Secretary of Public Education  
Sen. Mary Kay Papen  
T.J. Parks  
Richard A. Perea  
Rep. Dennis J. Roch  
Debbie Romero, designee for the Secretary of Finance and Administration  
Stan Rounds  
Eugene Schmidt  
Sen. Benny Shendo, Jr.  
Sen. John Arthur Smith  
Harry Teague

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Gay G. Kernan  
Sen. Mimi Stewart  
Sen. Bill Tallman

**Absent**

Sen. William P. Soules, Vice Chair  
Rep. Brian Egolf  
Kirk Hartom  
Mike Phipps  
Rep. Debbie A. Rodella  
Rep. G. Andrés Romero

Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Sen. Howie C. Morales  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Pat Woods

**Staff**

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

Jeff Eaton, Fiscal Analyst, LCS

Kathleen Dexter, Researcher, LCS

Rebecca Griego, Records Officer, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of handouts are in the meeting file.

**Tuesday, August 28****PSCOOTF 2018 Resource Document**

Mr. Eaton presented the 2018 edition of the task force's resource book. The book includes information on public school funding and on the *Zuni* lawsuit that challenged that funding; background information on the task force; information on funding sources and formulas for capital outlay distribution to schools, including school facility condition rankings; a primer on public school capital outlay funding; property tax information for tax year 2017; and a summary of the task force's work during the 2017 interim.

In discussion, task force members noted that the funding formula was recently revised to place more responsibility on local governments and that this change will go into effect next year.

Task force members had questions on current litigation concerning public school funding. Mr. Burciaga offered to provide updated information on the issue. (Note: Following the meeting and after discussion with the chair, a presentation on the status of the litigation was scheduled for inclusion on the agenda for the next PSCOOTF meeting.)

**Public School Capital Outlay Council (PSCOC) Financial Plan**

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), and Jonathan Chamblin, director, PSFA, presented the PSCOC financial plan for fiscal year (FY) 2019 through FY 2023.

Ms. Irion opened the presentation with the announcement that at its meeting in June, the PSCOC awarded \$16.5 million to public school projects around the state. Included in that total is \$5 million for pre-kindergarten (pre-K) projects.

In June, the PSCOC approved the issuance of nearly \$107 million in supplemental severance tax bonds. The proceeds of the bond sale were allocated to the Instructional Material Fund, the Public Education Department (PED) transportation distribution, funding through the Public School Capital Improvements Act, referred to as the "SB 9 program", and capital project

awards made from the Public School Capital Outlay Fund. Expenditures from the Public School Capital Outlay Fund for FY 2019 include awards for security projects, lease payment assistance, master plan assistance, broadband deficiencies correction, pre-K classrooms, project inspections and PSFA operations. Ten million dollars was also set aside as an emergency reserve for contingencies, an increase of \$9 million over previous years that the PSCOC plans to continue through FY 2023. Ms. Irion noted that all expense totals presented for FY 2019 on the financial plan summary document, other than the emergency reserve for contingencies, will be adjusted, most likely upward, later in the year.

In regard to the broadband deficiencies correction program, Ms. Irion cautioned that the state match required in the federal E-Rate Program may increase in the next few months. The state match for that program is currently 10 percent.

Based on applications it has received, the PSCOC plans to award \$45.8 million in the third quarter of calendar year 2018 for design and systems projects. Awards planned for the remaining quarter of 2018 and subsequent years total \$34.4 million.

The PSCOC's ending fund balance for FY 2018 is just over \$42 million, Ms. Irion said. The council estimates that its ending balance for FY 2019 will be nearly \$78 million.

On questioning, task force members and the presenters, who were joined by David Abbey, director, Legislative Finance Committee (LFC), and Martica Casias, deputy director, PSFA, addressed the following topics.

***Transportation distribution and school bus replacements.*** The \$2.5 million allocated to the transportation distribution in FY 2019 is for operational expenses; this amount was requested by the PED. The \$25 million that was allocated to school bus replacements in 2017 came from "sponge bonds", which, according to an attorney general opinion, are considered cash and may be used for operational as well as capital costs. The state's recent bond rating downgrade has not significantly added to the cost of sponge bonds because they are issued for only a few days.

The November 2018 general election ballot will include a \$6 million general obligation bond question to replace district-owned school buses. Statute requires that buses be replaced every 12 years; the state is two to three years behind schedule on these replacements. No money was allocated in the General Appropriation Act of 2018 for bus replacements. The PED will submit an application through the Department of Environment for \$6 million in bus replacement funding from the Volkswagen Settlement Agreement.

***Offsets.*** Security projects funded through Senate Bill 239 (2018) are subject to offsets, but projects funded through House Bill 306 (2018) are not.

***SB 9 awards.*** SB 9 awards for FY 2019 will be calculated using the new funding formula.

**Lease payment assistance.** Funding for lease payment assistance is based on eligible square footage in a leased facility, and calculations are set by statute. In the past, charter schools assessed their eligible square footage, but the PSFA has recently conducted its own assessments. Funding is based on the lesser amount calculated using either square footage or school membership, known as "MEM". Changes in the Consumer Price Index are also factored in. The current average lease payment assistance amount is \$10.46 per square foot; the state pays, on average, between \$18.00 and \$20.00 per square foot to lease office space for state agencies.

Alternative off-site spaces and on-site multipurpose spaces that are used for elementary charter school physical education are not included in the lease assistance payment calculation.

**Holloman Elementary School project.** The PSFA met with the federal Department of Defense regarding possible federal funding for improvements under way at Holloman Elementary School to accommodate increased enrollment anticipated at the school with the arrival of a new F-16 squadron at Holloman Air Force Base.

**Project ranking, right-sizing and bids.** The PSFA uses a five-year projected enrollment estimate when ranking projects. Some schools that received a high ranking in the past have since lost a significant portion of their enrollment; their districts need to consider consolidation as a way to right-size their school facilities in the face of enrollment fluctuations.

The number of bidders on higher education projects has decreased because there is a lot of construction work in the state at the moment. Some of these projects have been reconfigured, as higher bids have been submitted from fewer bidders.

**Demolition.** Demolition is an eligible expense pursuant to the Public School Capital Outlay Act.

**PSFA operations.** The PSFA financial plan shows a drop in PSFA operational funding due to attrition. Two positions are currently vacant at the PSFA.

**Facility Condition Index.** Since the *Zuni* lawsuit was filed, the state has spent over \$2 billion to improve school facilities, which has reduced the average weighted New Mexico Facility Condition Index rating from more than 60 percent to approximately 35 percent.

**Local governments.** A member spoke in favor of increasing local government responsibility for projects because the state covers operational costs.

- Ms. Irion will provide information on the potential increase in the state match requirement in the federal E-Rate Program.
- Mr. Chamblin will provide information on:
  - (1) the Gadsden Independent School District systems award from last year; and
  - (2) the number of bidders on the Gallup Thoreau project.

## **Public School Security**

Mr. Chamblin provided a status report on public school security assessments that the PSFA is conducting in school districts statewide in preparation for security improvements.

The PSFA held workshops around the state earlier this year to assess school district concerns about security. Workshops included presentations from security experts such as public safety agencies and local first responders. When surveyed on their top five security concerns, workshop participants cited active shooters, student mental health, bullying, unauthorized access and domestic disputes over custody issues. Lack of funding for security improvements was cited as the most significant barrier that districts face, and for many districts, increased crisis training for staff topped the list of security measures they would implement if resources were available. Security measures that school districts have already implemented range from security camera and key card access systems, which are in use in many school districts, to bulletproof windows and gunshot detection systems, which are installed in only a few schools.

Following the workshops, the PSFA posted on its website a security guidelines document that school districts can use as they apply for security funding through the PSCOC. Forty-seven districts have since applied for funding on projects at 288 school campuses around the state. The PSFA assessed all applicant campuses in July and August and scored their needs based on site access controls, building exteriors and building interiors. In September, the PSFA will forward its recommendations to the PSCOC, which will make the final funding awards in October.

Mr. Chamblin, Ms. Casias and task force members addressed the following topics.

***Funding sources and eligibility.*** Some school districts submitted funding requests for a single project through both the security awards process and the systems awards process; however, projects will receive funding through only one funding stream. SB 9 funds are another funding stream and may be used for certain security equipment purchases. No funding source may be used to reimburse a district for expenses made prior to an award such as for projects that are already completed.

***Local match and offset.*** A local match is required for all security awards, including those for charter schools. The PSCOC will determine whether the awards will affect a school district's funding offset.

***Prioritizing projects.*** School districts consider community conditions such as homelessness and crime when prioritizing school security projects and applying for PSCOC funding. The PSCOC takes into account a facility's age when making awards.

***Assessments and applications.*** All applicant schools were required to have a third-party security assessment and to update their school safety plans. Some school districts did not apply for funding because they felt their security systems were already strong. Approximately two dozen funding applications were submitted by charter schools.

***Safety responsibilities and requirements.*** A district superintendent is responsible for setting and enforcing school safety standards throughout a district. Each school principal is responsible for compliance with those standards. The PED and the federal government require that all schools have a safety plan.

Mr. Chamblin will provide copies of the PSCOC's new prioritization method.

### **School Insurance**

Sammy Quintana, executive director, Public School Insurance Authority (PSIA), opened the PSIA presentation with an announcement of his imminent retirement. Ernestine Chavez, who currently serves as PSIA deputy director, will take over as executive director in September, he said.

Julie Garcia, regional director, Poms and Associates, and James Vautier, senior manager, Risk Services Safety and Security, Poms and Associates, joined Mr. Quintana to report on the PSIA risk program and on school safety issues.

The PSIA insures more than \$25 billion in property assets held by 88 school districts, 96 charter schools and 25 other educational entities and provides liability and workers' compensation coverage for 44,000 public school employees. To reduce both the frequency and severity of claims, the PSIA provides loss prevention programs on a variety of topics — ergonomics, threat assessment, active shooters, special education, predator identification and bullying prevention — for school personnel. The PSIA is also developing guidelines for schools as they consider allowing school employees to carry firearms on campus.

Poms and Associates contracts with the PSIA to conduct on-site school facility audits and to provide school security training. Mr. Vautier, who worked for years as a public school resource officer and now conducts these training sessions, noted that while the probability of a school shooting is still very low, the frequency of shootings has tripled since 2011. Preventing such events and other dangers requires that schools address security issues in both the physical environment, such as a lack of fencing or lockable doors, and in the human environment, such as students, staff or visitors who may pose a safety threat. Each school must identify and prioritize its unique risks and hazards in its safety plan; establish a safety committee and a behavioral threat assessment team; install a reliable emergency notification system; and conduct response training and practice sessions. Mr. Vautier stressed that school security applies to everyone on a school campus; maintaining a culture of awareness, safety and trust among staff and students is the cheapest security measure a school can adopt.

On questioning, the presenters clarified that while the PSIA insures higher education institutions, the safety plans required for those campuses differ from those for elementary, middle and high school campuses.

## **Decommissioning and Disposal of Schools**

Ms. Casias and Mr. Chamblin reported on how a school district may decommission or dispose of a facility that is vacant, unused or no longer needed by the district.

The school facility disposal process involves four entities: the community, the PED, the State Board of Finance and the state auditor. The community may be affected by disposal of a school facility because this can sometimes mean that students must be moved to another school or that a bond issuance is necessary to raise funds for demolition. If a facility is decommissioned but not demolished or disposed of, the abandoned facility remains a liability for the community.

In order to decommission one of its facilities for later disposal, a district must request approval from the PED, which will analyze the request on several points, including financial, transportation and capital outlay issues. Once PED approval is granted, the district must notify the State Board of Finance of its intent to dispose of the facility and provide an assessed valuation for the property. If the State Board of Finance approves the disposition and, subsequently, the state auditor approves it as well, the district can sell, donate, transfer title to or demolish the facility, with certain restrictions: 1) a donation or title transfer may only be made to another public entity; and 2) if the facility is listed on a state or federal historic register, the district must contact the Historic Preservation Division of the Cultural Affairs Department and, if the facility is to be demolished, document the facility prior to demolition.

The presenters noted that \$5.8 million was spent on demolition-only projects in 2008 through 2010, of which \$4.5 million was awarded by the PSCOC and the balance paid by the school districts.

The presenters and task force members addressed the following topics.

***Historic facilities.*** A school district that wishes to dispose of or demolish a facility that is listed on the state historic register must follow the Historic Preservation Division's approval process, which is outlined on the PSFA website. In making its decision, the division will consider whether the facility can be repaired rather than demolished. If approval is granted and the district wishes to sell the facility, it may sell to either a public or private entity.

***Charter schools.*** Charter schools have the first option to buy facilities scheduled for disposal by school districts; however, charter schools cannot operate in facilities that do not meet facility standards and requirements.

***Facility sales.*** Some rural school districts are unable to sell abandoned facilities because the Constitution of New Mexico requires they be sold for fair market value, yet much of the research on market value is conducted in urban areas; buyers are not willing to pay urban market prices for facilities in rural areas. State agencies are in a similar situation with their facilities.

Mr. Eaton will research alternative property disposition used in other states.

## **Pre-K Status and Capital Outlay**

Mr. Chamblin reported on the status of pre-K facilities around the state and their capital outlay funding needs.

Under the Pre-Kindergarten Act, funding for pre-K programs must be split equally between the PED and the Children, Youth and Families Department (CYFD), both of which run pre-K programs. Since 2007, \$23 million has been awarded to build or renovate PED pre-K classrooms, many of which are housed in elementary school facilities. The PSFA is currently assessing pre-K facilities to determine functional minimums for pre-K programs, which need space not only for classrooms but also for playgrounds, secure entries and parent parking areas. Mr. Chamblin noted that renovation of underused elementary school space for pre-K use can be expensive in the short term but save money in the long term through reduced maintenance costs.

On questioning, task force members and the presenters, who were joined by Rachel Gudgel, director, Legislative Education Study Committee (LESC), addressed the following topics.

***Most recent funding cycle.*** The PSFA received funding applications from districts that want to expand their pre-K facilities and districts that plan to build new facilities. All of the \$5 million awarded to pre-K programs went to programs for developmentally delayed children.

***Funding restrictions.*** PSFA funding cannot be used for classroom materials or for portable classrooms, though the PSFA is reconsidering the restriction on portable classrooms. Members discussed the advantages of using portable classrooms and posed the possibility that a pre-K program might use PED grant money to purchase materials.

***Costs, projections and planning.*** The LFC estimates that the cost per student in a full-day pre-K program in FY 2017 was \$7,400. Members noted that the cost projections for pre-K might be high and cited as an example the implementation of full-day kindergarten, which costs one-third of what had been projected at the time. A member spoke about the importance of planning, which may have been a reason the full-day kindergarten projections were inaccurate.

***CYFD pre-K programs.*** The CYFD's pre-K programs are housed primarily in private facilities, though some are located in public schools. Statute does not require that the PED and the CYFD coordinate their programs or facility usage.

***Need for pre-K programs.*** Because other venues, such as child care, are available for young children, it is not known how many children need, but lack access to, pre-K programs.

- Representative Garcia Richard will speak with the chair of the LESL about having LESL staff gather information on pre-K programs, including which districts have programs, which ones want them, which ones have facilities or need facilities for the programs and which ones need teachers.
- Ms. Gudgel will provide information on:

- (1) how charter schools can apply for pre-K funding; and
  - (2) pre-K funding available or appropriated to tribal communities.
- Ms. Casias will provide a list of pre-K funding award recipients, including tribal communities.

### **Minutes Approval**

On a motion duly made, seconded and unanimously adopted, the minutes from the task force's June 13, 2018 meeting were approved with the following change: the list of members who were present at the meeting was revised to include Antonio Ortiz, designee for the secretary of public education.

### **Broadband Deficiencies**

Ovidiu Viorica, senior technology projects manager, PSFA, and Richard Govea, technology projects manager, PSFA, gave a progress report on broadband in public schools and the PSFA's program to correct deficiencies.

Under statutory authority granted temporarily in 2014 and permanently in 2017, the PSCOC spends up to \$10 million annually to correct education technology infrastructure deficiencies in public schools statewide. The PSFA is currently working with 89 school districts and more than 100 charter schools, and it tends to have an average of 100 projects in progress at all times. Eighty percent to 100 percent of project costs are covered by a combination of PSCOC funding and federal funding through the federal E-Rate Program. The PSFA's goal for each project is to provide a scalable broadband system that allows for enrollment fluctuations. The presenters noted that while bandwidth prices have steadily dropped in the last several years, prices are now leveling off, though demand is still increasing. The PSFA recommends that schools share resources, citing as an example a fiber-optic line recently installed for use by both the Pueblo of Jemez and the Pueblo of Zia.

The presenters and task force members addressed the following topics.

***Fiber-based networks versus 5G technology.*** 5G technology has not yet been widely installed, has a limited range of coverage and, because it requires a great number of cell towers to provide full coverage, is best suited to urban areas. 5G networks are also dependent on fiber-optic-based networks to connect to the internet. The Farmington Municipal School District has an extensive fiber-optic-based network that can host 11,000 computers.

***E-Rate Program.*** Because funding has increased in the federal E-Rate Program, the PSCOC has not had to spend its entire \$10 million annual authorization for broadband deficiencies corrections.

### **Adjournment**

There being no further business before the task force, the meeting was adjourned at 3:33 p.m.



Revised: September 19, 2018

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

**September 21, 2018  
State Capitol, Room 307  
Santa Fe**

**Friday, September 21**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Stephanie Garcia Richard, Chair  
—Senator William P. Soules, Vice Chair
- 9:10 a.m.       (1)   **Public School Capital Outlay Council (PSCOC) Financial Plan**  
—Denise Irion, Chief Financial Officer, Public School Facilities Authority  
      (PSFA)
- 10:00 a.m.       (2)   **2018-2020 PSFA Strategic Plan**  
—Jonathan Chamblin, Director, PSFA
- 11:00 a.m.       (3)   **Progress Report on School Facilities Maintenance**  
—Larry Tillotson, Facilities Maintenance and Operations Support Manager,  
      PSFA
- 12:00 noon       **Lunch**
- 1:00 p.m.       (4)   **Zuni Lawsuit Update**  
—Joshua Granata, Esq., Assistant Attorney General, Office of the Attorney  
      General
- 2:30 p.m.       (5)   **Long-Term Charter School Facility Solutions**  
—Matthew Pahl, Executive Director, New Mexico Coalition for Charter  
      Schools
- 3:30 p.m.       (6)   **PSCOC Project Prioritization Methodologies**  
—Martica Casias, Deputy Director, PSFA
- 4:30 p.m.       **Adjourn**



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

**September 21, 2018**  
**State Capitol, Room 307**  
**Santa Fe**

The sixty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on September 21, 2018 at 9:10 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Stephanie Garcia Richard, Chair  
Martha "Marty" Braniff  
Greg Ewing  
Carl Foster  
Rep. Rick Little  
Rep. Patricia A. Lundstrom  
Antonio Ortiz, Designee for the Secretary of  
Public Education  
Sen. Mary Kay Papen  
Mike Phipps  
Rep. Dennis J. Roch  
Rep. Debbie A. Rodella  
Eugene Schmidt  
Debbie Romero, Designee for the Secretary  
of Finance and Administration (morning)  
Duffy Rodriguez, Secretary of Finance and  
Administration (afternoon)

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. Harry Garcia  
Sen. Mimi Stewart

**Absent**

Sen. William P. Soules, Vice Chair  
Sen. Craig W. Brandt  
Rep. Brian Egolf  
Kirk Hartom  
Sen. Stuart Ingle  
T.J. Parks  
Richard A. Perea  
Rep. G. Andrés Romero  
Stan Rounds  
Sen. Benny Shendo, Jr.  
Sen. John Arthur Smith  
Harry Teague

Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Sen. Howie C. Morales  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Pat Woods

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

**Staff**

Raúl E. Burciaga, Director, 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 handouts are in the meeting file.

**Friday, September 21****Public School Capital Outlay Council (PSCOC) Financial Plan**

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), reviewed changes to the PSCOC financial plan for fiscal year (FY) 2019 through FY 2023. She reported that revenue estimates have increased significantly for each of those years. Ms. Irion provided details regarding the recent awards made by the PSCOC to school districts for both standards-based and building systems awards and provided projections for award scenarios in the coming years.

In response to members' questions, Ms. Irion reported that school districts that have already made improvements to school security systems cannot be reimbursed retroactively for the cost of those improvements under the program now being established to award funds from recent special appropriations for school security improvements. Jonathan Chamblin, director, PSFA, observed that 288 applications were received for those funds and that a prioritization process is being developed to help serve the needs of applicants who are not scheduled to receive awards for security improvements at this time. Ms. Irion also reported that the PSCOC seeks to time its awards to dovetail with local bond issuances to ensure that state and local matching requirements for capital projects are met efficiently and cost-effectively. Members also discussed:

- processes and requirements for awarding funds for emergency building needs;
- school bus availability for athletic versus academic purposes; and
- the widespread use of operational funds to support school transportation needs.

**2018-2020 PSFA Strategic Plan**

Mr. Chamblin presented a strategic plan for the PSFA for 2018 through 2020, including a comparison of how strategic objectives have changed over time in reference to prior-year plans dating back to 2008. In response to information received from staff and school districts, the PSFA has reset the strategic planning process by engaging a strategic planning consultant and establishing a working group, including a representative from each of the PSFA's divisions. Mr. Chamblin described a participatory planning process designed to increase transparency and build community relationships. The focus of the plan is to:

- reduce the initial and ongoing costs of facility projects;
- increase the longevity of new and existing facilities;
- improve partnerships with schools;
- establish a key focus on developing the technology projects group;
- create a new closeout and energy projects group to facilitate the transition between construction and ownership of a project; and
- implement new assessment processes and systems to support energy efficiency goals.

In response to members' questions, Mr. Chamblin reported that a key objective of the new plan is to empower and support staff members as they work collectively to build partnerships and improve agency processes. Each group within the PSFA helps to develop action items for its focus areas. Mr. Chamblin noted that the PSFA has a budget of close to \$5 million annually and employs 46 staff members. Dr. Schmidt asked if the PSFA has developed a vision to solve the continuing issues surrounding charter school lease-assistance payments. Mr. Chamblin said that the PSFA and the PSCOC need to develop more robust processes for assessing special space needs and uses for charter schools. Members also discussed connectivity projects that might provide solutions to broadband limitations in rural areas and asked that Mr. Chamblin provide a follow-up report during the next interim on outcomes from the plan and the planning process.

### **Progress Report on School Facilities Maintenance**

Larry Tillotson, maintenance and operations support manager, PSFA, reported that the condition of school facilities has a tremendous impact on the educational environment and that good maintenance practices save operational dollars and protect capital investments. He described the PSFA's efforts to safeguard and maintain the 61 million square feet of property owned or operated by school districts, charter schools and constitutional schools in the state. In 2010, the Facilities Maintenance Assessment Report (FMAR), a tool to measure maintenance needs and requirements, was established. According to Mr. Tillotson, the FMAR process has been highly successful in moving school districts toward better maintenance practices across the state. Mr. Tillotson reported that over 78% of schools fell below a satisfactory maintenance level in the 2010-2015 FMAR cycle. At present, over 71% of school districts are operating at a satisfactory level after using the FMAR to identify and correct many of the factors that were contributing to poor maintenance efforts.

Mr. Tillotson outlined a number of next steps for the maintenance effort, including:

- establishing effective maintenance and custodial staffing levels;
- developing training and certification programs for key maintenance staff;
- collaborating with the Construction Industries Division (CID) of the Regulation and Licensing Department to define which systems repairs can be completed by district staff;
- encouraging data-driven communication regarding maintenance issues;
- developing energy management programs; and
- collaborating with other state agencies.

The chair and other task force members lauded the improvements that have been made in district maintenance efforts and encouraged sharing best practices from that process with other state agencies. In response to members' questions, Mr. Tillotson reported that the PSFA and school districts are working on developing staff training programs. He observed that charter schools are performing well on maintenance, although much of the charter school space is leased space that may be maintained by lessors. He also noted that the PSFA is looking for ways to collaborate with the CID to find ways to certify district staff to do more maintenance on building systems. In response to a member's question, Martica Casias, deputy director, PSFA, observed that under a memorandum of understanding with the CID, PSCOC projects receive priority for CID inspections and so suffer few delays in that regard.

### **Zuni Lawsuit Update**

Joshua Granata, assistant attorney general, Office of the Attorney General (OAG), provided a status report on the *Zuni* lawsuit. Mr. Granata reported that a status meeting on the ongoing developments in the *Zuni* lawsuit is scheduled for next week. He anticipates that at that meeting, a trial date will be set. Mr. Granata reported that the OAG has filed a motion for partial dismissal on the basis that the Grants-Cibola County School District (GCCSD) has not been an active party to the lawsuit. It is unclear at this point if the GCCSD board will support or oppose that motion. The court has ruled that some of the individual plaintiffs (students) no longer have standing in the lawsuit as they are no longer students, but other student plaintiffs have been ruled to have standing.

Procedurally, Mr. Granata reported that the next steps are to finish the trial, submit findings of fact and pursue the appeals process as necessary. Mr. Granata stated that there is no resolution in sight and that these steps are likely to be lengthy, with appeals from both sides. The plaintiffs' biggest complaint is not being able to build beyond the state-established adequacy standards. The state is defending those standards and has noted to the court recent developments, such as the 2018 legislation providing changes to the state- and local-match formula. One member noted that federal impact aid is still going to the state and not directly to the impact aid areas.

### **PSCOC Project Prioritization Methodologies**

Ms. Casias provided an overview of the following capital improvement programs operated by the PSCOC:

- standards-based projects (large projects such as new or replacement schools);
- systems (small projects to improve building systems);
- facilities master plans;
- security;
- broadband;
- pre-kindergarten classrooms; and
- charter school lease assistance.

Ms. Casias reviewed the eligibility criteria for each program, noting that the recent 2018 authorizations for PSCOC funding from House Bill 306 (2018) and Senate Bill 239 (2018) for security systems will require local matching participation per the state- and local-match formula. The Broadband Deficiencies Correction Program relies in part on federal E-rate matching funds. Ms. Casias reported that the state match may be increased under this program. The chair asked that the task force receive an update on the matching requirements as more information becomes available.

Members discussed the impact of the change in the state- and local-match formula, and Ms. Casias observed that the new formula will only apply to new grants and will not change existing awards. She also reported that school districts may seek waivers of the local match. Mr. Chamblin observed that security systems do not currently meet the building systems definition, but there is opportunity to include those systems in the building systems program. The task force discussed options to develop legislation to clarify inclusion of security systems in the building systems program. Members also discussed what the PSFA and the PSCOC may do to help school districts that will be adversely affected by the state- and local-match formula changes. According to Mr. Chamblin, this may include looking at timing for PSCOC funding cycles and changes to election laws that will impact local bonding. Task force members also discussed the requirements for school districts to certify the availability of their local match and provisions for emergency funding assistance.

### **Long-Term Charter School Facility Solutions**

Matthew Pahl, executive director, New Mexico Coalition for Charter Schools, reported that in New Mexico, charter schools are:

- public schools that are free to any student who chooses to attend;
- governed independently;
- committed to specific academic, financial and organizational performance;
- funded in an equal manner with district schools; and
- using unique educational methods and space to meet student needs.

Mr. Pahl provided a history of charter school facilities, noting that the lease-assistance program for charter schools was established in 2005. He reported that the PSCOC had planned to reduce charter school lease assistance by 20% this year; however, at its meeting the previous day, the PSCOC voted to maintain lease assistance for this year at the current level. Mr. Pahl observed that larger school districts, including the Albuquerque Public School District and Las Cruces Public School District, have begun to invest in long-term facilities and facility renovations for charter schools in exchange for state equalization guarantee or lease-assistance funds. According to Mr. Pahl, the requirement that charter schools be located in public facilities has not been fully realized because of legal issues slowing approval for lease-to-purchase agreements and because few charter schools can afford the local match required to secure facilities funding from the PSCOC. He asserted that lease assistance has only limited benefits for

both the general public and charter schools and offered several possible long-term charter school facility solutions:

- provide a borrowing option at preferred public market rates;
- include separate parameters for charter school loan qualifications; and
- prioritize repurposing capital investments that the public has already made.

Task force members discussed the feasibility of co-locating charter schools with public schools on the same campus and the potential to provide incentives for counties or other political subdivisions of the state to serve as fiscal agents for charter school loans from the New Mexico Finance Authority. Mr. Pahl presented the idea of creating a revolving loan fund to help charter schools meet their facilities needs. He also proposed enhancing charter school access to local mill levy bonds.

In response to members' questions, Mr. Pahl reported that roughly half of New Mexico's 96 charter schools are district-chartered and half are state-chartered. He stated that districts are able to go to the PSCOC on behalf of charter schools and that legislation that was introduced in 2018 that would have clarified that charter school facilities purchased by a private foundation through a lease-to-purchase agreement on behalf of a school would belong to the state upon final purchase. Ms. Casias clarified that there is no standardized lease agreement for charter schools and that the Public Education Department must approve lease-to-purchase agreements. Members also discussed the difficulties of ascertaining demand for charter school services and that certain small school districts face challenges similar to those faced by charter schools.

### **Adjournment**

There being no further business before the task force, the PSCOOTF meeting was adjourned at 3:39 p.m.

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

**October 16, 2018  
State Capitol, Room 322  
Santa Fe**

**Tuesday, October 16**

- 9:00 a.m.           **Call to Order and Introductions**  
—Senator William P. Soules, Vice Chair
- 9:10 a.m.       (1)   **Public School Capital Outlay Council (PSCOC) Financial Plan**  
—Denise Irion, Chief Financial Officer, Public School Facilities Authority  
      (PSFA)
- 9:30 a.m.       (2)   **2018 PSCOC PSFA Annual Report**  
—Jonathan Chamblin, Director, PSFA
- 10:00 a.m.      (3)   **Fiscal Year (FY) 2020 PSFA Budget Request**  
—Jonathan Chamblin, Director, PSFA
- 10:20 a.m.      (4)   **FY 2019 Security Awards and Pre-Kindergarten Awards Update**  
—Jonathan Chamblin, Director, PSFA
- 11:00 a.m.      (5)   **Update on Changes to the Statewide Adequacy Standards**  
—Martica Casias, Deputy Director, PSFA
- 11:30 a.m.      (6)   **Update on Charter School Processes and Procedures**  
—Jonathan Chamblin, Director, PSFA
- 12:00 noon       **Lunch**
- 1:00 p.m.       (7)   **Powers and Duties of the Public Education Department (PED) and  
PSFA as they Relate to Charter School Facilities and Charter  
School Facility Leases**  
—Martica Casias, Deputy Director, PSFA  
—Baylor Del Rosario, Ph.D., Deputy Director, Options for Parents and  
Families, Charter Schools Bureau, PED

- 2:00 p.m. (8) [Using Standardized Leases — Benefits, Obstacles, Requirements and Recommendations](#)  
—Martica Casias, Deputy Director, PSFA  
—Baylor Del Rosario, Ph.D., Deputy Director, Options for Parents and Families, Charter Schools Bureau, PED
- 3:00 p.m. (9) [Public School Lease Purchase Act Explained](#)  
—Mona Martinez, Deputy Director, PSFA
- 4:00 p.m. **Adjourn**

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

**October 16, 2018**  
**State Capitol, Room 322**  
**Santa Fe**

The sixty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator William P. Soules, vice chair, on October 16, 2018 at 9:18 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

Sen. William P. Soules, Vice Chair  
Sen. Craig W. Brandt  
Carl Foster  
Rep. Harry Garcia, designee for Speaker  
    Brian Egolf  
Sen. Stuart Ingle  
Antonio Ortiz, designee for Secretary of  
    Public Education Christopher  
    Ruszkowski  
Sen. Mary Kay Papen  
Rep. Dennis J. Roch  
Rep. Debbie A. Rodella  
Debbie Romero, designee for Secretary of  
    Finance and Administration Duffy  
    Rodriguez  
Sen. Benny Shendo, Jr.  
Sen. John Arthur Smith

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Gay G. Kernan  
Sen. Mimi Stewart

**Absent**

Rep. Stephanie Garcia Richard, Chair  
Martha "Marty" Braniff  
Dr. Greg Ewing  
Kirk Hartom  
Rep. Rick Little  
Rep. Patricia A. Lundstrom  
T.J. Parks  
Richard A. Perea  
Mike Phipps  
Rep. G. Andrés Romero  
Stan Rounds  
Eugene Schmidt  
Harry Teague

Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Sen. Howie C. Morales  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Pat Woods

**Staff**

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

**Tuesday, October 16****Public School Capital Outlay Council (PSCOC) Financial Plan**

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), provided an update on the projected capital outlay awards scenarios for fiscal year (FY) 2019 through FY 2023 and reported on current fund balances. In answer to members' questions, Ms. Irion noted that changes made by the PSCOC in the number of awards made (for example, including the top 100 ranked projects instead of the top 70 projects) impact the projected averages for awards over the years. Ms. Irion also provided information on the \$16 million in awards for security systems included in House Bill 306 and Senate Bill 239 from the 2018 legislative session.

Members discussed award delays related to charter school lease assistance and the mandate for charter schools to be located in public buildings, as well as building design process issues. Ms. Irion reported that there is generally an 18-month to 24-month design period for new construction that is intended to be inclusive of all stakeholders. She noted that roughly 10% of the overall project cost for a new construction project is allocated toward design.

**2018 PSCOC PSFA Annual Report**

Jonathan Chamblin, director, PSFA, reviewed the organizational structure of the PSCOC and provided a range of operational data related to award dollars currently under contract, lease assistance payments and the PSFA operational budget. He presented information on specific school projects and fundable projects and systems, including progress made since 2005 in improving facilities and replacing building systems. Mr. Chamblin also reported on the top five security threats identified in statewide workshops and surveys and the range of responses needed to address those threats. In addition, he emphasized the benefits of implementing strong preventive maintenance programs and offered options for improving those programs.

In response to members' questions, Mr. Chamblin reported that the average lifespan of a new building should approach 50 years but that in some older buildings, that span may only reach 30 years. Senator Smith observed that poor maintenance efforts on the part of a district may result in an additional tax burden on the general public to replace buildings and systems. He requested information on maintenance efforts in older buildings, including a breakdown of problem areas that may be evident in the years since 2005.

**FY 2020 PSFA Budget Request**

Ms. Irion presented the FY 2020 PSFA budget request, noting that it remains flat over the FY 2019 budget request. She observed that supplemental severance tax bond proceeds that feed

the Public School Capital Outlay Fund (PSCOF) have been diverted for special appropriations for school buses, broadband expansion projects, pre-kindergarten classrooms and solvency measures over the past four years. However, Ms. Irion reported, current estimates indicate that the fund will rebound and register an estimated increase of around 28% by FY 2023.

Task force members discussed:

- state and local share formula changes and the impact of those changes on district budgets;
- the equitability of including federal impact aid district payments in the state equalization guarantee formula;
- the impact of new science standards and instructional materials needs on state and district budgets; and
- options for restoring funding that is scheduled to be eliminated from school budgets as a result of solvency measures enacted in 2016 and 2017.

### **FY 2019 Security Awards and Pre-Kindergarten Awards Update**

Mr. Chamblin described the processes that the PSFA used to establish the new security systems awards program and provided comprehensive lists of the 2018-2019 security system awards made by the PSCOC, including a breakdown of the required local match and applicable offsets. He reported that applicant campuses were assessed and scored based on observable existing conditions in three general categories identified by industry standard best practices as key to school security: (1) site access control; (2) building interior; and (3) building exterior. Of the 47 applicant districts, 46 received awards for 222 school campuses at an average awarded total project cost of \$144,947 per campus. According to Mr. Chamblin, the PSFA also analyzed the variables driving costs in different districts to arrive at a reasonable range of cost for specific items and systems.

The next steps for the program include formalizing the award agreements with applicant schools and implementing projects beginning in mid-December. Mr. Chamblin stated that the PSFA will be tracking the program to provide findings and recommendations for the PSCOC for next year's program. Members complimented Mr. Chamblin and his staff on having implemented the security systems program effectively in such a short period of time. Task force members also discussed the importance of including adequate and up-to-date security systems in new construction, as well as the need to provide appropriate human resources, including counselors and behavioral health professionals, in the schools to mitigate security risks.

Mr. Chamblin reviewed the history of pre-kindergarten classroom construction projects since 2005 and observed that pre-kindergarten classrooms are not included in the adequacy standards and therefore may not be funded from the PSCOF. The PSFA is now administering pre-kindergarten classroom construction projects that had been administered by the Public Education Department (PED). The PSFA is requesting \$25 million for pre-kindergarten classrooms for FY 2020 through FY 2024. In response to members' concerns about the adequacy

of the \$5 million annual appropriations, Mr. Chamblin reported that the PSFA is working with the PED, the Legislative Finance Committee and the Legislative Education Study Committee to assess statewide needs in that regard.

### **Update on Changes to Statewide Adequacy Standards**

Martica Casias, deputy director, PSFA, reported on the results of a series of stakeholder input and adequacy standards workshops held by the PSFA across the state to gather ideas for potential changes to the current standards. The adequacy standards are used by the PSFA to measure and evaluate existing school buildings and to ensure that every school has at least the minimum type and number of spaces and system performance levels. She reviewed the existing space standards associated with various classroom, administrative and special use areas.

According to Ms. Casias, the "New Mexico Public School Adequacy Planning Guide" (APG) associated with the adequacy standards is a best-practices guide based on local and national planning criteria. The APG is used to help schools and school districts maximize their design goals. Ms. Casias noted that changes in science and other classroom standards may require changes in the adequacy standards and the APG. Senator Smith asked if any final determination regarding the standards has been requested from the district court overseeing the *Zuni* lawsuit. It was noted that the lawsuit is ongoing.

### **Minutes**

On a motion duly made and seconded, the minutes of the meeting of September 21, 2018 were approved without objection.

### **Update on Charter School Processes and Procedures**

Mr. Chamblin stated that the objectives of the PSFA's recent examination of charter school processes and procedures are to:

- ensure compliance with statutes related to charter schools;
- improve and clarify the charter school lease assistance processes and procedures; and
- improve collaboration between the PSFA, the PED, the Public Education Commission, the New Mexico Coalition for Charter Schools and charter schools regarding facility needs and leases.

In early November, the PSFA will kick off a series of meetings designed to:

- provide a venue for charter schools to discuss their unique facility issues with the PSFA and the PED;
- allow the PSFA to describe the processes and requirements for obtaining lease assistance; and
- build consensus for a uniform process to validate square footage and space utilization.

Mr. Chamblin noted that 20% of lease assistance applications had lease deficiencies in the past funding cycle and that better coordination is needed between the PED and the PSFA regarding approval of lease-to-purchase arrangements. Some leases contained onerous provisions for the charter schools, resulting in insurance liability and indemnification issues. Arrangements between charter foundations and third-party lessors are not transparent and appear to be passing on finance costs. The intent of the meetings is to identify and begin to formulate potential lease improvements that will benefit all parties.

In addition, Mr. Chamblin provided the following recommendations for the FY 2020 lease assistance cycle:

- maintain a database to track Facilities Master Plan dates, E-occupancy certificates, Weighted New Mexico Condition Index scores and validated square footage;
- develop a process for charter school notification to the PSFA of relocation to a new facility or additions to existing facilities;
- clarify what can and cannot be funded by lease assistance; and
- validate facility square footage by the end of January each year.

Next steps for the program include development of an online application for lease assistance; scheduling regional charter school workshops in Las Cruces, Albuquerque, Santa Fe and Taos; developing an online survey for charter schools to support the statewide workshops; and presenting lease assistance program improvements to the PSCOC and the PSCOOTF.

### **Powers and Duties of the PED and the PSFA as They Relate to Charter School Facilities and Charter School Facilities Leases**

Ms. Casias reviewed the educational occupancy standards and the average condition standards applicable to charter schools as well as the statutory powers and duties of the PSFA and the PED with respect to charter schools. She noted that neither the PSFA nor the PED has authority to enforce the requirement that charter schools be located in public facilities. Ms. Casias also addressed lease assistance payment processes and lease-to-purchase agreement requirements. Lease-to-purchase agreements must be approved by the PED.

### **Using Standardized Leases — Benefits, Obstacles, Requirements and Recommendations**

According to Ms. Casias, the Public School Capital Outlay Act authorizes the PSCOC to reimburse school districts and charter schools for lease payments. The PSFA reviews PSCOC lease assistance applications. The application for lease assistance requires that the applicant provide a copy of the lease for review for statutory compliance by the PSFA. Ms. Casias reported that the leases are unique, with little or no uniformity due to a variety of factors.

In 2012, a PSCOOTF work group was formed to address the issue of standardizing lease agreements. The group recognized then, as now, that the lack of a standardized lease results in a lack of consistency and transparency, according to Ms. Casias. As an outcome of the work group, the PSFA hired a legal consultant to prepare a standardized lease. The standardized lease

is very lengthy and attempts to address multiple lease scenarios and has proven to be too cumbersome to be useful. Use of a standardized lease is not mandatory for charter schools.

The PSFA is now working to develop templates that may be used to streamline the lease agreement process. The benefits of this approach include:

- ease of use for districts and schools;
- elimination of onerous terms and reduction of risk for the lessee;
- clear definitions of "gross square footage" and "classroom space";
- a clear definition of "terms and conditions"; and
- identification of responsibility for all operating costs.

Ms. Casias observed that the lessons of the past indicate that a "one-size-fits-all" approach will not work. Therefore, the recommendation is to provide templates for the four most common types of leases entered into by charter schools:

- (1) a lease between a charter school or charter foundation and a private owner;
- (2) a lease between a charter school or charter foundation and a public entity;
- (3) a lease with an option to purchase between a charter school or charter foundation and either a private or public entity; and
- (4) a lease purchase arrangement between a charter school or charter foundation and either a private or public entity.

Use of the templates will address the concerns raised in using a standardized lease, and the availability of the templates will prevent reliance on a landlord's lease documents, which may not serve a school's best interests.

### **Public School Lease Purchase Act Explained**

Mona Martinez, counsel, PSFA, provided information on the Public School Lease Purchase Act. In 2006, the Constitution of New Mexico was amended to allow school districts and charter schools to enter into financing agreements to lease a building or other real property. These financing agreements are not considered debts as long as there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property or if the lease is terminated if sufficient money is not available to meet the current lease payments.

The act uses the terms "lease purchase arrangement" and "financing agreement" interchangeably. The terms are defined as an agreement for the leasing of a building or other real property with an option to purchase for a reduced price, composed of principal and interest paid to the holder of the agreement. The Public School Lease Purchase Act requires a governing board or body that elects to acquire a building or property through a lease purchase arrangement to conduct a public forum. Further, school districts and charter schools are authorized to include the state's pledge in their lease purchase arrangements that the state will not limit or alter the

rights vested in school districts or charter schools to fulfill the terms of any lease purchase arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements.

Members discussed a range of issues related to lease assistance payments, including the legality of lease-to-purchase arrangements that involve private foundations. Senator Soules asked that the PSFA clarify information related to the number of lease purchase agreements and that the issue of lease assistance be revisited at the upcoming November meeting. Members requested that proposed legislation from the 2018 legislative session that was intended to clarify ownership issues surrounding lease-to-purchase arrangements be revisited at that time as well.

### **Adjournment**

There being no further business before the task force, the PSCOOTF adjourned at 3:08 p.m.



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

**November 26, 2018  
State Capitol, Room 322  
Santa Fe**

**Monday, November 26**

- 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 October 16, 2018 Minutes**
- 9:10 a.m.       (1)   **Public School Capital Outlay Council Financial Plan**  
—Denise Irion, Chief Financial Officer, Public School Facilities Authority  
      (PSFA)
- 9:30 a.m.       (2)   **PSFA Work Plan and Time Line: December 2018 Through June 2019**  
—Jonathan Chamblin, Director, PSFA
- 10:00 a.m.       (3)   **Consideration of Bills for Public School Capital Outlay Oversight  
Task Force Endorsement**  
—Public School Capital Outlay Oversight Task Force Members and Staff
- 11:00 a.m.       **Adjourn**



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

**November 26, 2018**  
**State Capitol, Room 322**  
**Santa Fe**

The sixty-ninth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Stephanie Garcia Richard, chair, on November 26, 2018 at 9:14 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. Stephanie Garcia Richard, Chair  
Sen. William P. Soules, Vice Chair  
Sen. Craig W. Brandt  
Martha "Marty" Braniff  
Carl Foster  
Sen. Stuart Ingle  
Rep. Rick Little  
Rep. Patricia A. Lundstrom  
Antonio Ortiz, designee for Secretary of  
Public Education Christopher  
Ruszkowski  
Sen. Mary Kay Papen  
Richard A. Perea  
Mike Phipps  
Rep. Debbie A. Rodella  
Duffy Rodriguez, Secretary of Finance and  
Administration  
Rep. G. Andrés Romero  
Sen. John Arthur Smith

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. Harry Garcia  
Sen. Howie C. Morales  
Sen. Mimi Stewart

**Absent**

Rep. Brian Egolf  
Greg Ewing  
Kirk Hartom  
T.J. Parks  
Rep. Dennis J. Roch  
Stan Rounds  
Eugene Schmidt  
Sen. Benny Shendo, Jr.  
Harry Teague

Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Sen. Gay G. Kernan  
Sen. Cliff R. Pirtle  
Sen. Sander Rue  
Sen. Pat Woods

## **Staff**

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

Jeff Eaton, Fiscal Analyst, LCS

Michelle Jaschke, Researcher, LCS

## **Minutes Approval**

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

## **Guests**

The guest list is in the meeting file.

## **Handouts**

Copies of handouts are in the meeting file and are posted on the legislature's website.

## **Monday, November 26**

### **Introductions and Approval of Minutes**

Representative Garcia Richard asked members and guests to introduce themselves. Dr. Foster moved to approve the minutes of the October 16, 2018 meeting. The motion was seconded by Representative Rodella, and the task force approved the minutes without objection.

### **Public School Capital Outlay Council (PSCOC) Financial Plan**

Denise Irion, chief financial officer, Public School Facilities Authority (PSFA), provided the task force with an update on PSCOC action over the last month, including a summary of out-of-cycle and emergency awards and offset adjustments made by the council. Ms. Irion summarized increases and decreases to the current budget and outlined anticipated changes for the coming fiscal years. She noted a reduction in current fund balances as a result of recent drawdowns for operational expenses and awards. In response to task force members' questions, Ms. Irion reported that the personnel vacancy rate for the PSFA hovered around 5% last year and is now approaching 10%. Ms. Irion reported that hiring is now in process. Members discussed:

- how the weighted New Mexico condition index is used to rank schools in the standards-based awards process;
- the status of the ongoing *Zuni* lawsuit contesting the equitability of the state's public school capital outlay process;
- discussion of legal counsel representing the plaintiffs in the *Zuni* lawsuit and the presumable actuarial soundness of that counsel's retirement plan as a result of 18 years of litigation in the case; and
- the relative merits of developing legislation intended to finalize the outcome of the *Zuni* lawsuit.

### **PSFA Work Plan and Time Line: December 2018 Through June 2019**

Jonathan Chamblin, director, PSFA, presented a schedule reflecting the work plans for the security, broadband deficiencies correction, standards-based and systems-based awards programs as well as a tentative schedule for the pre-kindergarten classroom construction program. Mr. Chamblin noted that the pre-kindergarten program requires legislative action to either provide direct funding for the program or make pre-kindergarten classroom construction an eligible activity under the standards-based awards program. In response to members' questions, Mr. Chamblin observed that the current schedules and work plans are designed to address the most important process issues for both school districts and the PSFA. For example, the schedule for the broadband deficiencies correction program is driven by the requirements of the federal e-rate cycle. The lease assistance program is currently under review, and Mr. Chamblin reported that the PSFA is conducting pre-application site visits to determine eligible square footage for lease assistance payments. Task force members and PSFA staff discussed:

- how pre-kindergarten classroom construction has been funded in the past;
- proposed legislation to address the need for pre-kindergarten classrooms;
- the Children, Youth and Families Department pre-kindergarten program that pays private operators to provide needed services but does not provide capital project funding;
- the changing requirements for space use in libraries; and
- the sequencing for systems-based projects to coincide with suitable weather and summer building time.

Mr. Chamblin reported on the ongoing information gathering for potential changes to the adequacy standards. He noted that the conversation on the standards will return to the PSCOC once information gathering is completed. Several issues are at the top of the list for discussion, including security, technology, special education and health. Security and technology space needs and issues are not currently addressed in the standards, and special education and health equipment and requirements have changed considerably over time. Members asked that the task force receive updates on the adequacy standards discussions during the next interim.

### **Consideration of Bills for PSCOOTF Endorsement**

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

The first bill, providing for ownership of certain charter school facilities pursuant to lease-purchase agreements, was endorsed by the task force last year and passed the House but died in the Senate. Following a review of the bill's provisions, a task force member moved to endorse the bill. The motion was seconded, and the endorsement was approved without objection.

The second bill presented for endorsement by the task force includes provisions to allow for expenditures from the Public School Capital Outlay Fund for pre-kindergarten capital projects and provisions for changing the formula for maximum annual expenditures of the PSFA.

Several members of the task force observed that the Legislative Education Study Committee is working on legislation that would address pre-kindergarten capital projects by making those projects eligible under the adequacy standards. A task force member moved to strike provisions related to funding for pre-kindergarten capital projects from the proposed legislation. Another member of the task force seconded the motion to revise the bill, and the motion was approved without objection. Another member of the task force moved to endorse the proposed legislation as amended. The motion was seconded and passed, with two task force members dissenting.

### **Adjournment**

There being no further business before the task force, the meeting was adjourned at 11:26 a.m.

## ENDORSED LEGISLATION



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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL  
OUTLAY ACT; CHANGING THE FORMULA OF MAXIMUM ANNUAL EXPENDITURES  
OF THE PUBLIC SCHOOL FACILITIES AUTHORITY.

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

SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975,  
Chapter 235, Section 4, as amended by Laws 2017, Chapter 142,  
Section 1 and by Laws 2018, Chapter 71, Section 3) is amended  
to read:

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

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

B. Except as provided in Subsections G and I

underscoring material = new  
[bracketed material] = delete

1 through [Ø] P of this section, money in the fund may be used  
2 only for capital expenditures deemed necessary by the council  
3 for an adequate educational program.

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

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

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underscoring material = new  
[bracketed material] = delete

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

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

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

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

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

25 G. Balances in the fund may be ~~annually~~

.211699.3

underscored material = new  
[bracketed material] = delete

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

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

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

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

21 I. The fund may be expended annually by the council  
22 for grants to school districts for the purpose of making lease  
23 payments for classroom facilities, including facilities leased  
24 by charter schools. The grants shall be made upon application  
25 by the school districts and pursuant to rules adopted by the

.211699.3

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

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

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

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

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

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

19 (6) as used in this subsection:

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

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1 facilities in the first year of instruction, as shown in the  
2 approved charter school application; provided that after the  
3 eightieth day of the school year, the MEM shall be adjusted to  
4 reflect the full-time-equivalent enrollment on 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 second and third reporting dates of the prior school year; or

24 (b) the school district meets all of the  
25 following requirements: 1) the school district has fewer than

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

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

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

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

24 (3) the council may enter into an agreement  
25 with the school district under which an amount equal to the

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1 savings to the district in lower insurance premiums are used to  
2 reimburse the fund fully or partially for the demolition costs  
3 allocated to the district.

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

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

24 O. Up to ten million dollars (\$10,000,000) of the  
25 fund may be expended in each of fiscal years 2019 through 2022

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1 for school security system project grants made in accordance  
2 with Section 22-24-4.7 NMSA 1978."

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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

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

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 and  
8 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 not~~  
14 ~~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 if the charter  
23 school makes lease payments to a nonprofit entity specifically  
24 organized for the purpose of providing a facility for the  
25 charter school, the charter school demonstrates that it has

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1 entered into a legally binding agreement requiring the  
2 nonprofit entity to transfer to the charter school the title to  
3 the facility immediately after the nonprofit entity's  
4 acquisition of title to the facility.

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

8 F. The public school capital outlay council:

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

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

18 SECTION 2. Section 22-24-4 NMSA 1978 (being Laws 1975,  
19 Chapter 235, Section 4, as amended by Laws 2017, Chapter 142,  
20 Section 1 and by Laws 2018, Chapter 71, Section 3) is amended  
21 to read:

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

24 A. The "public school capital outlay fund" is  
25 created. Balances remaining in the fund at the end of each

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1 fiscal year shall not revert.

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

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

25 D. Applications for assistance from the fund shall

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1 be made by school districts to the council in accordance with  
2 requirements of the council. Except as provided in Subsection  
3 K of this section, the council shall require as a condition of  
4 application that a school district have a current five-year  
5 facilities plan, which shall include a current preventive  
6 maintenance plan to which the school adheres for each public  
7 school in the school district.

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

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

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

25 (2) the council may authorize payments

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1 directly to the contractor.

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

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

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

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

23 I. The fund may be expended annually by the council  
24 for grants to school districts for the purpose of making lease  
25 payments for classroom facilities, including facilities leased

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1 by charter schools; provided that a charter school is in  
2 compliance with Subsection D of Section 22-8B-4.2 NMSA 1978, as  
3 determined by the council; and provided further that if a  
4 charter school obtains money from the fund to make lease  
5 payments to a nonprofit entity specifically organized for the  
6 purpose of providing a facility for the charter school, the  
7 charter school demonstrates that it has entered into a legally  
8 binding agreement with the nonprofit entity that requires the  
9 nonprofit entity to transfer to the charter school the title to  
10 the facility immediately after the nonprofit entity's  
11 acquisition of title to the facility. The grants shall be made  
12 upon application by the school districts and pursuant to rules  
13 adopted by the council; provided that an application on behalf  
14 of a charter school shall be made by the school district, but,  
15 if the school district fails to make an application on behalf  
16 of a charter school, the charter school may submit its own  
17 application. The following criteria shall apply to the grants:  
18 (1) the amount of a grant to a school district  
19 shall not exceed:  
20 (a) the actual annual lease payments  
21 owed for leasing classroom space for schools, including charter  
22 schools, in the school district; or  
23 (b) seven hundred dollars (\$700)  
24 multiplied by the MEM using the leased classroom facilities;  
25 provided that in fiscal year 2009 and in each subsequent fiscal

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1 year, this amount shall be adjusted by the percentage change  
2 between the penultimate calendar year and the immediately  
3 preceding calendar year of the consumer price index for the  
4 United States, all items, as published by the United States  
5 department of labor;

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

10 (3) at the end of each fiscal year, any  
11 unexpended or unencumbered balance of the appropriation shall  
12 revert to the fund;

13 (4) no grant shall be made for lease payments  
14 due pursuant to a financing agreement under which the  
15 facilities may be purchased for a price that is reduced  
16 according to the lease payments made unless:

17 (a) the agreement has been approved  
18 pursuant to the provisions of the Public School Lease Purchase  
19 Act; and

20 (b) the facilities are leased by a  
21 charter school;

22 (5) if the lease payments are made pursuant to  
23 a financing agreement under which the facilities may be  
24 purchased for a price that is reduced according to the lease  
25 payments made, neither a grant nor any provision of the Public

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1 School Capital Outlay Act creates a legal obligation for the  
2 school district or charter school to continue the lease from  
3 year to year or to purchase the facilities nor does it create a  
4 legal obligation for the state to make subsequent grants  
5 pursuant to the provisions of this subsection; and

6 (6) as used in this subsection:

7 (a) "MEM" means: 1) the average  
8 full-time-equivalent enrollment using leased classroom  
9 facilities on the second and third reporting dates of the prior  
10 school year; or 2) in the case of an approved charter school  
11 that has not commenced classroom instruction, the estimated  
12 full-time-equivalent enrollment that will use leased classroom  
13 facilities in the first year of instruction, as shown in the  
14 approved charter school application; provided that, after the  
15 [~~eightieth day~~] second reporting date of the school year, the  
16 MEM shall be adjusted to reflect the full-time-equivalent  
17 enrollment on that date; and

18 (b) "classroom facilities" or "classroom  
19 space" includes the space needed, as determined by the minimum  
20 required under the statewide adequacy standards, for the direct  
21 administration of school activities.

22 J. In addition to other authorized expenditures  
23 from the fund, up to one percent of the average grant  
24 assistance authorized from the fund during the three previous  
25 fiscal years may be expended in each fiscal year by the [~~public~~

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1 ~~school facilities~~] authority to pay the state fire marshal, the  
2 construction industries division of the regulation and  
3 licensing department and local jurisdictions having authority  
4 from the state to permit and inspect projects for expenditures  
5 made to permit and inspect projects funded in whole or in part  
6 under the Public School Capital Outlay Act. The [~~public school~~  
7 ~~facilities~~] authority may enter into contracts with the state  
8 fire marshal, the construction industries division or the  
9 appropriate local authorities to carry out the provisions of  
10 this subsection. Such a contract may provide for initial  
11 estimated payments from the fund prior to the expenditures if  
12 the contract also provides for additional payments from the  
13 fund if the actual expenditures exceed the initial payments and  
14 for repayments back to the fund if the initial payments exceed  
15 the actual expenditures. Money distributed from the fund to  
16 the state fire marshal or the construction industries division  
17 pursuant to this subsection shall be used to supplement, rather  
18 than supplant, appropriations to those entities.

19 K. Pursuant to guidelines established by the  
20 council, allocations from the fund may be made to assist school  
21 districts in developing and updating five-year facilities plans  
22 required by the Public School Capital Outlay Act; provided  
23 that:

24 (1) no allocation shall be made unless the  
25 council determines that the school district is willing and able

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1 to pay the portion of the total cost of developing or updating  
2 the plan that is not funded with the allocation from the fund.  
3 Except as provided in Paragraph (2) of this subsection, the  
4 portion of the total cost to be paid with the allocation from  
5 the fund shall be determined pursuant to the methodology in  
6 ~~[Paragraph (5) of]~~ Subsection B of Section 22-24-5 NMSA 1978;  
7 or

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

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

13 (b) the school district meets all of the  
14 following requirements: 1) the school district has fewer than  
15 an average of one thousand full-time-equivalent students on the  
16 second and third reporting dates of the prior school year; 2)  
17 the school district has at least seventy percent of its  
18 students eligible for free or reduced-fee lunch; 3) the state  
19 share of the total cost, if calculated pursuant to the  
20 methodology in ~~[Paragraph (5) of]~~ Subsection B of Section  
21 22-24-5 NMSA 1978, would be less than fifty percent; and 4) for  
22 all educational purposes, the school district has a residential  
23 property tax rate of at least seven dollars (\$7.00) on each one  
24 thousand dollars (\$1,000) of taxable value, as measured by the  
25 sum of all rates imposed by resolution of the local school

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1 board plus rates set to pay interest and principal on  
2 outstanding school district general obligation bonds.

3 L. Upon application by a school district,  
4 allocations from the fund may be made by the council for the  
5 purpose of demolishing abandoned school district facilities;  
6 provided that:

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

10 (2) there is no practical use for the  
11 abandoned facility without the expenditure of substantial  
12 renovation costs; and

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

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

24 N. For each fiscal year from 2018 through 2022,  
25 twenty-five million dollars (\$25,000,000) of the public school

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1 capital outlay fund is reserved for appropriation by the  
2 legislature to the instructional material fund or to the  
3 transportation distribution of the public school fund. The  
4 secretary shall certify the need for the issuance of  
5 supplemental severance tax bonds to meet an appropriation from  
6 the public school capital outlay fund to the instructional  
7 material fund or to the transportation distribution of the  
8 public school fund. Any portion of an amount of the public  
9 school capital outlay fund that is reserved for appropriation  
10 by the legislature for a fiscal year, but that is not  
11 appropriated before the first day of that fiscal year, may be  
12 expended by the council as provided in this section.

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

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LEGISLATIVE COUNCIL SERVICE  
SANTA FE, NEW MEXICO