

**REPORT OF THE
PUBLIC SCHOOL CAPITAL OUTLAY
TASK FORCE**

January 2004

New Mexico Legislative Council Service
Santa Fe, New Mexico

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REPORT OF THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

Introduction

This is the third interim report of the public school capital outlay task force that was created by Laws 2001, Chapter 338. The task force has met for three years and has annually reported the results of its analyses, findings and recommendations to the governor and the legislature. The statutory authority for the task force was repealed in Laws 2001, Chapter 338 as of January 1, 2004. However, the task force was not able to complete its work by that date and, with the approval of the legislative council, it held a final meeting on January 17, 2004 to adopt its recommendations. At this meeting, the task force also recommended that it be reauthorized for one additional year. The need for this additional time is explained below under Highlights of Recommendations and Proposed Legislative Changes.

Copies of the two previous reports of the task force discuss in more detail the background and development of the new, statewide standards-based public school capital outlay process that is being implemented by the state. This report focuses on the work of the task force during the 2003 interim. However, the following background information is intended to help keep the issues before the task force in perspective.

Background

The current public school capital outlay task force is building on the work of two previous task forces that addressed the need for a statewide public school capital outlay program. The first task force was formed under the guidance of the state board of education in 1998 to conduct a comprehensive review of issues concerning New Mexico public school capital outlay and was chaired. The second task force was created by Senate Joint Memorial 21 enacted by the forty-fourth legislature, second special session. This task force issued its report in December 2000 and many of its recommendations were adopted in Laws 2001, Chapter 338.

The creation of the various public school capital outlay task forces was partially in response to the *Zuni* lawsuit, filed in January 1998, which challenged the constitutionality of the state's

process for funding public school capital outlay in the state that was then in effect. In 1999, Judge Rich of the eleventh judicial district court found that the state was in violation of the uniformity clause of the New Mexico constitution (Article XII, Section 1) in the manner in which it funded capital outlay for schools. The state was given until July 28, 2000 to correct past inequities and to establish and implement a uniform system of funding for future capital improvements. The court extended the time frame to await the work of the 2000 task force after its creation.

Laws of 2001, Chapter 338 enacted many of the recommendations of the 2000 task force. This legislation established a new framework for public school capital outlay that provides one hundred percent state funding for immediately remedying health and safety deficiencies at every public school in the state, continues to fund the substantial backlog of critical capital outlay needs of school districts that substantially used up their own resources for public school capital improvements; and that implements a long-term public school capital improvement process beginning September 1, 2003 that guarantees all school districts an adequate capital infrastructure -- adequate in terms of physical space, adequate in terms of educational suitability and adequate in terms of technological infrastructure. The legislation also increased the funding for maintenance and repair of schools so that the state investment in school facilities is safeguarded. Finally, it established a permanent revenue source for public school capital outlay using supplemental severance tax bonds.

Following a status conference with the court in April 2001, the judge appointed the Honorable Dan McKinnon as a special master to review the progress that the state had made in correcting past inequities and in developing and implementing a new capital outlay process. In May 2002, the court accepted the "Report of the Special Master" in which Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the disparities. . . ." in funding for school facilities and that ". . . at this time the state is in good faith and with substantial resources attempting to comply with the requirement's of Judge Rich's previous directions". The report also endorsed the use of the adequacy standard, upon which the new process was built, in

meeting the constitutional requirement for a uniform system of education.

One of the findings in the Special Master's report concerned the disqualifying effect of direct legislative appropriations to individual schools for capital outlay purposes. The report directed that these appropriations be taken into account in the funding formula that went into effect after September 1, 2003. In response to this directive, the funding formula was amended in Laws 2003, Chapter 147 to provide an offset against state grant awards for public school capital outlay equal to a percentage of any funds received by a school district as a direct legislative appropriation. The percentage of the offset is determined using the state-share formula, and primarily reflects the relative tax capacity of a school district. This means, in essence, that wealthier school districts are required to offset a greater proportion of legislative appropriations than poorer districts. This offset provision also applies to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Educational Technology Act.

Finally, the report of the Special Master called for the court to continue to monitor the capital outlay system being put into effect by the state to ensure that it is meeting the goal of bringing the state into compliance with the constitutional requirements. As of January 1, 2004, the court had not held a further status conference on the capital outlay system. However, the task force assumed that the court will want to review the system again after further progress has been made in implementing the new, statewide process.

Statutory Duties

The following are the duties of the task force, as set forth in the legislation:

1. to study and evaluate the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
2. to evaluate the existing permanent revenue streams and other potential revenues as

adequate long-term funding sources for public school capital outlay projects and recommend any changes that may be more cost-effective or appropriate;

3. to evaluate the effectiveness and fairness of the formula used in determining the amount of grant assistance that an approved public school capital outlay project may receive from the public school capital outlay fund and recommend any proposed changes to the legislature; and
4. to monitor and assist the public school capital outlay council as it:
 - (a) defines outstanding public school capital outlay deficiencies pursuant to Section 22-24-4.1 NMSA 1978;
 - (b) works with school districts in conducting a self-assessment of the projects needed to correct the outstanding deficiencies and establishes criteria for addressing those needs;
 - (c) develops statewide adequacy standards that establish the minimum acceptable level for the physical condition and capacity of public school buildings, the educational suitability of educational facilities and the need for technological infrastructure; and
 - (d) develops guidelines and procedures for reporting requirements and conditions to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made.

Membership

The task force consisted of 21 members, including members of the legislature, public members who have expertise in finance and education, superintendents of school districts that receive federal impact aid grants and certain designated public officials. Individuals serving as members of the task force in 2003 included the following:

Co-chairs

Robert J. Desiderio, dean of the university of New Mexico law school

Representative Rick Miera, chair of the house education committee

Legislative members

Senator Ben D. Altamirano, chair of the senate finance committee

Representative Max Coll, chair of the house appropriations and finance committee

Representative Larry A. Larranaga, minority member of the house of representatives

Senator Carroll H. Leavell, minority member of the senate

Senator Cynthia Nava, chair of the senate education committee

Public members

Gary Bland, state investment officer

Michael J. Davis and Veronica Garcia, superintendent of public instruction

Odis Echols, former legislator with experience in educational finance

Pancho Guardiola, superintendent, Cuba public schools, representing the "impact aid" districts

Leonard Haskie, assistant superintendent of support operations, Gallup-McKinley county public schools

James Jimenez, secretary of finance and administration

Kilino Marquez, superintendent of Grants-Cibola county schools, representing the "impact aid" districts

Rey S. Medina, former legislator with experience in educational finance

Tony Monfiletto, former staff member of legislative education study committee and founder and principal of a charter school

Alan Morgan, former superintendent of public instruction

James "Bud" Mulcock, former business executive and a current education lobbyist

Neil Nuttall, superintendent, Clovis municipal schools, representing the "impact aid" districts

Norman Suazo, architect with expertise in school construction and division chief with the bureau of Indian affairs

Ken White and William McCarthy, dean of the New Mexico state university college of

engineering

Work During the 2003 Interim

The task force held five meetings during the 2003 interim. It received testimony about the implementation of the public school capital outlay program, heard from selected school districts about how they are adapting to the new program and about any issues or concerns they have, received several status reports on the statewide assessment of school facilities, considered recommendations of the school safety task force as requested in Senate Joint Memorial 59, continued to review the adequacy of the permanent funding source, determined a method for ensuring that all school districts participate in the new process, even if they are unwilling, and considered other related issues.

In addition, the task force created three subcommittees – the funding subcommittee, the maintenance subcommittee and the charter school subcommittee. These subcommittees met periodically during the interim to consider in more detail issues related to their topic. Each subcommittee developed recommendations that were presented to the full task force in November 2003.

The work of the task force and the subcommittees was guided and assisted by a team of professional staff from various legislative and executive agencies, including the legislative council service, legislative education study committee (LESC), legislative finance committee, department of finance and administration, public education department and the public school facilities authority (PSFA). Additional assistance was provided by members of the public school capital outlay council (PSCOC) and by members of professional advisory groups created by the PSCOC on the creation of a reference for the adequacy standards and on the development of a model maintenance plan and a model master plan.

Appendix A contains the 2002 interim work plan adopted by the task force and approved by the legislative council. Appendix B includes agendas and minutes from four meetings of the task

force and a summary of the discussion at the September meeting, which was conducted as a special subcommittee meeting due to the lack of a quorum. The reports of the funding subcommittee, maintenance subcommittee and charter schools subcommittee presented to the full task force are included as Appendix C.

Highlights of Recommendations and Proposed Legislative Changes

The recommendations of the public school capital outlay task force contained in this report continue to move the state forward in addressing past inadequacies in public school capital outlay funding and implementing the new standards-based process for all schools. However, the task force did not consider its job complete.

While the task force made some recommendations to strengthen the permanent funding source, it was not able to determine whether the proposed funding changes are sufficient to bring all schools up to adequacy within a reasonable time period. The task force had initially been working on a conceptual framework that looked at bringing all schools up to adequacy within 10 years while also continuing to reduce the facility condition index for building renewal and replacement. The data needed to determine if this is the appropriate approach was not received in time to allow the task force to fully analyze it. Additionally, the task force learned that the base numbers compiled by 3D International as part of the statewide assessment of all school facilities do not include the appropriate escalation factor to evaluate the data over a multi-year time frame.

Therefore, one of the task force recommendations is that the task force be continued for one additional year. This will give the task force time to test and assess the framework for evaluating the adequacy of the permanent funding source and will give the PSCOC a year to pilot the new standards-based process.

The recommendations of the task force are included in two proposed pieces of legislation, a general public school capital outlay bill and a charter school bill. Copies of these bills are

included in Appendix D. The following summarizes the recommendations contained in these measures.

The General Public School Capital Outlay Bill

Funding

- The proposed legislation provides for an annual funding level for the ongoing public school capital outlay process of \$125 million per year. This reflects the task force's best estimate at this time of the amount needed to meet the statewide adequacy standards, including projected enrollment growth, within a reasonable time frame, taking into account the amount that can be realistically managed and overseen by the PSFA. However, as noted above, the task force believes that additional work is needed in this area.
- Funding will continue to be derived primarily from the use of supplemental severance tax bonds. However, because this source is fairly volatile from year-to-year and it is not expected to be sufficient to always provide \$125 million a year, the task force is recommending that senior severance tax bonds be used to guarantee the annual funding amount. The need to use senior severance tax bonding capacity will be determined based on a three-year average of past and current levels of supplemental bonds.
- The task force is also recommending that the amount of severance tax revenues that can be used to support supplemental severance tax bonds be increased from 37.5 percent to 45 percent. This will provide some additional capacity, especially in years when revenues are rising due to high oil and natural gas prices. The task force recognizes that this recommendation will reduce to some extent the amount of money transferred into the severance tax permanent fund on an annual basis. However, this must be weighed against the scarce resources available to the state for public school and other state and local infrastructure needs.

- The task force recommends that the state continue to fund the deficiencies corrections program that identified \$324.5 million in health and safety corrections that are needed at schools throughout the state. According to data presented to the task force, approximately \$106 million is needed to complete these projects. The bill provides these funds by authorizing supplemental severance tax bonds paid from fiscal year 2004 revenues that will otherwise be transferred to the severance tax permanent fund and by making a one-time appropriation from the general fund operating reserve.

Grant Awards and Process

5. The proposed legislation continues to require that for the allocation cycle beginning September 1, 2003, grant awards are based on the adequacy standards and all school districts are eligible to apply.
6. However, it also recognizes that under the critical capital outlay program, grant awards are often made in phases and that there are a number of projects partially funded by the PSCOC in the last cycle (beginning September 1, 2002) that require additional funds to complete. The task force endorses the need for these projects to receive continuation funding so that they are completed within the next four years. So, the legislation provides that for a four-year period, the order of priority shall first reflect those projects that are partially funded before this allocation cycle.
7. The legislation also authorizes the PSCOC to make grants outside of the normal process when an emergency occurs that threatens the health and safety of students or school personnel.
8. The legislation authorizes up to \$3 million of funds during the period of moving charter schools into public facilities to be appropriated annually from the public school capital outlay fund to support lease payments for charter schools. The grant amount to an individual school equals the lesser of the actual lease payment or \$300 per member

during the previous school year. It is intended that these funds also be used to match federal funds provided as part of the No Child Left Behind Act (see charter schools below).

Recalcitrant Districts

9. The legislation allows the PSCOC to bring a court action against a school district that is determined to be either unwilling or unable to bring its facilities up to a minimum standard required by the constitution of New Mexico within a reasonable time frame.
10. The court may then enter a judgment against the school district that would constitute a debt of the district. If the debt cannot be satisfied with available funds of the district, the court may order the imposition of a property tax in the district sufficient to satisfy the debt.

Maintenance

11. The Public School Capital Improvements Act (SB 9) is amended to allow SB 9 funds to be used for technical training and certification for maintenance and facilities management personnel.
12. The state guarantee amount for SB 9 is increased from \$50.00 per unit per mill to \$60.00 per unit per mill beginning in fiscal year 2005. Thereafter, both the guarantee amount and the minimum state contribution of \$5.00 per unit per mill are indexed to inflation. The public education department has not yet projected the cost of this provision. However, it is expected to provide approximately \$10 million a year in additional state funds for maintenance in fiscal year 2005 and to protect the level of state funding over time from erosion due to normal growth in assessed valuations.

Other General Provisions

13. The task force is re-created for one more year in order to continue to oversee the

implementation of the new process and evaluate the adequacy of the funding source.

14. The membership of the PSCOC is changed to reflect the new structure of the public education department and to add the president of the New Mexico superintendents' association as the tenth member.
15. Language is included that encourages the use of mediation at the district level to resolve disputes the district administration may have with individual schools.
16. A three-year carryforward period is applied to the direct legislative appropriation offset that applies to education technology funding.

The Charter School Bill

17. The task force endorses legislation that merges the draft bills endorsed by the task force and the LESC last year as its starting point for this year's recommendations.
18. The proposed bill provides for a mediation process as a way to resolve disputes between charter schools and their school districts. This process applies to disputes over issues related to the approval of the charter.
19. After July 1, 2004, when a new charter school is created or an existing charter is renewed, no member of the governing board of the charter school can serve on the governing board of another charter school.
20. The secretary of public education is allowed to authorize a single charter school to maintain separate facilities at two or more locations within the same district. The school is considered a single school for purposes of the funding factors.

21. A number of changes are made to deadlines, dates and requirements associated with obtaining a charter.
22. Local school districts will be required to provide facilities to a charter school if they have space available that is not being used for educational purposes.
23. The bill clarifies that local school districts are responsible for providing the state match required for projects to bring the facilities of charter schools up to the standards. If the district refuses, the matter goes to mediation.
24. After July 1, 2004, a new charter school cannot begin operating until the PSFA certifies that its facility meets life and health safety codes related to educational occupancy.
25. All facilities of charter schools will be required to meet the statewide adequacy standards within the same time frame as other public schools are being brought up to standards, since they will be in the queue like all public schools. The PSCOC will award funds to these charter schools to make the improvements in their facilities necessary to bring them up to standards. For leased facilities, the improvements will be accomplished through tenant improvements.
26. After January 1, 2009, the charter for a charter school cannot be renewed unless the school is housed in a public building that meets the adequacy standards. However, if it is not in an adequate public building, the charter school must demonstrate that there are no public buildings available that are adequate. It also has to show that the private building that it proposes to use meets the adequacy standards and that the owner agrees to maintain the building to continue to meet the standards at no additional cost.
27. As previously noted, in the general public school capital outlay bill, up to \$3 million may be appropriated from the public school capital outlay fund to make grants to charter

schools for lease payments. This will be allowed during the transition period until January 1, 2009, when charter schools are expected to be housed in public facilities.

Appendix A

2003 Interim Work Plan

2003 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

Statutory Authority and Duties

The public school capital outlay task force was created by Laws 2001, Chapter 338. The task force consists of 21 members, including members of the legislature, public members who have expertise in finance and education, superintendents of school districts or their designees from districts that receive federal impact aid grants and certain designated public officials. The work of the task force is to continue for three years and the task force is to report the results of its analyses and its findings and recommendations to the governor and the legislature no later than December 1 of each year. The statutory authority for the task force is repealed effective January 1, 2004.

The duties of the task force, as set forth in the legislation, are to:

- A. study and evaluate the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
- B. evaluate the existing permanent revenue streams and other potential revenues as adequate long-term funding sources for public school capital outlay projects and recommend any changes that may be more cost-effective or appropriate;
- C. evaluate the effectiveness and fairness of the formula used in determining the amount of grant assistance that an approved public school capital outlay project may receive from the public school capital outlay fund and recommend any proposed changes to the legislature; and
- D. monitor and assist the public school capital outlay council as it:
 - A. defines outstanding public school capital outlay deficiencies pursuant to Section 22-24-4.1 NMSA 1978;
 - B. works with school districts in conducting self-assessments of the projects needed to correct the outstanding deficiencies and establishes criteria for addressing those needs;
 - C. develops statewide adequacy standards that establish the minimum acceptable level for the physical condition and capacity of public school buildings, the educational suitability of educational facilities and the need for technological infrastructure; and
 - D. develops guidelines and procedures for reporting requirements and conditions to ensure that the grants are expended in the most prudent manner possible and that they are consistent with the original purpose for which they were made.

Membership

Legislative Members:

- Senator Ben D. Altamirano, chair of the senate finance committee
- Representative Max Coll, chair of the house appropriations and finance committee
- Representative Larry A. Larranaga, minority member of the house of representatives
- Senator Carroll H. Leavell, minority member of the senate
- Representative Ben Lujan, speaker of the house, advisory
- Representative Rick Miera, chair of the house education committee and co-chair of the task force
- Senator Cynthia Nava, chair of the senate education committee

Designated Public Officials:

- Gary Bland, state investment officer
- Michael J. Davis, superintendent of public instruction
- Robert J. Desiderio, designee of the dean of the university of New Mexico law school and co-chair of the task force
- James Jimenez, secretary of finance and administration
- Kenneth White, dean of the New Mexico state university college of engineering

Appointed Members:

- Leonard Haskie, assistant superintendent of support operations, Gallup-McKinley county public schools
- Otis Echoles, former state senator with experience in education and finance
- Pancho Guardiola, superintendent of Cuba independent schools, representing the "impact aid" districts
- Kilino Marquez, superintendent of Grants-Cibola county schools, representing the "impact aid" districts
- Rey S. Medina, former legislator with experience in educational finance
- Tony Monfiletto, principal of Amy Biehl charter high school and a former staff member of the legislative education study committee
- Allen Morgan, former superintendent of public instruction
- James "Bud" Mulcock, former executive of Public Service Company of New Mexico and current education lobbyist
- Neil Nuttall, superintendent of Clovis municipal schools, representing the "impact aid" districts
- Norman Suazo, architect with expertise in school construction and division chief with the bureau of Indian affairs

2003 Interim Work Plan

In order to accomplish the duties set forth in the legislation, the task force proposes to complete its work during the 2003 interim by focusing on the following areas:

- 1. Continue to monitor and assist the public school capital outlay council (PSCOC) as it creates the public school facilities authority, continues to implement the deficiencies correction program and moves to the statewide, standards-based program.**

The task force will hear periodic reports from the PSCOC regarding the progress being made on creating the new public school facilities authority and on funding and monitoring the deficiency correction projects around the state. It will also continue to receive reports regarding the updating and use of the statewide assessment data developed by 3D/International (3D/I) for all schools preparatory to implementing the standards-based program. It will review the weighting system developed by the PSCOC for prioritizing projects, as well as any decisions made about how to incorporate the need for new schools in growth districts.

2. Continue to review the funding for maintenance of school facilities and the effectiveness of current school maintenance programs and evaluate whether additional legislation is needed to provide sanctions for inadequate maintenance of facilities.

During the previous interim, the maintenance subcommittee of the task force recommended strengthening the requirements for implementing model maintenance procedures at the schools. The subcommittee also noted, in its report to the task force, that "a compliance mechanism to insure implementation and necessary accountability needs to be established and the task force needs to work on developing recommendations on this issue for the '04 session". The maintenance subcommittee will assess the efforts of the school districts to improve their maintenance procedures and determine what, if any, compliance mechanisms are needed in this area. They will make recommendations to the full task force on compliance and other maintenance issues.

3. Determine a method for dealing with the "recalcitrant district" issue, where a school district is either unwilling or politically unable to provide its local match requirement under the formula.

The task force recognizes that, in some instances, a school district may have schools that do not meet the adequacy standards and are on the priority list for funding, but it either cannot or will not pass a bond issue or other financing plan to provide its match as required under the state-share formula. The task force has called this the "recalcitrant district" problem. The formula subcommittee of the task force began work on this issue in the 2002 interim, but it did not reach any conclusions. The task force, under the guidance of Co-chair Desiderio, will consider this issue in greater depth and develop recommendations for addressing the problem, should it ever arise. The task force will also monitor the application of the state-share formula and make recommendations for any technical changes, if needed.

4. Evaluate the existing permanent revenue streams and other potential revenues as adequate long-term funding sources for public school capital outlay projects and determine how to provide additional short-term funding to complete the correction of outstanding health and safety deficiencies.

With the adoption of the statewide standards and the completion of the needs assessment, the task force will be better able to assess the overall capital outlay needs and to develop a proposed time frame for meeting those needs. A funding subcommittee will be created to

identify and evaluate funding issues and to develop options for consideration of the full task force. The funding subcommittee will use the software developed by 3D/I to evaluate the effect of various spending scenarios on addressing the backlog of capital needs. It will hear from state finance experts about projected levels of severance tax revenues and the supplemental severance tax bonding capacity, especially in terms of expected long-term trends. It will also monitor the availability of new federal revenues for school construction projects.

The funding subcommittee will analyze the need for other long-term funding sources and, if existing revenue sources do not appear adequate, will identify funding options and evaluate their advantages and disadvantages. The subcommittee will review the work of the previous task forces in this area and will re-evaluate these options and any new options in light of additional information on the level of needs and legislative and other feedback on the suitability of the options. The subcommittee will present its analysis to the full task force.

As required by law, the evaluation of each funding option will take into account:

- A. any short-term and long-term effects upon the general fund;
- B. any potential impact upon other capital outlay needs of the state, including the institutions of higher education, and its political subdivisions; and
- C. any potential impact upon the current citizens and businesses of the state, as well as the future economic development potential of the state.

In addition to looking at the long-term funding needs, the funding subcommittee will assess the need for either recommending additional short-term funding to complete the correction of outstanding health and safety deficiencies or for using a portion of the permanent revenue stream for this purpose and will make recommendations to the full task force on this issue.

5. Work with the legislative education study committee (LESC) to study the facility needs of charter schools.

During the previous interim, the charter school subcommittee of the task force developed a number of recommendations for addressing the facility needs of charter schools under the standards-based capital outlay program. These recommendations were reported to the LESL, but not enacted.

The charter school subcommittee will continue to meet and address the special capital needs of charter schools. It will work with the LESL, as requested, to provide information from the statewide assessment on the condition of charter school facilities and to develop recommendations, consistent with the statewide standards-based program, to ensure that the facility needs of charter schools are addressed in a manner consistent with the needs of non-charter schools.

6. Continue to monitor litigation involving the public school capital outlay program in New Mexico.

The task force will continue to monitor developments in the *Zuni* lawsuit, including any status hearing scheduled by Judge Joseph Rich of the eleventh judicial district court of the state. At the request of the legislative council, the task force will also hear a status report on the suit in front of the tenth circuit court resulting from the administrative appeal of the state's equalization certification related to the use of PL 874 (federal impact aid) funds.

2003 Approved Meeting Schedule and Budget

<u>DATE</u>	<u>LOCATION</u>	<u>BUDGET</u>
June 2	Albuquerque	\$2,823.38
August 19-21 (1-1/2 days for subcommittees, 1 day task force)	Albuquerque	5,245.88
October 1-3 (1-1/2 days for subcommittees, 1 day task force)	Albuquerque	5,245.88
November 6-7	Santa Fe	4,601.80
November 24-25	Santa Fe	<u>4,601.80</u>
TOTAL BUDGET REQUEST		\$22,518.74
TOTAL APPROVED BUDGET		\$20,000.00

Appendix B

Meeting Agendas and Minutes of Meetings

TENTATIVE AGENDA
for the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE
June 2, 2003
Pete McDavid Lounge
University of New Mexico Arena
Albuquerque, New Mexico

Monday, June 2

9:30 a.m. CALL TO ORDER AND WELCOME

INTRODUCTION OF MEMBERS
ADOPTION OF MINUTES FROM MEETING OF JANUARY 18, 2003
—Representative Rick Miera, Co-chair
—Robert Desiderio, Co-chair

9:45 a.m. 2003 LEGISLATIVE ACTION
—Janet Peacock, Staff, Legislative Council Service

10:30 a.m. UPDATE ON DEVELOPMENTS FROM THE PUBLIC SCHOOL CAPITAL
OUTLAY COUNCIL
—Paula Tackett, Member, Public School Capital Outlay Council

11:15 a.m. ADOPTION OF 2003 WORK PLAN AND MEETING SCHEDULE
—Discussion of Members and Staff

12:00 noon ADJOURN

**MINUTES
of the
JUNE 2003 MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**June 2, 2003
Pete McDavid Lounge, The Pit, UNM
Albuquerque**

Representative Rick Miera, co-chair, called the meeting of the public school capital outlay task force to order at 9:50 a.m. on Monday, June 2, 2003, in the Pete McDavid lounge at the Pit on the university of New Mexico campus in Albuquerque.

PRESENT

Robert Desiderio, co-chair
Rep. Rick Miera, co-chair
Sen. Ben D. Altamirano
Rep. Max Coll
Sen. Carroll H. Leavell
Sen. Cynthia Nava
Leonard Haskie
James Jimenez
Kilino Marquez
Tony Monfiletto
Bud Mulcock
Neil Nuttall

ABSENT

Rep. Larry A. Larranaga
Gary Bland
Michael J. Davis
Rey S. Medina
Norman Suazo
Ken White

Advisory members

Rep. Ben Lujan

Staff

Sharon Ball, Legislative Education Study Committee (LESC)
Sam Flaim, Department of Finance and Administration (DFA)
Bob Gorrell, Deficiencies Corrections Unit (DCU)
Liz Holmes, Legislative Council Service (LCS)
Linda Kehoe, Legislative Finance Committee (LFC)
Janet Peacock, LCS
Pauline Rindone, LESC
Paula Tackett, LCS

Representative Miera began the meeting by introducing Mr. Monfiletto as a new member of the task force and asking the other members of the task force and staff to introduce themselves.

Janet Peacock, LCS, reviewed legislation from the 2003 session that will affect the task force's interim committee work. Ms. Peacock summarized the changes that were included in Laws 2003, Chapter 147, which was Senate Bill 513 sponsored by the public school capital outlay task force. The most significant revisions to the public school capital outlay program contained in the bill were requirements for new maintenance plans, creation of the public school facilities authority, changes to the funding formula and the adoption of the legislative offset to apply against capital outlay grants and distributions from the educational technology fund. One program change adopted by the legislature that was not included in the original bill was a one-year \$15 million set-aside of funds to be awarded by the public school capital outlay council (PSCOC) during the final year of the critical capital outlay program to eligible school districts that are experiencing enrollment growth, are bonded to 90 percent of capacity and have a tax base per pupil of less than one-half the statewide average.

Ms. Peacock then referred the task force to House Joint Memorial 121, which focuses on the facility needs of charter schools. She noted that prior to the 2002 legislative session, the task force presented a number of recommendations to the legislative education study committee (LESC) on the issue of providing for the capital needs of charter schools. LESC did not endorse these recommendations and no legislation was introduced implementing the recommendations. While the legislature considered other measures addressing the needs of charter schools, none passed. What did pass was House Joint Memorial 121, which requests the LESC, the state department of public education (SDE) and charter schools to work together to study the facility needs of charter schools. Ms. Peacock noted that the memorial does not specifically include the task force as a study participant.

Ms. Peacock also reviewed Laws 2003, Chapter 238 (House Bill 992), which authorizes up to \$40 million in supplemental severance tax bonds for deficiency correction projects. She recognized the support of Speaker Lujan, the sponsor of this bill, and the cooperation of the governor and his staff at DFA in bringing this legislation forward. Finally, Ms. Peacock presented tables showing the direct legislative appropriations to schools and school districts for capital outlay and education technology projects passed by the 2003 legislature and signed by the governor (copies of the table are in the meeting file). She noted that \$8.9 million was authorized for school capital outlay projects and \$4.2 million for education technology projects. Of the \$4.2 million for education technology, \$3.7 million went to the Albuquerque public schools (APS).

Sam Flaim, chief economist at DFA, presented a paper on severance tax bond capacities and authorizations for fiscal year 2003 (a copy is in the meeting file). Mr. Flaim said the senior severance tax bond (STB) capacity is expected to total \$137.8 million for fiscal year 2003 and the supplemental severance tax bond (SSTB) capacity is expected to total \$133 million, for a combined total of \$270.8 million. The \$137.8 million in senior bonds includes \$28.4 million for the deficiency correction program authorized in Laws 2001, Chapter 338. The \$133 million will provide \$102.3 million for critical capital outlay and other PSCOC projects, \$11.3 million for the state equalization distribution under "Senate Bill 9" and \$19.4 million for deficiency correction

projects as authorized in House Bill 992. Mr. Flaim added that the state board of finance will issue both long-term and short-term (sponge) STBs and sponge SSTBs in late June 2003 to the extent that all available cash balances in the bonding fund will be used ("sponged") in excess of the amount needed for the next two debt service payments.

With respect to House Bill 992, Mr. Flaim said that it permits an exception to the statutory revenue test that limits the issuance of new bonding to 87.5 percent of the prior year's revenue. It permits the "interception" of up to \$40 million in severance tax revenues that would otherwise be transferred to the severance tax permanent fund. Mr. Flaim told the task force that based on current revenue estimates, DFA anticipates that \$19.4 million will be available for deficiency corrections. Should actual revenues at the end of June exceed DFA's expected severance tax collections or if other capital outlay projects are not ready for funding, any and all of this excess revenue will be "sponged" in the supplemental program for deficiency corrections.

The task force discussed the effect that the new legislative offsets will have on school districts. In response to a question, Ms. Peacock said that offsets from a public school capital outlay award would go against the school district and not the specific school accepting the award. It was mentioned that SDE will be responsible for informing New Mexico school districts on how the new formula works and how it will affect their particular district. Representative Coll suggested that the school districts work closely with their legislators to ensure all parties involved are aware of the effects of school districts accepting a direct legislative appropriation versus a public school capital outlay award.

The task force briefly discussed the new requirements for approval of maintenance plans and questioned how they would be enforced. Paula Tackett said that the maintenance subcommittee had recommended that, at least to start, PSCOC assist school districts in completing their maintenance plans and not provide penalties. It was agreed that the task force would look at the need for penalties once it has more experience with the issue. Ms. Peacock noted that the proposed work plan for the task force for the 2003 interim has the issue of compliance with the maintenance requirements listed as an issue to be considered this interim.

In regard to the legislative offset for educational technology, concerns were voiced about the new funding formula and the effects it will have on educational technology distributions to APS. It was agreed that APS representatives should be invited to a future meeting to discuss the legislative offset issue.

A number of task force members expressed concerns that the charter school memorial did not include input from the public school capital outlay task force. In addition, James Jimenez, secretary of finance and administration, cited what he feels is a weakness in the memorial because it does not include the executive branch in its collaboration. Representative Miera noted that as chair of the LESC, he would assure Mr. Jimenez that the executive branch would be asked for its input. He said that he felt the task force should also continue to work on the charter school capital issue.

Ms. Tackett then reported on PSCOC developments. She reminded the task force that Catherine Smith is PSCOC's new chairman and informed the task force that meetings will take place once a month during the 2003 interim. The PSCOC has been divided into five

subcommittees: negotiation of the 3D/I contract; maintenance; facility authority; DCU; and allocations. Ms. Tackett explained that PSCOC recognizes the importance of high growth districts and the transition to the new facilities authority and that these issues will be addressed in its meetings.

Senator Altamirano discussed the past work of the task force, including the successes during the 2003 session, and the lack of public understanding about all that is being done. He suggested the task force develop a public relations campaign in an effort to keep New Mexicans informed. Secretary Jimenez agreed and offered the services of DFA staff to work with the appropriate legislative staff on a possible campaign.

Bob Gorrell of the DCU provided the task force with a DCU update. Currently, there are 140 projects in construction and there will be 180 projects in the next 30 days. He informed the task force that DCU has developed a new policy in which contracted construction companies are paid 20 days after DCU receives an invoice. In response to a question about involving more local contractors, Mr. Gorrell said that by July 1, 2003, contractors will be able to access a new DCU web site. This web site will allow any contractor who is interested in doing business with DCU the opportunity to register online and be notified of future projects. Mr. Gorrell opined that the web site will encourage the construction industry to conduct business with the state, thus raising competition and lowering cost.

Discussion then turned to the proposed work plan for the 2003 interim (a copy is in the meeting file). The task force adopted a work plan that includes the following tasks:

- 1) continue to monitor and assist PSCOC as it creates the public school facilities authority; continue to implement the deficiencies correction program; and move to the statewide standards-based program;
- 2) continue to review the funding for maintenance of school facilities and the effectiveness of current school maintenance programs and evaluate whether additional legislation is needed to provide for inadequate maintenance of facilities;
- 3) determine a method for dealing with the "recalcitrant district" issue, in which a school district is either unwilling or politically unable to provide its local match requirement under the formula; and
- 4) evaluate the existing permanent revenue streams and other potential revenues as adequate long-term funding sources for public school capital outlay projects and determine how to provide additional short-term funding to complete the correction of outstanding health and safety deficiencies.

In addition, the task force agreed that the work plan should include working with LESC to develop recommendations that address charter school capital needs.

Mr. Desiderio proposed that the task force break up into three subcommittees: maintenance, chaired by Representative Miera; funding, chaired by Mr. Desiderio; and charter schools, chaired by Mr. Nuttall. The task force members were asked to submit their requests for

subcommittee membership to staff. The work plan was approved, subject to the revisions that were discussed.

The task force adopted the following dates for 2003 interim meetings:

- August 20-21
- October 2-3
- November 6-7
- November 24-25

It was suggested that for the August and October meetings, the subcommittees could meet the first day and the entire task force could meet the second day. Additional meetings of the subcommittees could be scheduled, if necessary. The meetings will take place in the Pete McDavid lounge at the Pit on the university of New Mexico campus in Albuquerque depending upon the availability of the lounge. The task force must report its final recommendations to the legislature by December 1, 2003.

The minutes of the January 2003 meeting were adopted. The task force adjourned at 12:00 p.m.

**TENTATIVE AGENDA
for the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**August 20-21, 2003
Pete McDavid Lounge
University of New Mexico Arena
Albuquerque**

Wednesday, August 20

FUNDING SUBCOMMITTEE

9:30 a.m. Call to Order

—Robert Desiderio, Chair

9:35 a.m. Discussion of Issues to be Addressed by the Subcommittee

—Robert Desiderio, Chair

—Staff

10:00 a.m. Update on Severance Tax Bond Capacities

—James Jimenez, Secretary of Finance and Administration

10:30 a.m. Review of Previous Funding Options

—Staff

MAINTENANCE SUBCOMMITTEE

9:30 a.m. Call to Order

—Rep. Rick Miera, Chair

9:35 a.m. Discussion of Issues to be Addressed by the Subcommittee

—Rep. Rick Miera, Chair

—Staff

10:00 a.m. Review of Maintenance Requirements and the Current Process

—Staff

11:00 a.m. Best Practices in Other States

—Staff

CHARTER SCHOOL SUBCOMMITTEE

1:30 p.m. Call to Order

—Neil Nuttall, Chair

- 1:35 p.m. Review of Previous Task Force Recommendations, 2003 Legislative Education Study Committee (LESC) Proposed Legislation and Other Charter-School-Related Legislation
—Sharon Ball, LESC
—Paula Tackett, Legislative Council Service (LCS)
- 2:45 p.m. Identification of Areas of Concern
—Sharon Ball, LESC
—Tony Monfiletto, Principal, Amy Biehl Charter High School
- 3:15 p.m. Discussion of Issues to be Addressed by the Subcommittee

Thursday, August 21

FULL TASK FORCE

- 9:30 a.m. Call to Order and Welcome
—Rep. Rick Miera and Robert Desiderio, co-chairs
- 9:40 a.m. Approval of 2003 Work Plan and Summary of Discussion from Previous Meeting and What We Have Learned
—Janet Peacock, Staff, LCS
- 10:00 a.m. Public School Capital Outlay Council — Report on Recent Activity
—Creation of the Public School Facilities Authority (PSFA)
—Paula Tackett, Member
—Bob Gorrell, Director
—Update on the Correction of Health and Safety Deficiencies
—Bob Gorrell, Director, PSFA
—Refining and Updating the Statewide Assessment
—Bill Sprick, Planning and Design Manager, PSFA
—Winton Smith, 3D International
- 12:00 noon Lunch
- 1:30 p.m. 2003 Education Technology Distributions and the Effect of the Legislative Appropriation Offset
—Steven Sanchez, State Department of Public Education
- 2:30 p.m. Albuquerque Public Schools — Adjusting to the New Process
—Michael Vigil, Superintendent for Business
—Pat McMurray, Director of Facilities Planning and Construction
—Tom Ryan, Executive Director of Technology
- 4:00 p.m. Adjourn

**MINUTES
of the
AUGUST 2003 MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**August 21, 2003
Pete McDavid Lounge, The Pit, UNM
Albuquerque**

Representative Rick Miera, co-chair, called the meeting of the public school capital outlay task force to order at 9:40 a.m. on Friday, August 21, in the Pete McDavid lounge at the Pit on the university of New Mexico campus in Albuquerque.

PRESENT

Robert Desiderio, co-chair
Rep. Rick Miera, co-chair
Sen. Ben D. Altamirano
Rep. Max Coll
Rep. Larry A. Larrañaga
Sen. Cynthia Nava
Michael J. Davis
Odis Echols
James Jimenez
Rey Medina
Tony Monfiletto
Bud Mulcock
Neil Nuttall
Norman Suazo

ABSENT

Sen. Carroll H. Leavell
Gary Bland
Pancho Guardiola
Leonard Haskie
Kilino Marquez
Alan Morgan
Ken White

Advisory members

Rep. Ben Lujan

Staff

Sharon Ball, Legislative Education Study Committee (LESC)
Sam Flaim, Department of Finance and Administration (DFA)
Bob Gorrell, Public School Capital Outlay Finance Authority (PSFA)
Liz Holmes, Legislative Council Service (LCS)
Linda Kehoe, Legislative Finance Committee (LFC)
Steve Neel, LFC
Janet Peacock, LCS
Pauline Rindone, LESC
Paula Tackett, LCS

Representative Miera and Robert Desiderio, co-chairs, welcomed members and guests.

The task force approved minutes from the June meeting. Janet Peacock, LCS, summarized the discussion from the previous meeting and reported on the 2003 work plan that was approved by the legislative council.

Robert Gorrell, director of PSFA, and Paula Tackett, director of LCS and member of the public school capital outlay council (PSCOC), reported on PSCOC's activities. They reported on the three pertinent subcommittees — maintenance, 3DI and PSFA — explaining that each subcommittee is made up of at least one representative from the executive branch, legislative branch and the schools. A list of the members on the subcommittees was requested by Senator Nava.

Ms. Tackett reported that to date the 3DI contract has been extended to update the statewide assessment. The update will incorporate all PSCOC allocations and deficiencies correction unit (DCU) projects, will identify the top 150 schools with the highest FCI to begin updating the assessment and will incorporate special runs for charter schools.

Mr. Gorrell and Ms. Tackett discussed PSFA's progress since its creation during the 2003 legislative session. Ms. Tackett explained that PSCOC has gone through a national search for a director, reviewed over 60 applications, interviewed 12 people, cut the list down to five and, finally, was pleased to announce the selection of Mr. Gorrell as the new director. Ms. Tackett took the task force through some of the issues and tasks facing PSCOC in getting PSFA's new standards-based program implemented, including developing a model preventive maintenance plan, changing the entire application process and developing guidelines for implementing the adequacy standards. PSCOC is working with a volunteer group of professional architects, school designers and others to review the adequacy standards and develop guidelines to clarify how they will be applied. It was suggested that the task force review the guidelines at a future meeting.

Mr. Gorrell mentioned a possible conflict in the legislation that created PSFA. While PSFA, as directed by PSCOC, is responsible for overseeing all school construction, the state board of education continues to have a review and approval function over school construction. It is believed that this needs to be corrected during the next legislative session.

Mr. Gorrell and Ms. Tackett also addressed changes that will have to be made to the public school facilities planning process, including PSFA's involvement in the process, beginning with the pre-planning stage and lasting through decommissioning. PSFA participation will also include maintenance and master-planning assistance.

Representative Larranaga raised several concerns about the amount of review under contract and review of procurement by the schools. In addition, he asked if PSFA controlled construction funds and what control over SB9 money the state has when it is not being used for its intended purposes. Mr. Gorrell and Ms. Tackett were of the opinion that PSCOC and PSFA have significant control, explaining that if even one cent of state money is put into a project, the Procurement Code must be followed. In an effort to make the process more consistent statewide, PSFA is working on standardizing contracts, allowing joint bidding and developing a web-based

advertising system specifically for architectural and construction services.

The task force also discussed the use of GSA contracts. Roofing projects were raised as an issue and Mr. Gorrell explained that DCU roof projects followed special procedures. These roofs are under warranty for 20 years and are typically bid at 15 to 30 percent less than GSA. Also, an independent task force has been created to report on the Albuquerque public schools (APS) roofs.

The maintenance subcommittee of the task force is looking at consolidating services in smaller districts through the regional educational cooperatives (RECs). The subcommittee directed staff to work with the RECs and provide more information at the September task force meeting.

Representative Miera suggested the task force consider tightening up the statutory provisions of the Procurement Code. Secretary Jimenez clarified some of the provisions, explaining that the Procurement Code was not intended to be efficient. Rather, it was intended to safeguard public funds and open up the process to a wide array of vendors.

Mr. Gorrell reported on the transition from DCU to PSFA. The current policy requiring construction managers to be within an hour and a half of their PSFA sites will be maintained. Construction managers will receive additional training that will include maintenance and planning. In addition, PSFA is developing a construction manager certification process.

PSFA's temporary administration will be similar to DCU's. However, types of projects will be greatly expanded. PSFA will also provide procurement oversight, begin regional training programs, assist in federal grant solicitation, integrate the 3DI database, advertise projects and develop a master planning process. PSFA is not completely staffed. Mr. Gorrell does not anticipate a full staff until the strategic plan is developed.

Mr. Gorrell told the task force that the planning program would add an additional component to PSFA. The planning program will include a process for site selection, a "program" statement, a schematic review, a full inventory to facilitate preventive maintenance and record keeping.

Discussion then turned to deficiency projects that began under DCU and have not been completed. Mr. Gorrell said the DCU money continues to be accounted for separately from other capital outlay funding. Most projects are complete and only nine old contracts seem impossible to "close out". PSFA has identified 90 percent of all deficiency projects and expects to report the status of all projects to PSCOC by March 2004. The PSFA/DCU has been awarded \$143 million; \$51 million is actually under contract and \$20.5 million has been spent. Mr. Desiderio asked Mr. Gorrell what additional funds will be needed to correct identified level 2E deficiencies. Mr. Gorrell informed the task force that the final costs should be available by February 15, 2004 and that the cost of the 150 worst projects will be available by October 15. Mr. Gorrell explained that the 150 worst projects are determined through an existing database with DCU taken out. Ranking is based on needs as established by the adequacy standards. Growth factors have not been considered in determining deficiency. PSCOC is working on incorporating growth factor data into the database.

Senator Nava expressed her concern about the interpretation of standards and their flexibility. She discussed poorer districts and their ability to meet, and exceed, the adequacy standards. Charter schools were mentioned in this discussion as well. Mr. Gorrell said the guidelines are addressing this issue. The task force was also informed that the guidelines do not address school size. Construction of new schools will be addressed at the master planning level on a case-by-case basis.

Mr. Mulcock recommended that projects be organized by legislative districts and that school districts report on their status to their legislators. He suggested that this step may assist in the legislative process. Superintendent Davis offered to help disseminate the information.

Bill Sprick, planning and design manager of PSFA, and Winton Smith of 3DI provided the task force with a 3DI status report. The assessment database will include all projects funded by DCU, PSCOC and the district since it was first completed.

Alan Armijo, Michael Vigil, Pat McMurray and Tom Ryan of APS reported on adjusting to the new statewide school funding process. APS is looking forward to being eligible for state money for the first time. It did not previously qualify, based on bonding capacity, even though it had the highest property tax rates.

Mr. McMurray, director of facilities planning and construction, said APS is currently working on the guidelines committee. He said he looks forward to working with PSFA and thinks the PSFA construction site manager is a needed change. APS has developed a preventive maintenance planning process and is concerned that the newly established PSFA may slow its process. APS conducts a district-wide survey every five years. Mr. McMurray stated that the five-year master plan has taken the politics out of the process. APS has implemented a community-based process within its process. It consists of an advisory team for each school with a membership of teachers, students, administrators and citizens. Currently, APS has 77 projects going on and \$135 million in these projects. He informed the task force that he hopes the state will work with the process APS has created so that projects are not slowed or duplicated.

Mr. Ryan, executive director of technology, explained to the task force that he is just now becoming familiar with the legislative offset and all of its implications. He noted that a majority of the educational technology money appropriated for APS is used for operational costs, including the support of 14 FTEs, internet connections and operational training. Little is spent on computers.

Members of the task force were surprised to learn that educational technology money was used for operational costs. Mr. Nuttall noted that Clovis also used some of its educational technology money for operations, but said that Clovis does not request legislative appropriations for educational technology and is therefore not adversely affected by the legislative offset. Representative Coll recommended that the task force further study the funding for educational technology.

In response to a question, Ms. Ball indicated that using funds for operational costs is permissible given the vague statutory definition of educational technology.

In response to concerns about not being aware of the legislative offset for educational technology, Ms. Peacock reminded members that the educational technology offset recommendations were a part of the recommendations of the task force adopted in January 2003. They were discussed in front of numerous legislative committees and on the floor of the house and senate. In addition, at the request of the house democratic caucus, the legislative council sent out a letter to all school superintendents in January 2003 advising them of the proposed changes.

Finally, it was noted that the state department of public education would report at the next task force meeting on the educational technology distributions. At that time, there will be further discussion of this issue.

The task force adjourned at 3:00 p.m.

**TENTATIVE AGENDA
for the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**September 25-26, 2003
Pete McDavid Lounge
University of New Mexico Arena
Albuquerque**

Thursday, September 25

MAINTENANCE SUBCOMMITTEE

9:30 a.m. Call to Order

—Representative Rick Miera, Chair

9:35 a.m. Regional Educational Cooperatives – How They Work

—Sandy Gladden, Executive Director, Region 9 Educational Cooperative

10:00 a.m. How School Districts Work with Regional Educational Cooperative

—Joe Guillen, President, New Mexico School Board Association

—Manuel Valdez, Chama Valley Independent Schools

—Bill Green, Quemado Independent Schools

10:30 a.m. Guidelines for the Development of District Preventive Maintenance Plans

Discussion on the Working Draft

—Robert Gorrell, Director, PSFA

CHARTER SCHOOL SUBCOMMITTEE

1:30 p.m. Call to Order

—Neil Nuttall, Chair

1:35 p.m. Charter Schools Critical Capital Needs List; Discussion of the Need to Create a Mechanism for the State to Purchase Charter School Facilities; Getting Charter Schools "To the Table"

—J. Alan Marks, South Valley Academy Charter School

2:30 p.m. 2002 Bill Draft Regarding Charter Schools

—Mike Puelle, Charter School Coalition

3:30 p.m. United States Department of Education Grant for Charter Schools

—Ruth LeBlanc, Educational Administrator, Alternative Education Unit, State Department of Public Education (SDE)

Friday, September 26

FULL TASK FORCE

- 9:30 a.m. Call to Order and Welcome
—Rep. Rick Miera and Robert Desiderio, Co-chairs
- 9:35 a.m. Approval of Minutes from August Meeting
- 9:40 a.m. Proposed Guidelines to the Statewide Adequacy Standards
—John Friedman, AIA, PSFA Adequacy Standards Planning Guidelines Consultant
—Bill Sprick, PSFA Planning and Design Manager
—Keith Vlastos, PSFA, Facilities Specialist
- 11:00 a.m. Adjusting to the New Process
—Sue Cleveland, Superintendent, Rio Rancho Public Schools
—Al Sena, Executive Director of Facilities, Rio Rancho Public Schools (Invited)
—Michael Vigil, Superintendent for Business, Albuquerque Public Schools (APS)
—Pat McMurry, Director of Facilities Planning and Construction, APS
- 12:00 noon Lunch
- 1:30 p.m. 2003 Education Technology Distributions and the Effect of the Legislative Appropriation Offset
—Steven Sanchez, SDE
—Tom Ryan, Executive Director of Technology
- 2:30 p.m. 3DI – Status Report
—Winton Smith, 3D International
- 4:00 p.m. Adjourn

**REPORT
of the
SEPTEMBER 2003 MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**September 26, 2003
Pete McDavid Lounge, The Pit, UNM
Albuquerque**

Representative Rick Miera, co-chair, and Robert Desiderio, co-chair, called the meeting of the public school capital outlay task force to order at 9:30 a.m. on Friday, September 26, in the Pete McDavid lounge at the Pit on the university of New Mexico campus in Albuquerque. There failing to be a quorum, the task force resolved itself into a special subcommittee for the purposes of taking testimony.

PRESENT

Robert Desiderio, co-chair
Rep. Rick Miera, co-chair
Odis Echols
Leonard Haskie

Rey S. Medina
Tony Monfiletto
Bud Mulcock
Neil Nuttall

Advisory members

Staff

Sharon Ball, Legislative Education Study Committee (LESC)
Bob Gorrell, Public School Finance Authority (PSFA)
Liz Holmes, Legislative Council Service (LCS)
Pauline Rindone, LESC
Bill Sprick, PSFA
Paula Tackett, LCS

ABSENT

Sen. Ben D. Altamirano
Rep. Max Coll
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell

Sen. Cynthia Nava
Gary Bland
Michael J. Davis
Pancho Guardiola
James Jimenez
Kilino Marquez
William McCarthy
Alan Morgan
Norman Suazo

Rep. Ben Lujan

Representative Miera and Robert Desiderio, co-chairs, welcomed members and guests.

John Friedman, consultant, Bill Sprick, PSFA, and Keith Vlastos, PSFA, reviewed the proposed guidelines to the statewide adequacy standards as drafted by the public school capital outlay council (PSCOC) standard subcommittee and the guidelines advisory group. The task force was reminded that the guidelines provided were in draft form and had yet to be presented to the PSCOC. Mr. Sprick said any input from the task force would be greatly appreciated. Mr. Sprick said the guidelines, when used with the adequacy standards, facilitate planning goals that create a permanent building and site record, provide a basis for capital outlay planning, identify needs required to meet adequacy standards and function as a baseline document for planning and design for remodels, additions or new school designs.

Mr. Friedman summarized the draft of the proposed guidelines. He first mentioned the importance of site selection and pointed out that if a site's soil is tested and proves to be favorable, there is potentially a five percent cost savings to a project.

Mr. Monfiletto wanted to know who pays for the infrastructure of a school facility. Mr. Friedman said school districts generally pay for their infrastructure; however, it often becomes an intergovernmental problem.

Mr. Gorrell reminded the task force that the guidelines are to provide assistance to the school districts on what they need to focus on to reach or maintain adequacy. Ms. Tackett asked the task force to raise any crucial parts of the guidelines so that these points can be emphasized to PSCOC during its upcoming review.

While school districts and communities are not required to work together on the construction or renovation of a school's facilities, Mr. Friedman said schools should be built with community use in mind. He also mentioned the importance of sprinkler systems and fire protection in the planning and maintenance of school facilities.

Mr. Mulcock questioned how the guidelines applied to athletic fields. Athletic fields are subject to the adequacy standards and have unique circumstances often depending on the community in which they are located. The task force recommended that PSCOC and the guidelines advisory board clarify the guidelines as they apply to athletic fields.

Mr. Friedman explained the guidelines from the planning and building standpoint. School facilities are designed based on the architectural philosophy that one focuses on the classroom first. The guidelines advisory board discussion was dominated by the subject of the classroom. The classroom guidelines need to be flexible because they address different needs based on the students' ages, the type of programs offered and the size of the school district. Mr. Friedman said libraries and media centers pose an interesting issue because consensus has not been reached on a standard size. Mr. Mulcock suggested that the guidelines advisory board clarify the guidelines for library and media center space.

Mr. Friedman addressed two other issues in regard to classroom space. The issue of

special education classrooms has yet to be discussed by the guidelines advisory board. Mr. Friedman was of the opinion that special attention needs to be taken when addressing this issue and decisions should not be made hastily until they have been thoroughly reviewed. The second issue is the amount of space to be used for hallways, restrooms, mechanical and electrical equipment areas, wall thickness and common areas. In architectural terms, these spaces are known as "TARE". It has been determined that no more than 30 percent of TARE space shall be included in the gross square footage.

The task force was of the opinion that the special education classroom issues cannot be delayed because they are a part of the process mandated by the courts. Mr. Nuttall suggested that the guidelines advisory board include Superintendent Sue Cleveland, Rio Rancho public schools (RRPS), in its special education discussions because RRPS has a progressive program. The task force also asked Mr. Friedman and staff of PSFA to include a list of the various needs of special education classrooms as well as adequate floor plans.

Ms. Cleveland and Alfred Sena, RRPS executive director of facilities, discussed adjusting to the new process. Ms. Cleveland suggested that projects be overseen in phases and that completion time be a focus for large projects. Ms. Cleveland voiced her concern that the new process has the potential to eliminate community involvement and local ownership. The issue of requiring a classroom to be a specific size, especially with special education facilities, is of further concern. Representative Miera pointed out a contradiction in educational philosophies since inclusion programs have gained wide support, yet the design of special education programs and classrooms appears to be heading in a direction that would isolate them from the rest of the school. Ms. Cleveland explained that the needs of students in special education vary. For example, some students require changing tables for their daily school routine.

Mr. Sena turned the discussion to the proposed guidelines. He expressed the opinion that training will be a key component in school districts successfully meeting the proposed guidelines. He also suggested that PSCOC be clear in its expectations of school districts. Also, he wondered if the requirements set by PSFA would potentially slow the process down.

Pat McMurry and Bob Bitner, both of Albuquerque Public Schools (APS), told the committee that APS has never been eligible for critical capital outlay. Because APS has had to fund all of its projects with local money, it developed a facilities master plan that requires community involvement. They stated two concerns with adjusting to the new process. Like RRPS, Mr. McMurry noted that APS has been dependent on community input and he fears this relationship could be eliminated. Secondly, APS hopes the state will not alter the master planning process — that it will not be duplicated or slowed down.

Mr. McMurry discussed the issue of critical capital outlay money being distributed after a local district has undertaken a project with local funds. It was agreed by the task force that this is an issue that will have to be played out within the new process. A clarification was made that a school district can bring a facility above adequacy standards but it would have to be done with the district's own money.

Upon questions from Mr. Nuttall, the task force found that APS does not include charter schools in its facilities master plan. He expressed the importance of including charter schools because they are public schools and this is an issue that the state and schools must address.

Mr. Bitner summarized APS's master planning process. The master plan includes buildings as well as infrastructure. Unfortunately, there is not enough money to address all the problems. Funds that should be used for teachers' salaries are used for maintenance employees' salaries. Underfunding will be worsened by the inclusion of charter schools. APS is a growth district and it is building new schools in response; however, money is not being used to maintain these schools.

Winton Smith, 3DI, provided the task force with a status update. A preliminary list is being assembled that identifies schools with the most critical needs. Mr. Smith mentioned several factors that are contributing to changes in the preliminary list. Schools in growth districts will be affected as well as school districts that have critical projects underway that are not supported by the state. Co-chair Desiderio stressed the importance of knowing the estimated cost and length of these projects so that the task force can approach the legislature with this information. Mr. Smith said a new list will be available on October 15, 2003 and will include data from alternative schools and growth districts; however, it will not include charter schools.

Steve Sanchez, state department of public education, provided the task force with information on the educational technology fund.

Tom Ryan, APS, reminded the task force that educational technology does not receive core funding. Mr. Ryan proposed that the state hold school districts harmless for one year, provide a categorical offset so that school districts can modify their budgets and negotiate connectivity contracts for schools throughout New Mexico. He also proposed a change in statute that allows educational technology money to be used for operational costs.

Mr. Ryan stressed the importance of trained educational technology personnel. He said that it cannot be assumed that every individual knows how to operate a computer. An individual who has knowledge of computers is a necessary component to an educational technology curriculum.

Mr. Ryan mentioned the lack of a stable funding source or funding streams for educational technology. He also cited the potential political problems when a school district accepts money from one legislator and rejects it from another. He suggested that the state study the possibility of establishing a guaranteed funding source for educational technology that would reduce the need for special appropriations.

Co-chair Desiderio reminded the task force and guests that the *Zuni* lawsuit stated that direct appropriations must be taken into account in any funding formula. He suggested the best way to deal with educational technology funding at this time might be to focus on a transition plan. The task force brainstormed possible ways to stabilize educational technology funding.

Mr. Monfiletto suggested that educational technology funding be included in the SEG. The Technology for Education Act was originally established categorically so that school districts would be required to use the money on technology. Mr. Sanchez said that educational technology needs categorical and distribution mechanisms, especially when budgets are tight and programs are cut. The task force asked LESC to study a funding formula for educational technology.

The task force adjourned at 3:00 p.m.

TENTATIVE AGENDA
for the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE
Room 307, State Capitol
Santa Fe

Monday, November 24

- 9:30 a.m. CALL TO ORDER AND WELCOME
—Representative Rick Miera and Robert Desiderio, Co-chairs
- 9:35 a.m. APPROVAL OF MINUTES FROM AUGUST MEETING
- 9:40 a.m. FY 2004 PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL (PSCOC) GRANT AWARDS
—David Abbey, Director, Legislative Finance Committee, and Chair, Allocation Subcommittee, PSCOC
—Bill Sprick, Planning and Design Manager, PSFA
- 10:00 a.m. IMPLEMENTATION OF STANDARDS-BASED PROCESS, PSCOC
—Paula Tackett, Chair, Public School Facilities Authority Subcommittee, PSCOC
—Bill Sprick, Planning and Design Manager, PSFA
- 10:45 a.m. PUBLIC SCHOOL FACILITIES AUTHORITY STRATEGIC PLAN
—Paula Tackett, Chair, Public School Facilities Authority Subcommittee, PSCOC
—Paul Minogue, Consultant
- 12:15 p.m. LUNCH
- 1:30 p.m. REPORT OF THE SCHOOL SAFETY TASK FORCE
—Dr. David Harrell, Research Analyst, Legislative Education Study Committee
—Dr. Kristine Meurer, Director, School Health Unit, Public Education Department
- 2:15 p.m. UPDATE ON STATEWIDE NEEDS ASSESSMENT
—Bill Sprick, Planning and Design Manager, PSFA
—Winton Smith and John Qualline, 3D/International Consultants
- 3:45 p.m. ADMINISTRATIVE APPEAL OF STATE EQUALIZATION FORMULA RELATED TO IMPACT AID FUNDS
—Paula Tackett, Director, Legislative Council Service
- 4:30 p.m. RECESS

Tuesday, November 25

9:00 a.m. REPORT OF THE MAINTENANCE SUBCOMMITTEE

—Representative Rick Miera, Chair

—Staff

10:00 a.m. REPORT OF THE CHARTER SCHOOL SUBCOMMITTEE

—Neil Nuttall, Chair

—Staff

11:00 a.m. REPORT OF THE FUNDING SUBCOMMITTEE

—Robert Desiderio, Chair

—Staff

12:00 noon LUNCH

1:30 p.m. THE "RECALCITRANT DISTRICT" PROPOSAL

—Robert Desiderio

2:15 p.m. DISCUSSION OF FINAL RECOMMENDATIONS

—Members

4:30 p.m. ADJOURN

**MINUTES
of the
NOVEMBER 2003 MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE**

**November 24-25, 2003
Room 307, State Capitol
Santa Fe**

Representative Rick Miera, co-chair, and Robert Desiderio, co-chair, called the meeting of the public school capital outlay task force (PSCOTF) to order at 9:30 a.m. on Monday, November 24, in room 307 of the state capitol.

PRESENT

Robert Desiderio, Co-chair
Rep. Rick Miera, Co-chair
Sen. Ben D. Altamirano
Rep. Max Coll
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Sen. Cynthia Nava
Deborah Gallegos for Gary Bland, State Investment Officer (November 24)
Odis Echols
Leonard Haskie (November 24)
James Jimenez
Kilino Marquez (November 24)
Rey Medina
Tony Monfiletto
Arlene Strumor and Alan Morgan for Veronica Garcia, Secretary of Public Education
Bud Mulcock
Neil Nuttall
Norman Suazo

ABSENT

Pancho Guardiola
William McCarthy

Advisory members

Rep. Ben Lujan (November 25)

Staff

Sharon Ball, Legislative Education Study Committee (LESC)
Tim Berry, Public School Facilities Authority (PSFA)
Liz Holmes, Legislative Council Service (LCS)
Jeff Eaton, PSFA
Linda Kehoe, Legislative Finance Committee (LFC)
Janet Peacock, LCS
Pauline Rindone, LESC
Bill Sprick, PSFA
Paula Tackett, LCS

Monday, November 24

Representative Miera and Mr. Desiderio, co-chairs, welcomed members and guests. The minutes of the August 20 and 21, 2003 meeting of the task force were approved.

Critical Capital Outlay Awards

David Abbey, director of the LFC and chair of the allocation subcommittee of the public school capital outlay council (PSCOC), Linda Kehoe, capital analyst for the LFC, and Bill Sprick, planning and design manager of the PSFA, reported on PSCOC grant awards for fiscal year 2004 (a copy of their presentation is in the meeting file). Mr. Abbey reported that in September 2003 the PSCOC awarded \$84.7 million to 51 school districts for critical capital outlay projects. He reminded task force members that for the 2004 award cycle, the law requires the PSCOC to allocate at least \$15 million to eligible growth districts that have used at least 90 percent of their bonding capacity and that have a below-average property tax capacity. Three districts have received awards under this set-aside. Although the law no longer requires the \$20 million set-aside for impact aid districts, the awards actually include \$40.3 million for projects in impact aid districts.

Mr. Abbey noted the high level of staff work involved in the awards process, including application review, site visits, formal presentations before the PSCOC and the scoring of applications using criteria and guidelines approved by the PSCOC. He also praised the staff for the coordination between critical capital outlay projects and deficiencies correction projects, with the result being that \$10.8 million of funds for 23 deficiency projects have been approved to augment the critical capital outlay project funds.

Mr. Sprick reviewed the individual project awards. He noted that the PSCOC has traditionally funded projects in phases and that of the 51 projects that were approved, 23 will be considered fully completed with the 2004 award. This leaves 28 projects in which the projects are not considered fully completed and in which there may be an expectation of additional funds.

Task force members discussed the issue of these uncompleted projects, considering the fact that by law fiscal year 2004 was the final year of the critical capital outlay program and that subsequent grant awards will be made under the standards-based program. Ms. Tackett noted that the PSCOC has not specifically discussed the issue of funding for completion of phased projects, but that because there is an expectation by the districts that funding will be provided for continuation projects, this issue needs to be considered. Mr. Desiderio noted that Ms. Tackett has notified the funding subcommittee of the issue and that the subcommittee has asked for some additional information before it makes a recommendation. He suggested that the task force discuss the issue the following day in conjunction with the subcommittee reports.

Implementation of Standards-Based Process

Paula Tackett, chair of the PSCOC PSFA subcommittee, and Mr. Sprick briefed the task force on the PSCOC's work to implement the standards-based process. Ms. Tackett began by reviewing the statutory requirements for the standards-based process as set out in Senate Bill 167 of 2001 and then refined in Senate Bill 513 of 2003. She also noted where there are some possible statutory conflicts that can be cleaned up in legislation endorsed by the task force for the 2004 legislative session. With regard to the new requirements, Ms. Tackett highlighted the

following items:

- all school districts are now be eligible for funding;
- priorities for funding shall be determined using the statewide adequacy standards;
- funded projects must be among the top priorities in the districts' master plans;
- districts must include in their master plans a preventive maintenance plan that must be approved by the council; and
- districts must be willing and able to pay their share of the funding based on the state match formula.

Ms. Tackett also noted that the standards-based program adds additional duties to the PSCOC in terms of providing assistance to the local districts. These duties include assisting districts with the identification of critical capital outlay needs and preparation of grant applications, the preparation of requests for bids or proposals, contract negotiations and contract implementation, construction management services for districts not large enough to provide the services with their own staff and, to the extent resources are available, the development and implementation of their preventive maintenance plans.

Ms. Tackett provided a copy of the PSCOC timetable for the implementation of the various tasks associated with implementing the new process (a copy is in the meeting file). She noted that the reference guide to the adequacy standards has been approved by the council pending one final review to ensure consistency between the standards and the reference guide. In response to a question about public input, she said that the greatest response came from librarians concerned about the size of libraries. While some of the concerns are the result of a misinterpretation of the standards, PSCOC is considering a revision to increase library size. She reported that work on the update of the 3D/International (3DI) assessment is progressing, although not without some difficulties. She explained the various adjustments to the data being undertaken in order to include the need for new facilities due to growth and to better capture the costs of meeting the adequacy standards.

In conclusion, Ms. Tackett stressed the effort being made by PSCOC and its staff to work with the districts to make the transition to the new process as painless and helpful as possible. She noted that the PSCOC does not have all of the steps in the new ranking and allocation process nailed down at this point and noted that several outstanding issues will be discussed with the task force later.

Mr. Sprick elaborated on the master plan guidelines, which were developed from the best practices of the districts and other states. A district advisory committee worked with PSFA to develop the guidelines, taking into account the needs and capabilities of small, medium and large districts. He noted that 19 districts do not have a current master plan. He said that PSFA staff will provide specific feedback to the districts on whether their plans lack any of the components in the guidelines.

Task force members reiterated the importance of keeping the school districts as involved as possible and maintaining their local responsibility for capital outlay planning. There was also a question about whether the 3DI database will include information on charter schools and the use of portables. Ms. Tackett responded that this information will be available by December 1, 2003.

Public School Facilities Authority Strategic Plan

Ms. Tackett and Paul Minogue, consultant, presented members with a copy of the draft PSFA strategic plan (a copy is in the meeting file). Ms. Tackett said the purpose of the presentation is to solicit input from the task force and to determine if the strategic plan reflects the ideas of the task force about the goals and objectives of the PSFA. Mr. Minogue summarized the Performance and Accountability Act of 1990 and its inclusion of a strategic planning process for state agencies. He then took the task force through the draft strategic plan for PSFA: mission, organizational values, organizational obstacles, goals and measures.

During the discussion, task force members suggested that the plan include greater emphasis on maintenance and specific performance measures for the completion of deficiencies correction projects and for reduction in the facility condition indexes (FCI) of the schools. Members also discussed concerns about the need for an appeals process for districts that disagree with the PSCOC's funding priorities and questions about the continuing role of the court in overseeing the new process. Ms. Strumor reminded members that the court said it will continue to monitor the state as it implements the new process. She agreed that at some point the state may want to ask the court to conduct a final review and, if satisfied with the progress, for a release of its oversight. However, she noted that this is a personal opinion and that the matter should be discussed with the attorney general's office.

Report of the School Safety Task Force

Dr. David Harrell, LESC research analyst, and Dr. Kristine Meurer, director of the public education department's school health unit, reported on the work of the school safety task force. Dr. Harrell reported that the 2003 legislature passed three memorials to examine and enhance public school safety and security. One of these, Senate Joint Memorial 59, requests the PSCOTF to study the need for and assess the current capability of schools, educators, other school employees and students to communicate quickly, reliably, and efficiently with public safety officials, community leaders and others during an emergency. The memorial also requests that the PSCOTF report to the legislature its findings and recommendations, if any, on the cost and feasibility of implementing such a system in every classroom, including portable classrooms, within three years. A copy of Senate Joint Memorial 59 was provided to task force members (a copy is in the meeting file).

Dr. Harrell noted that as the LESC developed its work plan for the 2003 interim, the committee realized that, given their common premise, these three joint memorials could be discussed together as components of the same broad issue. Therefore, staff members from the LESC, state department of public education, the PSFA, the department of health, the office of emergency preparedness and the department of public safety formed the school safety task force to review safety measures currently in place, to identify gaps or weaknesses and to recommend further actions.

According to Dr. Harrell, the school safety task force made an extensive presentation to the LESC in October, focusing on the issues and circumstances related to school safety and security addressed by one or more of the three memorials and offering some preliminary recommendations. He noted that the presentation today highlights part of the earlier presentation that falls within the purview of the PSCOTF: capital issues.

Dr. Meurer briefly reviewed the Report of the School Safety Task Force (a copy of the

report is in the meeting file). She said that every principal was provided with a school safety self-assessment form and asked to identify safety policies, procedures and needs. She noted that the responses in terms of capital needs were extremely varied. She said that the school safety task force's major recommendation in terms of capital funding is to provide each school district with state funding up to \$20,000 on a one-to-one matching basis for the purchase of identified capital needs.

Task force members questioned the approach recommended by the school safety task force. It was generally felt that school safety and security should be part of the adequacy standards and addressed through the normal capital outlay process. It was also noted that the deficiencies correction program includes funding for many of the items in the survey, including communication systems, fire alarms and fencing at elementary schools. However, other items such as emergency generators and security doors have not made the deficiencies correction list. The PSCOC was requested to review the adequacy standards in view of the school safety task force's recommendations to be sure that safety and security needs are appropriately covered.

Update on the Statewide Needs Assessment

Mr. Sprick reviewed the 2003 interim work being done by 3DI to update and refresh the statewide school assessment database. He reminded the task force that 3DI has been requested to update the database to include the impact of all projects funded by the state or district since 2001, to review and modify the assessments related to meeting the adequacy standards and to incorporate the costs of meeting enrollment growth in certain districts.

John Oualline, senior vice president of 3DI, provided a comparison of the original database compared to the refreshed database (a copy is in the meeting file). He said that the database work is not yet complete and that the information being provided is intended to illustrate the types of changes being done. With regard to recently funded projects, he said that the new "tree structure" will capture new funding allocated and will track school closings. With regard to the standards, the most significant changes are in space adequacy. The changes are mostly the result of the state better defining the standards and thereby allowing 3DI to assign square footage at the room level rather than the school level. With regard to growth needs, 3DI applies a growth factor that is calculated by PSFA to schools in certain districts to generate additional square footage needed to meet growing enrollments. Finally, Mr. Oualline noted that 3DI has developed a more accurate report that will calculate FCIs by any combination of the following categories: deferred maintenance (things broken now), capital renewal (things predicted to break) and educational adequacy (things missing based on adopted standards).

Task force members questioned how the growth factor was derived and how it will be used. Jeff Eaton of PSFA explained that the growth factor had been calculated by him using data provided by the state department of public education on the fortieth day enrollment figures for districts and for individual schools over the past five years. The average annual increase was then projected forward on a straight-line basis for five years. There was some discussion about the appropriate use of the growth factor and whether a three-year projection is preferable to a five-year projection given the unstable nature of enrollment growth. Ms. Tackett noted that the task force could look more closely at the issue of growth when the final 3DI data is provided.

Administrative Appeal of State Equalization Formula Related to Impact Aid Funds

Ms. Tackett provided the committee with an update on the administrative appeal before the 10th circuit court relating to the state equalization formula and the credit for impact aid funds. She reviewed the history of the state credit for certain federal impact aid funds, local property taxes and forest reserve funds under the state equalization guarantee program and explained the federal disparity test that allows "equalized" states to take credit for these impact aid funds. She noted that the current administrative appeal is based on the 1997-98 certification of the state that it met the disparity test. While the state's certification had been upheld in previous years, the current challenge is requesting the court to consider a change in the statistical methodology used to calculate the disparity test that it claims was adopted by congress in a 1994 amendment.

In response to a question about the potential impact to the state of losing the appeal, Ms. Tackett noted that the state will probably have to come up with \$300 million to \$400 million to distribute to those districts that received impact aid funds. She reminded task force members that the issue of federal impact aid funds was the underpinning of the *Zuni* lawsuit. The plaintiffs argued, among other things, that their districts needed to be able to retain their impact aid funds to address capital outlay issues.

Report of the Maintenance Committee

Representative Miera briefed the task force on the work done by the maintenance subcommittee during the 2003 interim and presented the report and recommendations of the maintenance subcommittee (a copy of the report is in the meeting file). He said that the maintenance subcommittee recommendations include the following three items:

- The Public School Capital Improvements Act should be amended to make maintenance the priority use of the funding out of SB 9 levies. Representative Miera noted that there has been some discussion about requiring that the funds only be used for maintenance, but that the subcommittee still does not have enough information on how SB 9 funds are actually used to make such a recommendation.
- The Public School Capital Improvements Act should be amended to allow the SB 9 funds to be used for technical training and certification for maintenance and facilities management personnel. Ms. Tackett noted that the current law prohibits spending SB 9 funds for salaries, but that the subcommittee feels that using funds from training and certification will be an appropriate use of the funds.
- The subcommittee also endorses the initial work of the PSFA staff in the development of the maintenance guidelines to assist districts in the development of their preventive maintenance plans. A copy of the guidelines was presented to the task force (a copy is in the meeting file).

Daryl Newsom, maintenance coordinator of the PSFA, reviewed the maintenance guidelines and the work of the PSFA's maintenance advisory work group (a copy of his presentation is in the meeting file). He emphasized the joint responsibility of the PSFA and the districts for ensuring that the maintenance of facilities is adhered to, pointing out that many of the tasks in the guidelines are the responsibility of PSFA. Some members of the task force expressed concern about the level of detail included in the guidelines and the ability of all school districts, especially small districts, to adhere to them. It was noted that the state should not try to micromanage the activities of the local districts.

During the task force discussion, it was noted that there is a real need to align state and local codes that apply to school facilities. Ms. Tackett noted that the subcommittee has discussed this issue and that it appears that some progress is being made in this area. The question was also raised about whether the subcommittee has considered any proposals to increase the SB 9 guarantee amount. Ms. Tackett reminded members that the current law authorizes the PSCOC to increase the guarantee amount if there are sufficient funds available for projects in a given year. She noted that given current revenue projections and project needs, it seems unlikely that the PSCOC will be increasing the amount in the near future. It was suggested by Senator Nava that the task force consider a proposal to index the SB 9 state contribution amounts, so at least the state funds do not decline in value because of inflation.

The task force recessed at 3:00 p.m.

Tuesday, November 25

Senator Nava called the second day of the PSCOTF meeting to order at 9:15 a.m.

Report of the Charter School Subcommittee

Neil Nuttall presented the report of the charter school subcommittee and draft legislation encompassing the subcommittee's recommendations (a copy of the report and the draft legislation are in the meeting file). He was assisted by Ms. Tackett and Sharon Ball, staff analyst for the LESC.

Mr. Nuttall noted that, as usual with charter schools, the recommendations of the subcommittee are not unanimously endorsed. In particular, he noted the concerns of Mr. Monfiletto, a member of the subcommittee and a principal of a charter school, that the recommendations do not address the most pressing issue of charter school advocates of the need for the state to provide funding for lease payments for charter schools. According to Mr. Nuttall, the subcommittee considered the proposal brought forth by charter school advocates for the state to provide direct funds to those charter schools in leased facilities for partial or full reimbursement of the lease payments. However, it did not endorse this concept. The subcommittee could not find an appropriate way to include lease payments in the construct of the standards-based capital outlay program, except in terms of tenant improvements, or the state equalization guarantee program.

Ms. Ball and Ms. Tackett reviewed the draft legislation. Ms. Ball began by noting that the subcommittee agreed to try and merge the draft bills endorsed by the task force and the LESC last year as its starting point for this year's recommendations. She explained that the draft legislation encompasses the following concepts that have been adopted by the subcommittee.

- A mediation process is recommended as a way to resolve disputes between charter schools and their school districts. This process applies to disputes over facilities, as well as issues related to the approval of the charter.
- The requirements for applying for a charter are slightly tightened.
- Local school districts will be required to provide facilities to a charter school if they have space available that is not being used for educational purposes. The charter school should not be required to pay rent for the facility unless there is a direct cost to the school district of providing the space. In that case, the rent covers the direct costs.

- It is clarified that local school districts are responsible for providing the state match required for projects to bring the facilities of charter schools up to the standards. If the district refuses, the matter goes to mediation.
- After March 1, 2004, a new charter school could not begin operating until the PSFA certifies that the charter school's facility meets life and health safety codes.
- All facilities of charter schools should meet the statewide adequacy standards within the same time frame as other public schools in the district are being brought up to standards, since they will be in the queue like all public schools. The PSCOC will award funds to these charter schools to make the improvements in their facilities necessary to bring them up to standards. For leased facilities, the improvements will be done through leasehold or tenant improvements.
- After January 1, 2008, the charter for a school should not be renewed unless the school is housed in a public building. However, if it is not in a public building, it has to demonstrate that there are no public buildings available that are adequate. It also has to show that the private building that it proposes to use meets the adequacy standards and that the owner agrees to maintain the building to continue to meet the standards at no additional cost.
- Charter schools will be allowed to challenge in any year their placement in the district's five-year plan through the mediation process. Other schools will be allowed a similar challenge the second year of failing to agree with their placement in the master plan.

The charter school draft legislation engendered much discussion both about the role of charter schools in the overall educational system and about the following specific issues.

- How the mediation provisions work and whether they can be streamlined.
- The requirement for charter schools to pay their school districts the "actual direct cost of providing the facilities". There were questions about what these costs are and whether this requirement is fair.
- Recent difficulties at some charter schools in accounting for their funds as revealed in audit reports. It was suggested that the accounting services of charter schools be provided by the district.
- The current practice of allowing several charter schools to have a common governing board. It was noted that this practice circumvents the intent of the Charter Schools Act, which is to encourage local community and parental involvement by allowing teachers, parents or community members to establish charter schools. The common governing board is seen as having the potential of establishing a charter school industry. It was suggested that the legislation include provisions requiring that each charter school have a separate governing board. There was discussion that there should be allowance for a charter school to have multiple sites, as long as it has a single mission. There was also discussion about applying the separate governing board provisions when a charter is up for renewal.

Report of the Funding Subcommittee

Mr. Desiderio presented the report of the funding subcommittee (a copy of the report is in the meeting file). Mr. Desiderio explained that the subcommittee addressed three funding issues: (1) the adequacy of the permanent funding stream for the standards-based process; (2) the need for additional nonrecurring funding to complete the deficiencies correction program; and (3) whether additional funding is needed to complete the phased projects funded under the critical

capital outlay program.

With regard to the permanent funding stream, Mr. Desiderio said that the subcommittee has not been able to make final recommendations because it is waiting for the completion of the 3DI needs assessment in order to establish the total cost of bringing the schools up to the adequacy standards. However, the subcommittee has adopted a methodology for deriving the annual funding needs and has made preliminary recommendations based on that methodology and on the most current 3DI data. Ms. Peacock explained the methodology and provided an example of how the annual need is calculated based on the most recent 3DI data. Mr. Desiderio explained that based on this methodology, the subcommittee is recommending the following.

- The dedication of supplemental severance tax bonding authority should continue as the primary permanent funding source for the ongoing programs. However, because this funding source is volatile from year to year and may not be adequate to meet the annual funding needs, the state should guarantee an annual funding amount necessary to meet the annual funding needs, not to exceed \$100 million per year, from senior severance tax bonds. The guarantee amount would be determined using a three-year rolling average of supplemental severance tax bond capacity compared to the shortfall from the annual need amount or \$100 million, whichever is less. The PSCOC would be required to determine the annual need amount based on a consistent methodology.

The discussion on this item focused on the issue of diverting a significant portion of senior severance tax bonding capacity to this program when there are so many competing needs for capital infrastructure in the state. It was noted that the governor will be making recommendations for changing the entire capital outlay process and that the funding for public schools will have to be incorporated into any final plan agreed to by the legislature and the governor. Speaker Lujan expressed concern about using severance tax bonds for operational purposes (to support the PSFA) and requested a clear ruling from the department of finance and administration that this is allowed.

There was also considerable discussion of the specifics of the methodology, including the use and calculation of the growth factor, the assumption of including local funds in excess of the match requirement in the calculation of the state funding need and the reliability of the 3DI data for ranking projects.

With regard to the completion of the \$324.5 million in deficiencies correction projects that have been approved in concept by the PSCOC, Mr. Desiderio reported the following recommendation of the subcommittee.

- The state should provide \$105.6 million in additional funding to complete the statewide, 100 percent-state-funded deficiencies correction program. Because of the serious nature of the deficiencies that have been identified, the additional funds should be awarded by no later than June 30, 2005 and expended by June 30, 2007.

Ms. Peacock reviewed the current costs and funding for the deficiencies correction program and provided information on possible funding sources that can be used to provide the additional money.

Task force members questioned whether the additional money needs to be provided so

soon or whether it can be stretched out over two or three years. In response to a question, Mr. Berry of the PSFA said that to date only \$34.3 million of the more than \$200 million that was previously appropriated has actually been expended. He added that \$187 million has been allocated and \$66.3 million is under contract. Members also questioned the additional \$11 million that was reported to be needed as a result of a change in the wage-rate schedule applicable to the installation of fire alarm and two-way communication systems. Secretary Jimenez said the executive is reevaluating the wage rate increase and some downward revision may be possible. While no decisions were made, it was generally agreed that, if an additional meeting is approved, the task force will look at the possibility of providing the additional funds over a longer time frame and will review the possible revenue sources at that time.

Finally, with regard to the need to provide additional funding to complete phased projects funded under the critical capital outlay program, Mr. Desiderio reported that because of insufficient data, the subcommittee has not made a recommendation on this issue. The subcommittee suggested that additional data be gathered by staff and that the issue be brought before the full task force for discussion. Ms. Tackett explained that the PSCOC award process often includes phasing the funding for projects. This allows the PSCOC to support more districts in any given year and also provides for a more manageable implementation schedule. She said that the PSCOC has not warned districts that funding for phased projects might be cut off after this funding cycle and that based on current information, it appears that approximately \$50 million is needed to complete these projects. She said that the amount includes an assumption that these projects will require a local match; the amount will be higher if the state pays the entire cost. Finally, Ms. Tackett summarized the additional information that staff has been requested to prepare in order to evaluate this issue. She noted that PSFA is still working with 3DI to get this data.

Task force members expressed conflicting views about this issue. On the one hand, it was noted that the law requiring the implementation of the standards-based process has been on the books since 2001 and districts should not expect continued support under the critical capital outlay criteria. To do so may put the state at odds with the court. On the other hand, it was argued that the PSCOC has specifically funded projects on a phased cycle and has created a social, if not legal, contractual obligation to the affected districts. In response to a question, Ms. Tackett said that the PSCOC has not discussed this issue and therefore has not made any recommendations. It was agreed that staff should analyze the uncompleted phased projects to determine where they will fall in the 3DI ranking and that the task force will reconsider this issue at the January meeting if one is held.

The "Recalcitrant District" Proposal

Mr. Desiderio reported that he has been working with Gary Carlson, a contract lawyer for the LCS, to develop a proposal for handling the hypothetical situation in which a school district has schools that do not meet the adequacy standards and are on the priority list for funding, but it either cannot or will not pass a bond issue or other financing plan to provide its match as required under the state share formula. This is what the task force has called the "recalcitrant district" problem.

Mr. Desiderio noted that the details of the proposal have not been worked out. However, the basic concept is that the state would create a "cause of action" for suing the recalcitrant

district and the remedy would be a mandamus for the district to impose a property tax sufficient to meet its required match. He said that there is some precedent in New Mexico for such an action. In response to a question, Mr. Desiderio said that if the district has sufficient funds to meet its obligation, but refuses to spend them, the court could mandate the district to spend the funds. Mr. Desiderio concluded by saying that he thinks this is a viable option and will bring a more developed proposal back to the task force.

Other Issues

Ms. Tackett and Ms. Peacock noted that there are several other issues that the task force may want to consider in making recommendations for statutory changes. These include the following.

- Purpose section of the Public School Capital Outlay Act.

It was agreed that this needs to be updated to reflect the new standards-based process.

- Education Technology Offset

The public education department staff that administers the education technology program has suggested that the carryforward for direct legislative appropriations be limited to three years in recognition of technological obsolescence. Staff was asked to review the use of educational technology funds and to make a recommendation on the merits of this proposal.

- Change Membership of PSCOC

The membership list needs to be changed to reflect the new secretary of public education and public education commission. In addition, there may be some desire to look at the balance of power from appointments. Prior to the constitutional change, the PSCOC membership had equal representation (three members each) from the executive branch, the legislative branch and the education community. With the creation of the new public education department, the executive will have four voting members and the education community will have two. It was agreed that the membership should be changed to reflect the new secretary and commission. In regard to the balance of power issue, there was not agreement. Staff was asked to bring back one or more proposals for consideration.

- Funding for PSFA

If the intention is to continue to fund the core operations of the PSFA from supplemental severance tax bonds, the statute needs to be clarified that this is intended. Currently, it provides for the use of these funds for project management costs.

- General Authority for Emergency Needs to Take Priority

Under the critical capital outlay process, there is specific authority for the PSCOC to give priority for projects when an emergency exists. However, there is no similar authority under the standards-based process. It was agreed that such a provision should be added.

Before adjourning, there was additional discussion about the need for a meeting in January. Ms. Tackett informed members that she will ask the legislative council to approve a meeting, but since the statutory authority for the task force was repealed as of January 1, 2004, task force members will not be eligible for per diem and mileage. Members noted this, but agreed that another meeting should be requested.

The task force adjourned at 12:55 p.m.

TENTATIVE AGENDA
for the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

January 17, 2004
Room 307, State Capitol
Santa Fe

Saturday, January 17

- 10:00 a.m. CALL TO ORDER
 —Representative Rick Miera, Co-chair
- OVERVIEW OF MEETING TOPICS AND LOGISTICS
 —Staff
- 10:15 a.m. REVIEW OF PROPOSED PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL
 (PSCOC) AWARDS PROCESS
 —Paula Tackett, Member, PSCOC
 —Tim Berry, Public School Facilities Authority (PSFA)
- 10:45 a.m. REVIEW OF STATEWIDE ASSESSMENT DATA
- SPECIAL REPORTS
 Charter Schools, including PSCOC variances from the standards
 Full Day Kindergarten Facilities
 Use of Portables
 - GROWTH FACTORS
 - PRELIMINARY RANKINGS
 - TOTAL COSTS
 —Bob Gorrell and Bill Sprick, PSFA
 —Winton Smith and John Oualline, 3D International
- 11:30 a.m. CRITICAL CAPITAL OUTLAY CONTINUATION PROJECTS
 —Bill Sprick, PSFA
- (Working Lunch)
- 12:00 noon REVIEW OF DRAFT LEGISLATION AND ADOPTION OF
 RECOMMENDATIONS
- THE "GENERAL" PUBLIC SCHOOL CAPITAL OUTLAY BILL
 - CHARTER SCHOOL BILLS
 —Staff
- 4:00 p.m. ADJOURN

MINUTES
of the
JANUARY 2004 (UNOFFICIAL¹) MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

January 17, 2004
Room 307, State Capitol
Santa Fe

Representative Rick Miera, co-chair, and Robert Desiderio, co-chair, called the meeting of the public school capital outlay task force to order at 9:40 a.m. on Saturday, January 17, 2004, in room 307 of the state capitol.

PRESENT

Robert Desiderio, co-chair
Rep. Rick Miera, co-chair
Sen. Ben D. Altamirano
Rep. Max Coll
Sen. Carroll H. Leavell
Sen. Cynthia Nava
Odis Echols
Veronica Garcia
Leonard Haskie
James Jimenez
Kilino Marquez
Rey Medina
Tony Monfiletto
Bud Mulcock
Neil Nuttall
Norman Suazo

ABSENT

Gary Bland
Pancho Guardiola
Rep. Larry A. Larranaga
William McCarthy
Alan Morgan

Advisory member

Rep. Ben Lujan

Staff

David Abbey, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Education Study Committee (LESC)
Tim Berry, Public School Facilities Authority (PSFA)
Gary Carlson, Legislative Council Service (LCS)
Bob Gorrell, PSFA
Liz Holmes, LCS
Janet Peacock, LCS
Pauline Rindone, LESC
Bill Sprick, PSFA

¹The statutory authority of the public school capital outlay task force was repealed effective January 1, 2004. Therefore, these minutes are not official, but represent a report of the actions and discussion during the meeting.

Paula Tackett, LCS

Representative Miera and Mr. Desiderio, co-chairs, welcomed members and guests. The minutes of the November 24-25, 2003 meeting of the task force were approved. Paula Tackett reviewed the logistics of the meeting, including the need for a working lunch.

Senator Altamirano asked the task force to consider a motion to recommend funding of \$20 million for building Chapparral high school in the Gadsden school district. The motion was seconded by Senator Nava. Senator Altamirano noted the extreme need for this school based on his personal knowledge of it. Secretary Jimenez agreed that there is a significant need for this school. Ms. Tackett noted that initial funding for Chapparral high was approved by the public school capital outlay council (PSCOC) during the last grant award cycle and that the proposed legislation that the task force would be considering later has some provisions to address continuation funding for this school and for other projects that the PSCOC has partially funded. The task force indicated it would hold taking action on the motion until after consideration of the proposed legislation.

Review of the PSCOC Awards Process

Ms. Tackett, chair of the PSFA subcommittee of the PSCOC, and Tim Berry, deputy director of the PSFA, reviewed the proposed process that the PSCOC is considering to implement the standards-based process and several issues that are still to be resolved. Ms. Tackett noted that this is a preliminary proposal, as the PSCOC has not yet formally adopted a process. She stated that, for discussion purposes, the process has been broken down into four phases: pre-application, application, post-application review and analysis and grant awards. She noted that the goal of the PSCOC and staff is to strike the appropriate balance between PSFA statutory duties and local districts' autonomy.

Mr. Berry explained the proposed process in more detail. He noted that the project ranking system would be built around what he called the New Mexico condition index (NMCI) of the school, which is the new index calculated by 3D international (3DI) that measures the needs under the adequacy standards, including a factor for growth, and the traditional building renewal and replacement needs using the national building owners and managers association (BOMA) standards. The process would require PSFA staff to work with the districts to review and update the index for their individual schools and to try and ensure consistency between the information in the five-year plans and in the facilities database. Mr. Berry explained that it has been proposed that the NMCI would also be used to screen the potential pool of applications by informing districts of the highest ranked projects on the ranking list that could tentatively be funded within 150 percent of the projected available state funds. He also discussed the proposed appeals process that would give districts the opportunity to challenge PSFA initial rankings, the intent of the PSFA field review efforts and various issues related to the final grant award decision.

During the discussion period, Mr. Abbey, also a member of the PSCOC, expressed his opinion that the ranking process should continue to have some flexibility built into it. He noted that the PSCOC could not expect to "push a button" and get the right answer. The task force was reminded, however, that the court and the law requires funding based on deviation from the adequacy standards.

Review of Statewide Assessment Data

Bob Gorrell and Bill Sprick of the PSFA and John Oualline of 3DI provided a number of reports on the statewide assessment data. Copies of all handouts are in the meeting file.

Mr. Sprick began by reviewing the charter school analysis that shows the proposed variances from the adequacy standards that staff presented to the PSCOC and the actual variances granted by the PSCOC. He explained the rationale behind granting variances to charter schools and the factors that staff used in making their recommendations. During the discussion, staff was asked whether the 3DI report includes specific information on the needs of charter schools. Mr. Sprick said that this information is included in the database, but that there is not a separate run for charters.

Mr. Sprick also provided information on the funding needs for full-day kindergarten. He noted that a recent survey by the public education department shows that 117 classrooms are needed for full-day kindergarten. The estimated cost of providing these classrooms ranges from \$6.7 million using portables to \$21 million for permanent structures. In response to a question, Ms. Tackett noted that the adequacy standards include classroom space for kindergarten, as well as auxiliary needs such as playground equipment and fencing. In response to a question regarding funding for kindergarten, she also said that schools with insufficient space for kindergarten will not automatically rise to the top of the 3DI rankings, as this is only one factor included in the ranking. Mr. Gorrell added that insufficient kindergarten space, for example, will not be treated differently than insufficient space for a science classroom for the new science requirement.

Mr. Oualline reviewed the special report on the use of portables. He noted that the report shows a total of 666 portables at schools throughout New Mexico, comprising 3.3 million square feet of space. The 3DI lifecycle analyses use a useful life of 15 years as the baseline for portables. Individual portables are then evaluated against this baseline and for other specific repair costs. According to the 3DI report, the replacement cost for expired portables is \$230 million for replacement with new portables or \$296 million for replacement with permanent construction. If all current portables, regardless of age, are replaced with permanent construction space, the cost would be \$457 million.

Mr. Gorrell reminded members that the updated statewide assessment includes the cost for additional space due to projected enrollment growth and provided a table showing the growth factors used in the analysis. He explained that the growth factor is calculated on a school-by-school basis, using the average growth in the 40-day membership over the 1998-2002 school years. It assumes 100 percent capacity. In response to questions, he noted that the table will not include new schools started after 2002 and that the growth factors will be a starting point for the PSFA and districts to use in the planning process. The purpose is to ensure that the relative rankings recognize the space needs in growing areas.

Mr. Gorrell then asked the members to turn their attention to the charts showing the statewide comparative rankings by district and by school. He explained that these are the preliminary rankings by 3DI and that the PSFA feels comfortable that the ranking using the "weighted + growth" index reflects the reality of the condition of the schools around the state. He noted that the "FCI" in the chart is no longer based on BOMA standards, but has been revised to

include the costs of meeting the adequacy standards as well as projected enrollment growth. This new index should be renamed the NMCI. He also provided a chart showing the proposed weighting system.

Ms. Tackett briefly explained the rationale for the various columns on the charts, noting that at the last meeting, the task force asked staff to separate out the costs of meeting the adequacy standards from the costs of building renewal and replacement. This information is provided in the right-hand columns of the chart, both on a weighted and unweighted basis. She pointed out that when the task force discusses its recommendations on funding later in the meeting, this information will be addressed again.

Members looked at the rankings for a number of specific schools and discussed the relevant methodology and data. In response to a question about combined schools, Mr. Oualline noted that 3DI will be breaking out the data separately for combined schools that share a campus but have separate facilities. Mr. Abbey noted that the replacement cost numbers need "to be taken with a grain of salt" and Mr. Gorrell agreed that they are not the project cost that the PSCOC will fund. They merely give an indication of need using a consistent methodology for all schools. Mr. Gorrell reiterated that the numbers are preliminary and that PSFA will be working with all the districts to refine them. Representative Miera commented that once the districts understand that the numbers will be used in making grant awards, he felt that they will be motivated to correct any errors and make sure the data reflects reality.

In closing, Mr. Oualline noted that the total need reflected on the charts amounts to \$2.3 billion. He said that this reflects a snapshot in time and represents the cost today of addressing the needs. If the state adopts a goal of addressing the needs over a 10-year period, the amounts will need to be increased by three percent per year for inflation and 2.75 percent per year for additional renewal and replacement costs. Mr. Gorrell added that it will cost \$140 million a year just to maintain schools in their current condition.

Critical Capital Outlay Continuation Projects

Mr. Sprick presented a table of continuation projects from the 2003-2004 PSCOC awards. A copy is in the meeting file. The task force had previously directed staff to review these projects and Mr. Sprick indicated that based on staff analysis and refinement of the projects, it will cost approximately \$65 million to fund these projects. Mr. Nuttall noted the importance of these projects for many schools, including two in his district that were not included to be funded. Ms. Tackett said that the proposed legislation authorizes the PSCOC to provide funding for continuation projects during a transition period.

Review of Proposed Legislation — The General Capital Outlay Bill

Ms. Tackett, Ms. Peacock and Mr. Carlson reviewed draft legislation. A copy of the legislation is in the meeting file. The following changes to the draft bill were discussed:

- With regard to the language in the legislative offset provisions (page 16), there was a discussion about the time period for school districts to accept or reject their direct legislative appropriations. It was noted that there is no definite time period. The acceptance occurs when the certification is made to the state board of finance that the district is ready to begin the project and is thus requesting that the bonds be sold or general fund appropriations be allocated. It was agreed that the bill should provide a specific time limit for a school district to "reject" its direct legislative appropriations.
- On page 21, Subsection G, Representative Coll noted that there should not be an automatic appropriation to the PSFA for its operating budget, but that it should go through the regular appropriation process like all other agencies. Secretary Jimenez agreed that this is a preferable approach. It was agreed that the bill should say "may be appropriated" instead of "is appropriated".
- It was agreed that the language relating to continuation projects beginning on page 27 should be clarified to specify that it applies to projects partially funded by the PSCOC in the September 2003 allocation cycle. In addition, there was concern about an unlimited time period for funding the continuation projects, so it was agreed that it will be limited to three years. Finally, there was concern about limiting the funding for continuation projects to the "minimum amount necessary to meet the statewide adequacy standards". Senator Nava noted that this could conflict with the planning process upon which the project is initially funded. It was agreed to delete the word "minimum" and see if further clarification is needed.
- It was recommended that the language allowing the use of funds in the event of an emergency be tightened by requiring that the safety risk be an immediate risk.
- With respect to the language in Section 11, beginning on page 36, relating to the certification of need, Co-chair Desiderio explained that the 3DI data had been given to staff on Friday, January 16, and at about 9:00 p.m. Friday evening, this section had been drafted to address the new total costs reflected in the data, with a new proposal to have the goal of the state be to reduce the average NMCI from 36.87 to 25. The goal of a statewide average of 25 was selected as representing a meaningful reduction taking into account the ability of the state to effectively manage the funds.

Mr. Desiderio said that upon reflection, he is now recommending that the task force not adopt this approach until further analysis could be done on the data. He said that he is not certain whether the proposal will enable the state to convince the court that all schools will be brought up to adequacy within a reasonable time period. He also said that the task force had initially been working on a conceptual framework that looked at bringing all schools up to adequacy within 10 years and reducing the statewide average facility condition index for building renewal and replacement to 20 percent. However, the new data shows greater-than-expected costs for meeting the adequacy standards and a facility

condition index for building renewal and replacement well below the 20 percent target. In addition, staff learned that the base numbers do not include the appropriate escalation factors to evaluate need over a multi-year time frame. Given all these issues, Mr. Desiderio recommended that the task force continue to work on this issue over the next year. He said the PSCOC will continue moving forward with implementing the standards-based process on a pilot basis to see how the new process will work. In addition, it will address the continuation projects previously discussed. Since the legislation already includes provisions to keep the task force in operation for another year, this is consistent with that proposal.

The task force agreed with the recommendation of Mr. Desiderio and directed staff to rewrite this section appropriately.

- On page 42, it was noted that Section 14, the duties of the public school capital outlay task force, duplicates Section 22 and should be stricken.
- On page 47, Section 16 of the bill allows for a mediation process for resolving disputes over the five-year facilities plan. A number of task force members expressed concern about the potential proliferation of requests for mediation using this provision and about requiring the secretary of public education to make final decisions in these disputes. After considerable discussion, it was agreed to remove this section, but to insert language supporting the establishment and use of a dispute resolution process within each district to address concerns about the facilities master plan.
- On pages 53 through 55, the indexation of the SB 9 amounts should be changed to increase the guarantee amount to \$60.00 per unit per mill for fiscal year 2005 and then index both this amount and the \$5.00 minimum amount to the CPI beginning in fiscal year 2006.
- On page 57, it was explained that the proposed membership of task force has been reduced by eliminating members who had not participated in the past year. This includes the state investment officer and the dean of the college of engineering at New Mexico state university. Ms. Ball noted that it is her impression that Ms. Deborah Gallegos, the deputy state investment officer who attended the task force meeting on November 24, expressed a desire to continue to participate. Staff was requested to contact the state investment officer and determine if he or his designee wishes to serve on the task force. If so, he will be retained.

The task force voted to recommend this bill with these changes.

Review of Proposed Legislation — The Charter School Bills

Ms. Tackett explained that there are three bills relating to charter schools — the bill discussed at the previous meeting that encompasses the recommendations of the charter school subcommittee, a bill drafted at the request of Secretary Jimenez that addresses the issue of lease payments for charter schools and a bill drafted at the request of the public education department that provides funds to charter schools on a per-member basis to match federal funds available for

facilities of charter schools.

Ms. Tackett explained the three bills. Task force members discussed the similarities and differences between the bill earmarking \$3 million for lease payments and the bill earmarking \$5 million to match federal funds to be distributed on a per-pupil basis. In response to questions, Dr. Michael Kaplan from the public education department provided additional information about the federal funds appropriated by congress under the No Child Left Behind Act of 2001 that will be awarded through a competitive application process to states that provide assistance to charter schools for their capital outlay needs. After considerable discussion, it was agreed to endorse the idea of allowing up to \$3 million per year to be appropriated from the public school capital outlay fund for lease payments for charter schools and to specify that these funds could be used to match federal funds under the No Child Left Behind Act of 2001. The lease payment assistance would be a transitional program that would expire in 2009 when all charter schools are intended to be in public buildings. Ms. Tackett noted that from a drafting perspective, these provisions should be included in the general capital outlay bill rather than the charter school bill. The task force accepted this recommendation.

In terms of the charter school bill, the following changes were discussed:

- There was considerable discussion about the requirement on page 3, lines 23 through 25, for the accounting services for a charter school to be performed by the school district. Members expressed concern that this requirement is too broad and should be targeted to those schools that have repeated financial problems and audit exceptions. It was also noted that school districts may oppose this requirement if they feel that they are being forced to provide these services without compensation. In the end, a motion was passed to delete the provision entirely. Some members felt that this is a serious problem that needs to be addressed and Ms. Tackett said that staff will draft an amendment that could be proposed that would require the district to provide accounting services when certain events trigger the need.
- On page 6, line 7, language should be added to clarify that a charter school that maintains separate facilities at two or more locations within the same school district is considered a single school for purposes of the factors in the funding formula.
- On page 7, line 10, it was agreed to change March 2004 to July 2004, since the March date would require the bill to pass with an emergency clause.

The task force voted to recommend the charter school bill with these changes. It also accepted a motion to allow staff to make other necessary changes to both the general capital outlay bill and the charter school bill to carry out the intent of the task force.

Senator Nava reminded members that Senator Altamirano had asked the task force to consider a motion to recommend a \$20 million appropriation for construction of the Chapparral high school in the Gadsden school district. There was discussion about the need for this motion given the provisions in the proposed legislation that give priority to funding for continuation projects over the next three years. Senator Nava expressed her concern that the PSCOC still has

considerable discretion to determine what is a continuation project and at what level it should be funded. The task force adopted a substitute motion to request the PSCOC to carefully review all of the projects that qualify as continuation projects to ensure that the rationale for the initial funding decision is going to be upheld.

The meeting was adjourned at 4:45 p.m.

Appendix C
Report of the Funding Subcommittee
Report of the Maintenance Subcommittee
Report of the Charter School Subcommittee

PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE
REPORT OF THE FUNDING SUBCOMMITTEE

The funding subcommittee met twice during the interim to review the current funding sources and amounts available to support the ongoing, standards-based program, the enhanced maintenance program (SB 9) and the state oversight responsibilities and to complete the deficiencies correction program. The subcommittee adopted the following recommendations for consideration by the full task force.

- The dedication of supplemental severance tax bonding authority should continue as the primary permanent funding source for the ongoing programs. However, because this funding source is volatile from year to year and it may not be adequate to meet the annual funding needs, the state should guarantee an annual funding amount necessary to meet the annual funding needs, not to exceed \$100 million per year, from senior severance tax bonds. The guarantee amount would be determined using a three-year rolling average of supplemental severance tax bond capacity compared to the shortfall from the annual need amount or \$100 million, whichever is less. The public school capital outlay council (PSCOC) would be required to determine the annual need amount based on a consistent methodology and to report that amount to the governor and the legislature.
- The state should provide \$105.6 million in additional funding to complete the statewide, 100-percent-state-funded deficiencies correction program. Because of the serious nature of the deficiencies that have been identified, the additional funds should be awarded no later than June 30, 2005 and expended by June 30, 2007.

The Permanent Revenue Source

With regard to funding the ongoing, standards-based program, the goal of the subcommittee was to identify a permanent funding source that will ensure that all schools meet the adequacy standards in a reasonable amount of time. In order to accomplish this, the subcommittee addressed the following factors.

1. Total Need

The subcommittee agreed that the starting point for any evaluation of funding sources should be the total cost of bringing all schools up to the adequacy standards. It was hoped that the statewide needs assessment being conducted by 3D/International (3DI) and the public school facilities authority (PSFA) would provide a current estimate of this cost.

In working with state officials and the 3DI consultants, it became apparent that the existing format of the 3DI database did not adequately distinguish between the costs of meeting the adequacy standards and the costs of other building renovation and renewal needs associated with aging infrastructure. In addition, the original data did not capture future facility needs due to enrollment growth in numerous school districts.

The subcommittee learned that during the past several months, PSFA staff has worked with 3DI to modify the statewide assessment database to break out the costs of meeting the adequacy standards separately from the other building renewal costs and to add projected costs for new facilities based on enrollment growth projections calculated by PSFA staff in conjunction with other state education experts. In addition, 3DI has been working to refresh the database to include the effect of all state and local funds allocated to school facility projects through the end of fiscal year 2004.

While most of the data-gathering work had been completed, the final results were not yet available to the subcommittee. Thus, the ability to determine the total need was limited to the use of some preliminary data and "best estimates" of PSFA staff and the 3DI consultants. In the end, the subcommittee used this preliminary data to develop a plausible estimate of need and recommended a methodology to be used to determine the need once the final numbers are available. A copy of the proposed methodology with the preliminary data is attached.

The methodology incorporates three cost factors to determine the cost for building projects:

- costs to meet educational adequacy standards at existing facilities;
- costs to provide new facilities in districts experiencing enrollment growth; and
- costs for building renewal to significantly improve the facility condition index of existing

buildings and systems.

In addition to the cost of building projects, the methodology includes annual funds for the state share of maintenance costs through the SB 9 program. Currently, the state is providing a minimum \$5.00 per mill per funding unit amount to all districts that participate in the program and a \$50.00 per mill per funding unit guarantee amount. This costs about \$14 million a year. The methodology adopted by the subcommittee provides an average of \$20 million per year in state support for SB 9, in recognition of the need to continue to enhance the program over time.

Finally, the methodology for the determination of total need also includes annual funds for the operation of the PSFA, including both the core operations and the direct project management expenses. An average annual amount of \$4.5 million was assumed for this purpose. Current law provides that an amount up to five percent of the average annual grant assistance authorized from the public school capital outlay fund may annually be expended for project management expenses. This language may need to be changed to clarify that project management expenses include the indirect, as well as the direct, costs of the PSFA.

2. A Reasonable Time Frame

Based on the preliminary needs data, the subcommittee is recommending that the permanent state funding source be sufficient to ensure that all schools reach the adequacy standards within 10 years. Under this time frame, the state and local districts will be managing over \$160 million of construction projects a year as part of the standards-based program. The subcommittee feels that this is a realistic time frame, both in terms of properly managing the program and achieving demonstrable improvements in school facilities throughout the state.

3. Use of State and Local Funds

The methodology recommended by the subcommittee assumes that the current statutory funding formula will provide an average state share of 50 percent and local share of 50 percent, as intended when it was adopted by the legislature, over the 10-year period. It assumes that money provided through the formula will provide the majority of funding to meet the adequacy standards. However, it also assumes that local school districts will continue to spend some portion of their own revenues without state match to address needs in their districts that are not at

the top of the statewide priority list.

4. Potential State Funding Sources

Early in its work, the subcommittee reviewed the most recent five-year estimates for supplemental severance tax bond capacity and determined that it was unlikely that this revenue source alone would always be sufficient to meet the ongoing funding needs. The subcommittee also looked at a menu of other possible funding sources, including options to increase gross receipts taxes or property taxes to provide additional funds. The subcommittee unanimously agreed that recommending a tax increase was not a viable option at this time, since it would almost certainly not receive the support of the governor or the legislature.

Given this constraint, the subcommittee was forced to consider using existing revenue sources for shoring up the supplemental severance tax bond authority. The most logical source seemed to be the senior severance tax bonding program, which is already used to fund needed public facilities and infrastructure. The subcommittee agreed that using this source to guarantee the amount of funding needed to implement the standards-based public school capital outlay program was an appropriate priority for the use of these limited funds, especially given the constitutional mandate to provide a uniform system of free public education.

Additional Funding to Complete the Deficiencies Correction Program

The deficiencies correction program began in June 2001 and provided a one-time snapshot of deficiencies at all schools throughout the state that posed an immediate life, health or safety risk to students and school personnel. These deficiencies were to be funded entirely by the state, with funds allocated by June 30, 2004 and expended by June 30, 2006. A total of \$324.5 million in deficiencies were initially identified and accepted by the PSCOC as meeting the criteria of the program. An additional amount of \$11 million was recently added to the total as a result of a change in the wage-rate schedule applicable to the installation of fire alarm and two-way communication systems. This brought the total identified need to \$335.5 million.

According to data provided to the subcommittee, to date a total of \$237.5 million has been appropriated for the deficiencies correction program. Of this amount, \$7.7 million was used, as provided for in legislation, for operational costs of running the program and for updating the

statewide assessment data. This leaves an unfunded commitment of \$105.6 million to complete the deficiencies correction program.

The subcommittee strongly supports the need to fulfill the commitment that the state has made to fully fund the deficiencies correction program. It therefore recommends that the governor and the legislature provide \$105.6 million in capital funding for this program. The subcommittee also recommends that the additional money be awarded no later than June 30, 2005 and expended by June 30, 2007.

Additional Funding to Complete Critical Capital Outlay Projects

The subcommittee received some preliminary information from the PSCOC about the need to provide additional funding to complete phased projects funded under the critical capital outlay program. Because of insufficient data, the subcommittee did not make a recommendation on this issue. It suggested that additional data be gathered by staff and that the issue be brought before the full task force for discussion.

PROPOSED METHODOLOGY FOR DERIVATION OF ANNUAL NEED FOR STATE FUNDING

Project Money	<u>10 Years</u>	<u>Annual</u>
1. Adequacy and Growth		
Current 3D/I estimate to meet "adequacy" categories*	1,000.0	
Plus:		
New facilities due to growth over 10 years	660.0	
Less:		
Deficiency projects committed, but not expended	60.0	
Adequacy portion of PSCOC projects committed, but not expended	200.0	
Adequacy portion of local district projects committed, but not expended	200.0	
<hr/>		
Total Current Adequacy Need (10 years)	1,200.0	
Annual amount assuming 10 year target date		120.0
2. Building and Systems Renewal		
Current 3D/I estimate for building and systems renewal	2,100.0	
Less: deficiency, PSCOC project and local dollars committed, but not expended	-450.0	
<hr/>		
Total Current Renewal Need (10 years)	1,650.0	
Total Current Replacement Cost	6,100.0	
FCI for building and systems renewal (renewal need/replacement cost)	0.27	
Target FCI for Renewal = .2		
Amount needed to reach target	430.0	
Annual amount assuming 10 year target date		43.0
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Total annual amount to meet adequacy and target FCI for renewal		163.0
Resources Available for projects		
Local, unmatched funds		20.0
State funds (50% of \$143 million)		71.5
Local matching funds (50% of \$143 million)		71.5
		<hr/>
		163.0
Total Annual State Funds Needed		
Project money		71.5
SB 9 (allows some increase in guarantee amount)		20.0
PSFA operational funds		4.5
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Total		96.0

*All amounts are estimates based on "refreshed" 3D/I data for 35% of schools and unrefreshed data for the remainder.

ESTIMATED FUNDING NEEDS TO COMPLETE DEFICIENCY PROJECTS

Complete Deficiencies, 100% State Funding

Total Identified Need	324.5	
Add: Increase Cost of Alarm Systems	11.0	
Subtotal		335.5
Funding to Date	237.6	
Less: Operational expenditures	-7.7	
Less: Net Project Funding		-229.9
Additional Amount Needed		105.6

POSSIBLE SOURCES OF NON-RECURRING FUNDS

Senior "sponge" capacity	up to \$105.6 million over two years
Excess FY 04 revenues to be transferred to the severance tax permanent fund	\$59.7 (current DFA estimate; could be more or less based on actual current year revenues)
Appropriation from operating reserve	up to \$105.6
Sweep of "unexpended" capital appropriations	unknown

REPORT OF THE MAINTENANCE SUBCOMMITTEE

The maintenance subcommittee of the public school capital outlay task force met three times during the 2003 interim and discussed a number of key issues related to improving school maintenance.

Some of these issues included:

- ▶ a discussion of where we are now and where we are going;
- ▶ maintenance personnel skills, training and salaries, including the need to get personnel certified and better paid;
- ▶ work order systems and other facilities management information systems;
- ▶ expenditures for maintenance, including how much of the SB 9 money actually goes to maintenance; and
- ▶ components of a preventive maintenance plan.

Staff of the public school facilities authority (PSFA) discussed the development of a model maintenance plan and worked with the maintenance subcommittee to review the necessary components of maintenance guidelines. The subcommittee spent a great deal of one meeting reviewing and making changes and suggestions to the draft maintenance guidelines. A copy of the draft is attached as Attachment A to this report.

The subcommittee discussed possible amendments to the Public School Capital Improvements Act (SB 9). Although there was some discussion about amending the act so that the funds could only be used for maintenance, the subcommittee still felt that it did not have enough information on how the SB 9 money is used to make such a recommendation. It does recommend that the statute be amended to require a district to focus SB 9 use first on maintenance before being able to use it for the other authorized purposes. It also recommends that the statute be amended to allow the money to be used for technical training and certification for maintenance and facilities management personnel.

The subcommittee also spent time looking into the inter-jurisdictional issues on code compliance

between the state and local governments, supporting that the state code should govern as the standardized code that should be applied to all school facilities. The subcommittee also discussed impact fees paid by developers; the need for appropriate sites to be given to schools when developers give land to schools; and the need for municipalities to reimburse school districts for utility expansion charges that districts have to pay for new schools in new developments when residents move along the utility line for which the school has already paid.

A final issue related to zoning restrictions and geotechnical requirements was raised, but the subcommittee determined that this is a future issue that requires more study and recommended that it be addressed by the public school capital outlay council.

In summary, the following are recommendations of the maintenance subcommittee.

- ▶ The Public School Capital Improvements Act should be amended to make maintenance the priority use of the funding out of SB 9 levies.
- ▶ The Public School Capital Improvements Act should be amended to allow the SB 9 funds to be used for technical training and certification for maintenance and facilities management personnel.
- ▶ The subcommittee endorses the work of the PSFA staff in the development of the maintenance guidelines to assist the districts.

REPORT OF THE CHARTER SCHOOL SUBCOMMITTEE

The Charter School Subcommittee met three times during the interim to address the facility needs of charter schools under the standards-based capital outlay program. The subcommittee reviewed draft legislation endorsed by the Public School Capital Outlay Task Force in 2002, draft legislation endorsed by the Legislative Education Study Committee (LESC) in 2002 and other proposed legislative solutions considered during the 2003 legislative session.

The subcommittee agreed to try and merge the draft bills endorsed by the task force and the LESC last year as its starting point for this year's recommendations. The recommendations modify the Charter School Act, in order to provide charter schools with additional avenues for resolving disputes with their school districts. In terms of school facilities, the subcommittee recognizes the reality that many charter schools are in leased facilities, but its recommendations are premised on the goal of having charter schools located in public facilities that will ultimately meet state adequacy standards.

The subcommittee also considered the proposal brought forth by charter school advocates for the state to provide direct funds to those charter schools in leased facilities for partial or full reimbursement of the lease payments. However, it did not endorse this concept. The subcommittee could not find an appropriate way to include lease payments in the construct of the standards-based capital outlay program, except in terms of tenant improvements or the state equalization guarantee program.

Finally, the subcommittee reviewed the Charter School Stimulus Fund and recommended extending the time period available to a charter school to use grant awards from the fund. The subcommittee also discussed considering a set amount for a charter school from the Charter School Stimulus Fund, but did not recommend a certain amount.

The recommendations of the Charter School Subcommittee encompass the following concepts. Draft legislation showing the specific recommendations is attached.

- A mediation process is recommended as a way to resolve disputes between charter schools and their school districts. This process applies to disputes over facilities, as well as issues related to the approval of the charter.
- The requirements for applying for a charter are slightly tightened.

- Local school districts would be required to provide facilities to a charter school if they have space available that is not being used for educational purposes. The charter school should not be required to pay rent for the facility unless there is a direct cost to the school district of providing the space. In that case, the rent would cover the direct costs.
- It is clarified that local school districts are responsible for providing the state match required for projects to bring the facilities of charter schools up to the standards. If the district refuses, the matter would go to mediation.
- After March 1, 2004, a new charter school could not begin operating until the Public School Facilities Authority certifies that the facility meets life and health safety codes.
- All facilities of charter schools should meet the statewide adequacy standards within the same time frame that other public schools in the district are being brought up to standards, since they will be in the queue like all public schools. The PSCOC would determine and award funds to these charter schools to make the improvements in their facilities necessary to bring them up to standards. For leased facilities, the improvements would be done through leasehold improvements.
- After January 1, 2008, the charter for a school should not be renewed unless the school is housed in a public building. However, if it is not in a public building, it would have to demonstrate that there are no public buildings available that are adequate. It would also have to show that the private building that it proposes to use meets the adequacy standards and that the owner agrees to maintain the building to continue to meet the standards at no additional cost.
- Charter schools would be allowed to challenge their placement in the district's five-year plan through the mediation process in any year. Other schools would be allowed a similar challenge in the second year of their disagreement with their placement in the master plan.

Appendix D

Draft Legislation Endorsed by the Task Force

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; AUTHORIZING SEVERANCE
TAX BONDS AND SUPPLEMENTAL SEVERANCE TAX BONDS FOR PUBLIC
SCHOOL CAPITAL OUTLAY PROJECTS; AMENDING THE PUBLIC SCHOOL
CAPITAL IMPROVEMENTS ACT TO ESTABLISH FUNDING PRIORITIES,
EXPAND THE PURPOSE FOR WHICH FUNDS MAY BE USED, INCREASE THE
STATE DISTRIBUTION AND ADJUST STATE DISTRIBUTIONS BY AN
INFLATION FACTOR; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT
TO CHANGE THE MEMBERSHIP OF THE PUBLIC SCHOOL CAPITAL OUTLAY
COUNCIL, CHANGE CRITERIA FOR FUNDING CERTAIN PROJECTS, PROVIDE
A PROCEDURE FOR APPEALING CERTAIN DECISIONS, PROVIDE A CAUSE OF
ACTION AGAINST CERTAIN SCHOOL DISTRICTS FOR CERTAIN
CONSTITUTIONAL VIOLATIONS AND PROVIDE FOR A TAX IMPOSITION AS A
REMEDY; CREATING THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE;
PROVIDING DUTIES FOR THE TASK FORCE; AMENDING THE TECHNOLOGY
FOR EDUCATION ACT TO LIMIT CARRYFORWARD PROVISIONS; MAKING

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1 APPROPRIATIONS.

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

3 Section 1. Section 7-27-10.1 NMSA 1978 (being Laws 2003,
4 Chapter 134, Section 1) is amended to read:

5 "7-27-10.1. BONDING CAPACITY--AUTHORIZATION FOR SEVERANCE
6 TAX BONDS--~~[WATER PROJECTS]~~ PRIORITY FOR WATER PROJECTS AND
7 PUBLIC SCHOOL CAPITAL OUTLAY.--

8 A. By January 15 of each year, the board of finance
9 division of the department of finance and administration shall
10 estimate the amount of bonding capacity available for severance
11 tax bonds [~~to be authorized by the legislature~~] and
12 supplemental severance tax bonds.

13 B. The board of finance division shall [~~authorize~~] set
14 aside ten percent of the estimated severance tax bonding
15 capacity each year [~~and~~]. The legislature authorizes the state
16 board of finance to issue severance tax bonds in the annually
17 [~~deducted~~] set aside amount for use by the water trust board to
18 fund water projects statewide. [~~B.~~] The water trust board
19 shall certify to the state board of finance the need for
20 issuance of severance tax bonds for water projects. The state
21 board of finance may issue and sell the severance tax bonds in
22 the same manner as other severance tax bonds in an amount not
23 to exceed the authorized amount provided for in [~~Subsection A~~
24 ~~of this section~~] this subsection. If necessary, the state
25 board of finance shall take the appropriate steps to comply

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1 with the federal Internal Revenue Code of 1986, as amended.
2 Proceeds from the sale of the severance tax bonds are
3 appropriated to the water project fund in the New Mexico
4 finance authority for the purposes certified by the water trust
5 board to the state board of finance.

6 C. Money from the severance tax bonds provided for in
7 Subsection B of this section shall not be used to pay indirect
8 project costs. Any unexpended balance from proceeds of
9 severance tax bonds issued for a water project shall revert to
10 the severance tax bonding fund within six months of completion
11 of the water project. The New Mexico finance authority shall
12 monitor and ensure proper reversions.

13 D. As used in this section, "water project" means a
14 capital outlay project for:

15 (1) the storage, conveyance or delivery of
16 water to end users;

17 (2) the implementation of federal Endangered
18 Species Act of 1973 collaborative programs;

19 (3) the restoration and management of
20 watersheds;

21 (4) flood prevention; or

22 (5) conservation, recycling, treatment or
23 reuse of water.

24 E. In addition to the amount of severance tax bonding
25 capacity set aside pursuant to Subsection B of this section, if

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1 the specific conditions and limitations prescribed by this
2 subsection are satisfied, the board of finance division shall
3 set aside an amount for public school capital outlay projects.

4 The amount of the set-aside shall be calculated as follows:

5 (1) the division shall:

6 (a) add: 1) the total amount of
7 severance tax bonds and supplemental severance tax bonds issued
8 during the previous fiscal year for public school capital
9 outlay pursuant to the Public School Capital Outlay Act and the
10 Public School Capital Improvements Act but excluding severance
11 tax bonds or supplemental severance tax bonds issued to correct
12 deficiencies pursuant to Section 22-24-4.1 NMSA 1978; 2) the
13 estimated total amount of severance tax bonds and supplemental
14 severance tax bonds to be issued during the current fiscal year
15 for public school capital outlay pursuant to the Public School
16 Capital Outlay Act and the Public School Capital Improvements
17 Act but excluding severance tax bonds or supplemental severance
18 tax bonds issued to correct deficiencies pursuant to Section
19 22-24-4.1 NMSA 1978; and 3) the estimated supplemental
20 severance tax bonding capacity calculated pursuant to
21 Subsection A of this section; and

22 (b) divide the sum by three;

23 (2) except as provided in Paragraph (3) of
24 this subsection, the amount of severance tax bonding capacity
25 set aside for public school capital outlay projects shall equal

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1 the value reached by subtracting the amount calculated pursuant
2 to Paragraph (1) of this subsection from the lesser of:

3 (a) one hundred twenty-five million
4 dollars (\$125,000,000); or

5 (b) the amount certified by the public
6 school capital outlay council pursuant to Section 22-24-5.4
7 NMSA 1978; and

8 (3) if the value calculated pursuant to
9 Paragraph (2) of this subsection is less than zero, no amount
10 shall be set aside pursuant to this subsection.

11 F. In compliance with the Severance Tax Bonding Act,
12 the state board of finance may issue and sell severance tax
13 bonds in the amount set aside pursuant to Subsection E of this
14 section when the public school capital outlay council certifies
15 by resolution the need for the issuance of the bonds. The
16 state board of finance shall schedule the issuance and sale of
17 the bonds in the most expeditious and economical manner
18 possible. If necessary, the state board of finance shall take
19 the appropriate steps to comply with the federal Internal
20 Revenue Code of 1986, as amended. The proceeds from the sale
21 of the bonds are appropriated to the public school capital
22 outlay fund for the purposes certified by the public school
23 capital outlay council to the state board of finance.

24 G. The board of finance division shall deduct the
25 amounts set aside in Subsections B and E of this section from

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1 the capacity estimated pursuant to Subsection A of this section
2 and certify the result to the legislature as the amount
3 available for additional severance tax bond authorizations."

4 Section 2. Section 7-27-12.2 NMSA 1978 (being Laws 2001,
5 Chapter 338, Section 2) is amended to read:

6 "7-27-12.2. SUPPLEMENTAL SEVERANCE TAX BONDS--PUBLIC
7 SCHOOL CAPITAL OUTLAY PROJECTS.--

8 A. The public school capital outlay council is
9 authorized to certify by resolution that proceeds of
10 supplemental severance tax bonds are needed for expenditures
11 relating to public school capital outlay projects pursuant to
12 [~~Section 22-24-5 NMSA 1978~~] the Public School Capital Outlay
13 Act or for the state distribution for public school capital
14 improvements pursuant to the Public School Capital Improvements
15 Act. The resolution shall specify the total amount needed.

16 B. The state board of finance may issue and sell
17 supplemental severance tax bonds in compliance with the
18 Severance Tax Bonding Act when the public school capital outlay
19 council certifies by resolution the need for the issuance of
20 the bonds. The amount of the bonds sold at each sale shall not
21 exceed the lesser of the amount certified by the council or the
22 amount that may be issued pursuant to the restrictions of
23 Section 7-27-14 NMSA 1978.

24 C. The state board of finance shall schedule the
25 issuance and sale of the bonds in the most expeditious and

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1 economical manner possible.

2 D. The proceeds from the sale of the bonds are
3 appropriated as follows:

4 (1) the amount certified by the
5 ~~[superintendent of public instruction]~~ secretary of public
6 education as necessary to make the distribution pursuant to
7 Section 22-25-9 NMSA 1978 is appropriated to the public school
8 capital improvements fund for the purpose of carrying out the
9 provisions of the Public School Capital Improvements Act; and

10 (2) the remainder of the proceeds is
11 appropriated to the public school capital outlay fund for the
12 purpose of ~~[making awards of grant assistance pursuant to~~
13 ~~Section 22-24-5 NMSA 1978, except that, of the proceeds~~
14 ~~received from the sale of the bonds in fiscal year 2001, fifty~~
15 ~~million dollars (\$50,000,000) shall be used for projects to~~
16 ~~correct outstanding deficiencies pursuant to Sections 22-24-4.1~~
17 ~~and 22-24-4.2 NMSA 1978]~~ carrying out the provisions of the
18 Public School Capital Outlay Act."

19 Section 3. Section 7-27-14 NMSA 1978 (being Laws 1961,
20 Chapter 5, Section 11, as amended) is amended to read:

21 "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

22 A. The legislature shall provide for the continued
23 assessment, levy, collection and deposit into the severance tax
24 bonding fund of the tax or taxes upon natural resource products
25 severed and saved from the soil of the state that, together

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1 with such other income as may be deposited to the fund, will be
2 sufficient to produce an amount that is at least the amount
3 necessary to meet annual debt service charges on all
4 outstanding severance tax bonds and supplemental severance tax
5 bonds.

6 B. Except as otherwise specifically provided by law,
7 the state board of finance shall issue no severance tax bonds
8 unless the aggregate amount of severance tax bonds outstanding,
9 and including the issue proposed, can be serviced with not more
10 than fifty percent of the annual deposits into the severance
11 tax bonding fund, as determined by the deposits during the
12 preceding fiscal year.

13 C. The state board of finance shall issue no
14 supplemental severance tax bonds with a term that extends
15 beyond the fiscal year in which the bonds are issued unless the
16 aggregate amount of severance tax bonds and supplemental
17 severance tax bonds outstanding, and including the issue
18 proposed, can be serviced with not more than sixty-two and
19 one-half percent of the annual deposits into the severance tax
20 bonding fund, as determined by the deposits during the
21 preceding fiscal year.

22 D. Except as otherwise specifically provided by law,
23 the state board of finance may issue supplemental severance tax
24 bonds with a term that does not extend beyond the fiscal year
25 in which they are issued if the debt service on such

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1 supplemental severance tax bonds when added to the debt service
2 previously paid or scheduled to be paid during that fiscal year
3 on severance tax bonds and supplemental severance tax bonds
4 does not exceed [~~eighty-seven and one-half~~] ninety-five percent
5 of the deposits into the severance tax bonding fund during the
6 preceding fiscal year.

7 E. The provisions of this section shall not be
8 modified by the terms of any severance tax bonds or
9 supplemental severance tax bonds hereafter issued."

10 Section 4. Section 7-37-7 NMSA 1978 (being Laws 1973,
11 Chapter 258, Section 40, as amended) is amended to read:

12 "7-37-7. TAX RATES AUTHORIZED--LIMITATIONS.--

13 A. The tax rates specified in Subsection B of this
14 section are the maximum rates that may be set by the department
15 of finance and administration for the use of the stated
16 governmental units for the purposes stated in that subsection.
17 The tax rates set for residential property for county, school
18 district or municipal general purposes or for the purposes
19 authorized in Paragraph (2) of Subsection C of this section
20 shall be the same as the tax rates set for nonresidential
21 property for those governmental units for those purposes unless
22 different rates are required because of limitations imposed by
23 Section 7-37-7.1 NMSA 1978. The department of finance and
24 administration may set a rate at less than the maximum in any
25 tax year. In addition to the rates authorized in Subsection B

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1 of this section, the department of finance and administration
2 shall also determine and set the necessary rates authorized in
3 Subsection C of this section. The tax rates authorized in
4 Paragraphs (1), [~~and~~] (3) and (4) of Subsection C of this
5 section shall be set at the same rate for both residential and
6 nonresidential property. Rates shall be set after the
7 governmental units' budget-making and approval process is
8 completed and shall be set in accordance with Section 7-38-33
9 NMSA 1978. Orders imposing the rates set for all units of
10 government shall be made by the boards of county commissioners
11 after rates are set and certified to the boards by the
12 department of finance and administration. The department of
13 finance and administration shall also certify the rates set for
14 nonresidential property in governmental units to the department
15 for use in collecting taxes imposed under the Oil and Gas Ad
16 Valorem Production Tax Act, the Oil and Gas Production
17 Equipment Ad Valorem Tax Act and the Copper Production Ad
18 Valorem Tax Act.

19 B. The following tax rates for the indicated purposes
20 are authorized:

21 (1) for the use of each county for general
22 purposes for the 1987 and subsequent property tax years, a rate
23 of eleven dollars eighty-five cents (\$11.85) for each one
24 thousand dollars (\$1,000) of net taxable value of both
25 residential and nonresidential property allocated to the

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1 county;

2 (2) for the use of each school district for
3 general operating purposes, a rate of fifty cents (\$.50) for
4 each one thousand dollars (\$1,000) of net taxable value of both
5 residential and nonresidential property allocated to the school
6 district; and

7 (3) for the use of each municipality for
8 general purposes for the 1987 and subsequent property tax
9 years, a rate of seven dollars sixty-five cents (\$7.65) for
10 each one thousand dollars (\$1,000) of net taxable value of both
11 residential and nonresidential property allocated to the
12 municipality.

13 C. In addition to the rates authorized in Subsection B
14 of this section, there are also authorized:

15 (1) those rates or impositions authorized
16 under provisions of law outside of the Property Tax Code that
17 are for the use of the governmental units indicated in those
18 provisions and are for the stated purpose of paying principal
19 and interest on a public general obligation debt incurred under
20 those provisions of law;

21 (2) those rates or impositions authorized
22 under provisions of law outside of the Property Tax Code that
23 are for the use of the governmental units indicated in those
24 provisions, are for the stated purposes authorized by those
25 provisions and have been approved by the voters of the

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1 governmental unit in the manner required by law; ~~and~~

2 (3) those rates or impositions necessary for
3 the use of a governmental unit to pay a tort or workers'
4 compensation judgment for which a county, municipality or
5 school district is liable, subject to the limitations in
6 Subsection B of Section 41-4-25 NMSA 1978, but, except as
7 provided in Paragraph (4) of this subsection, no rate or
8 imposition shall be authorized to pay any judgment other than
9 one arising from a tort or workers' compensation claim; and

10 (4) those rates or impositions ordered by a
11 court pursuant to Section 22-24-5.5 NMSA 1978 and for the use
12 of a school district to pay a judgment pursuant to that
13 section.

14 D. The rates and impositions authorized under
15 Subsection C of this section shall be on the net taxable value
16 of both residential and nonresidential property allocated to
17 the unit of government specified in the provisions of the other
18 laws or the judgments."

19 Section 5. Section 15-3B-2 NMSA 1978 (being Laws 1972,
20 Chapter 74, Section 2, as amended) is amended to read:

21 "15-3B-2. DEFINITIONS.--As used in the Property Control
22 Act:

23 A. "capital outlay project" means the acquisition,
24 improvement, alteration or reconstruction of assets of a long-
25 term character that are intended to continue to be held or

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1 used, including land, buildings, machinery, furniture and
2 equipment. A "capital outlay project" includes all proposed
3 expenditures related to the entire undertaking;

4 B. "department" means the general services department;

5 C. "director" means the director of the division;

6 D. "division" means the property control division of
7 the department;

8 E. "jurisdiction" means all state buildings and land
9 except those under the control and management of the state
10 armory board, the office of cultural affairs, the state fair
11 commission, the department of game and fish, the [~~state highway~~
12 ~~and transportation~~] department of transportation, the
13 commissioner of public lands, the state parks division of the
14 energy, minerals and natural resources department, the state
15 institutions of higher learning, the New Mexico school for the
16 deaf, the New Mexico school for the visually handicapped, the
17 judicial branch, the legislative branch, [~~and~~] property
18 acquired by the economic development department pursuant to the
19 Statewide Economic Development Finance Act and property
20 acquired by the public school facilities authority pursuant to
21 the Public School Capital Outlay Act; and

22 F. "secretary" means the secretary of general
23 services."

24 Section 6. Section 22-15A-9 NMSA 1978 (being Laws 1994,
25 Chapter 96, Section 9, as amended) is amended to read:

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1 "22-15A-9. EDUCATIONAL TECHNOLOGY FUND--DISTRIBUTION.--

2 A. Upon annual review and approval of a school
3 district's educational technology plan, the bureau shall
4 determine a separate distribution from the educational
5 technology fund for each school district.

6 B. On or before July 31 of each year, the bureau shall
7 distribute money in the educational technology fund directly to
8 each school district in an amount equal to ninety percent of
9 the school district's estimated adjusted entitlement calculated
10 pursuant to Subsection C of this section. A school district's
11 unadjusted entitlement is that portion of the total amount of
12 the annual appropriation that the projected membership bears to
13 the projected membership of the state. Kindergarten membership
14 shall be calculated on a one-half full-time equivalent basis.

15 C. A school district's estimated adjusted entitlement
16 shall be calculated by the bureau using the following
17 procedure:

18 (1) a base allocation is calculated by
19 multiplying the total annual appropriation by seventy-five
20 thousandths [~~of one~~] percent;

21 (2) the estimated adjusted entitlement amount
22 for a school district whose unadjusted entitlement is at or
23 below the base allocation shall be equal to the base
24 allocation. For a school district whose unadjusted entitlement
25 is higher than the base allocation, the estimated adjusted

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1 entitlement shall be calculated pursuant to Paragraphs (3)
2 through (13) of this subsection;

3 (3) the total projected membership in those
4 school districts that will receive the base allocation pursuant
5 to Paragraph (2) of this subsection is subtracted from the
6 total projected state membership;

7 (4) the total of the estimated adjusted
8 entitlement amounts that will be distributed to those school
9 districts receiving the base allocation pursuant to Paragraph
10 (2) of this subsection is subtracted from the total
11 appropriation;

12 (5) the projected membership for the district
13 is divided by the result calculated pursuant to Paragraph (3)
14 of this subsection;

15 (6) the number calculated pursuant to
16 Paragraph (5) of this subsection is multiplied by the value
17 calculated pursuant to Paragraph (4) of this subsection;

18 (7) ~~[the total of all legislative~~
19 ~~appropriations excluding reauthorizations of education~~
20 ~~technology appropriations made to the subject school district~~
21 ~~made after January 1, 2003 for educational technology]~~
22 excluding appropriations made prior to January 1, 2003 and
23 reauthorizations of previous educational technology
24 appropriations, the total of educational technology
25 appropriations made in the immediately preceding three fiscal

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1 years directly to, and not rejected by, the school district, is
2 calculated. No later than June 30 of each year, the
3 [~~legislative council service~~] department of finance and
4 administration shall certify to the bureau the amount of direct
5 appropriations made to each school district during the
6 preceding twelve months. An appropriation made in a fiscal
7 year shall be deemed to be accepted by a school district
8 unless, prior to July 15 of the fiscal year following the
9 appropriation, the district notifies the department of finance
10 and administration and the public education department that the
11 district is rejecting the appropriation;

12 (8) the applicable amount for the school
13 district calculated from Subparagraph (k), (m), (n) or (o) of
14 Paragraph (5) of Subsection [E] B of Section 22-24-5 NMSA 1978
15 is subtracted from one;

16 (9) the value calculated pursuant to Paragraph
17 (7) of this subsection for the school district is multiplied by
18 the amount calculated pursuant to Paragraph (8) of this
19 subsection for that school district;

20 (10) the total amount of reductions for the
21 school district made in [~~prior~~] the immediately two preceding
22 fiscal years pursuant to Paragraph (11) of this subsection is
23 subtracted from the amount calculated pursuant to Paragraph (9)
24 of this subsection for that school district;

25 (11) the amount calculated for the school

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1 district pursuant to Paragraph (10) of this subsection is
2 subtracted from the amount calculated pursuant to Paragraph (6)
3 of this subsection for that school district;

4 (12) if the amount calculated for the school
5 district pursuant to Paragraph (11) of this subsection is equal
6 to or less than the base allocation amount, the estimated
7 adjusted entitlement amount for that school district is equal
8 to the base allocation amount; and

9 (13) if the amount calculated for the school
10 district pursuant to Paragraph (11) of this subsection is more
11 than the base allocation amount, the estimated adjusted
12 entitlement amount for that school district is equal to the
13 amount calculated pursuant to that paragraph.

14 D. On or before January 30 of each year, the bureau
15 shall recompute each adjusted entitlement using the final
16 funded membership for that year and, without making any
17 additional reductions, shall allocate the balance of the annual
18 appropriation adjusting for any over- or under-projection of
19 membership.

20 E. [~~Any~~] A school district receiving funding pursuant
21 to the Technology for Education Act is responsible for the
22 purchase, distribution, use and maintenance of educational
23 technology.

24 F. As used in this section, "membership" means the
25 total enrollment of qualified students, as defined in the

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1 Public School Finance Act, on the current roll of class or
2 school on a specified day. The current roll is established by
3 the addition of original entries and reentries minus
4 withdrawals. Withdrawal of students, in addition to students
5 formally withdrawn from the public school, includes students
6 absent from the public school for as many as ten consecutive
7 school days."

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

10 "22-24-2. PURPOSE OF ACT.--The purpose of the Public
11 School Capital Outlay Act is to [~~meet critical school district~~
12 ~~capital outlay needs which cannot be met by the school district~~
13 ~~after it has exhausted available sources~~] ensure that, through
14 a standards-based process for all school districts, the
15 physical condition and capacity, educational suitability and
16 technology infrastructure of all public school facilities in
17 New Mexico meet an adequate level statewide and the design,
18 construction and maintenance of school sites and facilities
19 encourage, promote and maximize safe, functional and durable
20 learning environments in order for the state to meet its
21 educational responsibilities and for New Mexico's students to
22 have the opportunity to achieve success."

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

25 "22-24-4. FUND CREATED--USE.--

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

4 B. Except as provided in Subsections G [~~and H~~] through
5 K of this section, money in the fund may be used only for
6 capital expenditures deemed by the council necessary for an
7 adequate educational program.

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

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1 district. The council may authorize the permanent disposition
2 of the [~~property~~] portable classrooms by the [~~property control~~
3 ~~division~~] public school facilities authority with prior
4 approval of the state board of finance.

5 D. Applications for assistance from the fund shall be
6 made by school districts to the council in accordance with
7 requirements of the council. The council shall require as a
8 condition of application that a school district have a current
9 five-year facilities plan, which shall include a current
10 preventive maintenance plan to which the school adheres for
11 each public school in the school district.

12 E. The council shall review all requests for
13 assistance from the fund and shall allocate funds only for
14 those capital outlay projects that meet the criteria of the
15 Public School Capital Outlay Act.

16 F. Money in the fund shall be disbursed by warrant of
17 the department of finance and administration on vouchers signed
18 by the secretary of finance and administration following
19 certification by the council that an application has been
20 approved or an expenditure has been ordered by a court pursuant
21 to Section 22-24-5.5 NMSA 1978. At the discretion of the
22 council, money for a project shall be distributed as follows:

23 (1) up to ten percent of the portion of the
24 project cost funded with distributions from the fund or five
25 percent of the total project cost, whichever is greater, may be

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1 paid to the school district before work commences with the
2 balance of the grant award made on a cost-reimbursement basis;
3 or

4 (2) the council may ~~make~~ authorize payments
5 directly to the contractor.

6 G. ~~[An amount up to five percent of the average annual~~
7 ~~grant assistance authorized from the fund during the three~~
8 ~~previous fiscal years may annually be expended for project~~
9 ~~management expenses.]~~ Balances in the fund may be annually
10 appropriated for the core administrative functions of the
11 public school facilities authority pursuant to the Public
12 School Capital Outlay Act and, in addition, balances in the
13 fund may be expended by the public school facilities authority,
14 upon approval of the council, for project management expenses;
15 provided that:

16 (1) the total annual expenditures from the
17 fund pursuant to this subsection shall not exceed five percent
18 of the average annual grant assistance authorized from the fund
19 during the three previous fiscal years; and

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

23 H. Up to one million two hundred fifty thousand
24 dollars (\$1,250,000) of the balances of the fund may be
25 expended in fiscal years 2003 and 2004 by the council for the

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1 purpose of updating and refining the statewide assessment study
2 required by Section 22-24-5 NMSA 1978 and for the training of
3 state and local officials on the use of the database and other
4 data-management-related issues identified by the council.

5 I. Of the appropriation made to the fund by Subsection
6 D of Section 15 of Chapter 338 of Laws 2001 for the purpose of
7 correcting outstanding deficiencies, one million one hundred
8 thousand dollars (\$1,100,000) is appropriated to the council
9 for expenditure in fiscal year 2004 for the core administrative
10 functions of the deficiencies corrections program. Any
11 unexpended or unencumbered balance remaining at the end of
12 fiscal year 2004 shall revert to the fund.

13 J. Up to seven hundred thousand dollars (\$700,000) of
14 the balances of the fund may be expended by the council in
15 fiscal year 2004 for the core administrative functions of the
16 public school facilities authority.

17 K. Up to three million dollars (\$3,000,000) may be
18 appropriated annually from the fund to the council in fiscal
19 years 2005 through 2009 for grants to charter schools for the
20 purpose of making lease payments for charter school facilities.
21 The grants shall be made upon application by the charter
22 schools and pursuant to rules adopted by the council and the
23 following criteria:

24 (1) the amount of an annual grant to a charter
25 school shall be the lesser of:

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1 (a) the actual annual lease payment owed
2 by the charter school to lease school facilities; or

3 (b) three hundred dollars (\$300)
4 multiplied by the number of MEM attending the charter school;
5 provided that, if the total grants awarded pursuant to this
6 paragraph would exceed the total annual appropriation, the rate
7 specified in this subparagraph shall be reduced
8 proportionately;

9 (2) a grant may be used by a charter school as
10 a state match necessary to obtain federal grants pursuant to
11 the federal No Child Left Behind Act of 2001;

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

15 (4) as used in this subsection, "MEM" means
16 the total full-time-equivalent enrollment attending a charter
17 school in the final funded prior school year."

18 Section 9. Section 22-24-4.1 NMSA 1978 (being Laws 2001,
19 Chapter 338, Section 6, as amended) is amended to read:

20 "22-24-4.1. OUTSTANDING DEFICIENCIES--ASSESSMENT--
21 CORRECTION.--

22 A. No later than September 1, 2001, the council shall
23 define and develop guidelines, consistent with the codes
24 adopted by the construction industries commission pursuant to
25 the Construction Industries Licensing Act, for school districts

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1 to use to identify outstanding serious deficiencies in public
2 school buildings and grounds, including buildings and grounds
3 of charter schools, that may adversely affect the health or
4 safety of students and school personnel.

5 B. A school district shall use these guidelines to
6 complete a self-assessment of the outstanding health or safety
7 deficiencies within the school district and provide cost
8 projections to correct the outstanding deficiencies.

9 C. The council shall develop a methodology for
10 prioritizing projects that will correct the deficiencies.

11 D. After a public hearing and to the extent that money
12 is available in the fund for such purposes, the council shall
13 approve allocations from the fund on the established priority
14 basis and, working with the school district and pursuant to the
15 Procurement Code, enter into construction contracts with
16 contractors to correct the deficiencies.

17 E. In entering into construction contracts to correct
18 deficiencies pursuant to this section, the council shall
19 include such terms and conditions as necessary to ensure that
20 the state money is expended in the most prudent manner possible
21 and consistent with the original purpose.

22 F. Any deficiency that may adversely affect the health
23 or safety of students or school personnel may be corrected
24 pursuant to this section, regardless of the local effort or
25 percentage of indebtedness of the school district.

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1 G. It is the intent of the legislature that all
2 outstanding deficiencies in public schools and grounds that may
3 adversely affect the health or safety of students and school
4 personnel be identified and awards made pursuant to this
5 section no later than June 30, [~~2004~~] 2005, and that funds be
6 expended no later than June 30, [~~2006~~] 2007."

7 Section 10. Section 22-24-5 NMSA 1978 (being Laws 1975,
8 Chapter 235, Section 5, as amended) is amended to read:

9 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
10 APPLICATION--GRANT ASSISTANCE.--

11 ~~[A. For project allocation cycles occurring before~~
12 ~~September 1, 2003, the council shall approve an application for~~
13 ~~grant assistance from the fund for a public school capital~~
14 ~~outlay project not wholly funded pursuant to Section 22-24-4.1~~
15 ~~NMSA 1978, when the council determines that:~~

16 ~~(1) a need exists requiring action;~~

17 ~~(2) the residents of the school district have~~
18 ~~provided available resources to the school district to meet its~~
19 ~~capital outlay requirements;~~

20 ~~(3) the school district has used its capital~~
21 ~~resources in a prudent manner;~~

22 ~~(4) the school district has provided insurance~~
23 ~~for buildings of the school district in accordance with the~~
24 ~~provisions of Section 13-5-3 NMSA 1978;~~

25 ~~(5) the school district;~~

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1 ~~(a) is indebted at not less than~~
2 ~~sixty-five percent of the total general obligation debt~~
3 ~~authorized by law; or~~

4 ~~(b) within the last three years, was~~
5 ~~indebted at the level required in Subparagraph (a) of this~~
6 ~~paragraph and received a grant pursuant to this section for the~~
7 ~~initial stages of a project and currently has a critical need~~
8 ~~for an additional grant to complete the same project;~~

9 ~~(6) the application includes:~~

10 ~~(a) the capital needs of any charter~~
11 ~~schools located in the school district or the school district~~
12 ~~has shown that the capital needs of the charter schools are not~~
13 ~~as great as the capital needs requested in the application; and~~

14 ~~(b) the facilities needed in the school~~
15 ~~district to implement a full-day kindergarten program or that~~
16 ~~the school district has shown that the need for facilities to~~
17 ~~implement the program is not as great as the capital needs~~
18 ~~requested in the application; provided that the total amount of~~
19 ~~assistance grants made in a fiscal year for the purpose of~~
20 ~~implementing full-day kindergarten programs shall not exceed~~
21 ~~five million dollars (\$5,000,000); and~~

22 ~~(7) the school district has submitted a five-~~
23 ~~year facilities plan that includes:~~

24 ~~(a) enrollment projections;~~

25 ~~(b) a current preventive maintenance~~

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1 ~~plan to which the school adheres for each public school in the~~
2 ~~district; and~~

3 ~~(c) projections for the facilities~~
4 ~~needed in order to maintain a full-day kindergarten program.~~

5 ~~B. The council shall consider all applications for~~
6 ~~assistance from the fund and, after a public hearing, shall~~
7 ~~either approve or deny the application. Applications for grant~~
8 ~~assistance shall only be accepted by the council after a school~~
9 ~~district has complied with the provisions of this section. The~~
10 ~~council shall list all applications in order of priority, and~~
11 ~~all allocations shall be made on a priority basis, except:~~

12 ~~(1) twenty million dollars (\$20,000,000) of~~
13 ~~the proceeds from supplemental severance tax bonds available~~
14 ~~for the funding cycle in each of fiscal years 2002 and 2003~~
15 ~~shall be set aside for allocation solely for projects in school~~
16 ~~districts that are eligible for funding from the fund and that~~
17 ~~receive grants from the federal government as assistance to~~
18 ~~areas affected by federal activity authorized in accordance~~
19 ~~with Title 20 of the United States Code, commonly known as "PL~~
20 ~~874 funds" or "impact aid";~~

21 ~~(2) fifteen million dollars (\$15,000,000) of~~
22 ~~the money in the fund available for the funding cycle in fiscal~~
23 ~~year 2004 shall be set aside for allocation solely for projects~~
24 ~~in school districts that are eligible for funding and that:~~

25 ~~(a) are eligible for additional program~~

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1 ~~units pursuant to Section 22-8-23.1 NMSA 1978;~~

2 ~~(b) are indebted at not less than ninety~~
3 ~~percent of the total general obligation debt authorized by law;~~
4 ~~and~~

5 ~~(c) have a net taxable value per MEM~~
6 ~~equal to less than fifty percent of the average statewide net~~
7 ~~taxable value per MEM; and~~

8 ~~(3) in the case of an emergency]~~

9 A. Applications for grant assistance, the approval of
10 applications, the prioritization of projects and grant awards
11 shall be conducted pursuant to the provisions of this section;
12 provided, however, that the order of priority in the three
13 years beginning July 1, 2004 shall first reflect those projects
14 that [have been previously funded] were partially funded by the
15 council in September 2003 but are not as yet completed,
16 excluding expansion of those projects and contingent upon
17 maintenance of the required local support. [C. For allocation
18 cycles beginning after September 1, 2003, the following
19 provisions apply] In that transition period, such projects
20 shall be funded regardless of any deviation from the statewide
21 adequacy standards; provided, that the amount of the award
22 received shall not exceed the amount necessary to meet the
23 statewide adequacy standards, including projected enrollment
24 growth.

25 B. Except as provided in Subsection A of this section

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1 and in Section 22-24-5.5 NMSA 1978, the following provisions
2 govern grant assistance from the fund for a public school
3 capital outlay project not wholly funded pursuant to Section
4 22-24-4.1 NMSA 1978:

5 (1) all school districts are eligible to apply
6 for funding from the fund, regardless of percentage of
7 indebtedness;

8 (2) priorities for funding shall be determined
9 by using the statewide adequacy standards developed pursuant to
10 Subsection [D] C of this section; provided that:

11 (a) the council shall apply the
12 standards to charter schools to the same extent that they are
13 applied to other public schools; and

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

19 (3) [~~after consulting with the staff architect~~
20 ~~of the property control division of the general services~~
21 ~~department]~~ the council shall establish criteria to be used in
22 public school capital outlay projects that receive grant
23 assistance pursuant to the Public School Capital Outlay Act.
24 In establishing the criteria, the council shall consider:

25 (a) the feasibility of using design,

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1 build and finance arrangements for public school capital outlay
2 projects;

3 (b) the potential use of more durable
4 construction materials that may reduce long-term operating
5 costs; and

6 (c) any other financing or construction
7 concept that may maximize the dollar effect of the state grant
8 assistance;

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

12 (5) except as provided in Paragraph (6) or (8)
13 of this subsection, the state share of a project approved and
14 ranked by the council shall be funded within available
15 resources in accordance with the following procedure:

16 (a) the final prior year net taxable
17 value for a school district divided by the MEM for that school
18 district is calculated for each school district;

19 (b) the final prior year net taxable
20 value for the whole state divided by the MEM for the state is
21 calculated;

22 (c) excluding any school district for
23 which the result calculated pursuant to Subparagraph (a) of
24 this paragraph is more than twice the result calculated
25 pursuant to Subparagraph (b) of this paragraph, the results

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1 calculated pursuant to Subparagraph (a) of this paragraph are
2 listed from highest to lowest;

3 (d) the lowest value listed pursuant to
4 Subparagraph (c) of this paragraph is subtracted from the
5 highest value listed pursuant to that subparagraph;

6 (e) the value calculated pursuant to
7 Subparagraph (a) of this paragraph for the subject school
8 district is subtracted from the highest value listed in
9 Subparagraph (c) of this paragraph;

10 (f) the result calculated pursuant to
11 Subparagraph (e) of this paragraph is divided by the result
12 calculated pursuant to Subparagraph (d) of this paragraph;

13 (g) the sum of the property tax mill
14 levies for the prior tax year imposed by each school district
15 on residential property pursuant to Chapter 22, Article 18 NMSA
16 1978, the Public School Capital Improvements Act, the Public
17 School Buildings Act, the Education Technology Equipment Act
18 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
19 is calculated for each school district;

20 (h) the lowest value calculated pursuant
21 to Subparagraph (g) of this paragraph is subtracted from the
22 highest value calculated pursuant to that subparagraph;

23 (i) the lowest value calculated pursuant
24 to Subparagraph (g) of this paragraph is subtracted from the
25 value calculated pursuant to that subparagraph for the subject

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1 school district;

2 (j) the value calculated pursuant to
3 Subparagraph (i) of this paragraph is divided by the value
4 calculated pursuant to Subparagraph (h) of this paragraph;

5 (k) if the value calculated for a
6 subject school district pursuant to Subparagraph (j) of this
7 paragraph is less than five-tenths, then, except as provided in
8 Subparagraph (n) or (o) of this paragraph, the value calculated
9 for that school district pursuant to Subparagraph (f) of this
10 paragraph equals the portion of the approved project to be
11 funded from the fund;

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

16 (m) if the value calculated for a
17 subject school district pursuant to Subparagraph (j) of this
18 paragraph is five-tenths or greater, then the value calculated
19 pursuant to Subparagraph (l) of this paragraph is added to the
20 value calculated pursuant to Subparagraph (f) of this
21 paragraph. Except as provided in Subparagraph (n) or (o) of
22 this paragraph, the sum equals the portion of the approved
23 project to be funded from the fund;

24 (n) in those instances in which the
25 calculation pursuant to Subparagraph (k) or (m) of this

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1 paragraph yields a value less than one-tenth, one-tenth shall
2 be used as the portion of the approved project to be funded
3 from the fund;

4 (o) in those instances in which the
5 calculation pursuant to Subparagraph (k) or (m) of this
6 paragraph yields a value greater than one, one shall be used as
7 the portion of the approved project to be funded from the fund;

8 (p) except as reduced pursuant to
9 Paragraph (6) of this subsection, the amount to be distributed
10 from the fund for an approved project shall equal the value for
11 the subject school district derived from Subparagraph (k), (m),
12 (n) or (o) of this paragraph multiplied by the total project
13 cost; and

14 (q) as used in this paragraph: 1) "MEM"
15 means the total full-time equivalent enrollment of students
16 attending public school in a school district in the final
17 funded prior school year [~~with kindergarten being counted as~~
18 ~~five-tenths~~]; and 2) "total project cost" means the total
19 amount necessary to complete the public school capital outlay
20 project less any insurance reimbursement received by the school
21 district for the project;

22 (6) the amount calculated pursuant to
23 Subparagraph (p) of Paragraph (5) of this subsection shall be
24 reduced by the following procedure:

25 (a) the total of all legislative

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1 appropriations made after January 1, 2003 directly to, and not
2 rejected by, the subject school district for non-operating
3 purposes, excluding educational technology and reauthorizations
4 of appropriations previously made to the subject school
5 district, is calculated; provided that an appropriation made in
6 a fiscal year shall be deemed to be accepted by a school
7 district unless, prior to July 15 of the fiscal year following
8 the appropriation, the district notifies the department of
9 finance and administration and the public education department
10 that the district is rejecting the appropriation;

11 (b) the applicable amount for the
12 subject school district calculated from Subparagraph (k), (m),
13 (n) or (o) of Paragraph (5) of this subsection is subtracted
14 from one;

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

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

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

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

3 (7) as used in Paragraphs (5) and (6) of this
4 subsection, "subject school district" means the school district
5 that has submitted the application for funding and in which the
6 approved public school capital outlay project will be located;

7 (8) in those instances in which a school
8 district has used all of its local resources, the council may
9 fund up to the total amount of a project; and

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

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

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

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

20 (d) the school district has submitted a
21 five-year facilities plan that includes: 1) enrollment
22 projections; 2) a current preventive maintenance plan that has
23 been approved by the council pursuant to Section 22-24-5.3 NMSA
24 1978 and that is followed by each public school in the
25 district; and 3) projections for the facilities needed in order

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1 to maintain a full-day kindergarten program;

2 (e) the school district is willing and
3 able to pay any portion of the total cost of the public school
4 capital outlay project that, according to Paragraph (5), (6) or
5 (8) of this subsection, is not funded with grant assistance
6 from the fund;

7 (f) the application includes the capital
8 needs of any charter schools located in the school district or
9 the school district has shown that the facilities of the
10 charter schools in the district meet the statewide adequacy
11 standards; and

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

16 [~~D.~~] C. After consulting with the public school
17 capital outlay task force and other experts, the council shall
18 [~~develop and~~] regularly review and update statewide adequacy
19 standards applicable to all school districts. The standards
20 shall establish the [~~minimum~~] acceptable level for the physical
21 condition and capacity of buildings, the educational
22 suitability of facilities and the need for technological
23 infrastructure. Except as otherwise provided in the Public
24 School Capital Outlay Act, the amount of outstanding deviation
25 from the standards shall be used by the council [~~after~~

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1 ~~September 1, 2003]~~ in evaluating and prioritizing public school
2 capital outlay projects.

3 ~~[E.]~~ D. It is the intent of the legislature that grant
4 assistance made pursuant to this section allow every school
5 district to meet the standards developed pursuant to Subsection
6 ~~[D]~~ C of this section; provided, however, that nothing in the
7 Public School Capital Outlay Act or the development of
8 standards pursuant to that act prohibits a school district from
9 using local funds to exceed the statewide adequacy standards.

10 ~~[F.]~~ E. Upon request, the council shall work with, and
11 provide assistance and information to, the public school
12 capital outlay task force.

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

21 ~~[H. The council]~~ G. Upon the recommendation of the
22 public school facilities authority, the council shall develop
23 building standards for public school facilities and shall
24 promulgate other such rules as are necessary to carry out the
25 provisions of the Public School Capital Outlay Act.

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

11 Section 11. A new section of the Public School Capital
12 Outlay Act, Section 22-24-5.4 NMSA 1978, is enacted to read:

13 "22-24-5.4. [NEW MATERIAL] PUBLIC SCHOOL CAPITAL OUTLAY
14 COUNCIL--CERTIFICATION OF NEED.--

15 A. Prior to January 1 of each year, the council shall
16 calculate the amount needed in the fund to carry out the
17 provisions of the Public School Capital Outlay Act during the
18 next grant allocation cycle. The calculation shall consider
19 the amounts necessary:

20 (1) to ensure that all public school
21 facilities will meet the statewide adequacy standards within a
22 reasonable time;

23 (2) for new or expanded public school
24 facilities to meet growth in enrollment;

25 (3) to improve the condition of existing

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1 facilities, as shown by a condition index derived from a
2 statewide database, maintained by the public school facilities
3 authority, showing the condition of adequacy of each public
4 school facility; and

5 (4) to provide adequate administrative
6 resources for the public school facilities authority.

7 B. The need calculated pursuant to Subsection A of
8 this section shall be added to the amount certified by the
9 secretary of public education as necessary to make the
10 distribution pursuant to Section 22-25-9 NMSA 1978, and the sum
11 shall be certified by the council to the legislature, the
12 governor and the board of finance division of the department of
13 finance and administration."

14 Section 12. A new section of the Public School Capital
15 Outlay Act, Section 22-24-5.5 NMSA 1978, is enacted to read:

16 "22-24-5.5. [NEW MATERIAL] RECALCITRANT SCHOOL
17 DISTRICTS--COURT ACTION TO ENFORCE CONSTITUTIONAL COMPLIANCE--
18 IMPOSITION OF PROPERTY TAX.--

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

23 (1) the physical condition of a public school
24 facility in the school district is so inadequate that the
25 facility or the education received by students attending the

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1 facility is below the minimum required by the constitution of
2 New Mexico;

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

6 (3) either:

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

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

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

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

20 (1) order the council to expend sufficient
21 resources necessary to bring the facility up to the minimum
22 level required by the constitution of New Mexico;

23 (2) order the school district to comply with
24 Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978 and
25 to take all other actions necessary to facilitate the

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1 completion of the project ordered pursuant to Paragraph (1) of
2 this subsection; and

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

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

21 Section 13. Section 22-24-6 NMSA 1978 (being Laws 1975,
22 Chapter 235, Section 6, as amended) is amended to read:

23 "22-24-6. COUNCIL CREATED--ORGANIZATION--DUTIES.--

24 A. There is created the "public school capital outlay
25 council", consisting of the:

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1 (1) secretary of finance and administration or
2 [~~his~~] the secretary's designee;

3 (2) [~~state superintendent or his~~] secretary of
4 public education or the secretary's designee;

5 (3) [~~the~~] governor or [~~his~~] the governor's
6 designee;

7 (4) president of the New Mexico school boards
8 association or [~~his~~] the president's designee;

9 (5) [~~the~~] director of the construction
10 industries division of the regulation and licensing department
11 or [~~his~~] the director's designee;

12 (6) [~~the~~] president of the [~~state board or~~
13 ~~his~~] public education commission or the president's designee;

14 (7) [~~the~~] director of the legislative
15 education study committee or [~~his~~] the director's designee;

16 (8) [~~the~~] director of the legislative finance
17 committee or [~~his~~] the director's designee; [~~and~~]

18 (9) [~~the~~] director of the legislative council
19 service or [~~his~~] the director's designee; and

20 (10) president of the New Mexico
21 superintendents' association or the president's designee.

22 B. The council shall investigate all applications for
23 assistance from the fund and shall certify the approved
24 applications to the secretary of finance and administration for
25 distribution of funds.

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1 C. The council shall elect a chairman from among the
2 members. The council shall meet at the call of the chairman.

3 D. The [~~department of education~~] council shall account
4 for all distributions and shall make annual reports to the
5 public education commission, the governor, the legislative
6 education study committee, [~~and to~~] the legislative finance
7 committee and the legislature."

8 Section 14. Section 22-24-9 NMSA 1978 (being Laws 2003,
9 Chapter 147, Section 1) is amended to read:

10 "22-24-9. PUBLIC SCHOOL FACILITIES AUTHORITY--CREATION--
11 POWERS AND DUTIES.--

12 A. The "public school facilities authority" is created
13 under the [~~public school capital outlay~~] council. The
14 authority shall be headed by a director, selected by the
15 council, who shall be versed in construction, architecture or
16 project management. The director may hire no more than two
17 deputies with the approval of the council, and, subject to
18 budgetary constraints, shall employ or contract with such
19 technical and administrative personnel as are necessary to
20 carry out the provisions of this section. The director and
21 deputies shall be exempt from the provisions of the Personnel
22 Act; after July 1, 2004, all other employees of the authority
23 shall be subject to the provisions of the Personnel Act.

24 B. The authority shall:

25 (1) serve as staff to the council;

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1 (2) as directed by the council, provide those
2 assistance and oversight functions required of the council by
3 Section 22-24-5.1 NMSA 1978;

4 (3) assist school districts with:

5 (a) the development and implementation
6 of five-year facilities plans and preventive maintenance plans;

7 (b) procurement of architectural and
8 engineering services;

9 (c) management and oversight of
10 construction activities; and

11 (d) training programs;

12 (4) conduct ongoing reviews of five-year
13 facilities plans, preventive maintenance plans and performance
14 pursuant to those plans;

15 (5) as directed by the council, assist school
16 districts in analyzing and assessing their space utilization
17 options;

18 ~~[(5)]~~ (6) ensure that public school capital
19 outlay projects are in compliance with applicable building
20 codes;

21 ~~[(6)]~~ (7) conduct on-site inspections as
22 necessary to ensure that the construction specifications are
23 being met and periodically inspect all of the documents related
24 to projects;

25 ~~[(7) where appropriate]~~ (8) require the use

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1 of standardized construction documents and the use of a
2 standardized process for change orders;

3 [~~(8)~~] (9) have access to the premises of a
4 project and any documentation relating to the project;

5 [~~(9)~~] (10) after consulting with the
6 department [~~of education, develop~~], recommend building
7 standards for public school facilities to the council and
8 ensure compliance with [~~those~~] building standards adopted by
9 the council;

10 [~~(10)~~] (11) maintain a database of the
11 condition of school facilities and maintenance schedules; and

12 [~~(11)~~] (12) ensure that outstanding
13 deficiencies are corrected pursuant to Section 22-24-4.1 NMSA
14 1978. In the performance of this duty, the authority:

15 (a) shall work with school districts to
16 validate the assessment of the outstanding deficiencies and the
17 projected costs to correct the deficiencies;

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

21 (c) shall oversee all aspects of the
22 contracts entered into by the council to correct the
23 outstanding deficiencies;

24 (d) may conduct on-site inspections
25 while the deficiencies correction work is being done to ensure

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1 that the construction specifications are being met and may
2 periodically inspect all of the documents relating to the
3 projects;

4 (e) may require the use of standardized
5 construction documents and the use of a standardized process
6 for change orders;

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

9 (g) shall maintain, track and account
10 for deficiency correction projects separately from other
11 capital outlay projects funded pursuant to the Public School
12 Capital Outlay Act.

13 C. All actions taken by the authority shall be
14 consistent with educational programs conducted pursuant to the
15 Public School Code. In the event of any potential or perceived
16 conflict between a proposed action of the authority and an
17 educational program, the authority shall consult with the
18 [~~state superintendent~~] secretary of public education.

19 D. A school district, aggrieved by a decision or
20 recommendation of the authority, may appeal the matter to the
21 council by filing a notice of appeal with the council within
22 thirty days of the authority's decision or recommendation.

23 Upon filing of the notice:

24 (1) the decision or recommendation of the
25 authority shall be suspended until the matter is decided by the

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1 council;

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

5 (3) at the hearing, the school district, the
6 authority and other interested parties may make informal
7 presentations to the council; and

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

10 Section 15. Section 22-25-2 NMSA 1978 (being Laws 1975
11 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

12 "22-25-2. DEFINITIONS.--As used in the Public School
13 Capital Improvements Act:

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

17 B. "capital improvements" means expenditures,
18 including payments made with respect to lease-purchase
19 arrangements as defined in the Education Technology Equipment
20 Act but excluding any other debt service expenses, for:

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

23 (2) purchasing or improving public school
24 grounds;

25 (3) maintenance of public school buildings or

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1 public school grounds, [~~exclusive of~~] including expenditures
2 for technical training and certification for maintenance and
3 facilities management personnel, but excluding salary expenses
4 of school district employees;

5 (4) purchasing activity vehicles for
6 transporting students to extracurricular school activities; and

7 (5) purchasing computer software and hardware
8 for student use in public school classrooms."

9 Section 16. Section 22-25-7 NMSA 1978 (being Laws 1975
10 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

11 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
12 EXPENDITURES.--If as a result of an election held in accordance
13 with the Public School Capital Improvements Act a majority of
14 the qualified electors voting on the question vote in favor of
15 the imposition of the tax, the tax rate shall be certified,
16 unless the local school board requests by resolution that a
17 rate be discontinued, by the department of finance and
18 administration at the rate specified in the resolution
19 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
20 required by operation of the rate limitation provisions of
21 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
22 resolution and be imposed at the rate certified in accordance
23 with the provisions of the Property Tax Code. The revenue
24 produced by the tax and, except as provided in Subsection F of
25 Section 22-25-9 NMSA 1978, any state distribution resulting to

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1 the district under the Public School Capital Improvements Act
2 shall be expended only for the capital improvements specified
3 in the authorizing resolution."

4 Section 17. Section 22-25-9 NMSA 1978 (being Laws 1975
5 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

6 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
7 TAX UNDER CERTAIN CIRCUMSTANCES.--

8 A. Except as provided in Subsection C of this section,
9 the [~~state superintendent~~] secretary of public education shall
10 distribute to any school district that has imposed a tax under
11 the Public School Capital Improvements Act an amount from the
12 public school capital improvements fund that is equal to the
13 amount by which the revenue estimated to be received from the
14 imposed tax, at the rate certified by the department of finance
15 and administration in accordance with Section 22-25-7 NMSA
16 1978, assuming a one hundred percent collection rate, is less
17 than an amount calculated by multiplying the school district's
18 first forty days' total program units by the [~~dollar~~] amount
19 specified in Subsection B of this section and further
20 multiplying the product obtained by the tax rate approved by
21 the qualified electors in the most recent election on the
22 question of imposing a tax under the Public School Capital
23 Improvements Act. The distribution shall be made each year
24 that the tax is imposed in accordance with Section 22-25-7 NMSA
25 1978; provided that no state distribution from the public

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1 school capital improvements fund may be used for capital
2 improvements to any administration building of a school
3 district. In the event that sufficient funds are not available
4 in the public school capital improvements fund to make the
5 state distribution provided for in this section, the dollar per
6 program unit figure shall be reduced as necessary.

7 B. In calculating the state distribution pursuant to
8 Subsection A of this section, the following amounts shall be
9 used:

10 (1) [~~fifty dollars (\$50.00)~~] the amount
11 calculated pursuant to Subsection D of this subsection per
12 program unit; and

13 (2) for fiscal year 2006 and thereafter, an
14 additional amount certified to the [~~state superintendent~~]
15 secretary of public education by the public school capital
16 outlay council. No later than June 1, 2005 and each June 1
17 thereafter, the council shall determine the amount needed in
18 the next fiscal year for public school capital outlay projects
19 pursuant to the Public School Capital Outlay Act and the amount
20 of revenue, from all sources, available for the projects. If,
21 in the sole discretion of the council, the amount available
22 exceeds the amount needed, the council may certify an
23 additional amount pursuant to this paragraph; provided that the
24 sum of the amount calculated pursuant to this paragraph plus
25 the amount in Paragraph (1) of this subsection shall not result

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1 in a total statewide distribution that, in the opinion of the
2 council, exceeds one-half of the total revenue estimated to be
3 received from taxes imposed pursuant to the Public School
4 Capital Improvements Act.

5 C. For fiscal year 2004 and thereafter,
6 notwithstanding the amount calculated to be distributed
7 pursuant to Subsections A and B of this section, a school
8 district, the voters of which have approved a tax pursuant to
9 Section 22-25-3 NMSA 1978, shall not receive a distribution
10 less than [~~an amount equal to five dollars (\$5.00)~~] the amount
11 calculated pursuant to Subsection E of this section,
12 multiplied by the school district's first forty days' total
13 program units and further multiplying the product obtained by
14 the approved tax rate.

15 D. For purposes of calculating the distribution
16 pursuant to Subsection B of this section, the amount used in
17 Paragraph (1) of that subsection shall equal fifty dollars
18 (\$50.00) for fiscal year 2004, sixty dollars (\$60.00) for
19 fiscal year 2005 and in each subsequent fiscal year shall equal
20 the amount for the previous fiscal year adjusted by the
21 percentage increase between the next preceding calendar year
22 and the preceding calendar year of the consumer price index for
23 the United States, all items, as published by the United States
24 department of labor.

25 E. For purposes of calculating the minimum

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

9 F. In expending distributions made pursuant to this
10 section, school districts shall give priority to maintenance
11 projects.

12 [~~D.~~] G. In making distributions pursuant to this
13 section, the [~~state superintendent~~] secretary of public
14 education shall include such reporting requirements and
15 conditions as are required by rule of the public school capital
16 outlay council. The council shall adopt such requirements and
17 conditions as are necessary to ensure that the distributions
18 are expended in the most prudent manner possible and are
19 consistent with the original purpose as specified in the
20 authorizing resolution. Copies of reports or other information
21 received by the [~~state superintendent~~] secretary in response to
22 the requirements and conditions shall be forwarded to the
23 council."

24 Section 18. TEMPORARY PROVISION--SHORT-TERM SUPPLEMENTAL
25 SEVERANCE TAX BONDS AUTHORIZED FOR FISCAL YEAR 2004.--In

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1 addition to the bonds issued pursuant to Section 7-27-14 NMSA
2 1978 and notwithstanding the limitations of that section, in
3 compliance with the Severance Tax Bonding Act, in fiscal year
4 2004 the state board of finance may issue and sell supplemental
5 severance tax bonds with a term that does not extend beyond the
6 fiscal year in which they are issued in an amount not exceeding
7 forty-nine million six hundred thousand dollars (\$49,600,000)
8 when the public school capital outlay council certifies by
9 resolution the need for the issuance of the bonds. The
10 proceeds from the sale of the bonds are appropriated to the
11 public school capital outlay fund for the purpose of making
12 awards of grant assistance for correcting deficiencies pursuant
13 to the Public School Capital Outlay Act; provided, however,
14 that no supplemental severance tax bonds shall be issued
15 pursuant to this section:

16 A. until all other severance tax bonds and
17 supplemental severance tax bonds to be issued in fiscal year
18 2004 have been issued; and

19 B. unless the balance in the severance tax bonding
20 fund as of the date that the bonds are issued is greater than
21 the sum of:

22 (1) the debt service on the supplemental
23 severance tax bonds to be issued pursuant to this section;

24 (2) the debt service scheduled to be paid
25 during the remainder of the fiscal year on all outstanding

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1 severance tax bonds and supplemental severance tax bonds; and
2 (3) the amount necessary to meet all principal
3 and interest payments on outstanding bonds payable from the
4 severance tax bonding fund on the next two ensuing semiannual
5 payment dates.

6 Section 19. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL
7 OUTLAY TASK FORCE--CREATION--STAFF.--

8 A. The "public school capital outlay task force" is
9 created. The task force consists of twenty members as follows:

10 (1) the dean of the university of New Mexico
11 school of law or the dean's designee;

12 (2) the secretary of finance and
13 administration or the secretary's designee;

14 (3) the secretary of public education or the
15 secretary's designee;

16 (4) the state investment officer or the state
17 investment officer's designee;

18 (5) the chairmen of the house appropriations
19 and finance committee, the senate finance committee, the senate
20 education committee and the house education committee or their
21 designees;

22 (6) a minority party member of the house of
23 representatives, appointed by the New Mexico legislative
24 council;

25 (7) a minority party member of the senate,

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1 appointed by the New Mexico legislative council;

2 (8) two public members who have expertise in
3 education and finance appointed by the speaker of the house of
4 representatives;

5 (9) two public members who have expertise in
6 education and finance appointed by the president pro tempore of
7 the senate;

8 (10) three public members who have expertise
9 in education and finance appointed by the governor; and

10 (11) three superintendents of school districts
11 or their designees that receive grants from the federal
12 government as assistance to areas affected by federal activity
13 authorized in accordance with Title 20 of the United States
14 Code, appointed by the New Mexico legislative council in
15 consultation with the governor.

16 B. The chair of the public school capital outlay task
17 force shall be elected by the task force. The task force shall
18 meet at the call of the chair.

19 C. Members of the task force shall serve from the time
20 of their appointment through June 30, 2005. On July 1, 2005,
21 the task force is terminated.

22 D. The public members of the public school capital
23 outlay task force shall receive per diem and mileage pursuant
24 to the Per Diem and Mileage Act.

25 E. The legislative council service, with assistance

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1 from the public school facilities authority, the department of
2 finance and administration, the public education department,
3 the legislative education study committee and the legislative
4 finance committee, shall provide staff for the public school
5 capital outlay task force.

6 Section 20. TEMPORARY PROVISION--PUBLIC SCHOOL CAPITAL
7 OUTLAY TASK FORCE--DUTIES.--The public school capital outlay
8 task force shall:

9 A. study and evaluate the progress and effectiveness
10 of programs administered pursuant to the Public School Capital
11 Outlay Act and the Public School Capital Improvements Act;

12 B. review the condition index and the methodology used
13 for ranking projects;

14 C. evaluate the existing permanent revenue streams as
15 an adequate long-term funding source for public school capital
16 outlay projects;

17 D. monitor and assist the public school capital outlay
18 council and the public school facilities authority as they
19 perform functions pursuant to the Public School Capital Outlay
20 Act, particularly as they implement the statewide-based process
21 for making grant awards; and

22 E. before the beginning of the first session of the
23 forty-seventh legislature, report the results of its analyses,
24 findings and recommendations to the governor and the
25 legislature.

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SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE

AN ACT

RELATING TO EDUCATION; PROVIDING STANDARDS FOR CHARTER SCHOOL FACILITIES; PROVIDING PROCEDURES FOR ESTABLISHING CHARTER SCHOOLS; PROVIDING PROCEDURES FOR APPEALING THE REJECTION, NONRENEWAL OR REVOCATION OF A CHARTER; PROVIDING A MEDIATION PROCESS TO RESOLVE CERTAIN DISPUTES BETWEEN A CHARTER SCHOOL OR A PROPOSED CHARTER SCHOOL AND A LOCAL SCHOOL BOARD.

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

Section 1. Section 22-8B-1 NMSA 1978 (being Laws 1999, Chapter 281, Section 1) is amended to read:

"22-8B-1. SHORT TITLE.--~~[Sections 1 through 15 of this act]~~ Chapter 22, Article 8B NMSA 1978 may be cited as the "1999 Charter Schools Act"."

Section 2. Section 22-8B-2 NMSA 1978 (being Laws 1999, Chapter 281, Section 2) is amended to read:

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1 "22-8B-2. DEFINITIONS.--As used in the 1999 Charter
2 Schools Act:

3 A. "charter school" means a conversion school or
4 start-up school within a school district authorized by the
5 local school board to operate as a charter school;

6 B. "conversion school" means an existing public school
7 within a school district authorized by the local school board
8 to become a charter school;

9 C. "governing body" means the governing structure of a
10 charter school as set forth in the school's charter; [~~and~~]

11 D. "interested party" means a charter school
12 applicant, a governing body or a local school board that is
13 involved in a dispute arising from a decision of a local school
14 board and that participates in mediation regarding that
15 dispute;

16 E. except for hearings conducted pursuant to
17 Subsection F of Section 22-8B-6 NMSA 1978 or Subsection B of
18 Section 22-8B-12 NMSA 1978, "local school board" includes a
19 person designated by a local school board to act on the board's
20 behalf in its relationship with a charter school;

21 F. "mediation" means a process whereby a mediator,
22 through negotiation and problem-solving, attempts to help
23 interested parties resolve a dispute arising from a decision of
24 a local school board;

25 G. "mediator" means an individual or organization that

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1 is independent of interested parties and acts to assist
2 interested parties in the resolution of a dispute arising from
3 a decision of a local school board;

4 H. "secretary" means the secretary of public
5 education; and

6 [~~D.~~] I. "start-up school" means a public school
7 developed by [~~one or more~~] parents, teachers, [~~or~~] community
8 members or a public post-secondary educational institution and
9 authorized by the local school board of the school district in
10 which the school is located to become a charter school."

11 Section 3. Section 22-8B-4 NMSA 1978 (being Laws 1999,
12 Chapter 281, Section 4, as amended) is amended to read:

13 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
14 OPERATION.--

15 A. A charter school shall be subject to all federal
16 and state laws and constitutional provisions prohibiting
17 discrimination on the basis of disability, race, creed, color,
18 gender, national origin, religion, ancestry or need for special
19 education services.

20 B. A charter school shall be [~~administered and~~]
21 governed by a governing body in the manner set forth in the
22 charter; provided that no member of a governing body for a
23 charter school that is initially approved after July 1, 2004 or
24 whose charter is renewed after July 1, 2004 shall serve on the
25 governing body of another charter school.

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1 C. A charter school shall be responsible for its own
2 operation, including preparation of a budget, contracting for
3 services and personnel matters.

4 D. A charter school may [~~negotiate or~~] contract with a
5 school district, a university or college, the state, another
6 political subdivision of the state or any third party for the
7 use of a facility, its operation and maintenance and the
8 provision of any service or activity that the charter school is
9 required to perform in order to carry out the educational
10 program described in its charter; provided that facilities used
11 by a charter school shall meet the standards required pursuant
12 to Section 22-8B-4.2 NMSA 1978.

13 [~~E. In no event shall a charter school be required to~~
14 ~~pay rent for space that is deemed available, as negotiated by~~
15 ~~contract, in school district facilities; provided that the~~
16 ~~facilities can be made available at no cost to the district.~~
17 ~~All costs for the operation and maintenance of the facilities~~
18 ~~used by the charter school shall be subject to negotiation~~
19 ~~between the charter school and the district.]~~

20 E. A conversion school may choose to continue using
21 the school district facilities and equipment it had been using
22 prior to conversion.

23 F. A school district shall provide a charter school
24 with available facilities for the school's operations unless
25 the facilities are currently used for other educational

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1 purposes. A charter school shall not be required to pay rent
2 for the school district facilities if the facilities can be
3 provided at no cost to the school district. If facilities are
4 available, but cannot be provided at no cost to the school
5 district, the school district may not charge more than the
6 actual direct cost of providing the facilities. As used in
7 this subsection, "other educational purposes" includes health
8 clinics, daycare centers, teacher training centers, school
9 district administration functions and other ancillary services
10 related to a school district's functions and operations.

11 G. A charter school may pay the costs of operation and
12 maintenance of its facilities or may contract with the school
13 district to provide facility operation and maintenance
14 services.

15 H. Charter school facilities are eligible for state
16 and local capital outlay funds and shall be included in the
17 school district's five-year facilities plan.

18 [~~F.~~] I. A charter school shall negotiate with a school
19 district to provide transportation to students eligible for
20 transportation under the provisions of the Public School Code.
21 The school district, in conjunction with the charter school,
22 may establish a limit for student transportation to and from
23 the charter school site not to extend beyond the school
24 district boundary.

25 [~~G. A charter school may negotiate with a school~~

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1 ~~district for capital expenditures.~~

2 ~~H.~~] J. A charter school shall be a nonsectarian,
3 nonreligious and non-home-based public school that operates
4 within a school district.

5 ~~I.~~] K. Except as otherwise provided in the Public
6 School Code, a charter school shall not charge tuition or have
7 admission requirements.

8 L. With the approval of the secretary, a single
9 charter school may maintain separate facilities at two or more
10 locations within the same school district; but, for purposes of
11 calculating program units pursuant to the Public School Finance
12 Act, the separate facilities shall be treated together as one
13 school.

14 ~~J.~~] M. A charter school shall be subject to the
15 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
16 Accountability Act.

17 ~~K.~~] N. A charter school may acquire and dispose of
18 property; provided that, upon termination of the charter, all
19 assets of the charter school shall revert to the local school
20 board that authorized the charter.

21 ~~I.~~] O. A charter school may accept or reject any
22 charitable gift, grant, devise or bequest; provided that no
23 such gift, grant, devise or bequest shall be accepted if
24 subject to any condition contrary to law or to the terms of the
25 charter. The particular gift, grant, devise or bequest shall

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1 be considered an asset of the charter school to which it is
2 given.

3 [M-] P. A charter school may contract and sue and be
4 sued. A local school board that approves a charter school
5 shall not be liable for any acts or omissions of the charter
6 school.

7 [N-] Q. A charter school shall comply with all state
8 and federal health and safety requirements applicable to public
9 schools, including those health and safety codes relating to
10 educational building occupancy."

11 Section 4. A new section of the 1999 Charter Schools Act,
12 Section 22-8B-4.2 NMSA 1978, is enacted to read:

13 "22-8B-4.2. [NEW MATERIAL] CHARTER SCHOOL FACILITIES--
14 STANDARDS.--

15 A. The facilities of a charter school that is approved
16 on or after July 1, 2004 shall meet educational occupancy
17 standards required by applicable New Mexico construction codes.

18 B. The facilities of a charter school that is in
19 existence, or has been approved, prior to July 1, 2004 shall
20 meet the statewide adequacy standards promulgated by the public
21 school capital outlay council in the same manner as all other
22 public schools in the state and shall qualify for grants
23 pursuant to the Public School Capital Outlay Act as all other
24 public schools; provided that, for charter school facilities in
25 leased facilities, grants may be used as additional lease

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1 payments for leasehold improvements.

2 C. After January 1, 2009, a charter shall not be
3 renewed unless the charter school:

4 (1) is housed in a public building that is in
5 compliance with the statewide adequacy standards and is owned
6 by the charter school, the school district, the state, an
7 institution of the state, another political subdivision of the
8 state or a tribal government; or

9 (2) if it is not housed in a public building
10 described in Paragraph (1) of this subsection, demonstrates
11 that:

12 (a) public buildings are not available
13 or adequate for the educational program of the charter school;
14 and

15 (b) the facility in which the charter
16 school is housed meets the statewide adequacy standards and the
17 owner of the facility is contractually obligated to maintain
18 those standards at no additional cost to the charter school.

19 D. The public school capital outlay council:

20 (1) shall determine whether facilities of a
21 charter school meet the educational occupancy standards
22 pursuant to the requirements of Subsection A of this section;

23 (2) shall determine whether facilities of a
24 charter school meet the statewide adequacy standards pursuant
25 to the requirements of Subsections B and C of this section; and

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1 (3) upon a determination that specific
2 standards are not appropriate or reasonable for a charter
3 school, may grant a variance from those standards for that
4 charter school."

5 Section 5. Section 22-8B-5 NMSA 1978 (being Laws 1999,
6 Chapter 281, Section 5) is amended to read:

7 "22-8B-5. CHARTER SCHOOLS--~~[LOCAL SCHOOL BOARD]~~ SECRETARY
8 AUTHORITY--~~[STATE BOARD]~~ DEPARTMENT AUTHORITY.--

9 A. The local school board may waive only locally
10 imposed school district requirements.

11 B. The ~~[state board]~~ secretary shall waive
12 requirements relating to individual class load and teaching
13 load, length of the school day, staffing patterns, subject
14 areas and the purchase of instructional material. The ~~[state~~
15 ~~board]~~ secretary may waive state ~~[board]~~ requirements or rules
16 and provisions of the Public School Code pertaining to
17 graduation requirements, evaluation standards for school
18 personnel, school principal duties and driver education. Any
19 waivers granted pursuant to this section shall be for the term
20 of the charter granted.

21 C. A charter school shall be a public school,
22 accredited by the ~~[state board]~~ department and shall be
23 accountable to the school district's local school board for
24 purposes of ensuring compliance with applicable laws, rules and
25 charter provisions.

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1 D. No local school board shall require any employee of
2 the school district to be employed in a charter school.

3 E. No local school board shall require any student
4 residing within the geographic boundary of its district to
5 enroll in a charter school.

6 F. A student who is suspended or expelled from a
7 charter school shall be deemed to be suspended or expelled from
8 the school district in which the student resides."

9 Section 6. Section 22-8B-6 NMSA 1978 (being Laws 1999,
10 Chapter 281, Section 6) is amended to read:

11 "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION
12 PROCESS--AUTHORIZATION.--

13 A. The local school board shall have the authority to
14 approve the establishment of a charter school within the
15 [~~local~~] school district in which it is located.

16 B. A charter school applicant shall apply to a local
17 school board for a charter. An applicant shall only submit an
18 application in the school district in which the school is
19 located. Applications shall be submitted by [~~October 1~~] July 1
20 to be eligible for consideration for the following [~~school~~]
21 fiscal year; provided that the [~~October 1~~] July 1 deadline may
22 be waived upon agreement of the applicant and the local school
23 board.

24 C. An application for a start-up school may be made by
25 [~~one or more~~] teachers, parents, [~~or~~] community members or a

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1 public post-secondary educational institution.

2 D. An application for a conversion school shall
3 include a petition of support signed by not less than sixty-
4 five percent of the employees in the school. Additionally, a
5 petition in support of the charter school signed by [~~a~~
6 ~~majority~~] no less than two-thirds of the households whose
7 children are enrolled in a proposed conversion school [~~must~~]
8 shall accompany the application.

9 E. The local school board shall receive and review all
10 applications for charter schools. The local school board shall
11 not charge application fees. If the local school board finds
12 [~~the~~] that a charter school application is incomplete, the
13 local school board shall request the necessary information from
14 the charter school applicant.

15 F. The local school board shall hold at least [~~one~~
16 ~~meeting~~] two public meetings to obtain information and
17 community input to assist the local school board in its
18 decision whether to grant a charter school application. Upon
19 receipt of the charter application, the local school board
20 shall hold the first meeting to inform the community and to
21 begin a discussion of the charter school application with the
22 charter school applicant and other persons interested in the
23 charter application. The local school board shall rule on the
24 application for a charter school in a second public meeting
25 within sixty days after receiving the application. If not

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1 ruled upon within sixty days, the charter application [~~will~~]
2 shall be automatically reviewed by the [~~state board~~] secretary
3 in accordance with the provisions of Section [~~7 of the 1999~~
4 ~~Charter Schools Act~~] 22-8B-7 NMSA 1978. The charter school
5 applicant and the local school board may, however, jointly
6 waive the deadlines set forth in this section.

7 G. If the local school board denies a charter school
8 application or imposes conditions that are unacceptable to the
9 charter school applicant, the charter school applicant may
10 appeal the decision to the [~~state board~~] secretary pursuant to
11 Section [~~7 of the 1999 Charter Schools Act~~] 22-8B-7 NMSA 1978.

12 H. If a local school board denies a charter school
13 application, it shall state in writing its reasons for the
14 denial and provide the applicant with the written reasons for
15 the denial within fifteen days of the denial. If a local
16 school board grants a charter, it shall send a copy of the
17 approved charter to the department [~~of education~~] within
18 fifteen days after granting the charter."

19 Section 7. Section 22-8B-7 NMSA 1978 (being Laws 1999,
20 Chapter 281, Section 7) is amended to read:

21 "22-8B-7. CHARTER SCHOOL APPLICATION APPEAL--
22 PROCEDURES.--

23 A. The [~~state board~~] secretary, upon receipt of a
24 notice of appeal or upon [~~its~~] the secretary's own motion,
25 shall review decisions of any local school board concerning

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1 ~~[charter schools]~~ the denial, nonrenewal or revocation of a
2 charter in accordance with the provisions of this section.

3 B. A charter school applicant or governing body ~~[of a~~
4 ~~charter school]~~ that wishes to appeal a decision of a local
5 school board concerning the denial, nonrenewal or revocation of
6 a charter school or the imposition of conditions that are
7 unacceptable to the charter school or charter school applicant
8 shall provide the ~~[state board]~~ secretary with a notice of
9 appeal within thirty days ~~[after]~~ from the receipt of the local
10 school board's written decision. The charter school applicant
11 or governing body ~~[of the charter school]~~ bringing the appeal
12 shall limit the grounds of the appeal to the grounds for
13 denial, nonrenewal or revocation specified by the local school
14 board. The notice shall include a brief statement of the
15 reasons the charter school applicant or governing body contends
16 the local school board's decision was in error. Except as
17 provided in Subsection E of this section, the appeal and review
18 process shall be as follows:

19 (1) within sixty days after receipt of the
20 notice of appeal, the ~~[state board]~~ secretary, at a public
21 hearing that may be held in the school district in which the
22 charter school is located or in which the proposed charter
23 school has applied for a charter, shall review the decision of
24 the local school board and make its findings. If the ~~[state~~
25 ~~board]~~ secretary finds that the local school board's decision

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1 was arbitrary or capricious or contrary to the best interests
2 of the students, school district or community, the [~~state~~
3 ~~board~~] secretary shall [~~remand~~] refer the decision back to the
4 local school board with written instructions [~~for approval of~~]
5 to reconsider the charter [~~The instructions shall include~~
6 ~~specific recommendations concerning approval of the charter.~~
7 ~~The decision of the state board shall be final and not subject~~
8 ~~to appeal~~]; and

9 (2) within thirty days following the [~~remand~~]
10 referral of a decision by the [~~state board, the local school~~
11 ~~board, at a public hearing, shall approve the charter~~]
12 secretary, if the local school board does not decide in favor
13 of the charter school applicant or governing body, the
14 interested parties shall enter mediation pursuant to Sections
15 22-8B-16 through 22-8B-18 NMSA 1978 in an effort to resolve the
16 dispute concerning the local school board's decision. The
17 local school board shall pay the cost of the mediation.

18 C. The [~~state board, on its~~] secretary, on the
19 secretary's own motion, may review a local school board's
20 decision to grant a charter. Within sixty days after the
21 making of a motion to review by the [~~state board~~] secretary,
22 the [~~board~~] secretary, at a public hearing that may be held in
23 the school district in which the proposed charter school has
24 applied for a charter, shall review the decision of the local
25 school board and determine whether the decision was arbitrary

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1 ~~and~~ or capricious or whether the establishment or operation
2 of the proposed charter school would:

3 (1) violate any federal or state laws
4 concerning civil rights;

5 (2) violate any court order;

6 (3) threaten the health and safety of students
7 within the school district; or

8 (4) violate the provisions of Section ~~[11 of~~
9 ~~the 1999 Charter Schools Act]~~ 22-8B-11 NMSA 1978, prescribing
10 the permissible number of charter schools.

11 D. If the ~~[state board]~~ secretary determines that the
12 charter would violate the provisions set forth in Subsection C
13 of this section, the ~~[state board]~~ secretary shall ~~[remand]~~
14 refer the decision back to the local school board with
15 instructions to deny the charter application. The ~~[state~~
16 ~~board]~~ secretary may extend the time lines established in this
17 section for good cause. The decision of the ~~[state board]~~
18 secretary shall be final and not subject to appeal.

19 E. If a local school board denies an application or
20 refuses to renew a charter because the public school capital
21 outlay council has determined that the facilities do not meet
22 the standards required by Section 22-8B-4.2 NMSA 1978, the
23 charter school applicant or charter school may appeal the
24 decision to the secretary as otherwise provided in this
25 section; provided that the secretary shall reverse the decision

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1 of the local school board only if the secretary determines that
2 the decision was arbitrary, capricious, not supported by
3 substantial evidence or otherwise not in accordance with the
4 law."

5 Section 8. Section 22-8B-8 NMSA 1978 (being Laws 1999,
6 Chapter 281, Section 8) is amended to read:

7 "22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter
8 school application, whether for a start-up school or a
9 conversion school, shall be a proposed agreement between the
10 local school board and the charter school and shall include:

11 A. the mission statement of the charter school;

12 B. the goals, objectives and student performance
13 standards to be achieved by the charter school;

14 C. a description of the charter school's educational
15 program, student performance standards and curriculum that
16 [~~must~~] shall meet or exceed the state [~~board of education's~~]
17 educational standards and [~~must~~] shall be designed to enable
18 each student to achieve those standards;

19 D. a description of the way a charter school's
20 educational program will meet the individual needs of the
21 students, including those students determined to be at risk;

22 E. a description of the charter school's plan for
23 evaluating student performance, the types of assessments that
24 will be used to measure student progress toward achievement of
25 the state's standards and the school's student performance

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1 standards, the time line for achievement of the standards and
2 the procedures for taking corrective action in the event that
3 student performance falls below the standards;

4 F. evidence that the plan for the charter school is
5 economically sound, including a proposed budget for the term of
6 the charter and a description of the manner in which the annual
7 audit of the financial and administrative operations of the
8 charter school is to be conducted;

9 G. evidence that the fiscal management of the charter
10 school complies with all applicable federal and state laws and
11 regulations relative to fiscal procedures;

12 H. evidence of a plan for the displacement of
13 students, teachers and other employees who will not attend or
14 be employed in the conversion school;

15 I. a description of the governing body and operation
16 of the charter school, including how the governing body will be
17 selected, the nature and extent of parental, professional
18 educator and community involvement in the governance and
19 operation of the school and the relationship between the
20 governing body and the local school board;

21 J. an explanation of the relationship that will exist
22 between the proposed charter school and its employees,
23 including evidence that the terms and conditions of employment
24 will be addressed with affected employees and their recognized
25 representatives, if any;

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1 K. the employment and student discipline policies of
2 the proposed charter school;

3 L. an agreement between the charter school and the
4 local school board regarding their respective legal liability
5 and applicable insurance coverage;

6 M. a description of how the charter school plans to
7 meet the transportation and food service needs of its students;

8 N. a description of the waivers that the charter
9 school is requesting from the local school board and the [~~state~~
10 ~~board~~] secretary and the charter school's plan for addressing
11 these waiver requests;

12 O. a description of the facilities the charter school
13 plans to use; and

14 P. any other information reasonably required by the
15 local school board."

16 Section 9. Section 22-8B-9 NMSA 1978 (being Laws 1999,
17 Chapter 281, Section 9) is amended to read:

18 "22-8B-9. CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

19 A. An approved charter application shall be a contract
20 between the charter school and the local school board.

21 B. The contract between the charter school and the
22 local school board shall reflect all agreements regarding the
23 release of the charter school from school district policies.

24 C. The contract between the charter school and the
25 local school board shall reflect all requests for release of

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1 the charter school from [~~state board rules or~~] the Public
2 School Code or rules enacted pursuant to that code. Within ten
3 days after the contract is approved by the local school board,
4 any request for release from [~~state board~~] rules or the Public
5 School Code shall be delivered by the local school board to the
6 [~~state board~~] secretary. If the [~~state board~~] secretary grants
7 the request, [~~it~~] the secretary shall notify the local school
8 board and the charter school of [~~its~~] the decision. If the
9 [~~state board~~] secretary denies the request, [~~it~~] the secretary
10 shall notify the local school board and the charter school that
11 the request is denied and specify the reasons for denial.

12 D. Upon approval of the charter by the local school
13 board, the charter school shall be waived from the Public
14 School Code provisions relating to individual class load and
15 teaching load requirements, length of school day, staffing
16 patterns, subject areas and purchase of instructional
17 materials.

18 E. The charter school shall participate in the public
19 school insurance authority.

20 F. Any revision or amendment to the terms of the
21 contract may be made only with the approval of the local school
22 board and the governing body [~~of the charter school~~].

23 G. The charter [~~shall~~] may include procedures agreed
24 upon by the charter school and the local school board for the
25 resolution of disputes between the charter school and the local

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1 school board; provided that, if the charter does not include
2 such procedures or if the charter school and the local school
3 board do not reach an agreement after following the procedures,
4 the interested parties shall enter into mediation pursuant to
5 Sections 22-8B-16 through 22-8B-18 NMSA 1978 in an effort to
6 resolve a dispute.

7 [H. ~~The charter shall include procedures that shall be~~
8 ~~agreed upon by the charter school and the local school board in~~
9 ~~the event that such board determines that the charter shall be~~
10 ~~revoked pursuant to the provisions of Section 12 of the 1999~~
11 ~~Charter Schools Act.]"~~

12 Section 10. Section 22-8B-11 NMSA 1978 (being Laws 1999,
13 Chapter 281, Section 11) is amended to read:

14 "22-8B-11. CHARTER SCHOOLS--MAXIMUM NUMBER ESTABLISHED.--

15 A. A local school [boards] board shall [authorize the
16 approval of] approve or disapprove both conversion and start-up
17 charter schools within [~~their~~] its school [~~districts~~] district.

18 B. No more than fifteen start-up schools and five
19 conversion schools may be established per year statewide. The
20 [~~number of~~] charter school slots remaining in [~~that~~] a year
21 shall be transferred to succeeding years; [~~up to~~] provided that
22 a maximum of seventy-five start-up schools and twenty-five
23 conversion schools may be established in any five-year period.
24 The [~~state board~~] department shall promptly notify the local
25 school board of each school district when the limits set forth

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1 in this section have been reached."

2 Section 11. Section 22-8B-12 NMSA 1978 (being Laws 1999,
3 Chapter 281, Section 12) is amended to read:

4 "22-8B-12. CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--
5 GROUNDS FOR NONRENEWAL OR REVOCATION.--

6 A. A charter school may be approved for an initial
7 term of five or six years; provided that, if the approved term
8 is for six years, the first year shall be used for planning.

9 A charter may be renewed for successive periods of five years
10 each. Approvals of less than five years [~~can~~] may be agreed to
11 between the charter school and the local school board.

12 B. No later than [~~January 1~~] July 1 of the fiscal year
13 [~~prior to the year~~] in which the charter expires, the governing
14 body [~~of a charter school~~] may submit a renewal application to
15 the local school board. The local school board shall rule in a
16 public hearing on the renewal application no later than [~~March~~
17 ~~+~~] September 1 of the fiscal year in which the charter expires,
18 or on a mutually [~~agreed~~] agreed-upon date.

19 C. A charter school renewal application submitted to
20 the local school board shall contain:

21 (1) a report on the progress of the charter
22 school in achieving the goals, objectives, student performance
23 standards, state [~~board~~] minimum educational standards and
24 other terms of the initial approved charter application,
25 including the accountability requirements set forth in [~~Section~~

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1 ~~22-1-6 NMSA 1978~~] the Assessment and Accountability Act;

2 (2) a financial statement that discloses the
3 costs of administration, instruction and other spending
4 categories for the charter school that is understandable to the
5 general public, that will allow comparison of costs to other
6 schools or comparable organizations and that is in a format
7 required by the [~~state board~~] department;

8 (3) contents of the charter application set
9 forth in Section [~~8 of the 1999 Charter Schools Act~~] 22-8B-8
10 NMSA 1978;

11 (4) a petition in support of the charter
12 school renewing its charter status signed by not less than
13 sixty-five percent of the employees in the charter school; and

14 (5) a petition in support of the charter
15 school renewing its charter status signed by a majority of the
16 households whose children are enrolled in the charter school.

17 D. A charter may be revoked or not be renewed by the
18 local school board if the board determines that the charter
19 school did any of the following:

20 (1) committed a material violation of any of
21 the conditions, standards or procedures set forth in the
22 charter;

23 (2) failed to meet or make substantial
24 progress toward achievement of the state [~~board~~] minimum
25 educational standards or student performance standards

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1 identified in the charter application;

2 (3) failed to meet generally accepted
3 standards of fiscal management; or

4 (4) violated any provision of law from which
5 the charter school was not specifically exempted.

6 E. If a local school board revokes or does not renew a
7 charter, the local school board shall state in writing its
8 reasons for the revocation or nonrenewal and provide the
9 charter school with the written reasons within fifteen days of
10 the date that the local school board revokes or does not renew
11 the charter.

12 F. A decision to revoke or not to renew a charter may
13 be appealed by the governing body [~~of the charter school~~]
14 pursuant to Section [~~7 of the 1999 Charter Schools Act~~] 22-8B-7
15 NMSA 1978."

16 Section 12. Section 22-8B-14 NMSA 1978 (being Laws 1999,
17 Chapter 281, Section 14) is amended to read:

18 "22-8B-14. CHARTER SCHOOLS STIMULUS FUND CREATED.--

19 A. The "charter schools stimulus fund" is created in
20 the state treasury. Money in the fund is appropriated to the
21 department [~~of education~~] to provide financial support to
22 charter schools, whether start-up or conversion, for initial
23 planning and start-up costs and initial costs associated with
24 renovating or remodeling existing buildings and structures [~~for~~
25 ~~expenditure in fiscal year 2000 and subsequent fiscal years~~].

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1 The fund shall consist of money appropriated by the legislature
2 and grants, gifts, devises and donations from any public or
3 private source. The department [~~of education~~] shall administer
4 the fund in accordance with rules adopted by the [~~state board~~]
5 secretary. The department [~~of education~~] may use up to three
6 percent of the fund for administrative costs. Money in the
7 fund shall not revert to the general fund at the end of a
8 fiscal year.

9 B. If the charter school receives an initial grant and
10 fails to begin operating a charter school within the next
11 [~~eighteen~~] twenty-four months, the charter school shall
12 immediately reimburse the fund."

13 Section 13. A new section of the 1999 Charter Schools
14 Act, Section 22-8B-16 NMSA 1978, is enacted to read:

15 "22-8B-16. [NEW MATERIAL] DISPUTE RESOLUTION--MEDIATION
16 REQUIREMENT--EXEMPTION--SELECTION OF MEDIATOR.--

17 A. The provisions of this section and Sections 22-8B-
18 17 and 22-8B-18 NMSA 1978 shall apply to:

19 (1) disputes arising from a decision of a
20 local school board concerning the application of a charter
21 school or the denial, nonrenewal or revocation of a charter
22 that remains wholly or partially unresolved thirty days after
23 it is referred to the local school board for reconsideration
24 pursuant to Subsection B of Section 22-8B-7 NMSA 1978; and

25 (2) except as provided in Subsection B of this

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1 section, other disputes arising between a charter school and a
2 local school board that are not resolved pursuant to dispute
3 resolution provisions in the charter pursuant to Subsection G
4 of Section 22-8B-9 NMSA 1978.

5 B. The provisions of this section and Sections 22-8B-
6 17 and 22-8B-18 NMSA 1978 shall not apply in a dispute:

7 (1) between a charter school and a school
8 district concerning the priority of the charter school in the
9 school district's five-year facilities plan;

10 (2) between a charter school employee and the
11 charter school or the school district; or

12 (3) arising as a result of the negotiation of
13 a contract, or from a contract agreement, between a charter
14 school and any person other than the local school board.

15 C. The mediator hired to perform a mediation pursuant
16 to this section shall be agreed to by each interested party.

17 D. The local school board entering mediation shall
18 provide written notice of the date, time and location of the
19 mediation session to all interested parties at least fourteen
20 days prior to the first session and at least five days prior to
21 each succeeding session.

22 E. The mediation session shall take place at a neutral
23 location providing no advantage to an interested party. The
24 location shall be within the boundaries of the school district
25 in which the charter school is proposed to be established or is

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1 located. The mediator has final authority regarding the
2 location of a mediation session if the interested parties are
3 unable to agree on a location."

4 Section 14. A new section of the 1999 Charter Schools
5 Act, Section 22-8B-17 NMSA 1978, is enacted to read:

6 "22-8B-17. [NEW MATERIAL] INTERESTED PARTIES
7 PREPARATION--WRITTEN SUMMARIES--ATTENDANCE--DURATION.--

8 A. Prior to the first mediation session, each
9 interested party shall prepare a written summary that contains
10 a list of the issues to be resolved in the mediation and that
11 party's position relative to each issue. The summary shall not
12 exceed five pages and shall be delivered to the mediator seven
13 days prior to the first mediation session. A mediator may
14 request additional information from any interested party.

15 B. All interested parties properly notified of a
16 mediation session shall attend each session in its entirety
17 unless otherwise agreed to by all other interested parties and
18 the mediator. An interested party attending a mediation
19 session may enter into a settlement of any issue being
20 mediated.

21 C. The mediation of the dispute shall be completed
22 within forty-five days from the date of the first mediation
23 session."

24 Section 15. A new section of the 1999 Charter Schools
25 Act, Section 22-8B-18 NMSA 1978, is enacted to read:

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1 "22-8B-18. [NEW MATERIAL] MEDIATION REPORT--APPEAL--
2 COSTS.--

3 A. Within ten days of the completion of the mediation
4 process, the mediator shall provide each interested party and
5 the secretary a copy of the mediation report. The report shall
6 state:

- 7 (1) the issues that were mediated;
- 8 (2) which issues, if any, were resolved; and
- 9 (3) which issues, if any, remain partially or
10 wholly unresolved and suggestions of the mediator for
11 resolution of unresolved issues.

12 B. At the conclusion of the mediation, if the
13 interested parties do not reach an agreement, either interested
14 party may appeal the unresolved issues in the dispute to the
15 secretary. After reviewing and considering the issues
16 mediated, the secretary shall render a decision that shall be
17 final and not subject to appeal.

18 C. Except as otherwise provided in Section 22-8B-7
19 NMSA 1978, the costs associated with a mediation between a
20 charter school and the local school board shall be borne
21 equally by the interested parties to the dispute."

22 Section 16. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2004.