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CALIFORNIA STATE ALLOCATION BOARD  
PUBLIC MEETING

STATE CAPITOL, ROOM 437  
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, FEBRUARY 23, 2011  
TIME: 2:06 P.M.

Reported By: Mary Clark Transcribing  
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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

PEDRO REYES, Chief Deputy Director, Policy, designated representative for Ana Matosantos, Director, Department of Finance

SCOTT HARVEY, Acting Director, Department of General Services.

LYN GREENE, Appointee of Arnold Schwarzenegger, Former Governor of the State of California.

KATHLEEN MOORE, Director, School Facilities Planning Division, California Department of Education, designated representative for Tom Torlakson, Superintendent of Public Instruction.

SENATOR ALAN LOWENTHAL

SENATOR LONI HANCOCK

SENATOR BOB HUFF

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER JOAN BUCHANAN

ASSEMBLY MEMBER CURT HAGMAN

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA SILVERMAN, Acting Executive Officer

LISA KAPLAN, Assistant Executive Officer

REPRESENTATIVE OF THE DEPARTMENT OF GENERAL SERVICES,  
OFFICE OF LEGAL SERVICES PRESENT:

LANCE DAVIS, Staff Counsel

P R O C E E D I N G S

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CHAIRPERSON REYES: We'll go ahead and get started. We do have a quorum. Will the secretary please call the roll.

6

MS. GENERA: Senator Lowenthal.

7

SENATOR LOWENTHAL: Here.

8

MS. GENERA: Senator Hancock.

9

Senator Huff.

10

MS. GENERA: Assembly Member Brownley.

11

ASSEMBLY MEMBER BROWNLEY: Here.

12

MS. GENERA: Assembly Member Buchanan.

13

ASSEMBLY MEMBER BUCHANAN: Here.

14

MS. GENERA: Assembly Member Hagman.

15

ASSEMBLY MEMBER HAGMAN: Here.

16

MS. GENERA: Scott Harvey.

17

MR. HARVEY: Present.

18

MS. GENERA: Kathleen Moore.

19

MS. MOORE: Present.

20

MS. GENERA: Lyn Greene.

21

Pedro Reyes.

22

CHAIRPERSON REYES: Present.

23

MS. GENERA: We have a quorum.

24

CHAIRPERSON REYES: Okay. Thank you. I had hoped

25

that we had all the members here because I wanted to jump

1 into with the Board's approval, I'd like to jump into  
2 Item No. 14.

3 SENATOR LOWENTHAL: Can we wait until the other  
4 members are here?

5 CHAIRPERSON REYES: We could wait. Wait till the  
6 other couple members show up. Let's go ahead and move  
7 forward then on Tab 2, **Minutes**.

8 ASSEMBLY MEMBER HAGMAN: Move.

9 CHAIRPERSON REYES: Been moved. Is here a second  
10 for the Minutes?

11 MS. MOORE: Second.

12 CHAIRPERSON REYES: Moved and second. Any  
13 comments/observations on that? Yes, sir.

14 MR. HARVEY: I will abstain if I might. I was not  
15 present at the last Allocation Board meeting.

16 CHAIRPERSON REYES: Okay. That actually makes two  
17 of us. All in favor say aye.

18 (Ayes)

19 CHAIRPERSON REYES: Oh, do we go roll call? Yes.

20 ASSEMBLY MEMBER HAGMAN: We got a roll call first?  
21 We did roll call.

22 CHAIRPERSON REYES: Ms. Buchanan.

23 ASSEMBLY MEMBER BUCHANAN: I guess I have an  
24 abstention as well. I was going to abstain. Are we doing  
25 roll call?

1 MR. HAGMAN: Well, no. Are you saying we don't  
2 have a quorum.

3 MS. JONES: You can hold it open.

4 CHAIRPERSON REYES: We'll hold the Minutes open.

5 MS. KAPLAN: So what we can do is we can do a roll  
6 call vote and hold it open for the other members to come in  
7 and add on.

8 CHAIRPERSON REYES: All right. Let's do the roll  
9 call on the Minutes.

10 MS. GENERA: All right. Senator Lowenthal?

11 SENATOR LOWENTHAL: Aye.

12 MS. GENERA: Assembly Member Brownley.

13 ASSEMBLY MEMBER BROWNLEY: Aye.

14 MS. GENERA: Assembly Member Buchanan.

15 ASSEMBLY MEMBER BUCHANAN: Abstention.

16 MS. GENERA: Assembly Member Hagman.

17 ASSEMBLY MEMBER HAGMAN: Aye.

18 MS. GENERA: Scott Harvey.

19 MR. HARVEY: Abstention.

20 MS. GENERA: Kathleen Moore.

21 MS. MOORE: Aye.

22 MS. GENERA: Lyn Greene.

23 MS. GREENE: Aye.

24 MS. GENERA: And Pedro Reyes.

25 CHAIRPERSON REYES: I'll also abstain since I

1 wasn't here.

2 MS. GENERA: Okay. I'll hold it open. Yeah, I'll  
3 hold it open. We only have five on that one.

4 CHAIRPERSON REYES: Okay.

5 MS. SILVERMAN: **(Executive Officer's Report)** I  
6 apologize for our tardiness. We were at a briefing, so -- I  
7 wanted to highlight today to the Board members and the  
8 audience that we wanted to share with you the results from  
9 the current priority in funding apportionments.

10 In December, the Board took great action to  
11 provide 442 apportionments at the December Board that  
12 resulted in \$1.4 billion being approved and to date we have  
13 received over \$1.1 billion in funding requests and as of  
14 last Friday, we released \$960 million. So again that's  
15 great news with respect to the priorities that went out in  
16 December.

17 And we wanted to highlight to the Board that --  
18 and highlight to those districts that remain out there that  
19 we need your -- we need to have your fund release requests  
20 by March 15th. So we still have about \$300 million short  
21 from being successful and we encourage those districts to  
22 come forward and we have been communicating with those  
23 districts via telephone and email blasts to ensure that they  
24 are also successful in completing those requests to our  
25 office.

1           And we wanted to share with the Board in January  
2 when they provided \$103 million in apportionments, we have  
3 since then released \$34 million of that original  
4 \$103 million and again remind districts they have until  
5 April 26th, 2011, to submit their funding requests to our  
6 office.

7           And part of the agenda today, the Board has a  
8 decision to make on whether or not they want to provide 18  
9 new apportionments worth \$40.6 million. And again that's  
10 great news and we would definitely like to highlight the  
11 opportunity for those districts and if the Board does take  
12 action on those items, they have until May 24th to come in  
13 with a fund release request.

14           Another item we want to highlight is the joint  
15 workshops that we've been scheduled with Department of  
16 Education and Division of State Architect. That date is  
17 March 24th, 2011, and what we have initiated was a survey to  
18 the districts and stakeholders is what kind of interest  
19 would they like for us or topics or agenda they would like  
20 us to present at these joint workshops. So we actually had  
21 pretty astounding results. We had over 141 survey results  
22 and so we're right now accumulating those survey results and  
23 working on the proposed agenda and so we would definitely  
24 share with our Board members what the proposed agenda we'll  
25 be rolling out at the March 24th workshop. Again that's the

1 day after the Board.

2 An update on the seismic evaluations. From the  
3 nine school districts participating in the evaluations, we  
4 originally received \$200,000 grant from the Seismic Safety  
5 Commission. As a result of the engineering studies, we have  
6 expended about \$162,000. So staff is in the process of  
7 preparing a preliminary report to the Commission in early  
8 March and assess whether or not we have the ability to use  
9 the excess funds available for additional evaluation and  
10 again staff will be presenting a detailed comprehensive  
11 report at the March SAB.

12 Two more items: Since the Governor declared that  
13 the buildings -- the 11 properties that were going to be  
14 sold as a result of the prior administration have been  
15 terminated, that actually did terminate the surplus  
16 notification to the thousand plus DGS employees that also  
17 impacted eight of our employees. And so the Department of  
18 Personnel Administration sent out additional letters  
19 basically terminating those original letters that were sent  
20 out -- surplus notices that were sent out to eight of our  
21 staff members. So that's good news for our staff.

22 And the last item is we wanted to share with you  
23 is an update on the external audit item. I know it was  
24 brought up last month as far as what progress we've been  
25 making and we actually have another follow-up meeting with

1 the Controller's Office on March 3rd and we'd be happy to  
2 report out the result of that meeting at the next Board  
3 meeting.

4 With that, I open up to any questions.

5 CHAIRPERSON REYES: Members, any questions? Yes.  
6 Senator Hancock.

7 SENATOR HANCOCK: Thank you very much, Mr. Reyes.  
8 Regarding the update on seismic evaluations, as we were just  
9 discussing down in my office before we came up here, we've  
10 been asking for a number of months to have a substantive  
11 session scheduled to discuss the seismic program and really  
12 to get to the science and I think we're going to find out  
13 how complicated this is when we get to some of our appeals  
14 later today.

15 So I would actually to move that we do schedule a  
16 substantive meeting on the issues around seismic evaluation  
17 and that we ask the Department to confer at least once with  
18 a working group which would include FEMA, Division of State  
19 Architect, OPSC obviously, the American Society of  
20 Engineers, and some representatives of the field who have  
21 had experience with these issues because the liability  
22 issues interacting with the financial issues and the  
23 scientific issues of what it means to make various  
24 declarations about the quality of school buildings when  
25 consultants make them or whether the State makes them, I

1 think are very important.

2 So I just didn't want this to be passed by as  
3 meeting the request of the Board, that we actually do some  
4 very careful planning about this complicated issue. So --

5 CHAIRPERSON REYES: So you're asking that we put  
6 it on the agenda at a future time where we can devote  
7 some -- a lot of time into this issue for our ratification.

8 SENATOR HANCOCK: Right. And that -- right. And  
9 that the Board also -- OPSC confer with a --

10 CHAIRPERSON REYES: With the appropriate parties.

11 SENATOR HANCOCK: -- broader range of people.

12 CHAIRPERSON REYES: Okay.

13 SENATOR HANCOCK: Yeah.

14 CHAIRPERSON REYES: Okay.

15 SENATOR HANCOCK: DGS as well.

16 CHAIRPERSON REYES: We can do that. We can work  
17 on the agenda of that in the future. Thank you. Anybody  
18 else? Okay.

19 Okay. Let's lift the call on the **Minutes** now that  
20 we have everybody here, please.

21 MS. GENERA: All right. Senator Hancock. This is  
22 to approve the Minutes.

23 SENATOR HANCOCK: Okay. I actually had a change I  
24 wanted to make in the Minutes.

25 SENATOR LOWENTHAL: Is there an amendment -- was

1 there -- was that a motion that you made?

2 SENATOR HANCOCK: Well, if --

3 CHAIRPERSON REYES: She -- I think -- the way I  
4 took it was as a request that this be put on the agenda and  
5 I think we've directed staff to do so. I don't think  
6 there's an action that needs to be taken on it. I think  
7 it's a very reasonable request and as the Chair, we want to  
8 make sure we go on record as --

9 SENATOR LOWENTHAL: I -- you know, because of  
10 things coming up today also and how difficult and complex  
11 they are, I strongly concur with Senator Hancock.

12 CHAIRPERSON REYES: Okay.

13 SENATOR HANCOCK: Okay.

14 CHAIRPERSON REYES: Should we go back to the  
15 Minutes?

16 SENATOR HANCOCK: Could we delay this item?

17 CHAIRPERSON REYES: The Minutes?

18 SENATOR HANCOCK: Actually, yes. I'm sorry, but  
19 we were downstairs having this discussion.

20 CHAIRPERSON REYES: It's okay.

21 SENATOR HANCOCK: And I did have some specific  
22 language to --

23 CHAIRPERSON REYES: Okay.

24 SENATOR HANCOCK: -- to change, but I was also  
25 hoping that we could move up Agenda Item 14.

1           CHAIRPERSON REYES: That's my next move and I just  
2 wanted to clarify --

3           SENATOR HANCOCK: If that'd work.

4           CHAIRPERSON REYES: In fact I was waiting for  
5 everybody to be here to take Item 14 and just basically I --  
6 with the Board's indulgence, I would like to move to  
7 Item 14.

8           It is my understanding that the Board had approved  
9 that there be an **election of the Chair and the Vice Chair**.  
10 I got my binder on Wednesday of last week, got to it on  
11 Thursday, and it was at time that I realized that the  
12 election of the Chair was not in the agenda and we do not  
13 have -- at that point, we did not have the ten-day notice.

14           So with the Board's indulgence, what I propose we  
15 do is we have the election of the Chair, the election of the  
16 Vice Chair. However, the Chair's election will not be valid  
17 or voted on legally until next month's meeting and we will  
18 ratify it as a consent item.

19           So we'll take the vote and it does not become  
20 valid until next month. The reason for that is that we  
21 don't -- we can't put it in the agenda. It's not an agenda  
22 item, but it is symbolic and I'm putting it out there and I  
23 think that's the best legal compromise on how to deal with  
24 this.

25           ASSEMBLY MEMBER BROWNLEY: Thank you, Mr. Symbolic

1 Chair.

2 CHAIRPERSON REYES: Yes.

3 ASSEMBLY MEMBER BROWNLEY: In that vein, I would  
4 concur and would like to nominate you as our permanent  
5 Chair, you having over -- well over a decade of experience  
6 with the Department of Finance and another decade of  
7 experience working in many areas of -- important areas --  
8 policy areas for the Assembly and working for I think over  
9 five Speakers in the Assembly and find that you would be  
10 perfectly qualified and perfectly suited to chair this  
11 committee over the next two years, and with that, I would  
12 like to nominate you.

13 CHAIRPERSON REYES: Thank you.

14 SENATOR HANCOCK: Hancock.

15 ASSEMBLY MEMBER BUCHANAN: And I second that.

16 CHAIRPERSON REYES: Okay. It's been moved and  
17 second. Do we need to take a roll call? It's a symbolic  
18 roll call because we will ratify it in the consent item next  
19 month, but please take the roll.

20 MS. GENERA: Senator Lowenthal.

21 SENATOR LOWENTHAL: Aye.

22 MS. GENERA: Senator Hancock.

23 SENATOR HANCOCK: Aye.

24 MS. GENERA: Senator Huff.

25 SENATOR HUFF: Aye.

1 MS. GENERA: Assembly Member Brownley.

2 ASSEMBLY MEMBER BROWNLEY: Aye.

3 MS. GENERA: Assembly Member Buchanan.

4 ASSEMBLY MEMBER BUCHANAN: Aye.

5 MS. GENERA: Assembly Member Hagman.

6 ASSEMBLY MEMBER HAGMAN: Aye.

7 MS. GENERA: Scott Harvey.

8 MR. HARVEY: Aye.

9 MS. GENERA: Kathleen Moore.

10 MS. MOORE: Aye.

11 MS. GENERA: Lyn Greene.

12 MS. GREENE: Aye.

13 MS. GENERA: Pedro Reyes.

14 CHAIRPERSON REYES: I'll abstain. I don't know  
15 him. He's not sure what he's getting into. No. Thank you.  
16 Thank you.

17 Okay. With that, again it's not valid until next  
18 month, but we do move on to the Vice Chair election and that  
19 will be valid. So --

20 SENATOR HANCOCK: Mr. Chairman

21 CHAIRPERSON REYES: Senator Hancock.

22 SENATOR HANCOCK: I would like to move that we  
23 appoint Senator Lowenthal as the Vice Chair of the Board.  
24 He's a member of the Legislature and has been on this Board  
25 I think longer anybody else, for a very long time.

1           SENATOR HUFF: Is that good or bad?

2           ASSEMBLY MEMBER BROWNLEY: I'll second that.

3           SENATOR HANCOCK: All right.

4           CHAIRPERSON REYES: Okay. Any additional

5 nominations? Okay. Please.

6           MS. GENERA: Senator Lowenthal.

7           SENATOR LOWENTHAL: Aye.

8           MS. GENERA: Senator Hancock.

9           SENATOR HANCOCK: Aye.

10          MS. GENERA: Senator Huff.

11          SENATOR HUFF: Aye.

12          MS. GENERA: Assembly Member Brownley.

13          ASSEMBLY MEMBER BROWNLEY: Aye.

14          MS. GENERA: Assembly Member Buchanan.

15          ASSEMBLY MEMBER BUCHANAN: Aye.

16          MS. GENERA: Assembly Member Hagman.

17          ASSEMBLY MEMBER HAGMAN: Aye.

18          MS. GENERA: Scott Harvey.

19          MR. HARVEY: Aye.

20          MS. GENERA: Kathleen Moore.

21          MS. MOORE: Aye.

22          MS. GENERA: Lyn Greene.

23          MS. GREENE: Aye.

24          MS. GENERA: Pedro Reyes.

25          CHAIRPERSON REYES: Aye.

1 MS. GENERA: It carries.

2 CHAIRPERSON REYES: Thank you. Now, Senator  
3 Lowenthal may have to leave us for a conference.

4 SENATOR LOWENTHAL: Right. Conference committee  
5 in about 25 minutes.

6 CHAIRPERSON REYES: Okay. I just want to give  
7 people a heads-up on that. Okay. Thank you for your  
8 indulgence on that. I know it was an important matter for  
9 the Board. **Consent item -- Consent Calendar.**

10 MS. SILVERMAN: Yes. The Consent Agenda is ready  
11 for your approval.

12 ASSEMBLY MEMBER HAGMAN: So moved.

13 MR. HARVEY: Second.

14 CHAIRPERSON REYES: Moved and second.

15 Questions/comments? Comments from the public? Hearing  
16 none, please call the roll.

17 MS. GENERA: Senator Lowenthal.

18 SENATOR LOWENTHAL: Aye.

19 MS. GENERA: Senator Hancock.

20 SENATOR HANCOCK: Aye.

21 MS. GENERA: Senator Huff.

22 SENATOR HUFF: Aye.

23 MS. GENERA: Assembly Member Brownley.

24 ASSEMBLY MEMBER BROWNLEY: Aye.

25 MS. GENERA: Assembly Member Buchanan.

1 ASSEMBLY MEMBER BUCHANAN: Aye.

2 MS. GENERA: Assembly Member Hagman.

3 ASSEMBLY MEMBER HAGMAN: Aye.

4 MS. GENERA: Scott Harvey.

5 MR. HARVEY: Aye.

6 MS. GENERA: Kathleen Moore.

7 MS. MOORE: Aye.

8 MS. GENERA: Lyn Greene.

9 MS. GREENE: Aye.

10 MS. GENERA: Pedro Reyes.

11 CHAIRPERSON REYES: Aye.

12 MS. GENERA: It carries.

13 CHAIRPERSON REYES: Thank you. Tab 5. Yes.

14 Senator.

15 SENATOR LOWENTHAL: Yeah. I was just wondering if  
16 I believe that there's an Assembly Member here, Assembly  
17 Member Cook, for Item 8, whether we could take that out  
18 because he is here.

19 CHAIRPERSON REYES: Absolutely. Thank you,  
20 Senator.

21 ASSEMBLY MEMBER COOK: Thank you, Senator.

22 ASSEMBLY MEMBER BROWNLEY: What item would that  
23 be?

24 MR. HARVEY: 8.

25 CHAIRPERSON REYES: 8.

1 ASSEMBLY MEMBER BROWNLEY: Thank you.  
2 Mr. Mireles.

3 MR. MIRELES: Thank you, Mr. Chair.

4 In May of last year, the **Morongo Unified School**  
5 **District** submitted an application under our Facility  
6 Hardship Program for a conceptual approval to replace the  
7 Joshua Tree Elementary School. During the course of our  
8 review, staff determined that we didn't have all of the  
9 necessary components to be eligible for facility hardship,  
10 so we returned the application to the district.

11 The district then subsequently submitted an appeal  
12 to the OPSC in November last year and that is the item  
13 before you today.

14 Existing statute allows school districts to  
15 request funding under the Facility Hardship Program when  
16 they are faced with extraordinary circumstances that are  
17 beyond their control. In these rare cases, the Board does  
18 have the authority to provide funding to mitigate the health  
19 and safety issues instead of the traditional new  
20 construction/modernization programs.

21 The School Facility Program regulations further  
22 clarify that the Board shall consider such factors such as  
23 proximity to an airport, major freeway, electrical  
24 facilities, high-power transmission lines, dams, pipelines,  
25 and other factors including deficiencies required by the

1 Division of State Architect to be repaired.

2 Now, since the inception of the School Facility  
3 Program in 1998 through the middle of 2006, neither statute  
4 nor regulations included specific language to allow for  
5 seismic mitigation. Now this was changed through the  
6 passage of AB127 and created the Seismic Mitigation Program.  
7 Proposition 1D then further allocated \$199.5 million for  
8 that program.

9 Now, the reason why I bring this up is because  
10 there's an important distinction to be made between the  
11 Seismic Mitigation Program and the other health and safety  
12 issues under our regular Facility Hardship Program.

13 The school district did come in and apply under  
14 the regular Facility Hardship Program. They didn't pursue  
15 funding under the Seismic Mitigation which has its own set  
16 of criteria.

17 The Facility Hardship Program -- over the past  
18 several years, in fact as far back as 1988, staff has used  
19 the definition imminent health and safety and that is  
20 something that you're going to hear today in terms of this  
21 definition and how it came about. The regulations do state  
22 that there is a threat. We've been looking, you know, in  
23 our records to find out when we establish this definition of  
24 imminent, but it is consistent with what would be required  
25 for all projects.

1           We rely on engineer reports to determine if there  
2 is a health and safety issue and because we're not experts  
3 in all these areas, we also rely on another governmental  
4 entity to concur that there is an imminent health and safety  
5 issue again because we're not experts.

6           In this particular case, the school district did  
7 submit several reports that identified the -- some trace  
8 fault lines -- and just a little background on the project  
9 and I know that the district is going to speak to it, but  
10 the district was pursuing an addition to the site, to the  
11 Joshua Tree Elementary, as well as modernization.

12           During the course of some preliminary testings,  
13 they identified several trace fault lines that are on the  
14 site. There was geotechnical reports and California  
15 Geological Survey reports that both concurred that very  
16 little of the site could be built on for human occupancy.

17           Now again this was related to adding buildings.  
18 That was what we call the first phase. But the second phase  
19 was, well, what about the buildings that are currently there  
20 and are they able to be there or should they have to be  
21 demolished and replaced.

22           By the way, we do have the State Architect here  
23 and he'll be talking a bit more about the details of that  
24 criteria. But simply put, the Building Code does allow  
25 buildings to remain on an existing site even if they are on

1 a trace fault line. Now, they can't add new buildings for  
2 human occupancy, but it's our understanding -- and again  
3 Mr. Howard can explain this further, but they can remain in  
4 the buildings and they can do a certain amount of work to  
5 these buildings as long as they don't exceed the current  
6 replacement value.

7           And this is the type of information that we use to  
8 determine whether there is a threat -- a health and safety  
9 threat to the buildings. We understand that the district  
10 cannot add on this site, but for purposes of qualifying for  
11 the facility hardship, we took a look at, well, is there an  
12 existing health and safety issue or is this simply -- not  
13 simply, but is it a matter of in the event of an earthquake,  
14 there is a potential for surface rupture.

15           Those are some of the information that we use.  
16 Now, we did take a look -- originally we had again the  
17 California Geological Survey reports and then we had a  
18 letter from the Division of State Architect that concurred  
19 with those reports.

20           Again when we looked at this information, we were  
21 looking at it and we realized that this information was  
22 based on adding new buildings and the fact that the district  
23 can't add new buildings on this site.

24           So then we took a step further to try and look at  
25 it from purposes of qualifying for our program. And again

1 the program, it's been the past practice that districts have  
2 to demonstrate that there is an imminent health and safety  
3 issue, and because we didn't feel that the letter from the  
4 Division of State Architect identified an imminent health  
5 and safety issue, we returned it to the district.

6 We have attached the district's arguments and then  
7 they're here to speak to that, so I won't get into their  
8 arguments, but we do want to point out that even though the  
9 district in our eyes didn't meet the criteria for facility  
10 hardship, they do qualify for funding under our other  
11 programs, namely new construction which means that they can  
12 add buildings to a site and modernization.

13 The Joshua Tree Elementary School site did  
14 generate modernization eligibility which means that they can  
15 use it if they want to abandon and replace that site on a  
16 different school site.

17 So that's just a little bit of background, but we  
18 do -- again we do have -- as well as the district, we also  
19 have the State Architect here with us that can answer  
20 questions specifically as to the nature of their letters,  
21 but the district is requesting that they -- that their  
22 facility hardship conceptual approval be approved and if the  
23 Board does approve their facility hardship, on stamped  
24 page 176, at the bottom of the page, there is some  
25 additional conditions that we have typically requested from

1 school districts that they must follow. Again this is in  
2 the event that the Board approves the facility hardship.

3 With that, I'll be happy to any questions on our  
4 analysis.

5 CHAIRPERSON REYES: Does anybody on the Board have  
6 questions? Yes.

7 MR. HARVEY: I just need some clarification if I  
8 can. I heard during part of your comments that they could  
9 not add new facilities on the site. Then I heard you say  
10 later that they would be eligible for new construction. I'm  
11 trying to understand how those two statements work together.

12 MR. MIRELES: That's a good question, Mr. Harvey,  
13 and I apologize if I didn't clarify that. They would be  
14 eligible to use new construction eligibility on a different  
15 site to build if they choose to abandon and replace Joshua  
16 Tree Elementary and build it on a different location --

17 MR. HARVEY: Okay. That makes sense.

18 MR. MIRELES: -- they can use new construction  
19 eligibility.

20 MR. HARVEY: That's all I needed, clarification.  
21 Thank you.

22 CHAIRPERSON REYES: Okay. Please, sir.

23 MR. WALKER: Yes. Thank you, Mr. Chair and  
24 members of the State Allocation Board. My name is Michael  
25 Walker. I'm the Chief Business Officer for the Morongo

1 Unified School District and on behalf of the Morongo Unified  
2 School District -- wee bit nervous here -- I'd want to  
3 express my appreciation for an opportunity to present our  
4 request for a conceptual approval to replace Joshua Tree  
5 Elementary School.

6           Being the business guy, sometimes we get detached  
7 from the schools, so I thought I'd just give you at least a  
8 little brief outline of the school. It's a K-6 elementary  
9 school. It's in the Mojave Desert, San Bernardino County.  
10 It is the home of our early childhood development for  
11 severely disabled kids ages three to five. It's a wonderful  
12 program there.

13           About 95 percent of the population is economically  
14 disadvantaged. It has our third largest population of  
15 homeless kids. We've got 17 great teachers and it's just a  
16 wonderful school.

17           Just to give you one indicator, we had in  
18 San Bernardino County this last year 175 schools in program  
19 improvement and I'm sure we're all painfully aware of what  
20 that is.

21           Joshua Tree Elementary School is one of seven  
22 schools in the county to get out of program improvement. It  
23 always reminds me of kind of like, you know, Steinbeck's  
24 California. It's just a great place. And those people  
25 worked so hard to make that distinction, we felt we had an

1 obligation to work equally hard to try to get them the best  
2 possible facility we can.

3           Now, where were we. How did we wind up getting  
4 here. In 2002, we did a master plan and when we did that,  
5 we looked at Joshua Tree Elementary School and a number of  
6 schools. We found that the facility at Joshua Tree looked  
7 more like a collection of dilapidated portables than it  
8 looked like a real school. So the board, the superintendent  
9 made that one of the priority schools.

10           In 2005, we were able to pass our first ever  
11 citizens vote on a school bond after numerous failures. So  
12 now we were in business. So we identified the 7 of the 17  
13 most needy schools and we went to work to start making these  
14 schools the best things they could be.

15           And everything was going great. We did the -- and  
16 the issue here is the geotechnical studies. We did that on  
17 all the schools for the first phase. Six of them passed  
18 with flying colors.

19           We actually moved on to doing the geotechnical  
20 studies on the next phase. They passed except when we got  
21 the geotechnical study on Joshua Tree.

22           And one of the points I'm trying to make here is  
23 that we're not sitting here saying, oh, we've got all of our  
24 schools because all of our schools -- excuse me -- all of  
25 our schools are close to faults. They are, all 17 of them,

1 but every single school so far with the exception of one has  
2 passed the geotechnical studies. And I don't have access to  
3 the numbers, but I'm sure if you had your staff look into  
4 it, there must have been hundreds of projects that this  
5 Board has approved that they've had to do the geotechnical  
6 study on and they've passed.

7           So our argument is that this is not a routine  
8 occurrence. This is a very rare occurrence and it's unique  
9 and we have been put into a catch-22 that has no escape.

10           Now what do I mean by that. Well, we went in the  
11 seven phases and we said, as was pointed out earlier, we're  
12 going to build brand new classrooms for these kids. We're  
13 going to get rid of these old 1970's portables and this is  
14 going to be a great facility.

15           Then it came up, the shockeroo that we did not --  
16 we could not come close to passing the geotechnical study.  
17 So we said, well, how bad is it. Maybe we can only not use  
18 part of the campus.

19           And I'll refer you to the booklets we handed out.  
20 There's an inside folder and it's got a picture here that  
21 shows the faults that go through Joshua Tree. Now, that has  
22 39 identified active faults running through one elementary  
23 school compared to zero at all the other schools we have.  
24 39 running through one school.

25           It's massively fractured, the land on that school,

1 and all we've got left in there is parts of two parking lots  
2 to build on. So we can probably, you know, accommodate a  
3 half a dozen cars.

4 It is a dead site. Now, when we start applying  
5 the rules that we're told that we have to follow by OPSC,  
6 DSA, et cetera, we now knew that we could no longer build or  
7 modernize at that facility at all forever.

8 So we had no out outside of looking for another  
9 facility. So what do we go to do? We went to try to find a  
10 way out and as a policy issue, I'd just like to mention that  
11 came up several times, the seismic mitigation, the seismic  
12 mitigation law as currently written is of absolutely no use  
13 to us.

14 Most of the people talk about, well, you don't  
15 qualify because the building type, it's not a Type II and  
16 you don't have -- you don't meet the acceleration. It's  
17 irrelevant to us.

18 The critical factor for us is that these buildings  
19 cannot be mitigated. They are unmitigatable. If you had  
20 not 190 million but \$190 trillion, you still could do  
21 nothing for Joshua Tree Elementary School because money is  
22 not the issue. We can't do anything on that site. We have  
23 to get off the site.

24 So therefore we went to the only possible program  
25 which is Facility Hardship and we started to apply to that

1 and we got our letter of concurrence from the Division of  
2 State Architect.

3 At that meeting in November of 2009, they told us  
4 and they presented this picture which gave me butterflies in  
5 my stomach and the structural engineer explained to me what  
6 would happen when the multipurpose room had a seismic event.

7 So at that point and at the recommendation of  
8 Division of State Architect, we abandoned the multipurpose  
9 room. So that lost us our kitchen, no more school plays, no  
10 more assemblies. We took our library and gutted it and  
11 converted that into an ad-hoc kitchen/multipurpose room if  
12 you can even call it that because it can only take 60 kids  
13 out of the 380. Even today the kids are eating outside for  
14 lunch in this weather and that is -- so we are now far worse  
15 off-- because we tried to do something good for these kids,  
16 we're now in far worse position than if we'd done absolutely  
17 nothing.

18 And we're in a catch-22 because then they say that  
19 well, all these earthquake faults allow you to do absolutely  
20 nothing here, but if you want to move anywhere else, well,  
21 you know, we're going to add this new thing that's not in  
22 the regulations. We're going to add this thing called  
23 imminent and I dare anyone to find that anywhere.

24 So now they're saying you're dead in the water  
25 here because we don't use the word imminent, but if you want

1 to move, you're dead in the water because we're now going to  
2 add in this additional requirement of imminent.

3           So we're nowhere. So now we ask about, well, what  
4 does it really mean to be imminent because it's not in the  
5 code. It's not in the Board policy. It's not in any type  
6 of regulation we can find, but it's dooming us and they're  
7 giving us this past practice argument.

8           Well, our argument is that -- part of it is that  
9 this past practice is inconsistent to begin with because if  
10 they really truly always apply an imminent test to a  
11 facility hardship application, why do you do a pipeline. Is  
12 that pipeline imminently about to explode? Do you know that  
13 the welds are all faulty and it's going to blow up within  
14 the next 96 hours and therefore it's imminent. No. You  
15 know that it's a potential risk, just like the seismic  
16 faults on our campus are a potential risk.

17           The same thing for train tracks. The same for an  
18 airport. The same thing for a highway where a freighted  
19 truck may go off with toxic chemicals. There is no imminent  
20 test there that's passed, anymore than our faults. It is a  
21 potential risk. And this Board has routinely approved, as  
22 they will, obviously I don't have to tell you, but if you  
23 meet that criteria for what it means to be a hardship  
24 facility and the language says clear and simply that it has  
25 to be a threat to the safety -- health and safety threat --

1 excuse me -- to students and staff and we meet that  
2 repeatedly.

3           And if I quote what we were given by the various  
4 agencies that were also mentioned here, if I go to the  
5 California Geological Survey, they stated all observed  
6 faults should be treated as active and therefore potential  
7 hazards for surface fault rupture.

8           And we, as I said, identified 39 faults. The  
9 school may experience severe damage in the event of an  
10 earthquake including rupture of the ground surface,  
11 foundation cracking, and vertical uplift and that's by our  
12 geotechnical engineers.

13           The Division of State Architect quoting in both of  
14 their letters, the surface displacement, and I quote  
15 exactly, could cause catastrophic collapse of the permanent  
16 buildings.

17           To continue, MPH Structural Engineers, I quote,  
18 significant life safety hazards for students and staff  
19 exist. MPH Engineers again, certain sustained heavy  
20 structural damage will occur and then finally DSA again, DSA  
21 concurs with the opinions expressed by both the structural  
22 engineer report and the California Geological Survey.

23           And the last item just to drill it home one more  
24 time: The proximity to the earthquake faults is a health  
25 and safety risk that cannot be mitigated. That is a quote

1 from DSA and that is where we are.

2           So they've got us on a campus that says you can't  
3 build, you can't modernize, you can't improve the safety,  
4 and you can't move off. And that's where those kids sit  
5 today.

6           And I'm saying that we have met in an overwhelming  
7 way the requirement that is in the code and the requirement  
8 in the regulation says it has to be a hazard to students and  
9 staff, a health and safety hazard, and it does meet that and  
10 we've met it over and over again from anyone who's looked at  
11 that.

12           And so in closing, I would just like to say we  
13 respectfully ask the Board to grant the conceptual approval  
14 for Joshua Tree Elementary School. We accept all the  
15 conditions that have been stipulated. We respectfully note  
16 that time is of the essence and we sincerely thank the Board  
17 for their support in this matter.

18           CHAIRPERSON REYES: Thank you. Mr. Cook.

19           ASSEMBLY MEMBER COOK: Thank you, Mr. Chair, and  
20 thank you for adjusting the schedule so I could talk. I  
21 think we all got multiple committees and hearings and we're  
22 all buzzing around here.

23           First of all, I'm not expert on geology or what  
24 have you. Senator Huff knows that I'm a historian as he was  
25 allegedly many years ago.

1           So I want to talk just very, very briefly about  
2 the history. I was a history professor. Because I live in  
3 Yucca Valley which is very, very close and we've had some  
4 pretty good earthquakes out there. April 23rd in Joshua  
5 Tree, 1992, 6.1. Then of course we had the Landers quake  
6 which was originally 7.3. I think they've downgraded it to  
7 7.1. By the way, that was at three minutes to 5:00 in the  
8 morning and I have been through a number of earthquakes and  
9 that one there -- I have spent time in combat and everything  
10 else and that definitely put the fear of God in me because  
11 it just would not -- not stop shaking.

12           Anyway three hours later or maybe it was three  
13 hours and six minutes later, we had another one at Big Bear  
14 which is not right next to Joshua Tree, but it's close and  
15 6.5. I mean -- and I could go on and on and on. There's  
16 the Hector Mine quake which is out on the Marine Corps base  
17 which is adjacent to Joshua Tree and Landers. That was a  
18 7.1. That was in 1999.

19           And we experienced 60,000 aftershocks. Now, did  
20 we have tremendous casualties like there was in the  
21 Northridge quake, like there was two days -- was it two days  
22 ago or three days ago in New Zealand. No. Why? Because  
23 you don't have the population. You don't have the large  
24 structures except -- or those concentrations of populations  
25 with the exception of schools.

1           You look at this drawing here. You know, I spent  
2 26 years in the Marine Corps. It looks like a bunch of  
3 machine guns firing all at once right -- it's very, very  
4 scary that we have our kids, our teachers, our future in  
5 perhaps the most dangerous part of my district.

6           So it's a big deal for me. You know, I'm not  
7 going to come down and try and bore you or give you any --  
8 you know, the experts are all here. I'm worried about one  
9 thing. I'm worried about the kids, I'm worried about the  
10 health and safety and I'm worried about the fact that this  
11 happened in the past. It's going to happen again.

12           You know, I've been out there to that school to  
13 see some of these buildings. They have a brand new combat  
14 center -- an Iraqi Village they call it out there. It's in  
15 better shape than the school. And they do not have those  
16 fault lines directly under it.

17           So I would ask that you look at some of the  
18 historical evidence. I don't have all the other data in  
19 terms of that. All I know is I've lived there, you know,  
20 and I've been there. That's my home. You know, the  
21 fireplace fell down. The -- all the glass -- you know, we  
22 were fortunate. You know, the fan -- I was waiting for the  
23 fan to come down and clip me and I wouldn't be boring you  
24 right now.

25           But anyone that's gone through an earthquake --

1 and then you go through 60,000 after shocks. You know, I  
2 swear to God, you talk about posttraumatic stress syndrome.  
3 Anybody who's been in an earthquake area, I think you --  
4 every time the ground starts to rumble a little bit, there's  
5 something that goes on -- and this is the environment that  
6 we have and there's kids here. Now, this data is -- okay,  
7 kids, this is the environment that we want you to excel at,  
8 do the best we can, and I would hope that you would take  
9 this into consideration.

10 Thank you very much for allowing me to testify.

11 CHAIRPERSON REYES: Thank you. Do the Board  
12 members have any questions? Is there any additional public  
13 comment? Mr. Mireles.

14 MR. MIRELES: Mr. Chair, I would like to ask that  
15 Mr. Chip Howard [sic], the State Architect, if he could come  
16 up here and clarify. Again we're not the experts in this  
17 area and I just want to also reiterate the fact that we're  
18 very sympathetic to the district's situation, but perhaps  
19 Mr. Howard can explain the letters and the rationale and  
20 give us a little bit of insight in terms of the fault lines.

21 CHAIRPERSON REYES: Please come forward. Thank  
22 you.

23 MR. SMITH: Good afternoon, Board, Chair. Howard  
24 Chip Smith, Acting State Architect, and I can explain to  
25 you -- I think I can explain the objective reasoning behind

1 DSA's ultimate decision in this case, the second letter. I  
2 will agree I think that our letters lack clarity and towards  
3 that end, we are making changes internally in terms of our  
4 letters being written from headquarters rather than issued  
5 from the regional offices.

6           But with that said, we have looked at this quite a  
7 bit lately and have determined that an objective definition  
8 of our determination would be whether or not the existing  
9 school building possesses existing conditions such as  
10 damage, dry rot, that are required by code to be remediated  
11 and pose a threat to the health and safety of pupils.

12           In other words, not to diminish the potential  
13 risks associated with this particular site, but our  
14 objective analysis and decision is whether or not existing  
15 conditions, deterioration or damage, exist that the code  
16 does require -- and when I say code, I'm speaking the  
17 Title 24 building standards that we enforce for schools --  
18 whether or not those conditions exist and that the code  
19 would require that they be remediated.

20           So with that, I think that clarity is perhaps not  
21 there in the letters that we've written in the past, but  
22 that's what they were attempting to say.

23           CHAIRPERSON REYES: Okay. Ms. Buchanan.

24           ASSEMBLY MEMBER BUCHANAN: You know, it seems to  
25 me like we have ourselves in a situation here where they've

1 had to abandon the multi-use room because it's not safe for  
2 the students to be in the school. There's nowhere on the  
3 site where they can build. They have buildings that were  
4 built in 1958, so they're 52 years old.

5           When I look at this, I think it would be a waste  
6 of taxpayer dollars to try and modernize the portables or  
7 the buildings and the kids need a school and they're caught  
8 in between all this. If they were eligible for seismic  
9 dollars, they would get the 50 percent match, the same match  
10 they're going to get under the financial hardship program.

11           If you take a look at projects we've approved  
12 under the Emergency Repair Program -- and I would say having  
13 a multi-use room you can't occupy is certainly -- you know,  
14 if you could have emergency repairs, it'd be nice for the  
15 students to have that. We're approving playground  
16 equipment. We're approving removal of graffiti, those types  
17 of projects in the Emergency Repair Program, and this is a  
18 situation where you have an entire site that's not  
19 buildable.

20           We got into the issue with the school in Pittsburg  
21 and I do believe that this is very similar. So I could  
22 understand a strict interpretation of the law, but clearly  
23 if the buildings were occupiable, you wouldn't be abandoning  
24 them and therefore I believe it's up to the Board at some  
25 point in time to step in and make a decision to either move

1 the project forward or deny it and I believe that it should  
2 qualify for the financial hardship grant.

3 So I'd like to make the motion that we approve the  
4 appeal, subject to the conditions that have been outlined  
5 with staff.

6 SENATOR HUFF: I would second that.

7 MS. MOORE: Second.

8 CHAIRPERSON REYES: Okay. It's been moved and  
9 second. Yes, Mr. Harvey.

10 MR. HARVEY: On that motion, I -- hi, Chip. I'm  
11 going to blow through the imminent language because I too  
12 see it nowhere in statute or regulation. But when you read  
13 the entire regulation that controls this section, it indeed  
14 says that we have to take a look at the health and safety of  
15 pupils that may be at risk. It says is at risk as a matter  
16 of fact.

17 But it goes on to say factors to be considered and  
18 here's where I'm struggling and I want to ask you some  
19 follow-up questions because it says we should be looking at  
20 certain things when we make this determination and it indeed  
21 is health and safety of pupils is at risk.

22 It says including structural deficiencies required  
23 by the DSA to be repaired and then there's a separate  
24 section on seismic. So it sounds like you have a little  
25 more jurisdiction -- a little more freedom to interpret what

1 has to be structurally repaired and that's the term.

2           Is it true that DSA said the multipurpose room has  
3 to be abandoned and if so, what did you base that on and why  
4 are you now saying other portions of that school site, same  
5 fault lines, don't meet the test structural deficiencies  
6 required by the DSA to be repaired.

7           This is what I have to focus on is the regulation.  
8 I mean it is an absurd paradox to hear that you can't build  
9 on it, so new construction is out. Modernization may or may  
10 not be available. So here they are trying to salvage  
11 something and it's all up to you.

12           So tell me did you find the multipurpose room  
13 should have been abandoned and if so what did you base that  
14 on and why are the other structures not meeting that test.

15           MR. SMITH: In terms of the multipurpose room, I  
16 was not involved specifically with any determination of that  
17 type. I presume that the school district was working with  
18 our San Diego regional office and perhaps the regional  
19 manager on that matter. I don't believe DSA has --  
20 possesses the authority to dictate to a school district to  
21 abandon a school, but I don't know the specific  
22 conversations that may have transpired between the regional  
23 office and the school district.

24           ASSEMBLY MEMBER BUCHANAN: Could I just add to  
25 that.

1           CHAIRPERSON REYES: Ms. Buchanan, yes.

2           ASSEMBLY MEMBER BUCHANAN: I've had two different  
3 situations as a school board member where we had to abandon  
4 buildings. One was the only seismic project that you've  
5 approved where soil samples were done and they determined  
6 you'd have liquification if you had a major earthquake and  
7 it -- we did -- the district did end up getting the seismic,  
8 the only seismic money that was distributed, but we  
9 abandoned the building immediately.

10           As a school board and a superintendent, you can't  
11 keep kids in a school if you have engineering documents and  
12 another was frankly a new gym where we had problems and then  
13 it got into a lawsuit with the builder and that building  
14 ended up being abandoned for two years.

15           So DSA may not have the authority to shut down,  
16 but if a school board or a superintendent have evidence and  
17 are being told by an engineer that a facility's not safe,  
18 they put that district at a tremendous liability if they go  
19 ahead and continue to occupy those buildings.

20           CHAIRPERSON REYES: Yes. Senator Hancock.

21           SENATOR HANCOCK: Do you want to answer?

22           MR. SMITH: Oh, I hadn't quite finished. The  
23 second part of your question was related to structural  
24 damage or deficiencies, and DSA -- the context of the codes  
25 that we enforce, the framework of our decision making is

1 Title 24, building standards. And within that context,  
2 structural deficiencies would include either structural  
3 damage or distress, but very objective though. So either  
4 distress, deterioration, or damage would be how we look at  
5 the term or phrase structural deficiencies as say opposed to  
6 probabilistic risk-based events occurring.

7 MR. HARVEY: Thank you for that clarification.  
8 Maybe you can't see this map, but since we're sharing maps,  
9 this one obviously shows seismic hazards in California.  
10 That's almost the entire state. What -- and San Bernardino  
11 is off here to the east and it's in a lot of yellow. I  
12 assume the red is worse.

13 If San Bernardino -- if this particular school  
14 site had been in the red, do you think it would have  
15 qualified for your letter?

16 MR. SMITH: Yes. That represents strong shaking  
17 potential. So the red would be the most severe and the  
18 green, the least severe shaking potential. It's actually  
19 that map -- the large map is based on a 2 percent exceedance  
20 in 50 years which is -- event which equates a 2,500 year  
21 return interval earthquake.

22 So with that large earthquake, that's also known  
23 as an upper bound earthquake in the report that was done for  
24 the school district in this case. So that upper bound  
25 earthquake is a 2,500 year recurrence event and for that

1 event, that map shows the severity of shaking, with red  
2 being the largest, green being the least risk damage.

3 There are other hazards as well, but that is a  
4 strong shaking map as opposed to a faulting map.

5 MR. HARVEY: Thank you. And again they did not  
6 qualify for the seismic portion which has 6.8, a certain  
7 building type as the criteria. So they obviously were under  
8 that threshold, but have evidence from engineers and others  
9 that there are imminent -- not imminent, but fissures  
10 opening and buildings collapsing.

11 But again, Chip, hearing everything you've heard  
12 today, you're still not willing or choose not to because  
13 your objective criteria, to find that there are structural  
14 deficiencies required by you to be repaired on this school  
15 site.

16 MR. SMITH: That's correct. I wouldn't -- but I  
17 would concur there is potential risk.

18 MR. HARVEY: Thank you.

19 CHAIRPERSON REYES: Okay. I have Senator Hancock,  
20 Ms. Moore, and Assembly Member Brownley.

21 SENATOR HANCOCK: Well, I think that having gone  
22 into this with the intention of using school bond money to  
23 build a new school and finding out that you can't build on  
24 that site, we do want to -- I would like to help you move  
25 forward and do that. I think that's important.

1           What I don't understand is why you don't use your  
2 new construction -- your bond for new construction and move  
3 ahead that way and I'm not sure how this intersects with  
4 conceptual approval of financial hardship. Does that put  
5 you to the front of the line over other schools or why are  
6 we choosing a particular category?

7           MR. WALKER: Yes. First of all, we're not asking  
8 for financial hardship. We're asking for facility hardship.

9           SENATOR HANCOCK: Okay. Facility hardship.

10          MR. WALKER: I just --

11          SENATOR HANCOCK: I misspoke. Thank you for  
12 correcting me.

13          MR. WALKER: -- because we wouldn't qualify for  
14 financial because of our school bond.

15          SENATOR HANCOCK: Yeah. Yeah.

16          MR. WALKER: The bottom line is we just -- we're  
17 not a very rich area. Our bonding capacity was limited. We  
18 were only able to get a \$48 million bond for all 17 schools  
19 combined. The -- our developer fees are less than  
20 10 percent of what they were during the boom times and the  
21 only way we can go forward with our master plan has always  
22 been to leverage state matching funds.

23                 But as we -- as it exists now, we can't qualify  
24 for any state matching funds except for a very -- we have  
25 limited modernization money, very, very limited new school

1 construction money. There's no way that we can build --

2 SENATOR HANCOCK: Because you used it up or --

3 MR. WALKER: Well, that's right. Because when we  
4 passed the bond, we told the taxpayers we are going to help  
5 all 17 schools. And so -- and we've already done six and  
6 we're in the process of doing the others.

7 If we were to take every cent we had and throw it  
8 into Joshua Tree, we then would say the other ten schools  
9 are going.

10 SENATOR HANCOCK: So you would have no new  
11 construction money left?

12 MR. WALKER: We would have to use every  
13 eligibility we have.

14 MR. HANCOCK: Double counting.

15 MR. WALKER: And then again also we'd need -- and  
16 then -- yeah, thank you. We would also be double hit  
17 because now they would forever count every single classroom  
18 in Joshua Tree as a beautiful, wonderful classroom. So when  
19 we came up for eligibility counting, they would sit there  
20 and say, well, you voluntarily left Joshua Tree Elementary  
21 School, but the way we keep our books, you've got a  
22 classroom -- you've got 20 classrooms right there and you're  
23 not eligible for this because you've got this wonderful  
24 facility here in Joshua Tree that you're not using.

25 So it's a double end. But let -- could I just go

1 back --

2 SENATOR HANCOCK: I think we could deal with that,  
3 don't you think.

4 MS. MOORE: That's what the facility hardship  
5 does.

6 SENATOR HANCOCK: Yeah.

7 MR. WALKER: That's what the facility hardship  
8 does.

9 SENATOR HANCOCK: That's what the facility  
10 hardship does?

11 MR. WALKER: It makes us whole again.

12 SENATOR HANCOCK: Okay.

13 MR. WALKER: But could I just clarify one thing  
14 with what the State Architect was saying? We have never had  
15 and do not now have any argument whatsoever with the  
16 buildings. We have never said anything was wrong with the  
17 buildings.

18 What we're saying is that it doesn't matter what  
19 kind of building you have, whether it's a fire trap or the  
20 most beautifully built building in the history of man,  
21 nothing can survive on this site and that is what we're  
22 talking about. It's the ground that is the killer here not  
23 the building.

24 The example that someone gave -- I know I'm not an  
25 architect or any really smart guy, but it was -- it's like

1 saying you've got your -- you're on frozen ice on a lake and  
2 your car's sitting there and they're saying well, you know,  
3 you just had a tune-up and the car's only two years old. We  
4 can't find anything wrong with the car, so there is no risk  
5 here whatsoever as the ice cracks underneath the car.

6 Well, the building is not the issue. It's the  
7 ground. It's the ice the car's sitting on. It's the ground  
8 that the classroom is sitting on and again I just want to  
9 keep emphasizing about a policy issue regarding your Seismic  
10 Mitigation Program.

11 This -- we could never ever qualify whether they  
12 said that the type of buildings are the ones that are  
13 exactly built in Joshua Tree Elementary School in  
14 San Bernardino is our standard. We still could not get one  
15 penny because these buildings cannot be mitigated.

16 We could not ever mitigate -- we could never fix  
17 any of these buildings to make them safe. It's impossible  
18 and it's not because of the building. It's because of the  
19 ground and there's no way around it.

20 CHAIRPERSON REYES: Ms. Brownley.

21 ASSEMBLY MEMBER BROWNLEY: Thank you, Mr. Chair.  
22 And I appreciate, Senator Hancock, at the beginning of the  
23 meeting requesting that this issue be -- not this particular  
24 school district's issue, but the issue in general relative  
25 to earthquakes be agendized for us to have further

1 discussion on it.

2 I think the superintendent for finance makes a  
3 very compelling argument here which compels me to support  
4 the motion. On the other hand, we have, you know, the  
5 conundrum for -- at least for me is, you know, looking at  
6 this map, I know -- and I was a school board member in Santa  
7 Monica and Malibu during the Northridge earthquake.  
8 Fortunately that earthquake took place when kids were not in  
9 school.

10 But that was very, very scary and to witness it  
11 firsthand, I do know what it's like to be -- I haven't been  
12 in war, but I've had posttraumatic syndrome from being --  
13 living through some earthquakes.

14 So the conundrum here for me too is to know that  
15 there are other school districts that are potentially in the  
16 same trouble as this particular district and so this is a  
17 compelling argument. I'm going to support this motion  
18 today, but it also -- I struggle with the support because  
19 we're here to evaluate, look at regulations, and try to be  
20 fair and I feel like by supporting this today, I know that  
21 there are other districts out there that this vote -- I cast  
22 a vote that's being somewhat unfair potentially to other  
23 school districts.

24 And so I welcome future discussion because with  
25 this map right here that talks about the potential shaking

1 for California, we've had earlier discussions based on the  
2 earthquake retrofitting funding that we do have that school  
3 districts haven't really been able to utilize because the  
4 measurement is so high and why we see all of this red here,  
5 most of the school districts don't meet the shakability  
6 criteria to qualify for that funding.

7 So -- you know, so I think we need to have further  
8 discussion around this issue, but for today's purposes, I  
9 will be supporting the motion.

10 Oh, and I want to say one more thing and that is  
11 as we here in the Legislature debate over the value of  
12 regulations, I just have to say in this particular case, I  
13 think regulations are proving good because they're  
14 highlighting where the health and safety of children might  
15 not exist. And so I just had to put that out there and to  
16 make that point.

17 CHAIRPERSON REYES: Ms. Greene and then  
18 Mr. Hagman.

19 ASSEMBLY MEMBER HAGMAN: Yes.

20 MS. GREENE: Just a comment. Sorry. Just a  
21 comment. We are not concerned about the condition of the  
22 buildings and it concerns me that we bring DSA into this  
23 with the limited ability to comment on this and we have  
24 letters from Geological Survey, we have letters from an  
25 engineering firm.

1           The concern I have is that our expertise as a  
2 Board is relatively limited and we're getting advice in an  
3 area that we're not concerned about. And so I have a  
4 procedural concern about all of this in that we're not  
5 getting the information that we needed in order to make the  
6 decision.

7           But in that, I agree with Assembly Member Brownley  
8 that in terms of what we do have before us, fairness  
9 concerns the vote and I will vote for it.

10           CHAIRPERSON REYES: Mr. Hagman.

11           ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.  
12 And a lot of have been said, so I won't repeat some of it,  
13 but I think that's what this Board's for is I find this out  
14 and, you know, being a legislator as well. A lot of times  
15 with the best intentions, we make rules and laws and  
16 regulations trying to fit everybody in one box or the other,  
17 but life's not that clear-cut, and there's always going to  
18 be exceptions to every rule that we have to look at  
19 individually and that's what I appreciate about this  
20 particular case.

21           If you broaden the rules and regulations, you'll  
22 have -- you know, everyone's going to be able to qualify for  
23 every -- for more money than we have. At the same time, we  
24 do need to have the ability to look at each individual case  
25 and say this makes sense. This is a prudent thing to do or

1 not a prudent thing to do based on the information given to  
2 us.

3           So I appreciate the way the rules are written and  
4 what the steps were taken and, you know, as those exceptions  
5 come up, I think that's what we're here for on the Board is  
6 to hear those exceptions and try to sort them out to the  
7 best of our ability and try to do what's in the best of our  
8 constituents and taxpayers' mind and I'm for supporting this  
9 measure at the same time as well because this site is  
10 unbuildable.

11           I mean it's real basic. It's unbuildable at this  
12 point were to even go on from here.

13           I do have -- I have one question if I could  
14 though, sir. One of the conditions -- you said he approved  
15 all the conditions, but one is that the site would be sold.  
16 I was just wondering just out of curiosity if you have any  
17 kind of estimates what that site might be valued at at this  
18 point?

19           MR. WALKER: Obviously -- yeah, we've just made  
20 such a wonderful pitch for someone to buy it, but we would  
21 go to sell it and I would like to make it clear and the  
22 State Architect has too. There's one standard for health  
23 and safety of students and there's another saying we could  
24 have made this a maintenance facility, we could have made  
25 this a warehousing facility and so -- if we had the money,

1 but we don't, but I'm just saying -- and that means that  
2 that potential exists out there in the private sector and we  
3 would -- and there is an appropriate method for selling the  
4 property and I believe we give 50 percent back to the State  
5 or --

6 ASSEMBLY MEMBER HAGMAN: Right now we're looking  
7 at -- the State Allocation Board, we're looking at figures  
8 4.7 million and then minus whatever -- half of what you sell  
9 it for. So we bring that value down ever more. I would go  
10 ahead and confirm with that. Thank you, Mr. Chair.

11 CHAIRPERSON REYES: Thank you. I share the  
12 concerns of the present setting because most of California  
13 is built on -- and I grew up in Ventura County and I  
14 experienced a number of earthquakes.

15 I think this is one of those issues where it's a  
16 different pot of money where the request is coming from and  
17 where you could have gone, but then you go into the issue of  
18 your local revenues to do the math and I get that as the  
19 issue.

20 But we do have a motion on the floor and we have a  
21 second. So, Secretary, will you please call the roll.

22 MS. GENERA: Senator Hancock.

23 SENATOR HANCOCK: Aye.

24 MS. GENERA: Senator Huff.

25 SENATOR HUFF: Aye.

1 MS. GENERA: Assembly Member Brownley.

2 ASSEMBLY MEMBER BROWNLEY: Aye.

3 MS. GENERA: Assembly Member Buchanan.

4 ASSEMBLY MEMBER BUCHANAN: Aye.

5 MS. GENERA: Assembly Member Hagman.

6 ASSEMBLY MEMBER HAGMAN: Aye.

7 MS. GENERA: Scott Harvey.

8 Kathleen Moore.

9 MS. MOORE: Aye.

10 MS. GENERA: Lyn Greene.

11 MS. GREENE: Aye.

12 MS. GENERA: Pedro Reyes.

13 CHAIRPERSON REYES: I'll abstain on this one.

14 Thank you.

15 MS. GENERA: It carries.

16 CHAIRPERSON REYES: Okay. Thank you. I do want  
17 to acknowledge the presence of Senator Bob Margett from  
18 Arcadia in the front row who's formerly served on this  
19 Board. Thank you, sir, for your presence.

20 MR. MARGETT: Thank you. Good to be here.

21 CHAIRPERSON REYES: You're a masochist. No, I'm  
22 kidding. Sorry. That was out of order.

23 Okay. We go back then to Tab 5. Ms. Silverman.

24 MS. SILVERMAN: **(Status of Fund Releases)** Yes.

25 If I can direct your attention to Tab 5 and I need to turn

1 to Tab 5 as well. We wanted to highlight obviously this  
2 importance of what we've been doing over the last few  
3 months, and again this **report** reflects the **releases**, the  
4 cash that's going out on the street to fund projects. And  
5 it's a good story -- it's a good story for this program.

6           If you're not familiar with the report on stamped  
7 page 147, March 2009, this program was the benefactor of  
8 \$528 million which was great. We had no fund releases to  
9 report in this category this month. We still have a small  
10 balance of \$70,000.

11           And then in April 2009 category, we actually  
12 received \$1.4 billion in cash. As a result of the bond  
13 sales, we released \$23.9 million last month. So we still  
14 have a residual balance of 72.9 million.

15           And then the lower chart, if I can direct your  
16 attention, October 2009 and November 2009, we receive  
17 509 million. We disbursed \$99 million and we have a balance  
18 of 131 million.

19           On stamped page 148, you turn the page, please,  
20 the top chart, November 2009 and December 2009, we received  
21 a disbursement of \$111 million. Last month we didn't  
22 disburse any funds in this category. We still have a 27 and  
23 a half million dollar fund balance.

24           In the middle chart, March 2010, we received  
25 \$1.35 billion, and we actually disbursed \$59 million last

1 month with a bond balance of 252 million.

2           In November 2010, we actually received \$1.4  
3 billion from the last sale and we actually disbursed  
4 428 million and we still have 964 million of bond proceeds.

5           Again this reflects what's happened over the  
6 calendar month January 2011. In total we disbursed  
7 \$610 million. A good chunk of that funds that was released,  
8 428 million, was the result of priorities in funding and the  
9 remaining \$182 million came from the various pots.

10           Again as I shared with you earlier in my Executive  
11 Officer Statement, for priorities of funding in December, we  
12 actually received over \$1.1 billion in fund release  
13 requests. So what you'll see next month is again an  
14 escalation of the funds being disbursed for -- actually  
15 reflecting for February activity.

16           So I direct your attention to page 150. We  
17 actually have these bar charts. We've been illustrating to  
18 the Board the number of colorations obviously show where the  
19 money is being disbursed. Again we still have \$1.4 billion  
20 in our bank account as we speak.

21           We initially received over \$5.3 billion between  
22 the 2009 and the 2010 bond sales and we've disbursed over  
23 84 percent of those bond proceeds. So we still have  
24 26.9 percent of the bond proceeds in our bank account as we  
25 speak.

1           Again speaking to the success of priorities, we --  
2 that green shaded bar actually will be shrinking again as a  
3 reflection of additional releases, at least another  
4 500 million posted last month.

5           So with that, if there's any questions on this  
6 report.

7           CHAIRPERSON REYES: Mr. Harvey.

8           MR. HARVEY: I know you've answered the question.  
9 I'm sorry I can remember. I continue to be baffled as to  
10 why the Propositions 55 and 47 languish as it relates to  
11 expenditures. Is it because we don't have labor compliance  
12 programs and if we cruck this and get it out of the way,  
13 will some of this money move more quickly? Are the criteria  
14 so much different than 1D? I mean what makes only  
15 31 percent or 70 percent of these bonds moving where we're  
16 in the 97, 99 in other categories.

17           Some of it's perhaps the nature of the sale  
18 because it's, you know, '09? October rather than April?  
19 It's commercial paper? Is it interest rate? I mean what's  
20 driving the lack of draw down in some of these bond sales.

21           MS. SILVERMAN: Well, maybe a simple explanation  
22 is -- and it's not specifically related to Proposition 55  
23 and 47. When there was a fiscal crisis, we actually had  
24 \$2.4 billion of unmet need. We actually already had  
25 apportionments out there and it took at least the better

1 part of 2009 for the various sales that we've had to cover  
2 that \$2.4 billion balance.

3 So those projects, once they had their cash, they  
4 had 18 months to come in to perfect on those projects. So  
5 there is some of the 18-month timeline associated with some  
6 of this cash, the older pots. That's why perhaps it's not  
7 being disbursed as quickly.

8 But again the latter sales of part of the March  
9 2010 and then the November 2010 does reflect that new 90-day  
10 turnaround time and that's why those particular pots of  
11 funds are disbursed quite -- rather quickly.

12 MR. HARVEY: So in some cases, they haven't  
13 perfected their apportionment and they have time yet to do  
14 so, so maybe this money actually will go out the door and if  
15 they don't meet that deadline, the Board would have the  
16 ability to talk about where that should be redistributed.

17 MS. SILVERMAN: That's correct. That's correct.  
18 We have a spike. There's about \$220 million. If we have  
19 our timelines on decisions and it's not reflected anywhere  
20 in any of the reports, but there's about \$220 million that's  
21 sitting out there in October of this year that are set to  
22 expire.

23 So again encourage those districts to come in with  
24 their fund release requests when they have their 50 percent  
25 of the contracts in place. So again we can do our best to

1 encourage those districts to come in.

2 MR. HARVEY: And hopefully they will, but if they  
3 don't, then we have the ability to decide where whatever  
4 residual is left should go.

5 MS. SILVERMAN: That's correct.

6 MR. HARVEY: Thank you very much.

7 ASSEMBLY MEMBER BUCHANAN: I have a question.

8 CHAIRPERSON REYES: Yes, Ms. Buchanan.

9 ASSEMBLY MEMBER BUCHANAN: So and all that  
10 information's available in different reports. Would it make  
11 sense maybe to on this report also indicate the  
12 apportionments that have not been funded? I mean that  
13 would --

14 MS. SILVERMAN: Yeah. We can present that item  
15 next month and we can -- I'm not sure how detailed we want  
16 to get. I mean we can actually --

17 ASSEMBLY MEMBER BUCHANAN: Well, maybe we can just  
18 add a column here if we knew what the outstanding  
19 apportionments were. That would give you --

20 CHAIRPERSON REYES: A better sense of what's  
21 actually in the balance.

22 ASSEMBLY MEMBER BUCHANAN: That's exactly right.

23 MS. SILVERMAN: Yeah. We could certainly do that.

24 ASSEMBLY MEMBER BUCHANAN: Okay.

25 MS. SILVERMAN: Yeah.

1           CHAIRPERSON REYES: Thank you. Good idea.  
2 Anybody else. Moving on.

3           MS. SILVERMAN: Okay. Tab 6, **Status of Funds**.  
4 And this report really reflects what's remaining in the bond  
5 authority category. If I can direct your attention to  
6 page 151. The top category reflects Proposition 1D. We  
7 actually received \$7.3 billion in authorization from the  
8 voters and this month, we're reflecting 60 and a half  
9 million dollars of unfunded approvals being approved this  
10 month, small adjustments going for proposition -- excuse  
11 me -- new construction.

12           We actually had 25 modernization applications and  
13 we actually had one high performance application that was  
14 being processed and a number of different CCI adjustments  
15 that are going through Proposition 1D.

16           And the center category is Proposition 55. We had  
17 \$10 billion authorized by the voters. There's a positive  
18 amount because we actually are posting some corrections. So  
19 we have a \$20 million adjustment here.

20           In the lower category, the blue shaded area is  
21 Proposition 47. Again we have \$11.4 billion that was  
22 authorized by the voters in 2002 and we are actually  
23 processing again some CCI adjustments and some rescissions.  
24 And with that in total \$36.3 million in unfunded approvals  
25 that are part of the Consent Agenda.

1           I can direct your attention to page 152. There is  
2 also activity in the top category in Proposition 1A. So in  
3 total this month at the Consent Agenda, we are processing  
4 \$39.4 million that was approved already by the Board.

5           And then the center chart is the Emergency Repair  
6 Program. It's again we're bringing forward \$59.2 million of  
7 unfunded approvals and that represents 155 applications. So  
8 in total, we have \$282 million of unfunded approvals that  
9 are sitting out there.

10           And if I can get your attention and turn to  
11 page 153, again this is a summary chart of the  
12 authorizations and the spend-down of what we have  
13 apportioned.

14           So for Proposition 1D, we actually apportioned  
15 67 percent which is the blue shaded area of the bond and the  
16 maroon shaded area is 743 million that's sitting on the  
17 unfunded list, so that represents 10 percent that's sitting  
18 out there.

19           We have still 23 percent of Proposition 1D that  
20 hasn't been authorized. So as we process applications, that  
21 amount will be shrinking as well.

22           On Page 154, Proposition 55, larger blue shaded  
23 area. The original authorization was 10 billion. We've  
24 apportioned 91 percent of that. 5 percent still remains on  
25 the unfunded list and we still have 4 percent of the bond

1 authority that's sitting there.

2 Page 155, Proposition 47, we've expended  
3 98.6 percent and we actually .9 sitting on the unfunded list  
4 and we have \$65.8 million that's sitting in bond authority  
5 and that represents less than a half percent.

6 The new construction chart is on page 156. We --  
7 what we did here was summarize all the new construction  
8 authorities from Proposition 1D, 55, and 47, again as we  
9 apportion projects and take them off the unfunded list which  
10 represents new construction. 92.9 of that original  
11 authorization has been expended or apportioned. We still  
12 have 3.6 percent sitting on the unfunded list and we have  
13 \$507 million that's sitting in unfunded -- excuse me -- in  
14 the unauthorized category which we still have authority.

15 We want to introduce a new chart which is on  
16 page 156a which shows the activity in the Emergency Repair  
17 Program. We have to some extent provided cash to the  
18 program and it's the blue shaded area and what we shared  
19 earlier is we still have 282 million of unfunded approvals  
20 and we're still processing applications. We still have  
21 175 million in authority left to process additional  
22 applications.

23 So with that, I would open up to any questions.

24 CHAIRPERSON REYES: Any Board members have any  
25 questions? Any comments -- any public comment on either

1 Tabs 5 or 6? That is the fund releases or status of funds.  
2 Okay. Hearing none, we move forward.

3 Tab 7 this item has been withdrawn. Tab 8 we've  
4 dispensed with. Tab 9 this is **Priorities in School**  
5 **Construction Funding** apportionments. Ms. Silverman.

6 MS. SILVERMAN: Yes. Page 195, we wanted to  
7 highlight to the Board again as a continuation of the  
8 October 2010 priority funding round. Again the Board  
9 provided \$1.4 billion in apportionments in December. We  
10 actually provided \$103 million in apportionments in January  
11 and with that, we're bringing forward to the Board 18  
12 additional projects that represent \$40.6 million in  
13 apportionments as stated in Attachment A.

14 Part of the priority round is we actually had an  
15 open round from October 7th to November 8th, 2010, in which  
16 districts were required to make the following  
17 certifications. The districts understand that the time  
18 allowed on the fund release shall be no more than 90 days  
19 from the time of the apportionment.

20 In addition the districts acknowledge that failure  
21 to submit the completed fund release authorization within  
22 the 90-day period would result in the projects being  
23 rescinded without further Board action.

24 As part of the rescinded application, they will  
25 revert back to the unfunded approvals at the bottom of the

1 unfunded list and could not be guaranteed for bonding  
2 authority. The applications will be received by a date  
3 certain. In that case, it could result in multiple  
4 rescissions.

5           And at the time, the district is also  
6 acknowledging that they will waive the 18-month standard  
7 requirement.

8           So as part of the follow-up report to the  
9 companion item that we presented last month, we wanted to  
10 share with the Board that as a result of some rescissions  
11 that we brought forward and acknowledged at the last Board  
12 that we still have \$61.4 million and if you could turn to  
13 stamped page 196, that will show you the summary of the cash  
14 we had available.

15           We actually have a few companion items that if the  
16 Board decides to approve some items so that we -- you reduce  
17 the cash available in the companion items and so with that,  
18 we're bringing forward \$40.6 million and we still have  
19 \$12.2 million available.

20           Again that represents 18 projects. So if the  
21 Board chooses to take action on Attachment A, which is  
22 page 197a, those are the list of projects that would be  
23 provided apportionments. The approved applications  
24 receiving State apportionments are required to complete at  
25 50-05 containing the original signature and be received by

1 the Office of Public School Construction by May 24th which  
2 is part of the condition of the apportionment, and if the  
3 district doesn't comply with that and fails to submit the  
4 proper documentation with the timelines, then the project  
5 will be rescinded post May 24th.

6 With that, our recommendation is to approve the  
7 State apportionments for the projects shown on Attachment A.  
8 Be clear that all applications receiving apportionments are  
9 subject to the new construction grant adjustments.

10 In addition, declare the October 10th priority  
11 round closed and direct staff to distribute the remaining  
12 cash as part of the cash management discussion next month.

13 With that I open up to any questions.

14 CHAIRPERSON REYES: Any questions, Board members?

15 MR. HARVEY: I'd move approval.

16 CHAIRPERSON REYES: Second?

17 MS. MOORE: I have a comment.

18 CHAIRPERSON REYES: Okay. Do you want to second  
19 and then have a comment or --

20 MS. MOORE: I prefer to make the comment.

21 CHAIRPERSON REYES: Okay.

22 MS. MOORE: But if someone wants to second first.

23 CHAIRPERSON REYES: Somebody want to second it so  
24 we can move on.

25 ASSEMBLY MEMBER BUCHANAN: Second.

1           CHAIRPERSON REYES: It's been moved and second.  
2 Yes, comments.

3           MS. MOORE: This is my concern is that we have  
4 61.4 million in funding available today and I for one would  
5 want to see that we are apportioning that funding today. I  
6 think it's important to school districts to be able to  
7 utilize that funding and I'm wondering the 12. -- is it  
8 12.2 -- 12. -- what is it? 12.8 that is not recommended for  
9 apportionment, can you talk to us a little more about what  
10 companion items and how much those companion items are.

11           MS. SILVERMAN: Tucked away in our item is -- we  
12 have a companion item for Calexico and Belmont. If the  
13 Board approves or supports approval of those items, it will  
14 reduce the cash available. So --

15           MS. MOORE: So what I would like to propose  
16 then -- and I have no problem with the motion and the  
17 second -- is that if we do not apportion the funding on  
18 those items that we revisit this item so that if in case --  
19 depending on the outcome of those, that we have another look  
20 at the cash available to projects that are waiting in line.

21           MS. SILVERMAN: So we can bring back those  
22 projects for additional apportionments as we go down the  
23 line, if we chose to. If the Board doesn't act on the last  
24 recommendation to close out the round, I think the only  
25 concern we had was some of the certifications may be getting

1 stale, but that's all conditional.

2 We could certainly bring back additional items.

3 MS. MOORE: I'm saying we would complete in this  
4 Board meeting and then close the funding round, but I for  
5 one would hate to leave some money on the table that a  
6 school district could utilize. So I'll wait to see the  
7 outcome of the other items, but to me we have 12.8 available  
8 this Board meeting that could go out to projects that could  
9 be helping communities and helping schools.

10 MS. SILVERMAN: And the other concern too is --  
11 you know, Lisa did bring up a good point. We also have --  
12 another point is we can go to those items, take action on  
13 those items, and then come back and revisit this should the  
14 Board choose.

15 The other issue is we have limitations on how much  
16 we can fund because the \$12.2 million when it's broken down  
17 in its various pot, we have \$3 million available in  
18 Proposition 1D, \$1.4 million -- I mean there are splinter  
19 pots of money available in Proposition 55. \$1.1 million  
20 available in Proposition 47 and about 6.4 million is  
21 available in Proposition 1A.

22 So they're split all over the place and you  
23 couldn't fund the next project in line technically.

24 MS. MOORE: Okay. So that's the real reason for  
25 the recommendation then.

1 MS. SILVERMAN: Right.

2 MS. MOORE: Not -- and that it's -- that it  
3 would --

4 MS. SILVERMAN: We --

5 MS. MOORE: -- there's not enough to go down to  
6 the next project?

7 MS. SILVERMAN: Fully fund the next project.

8 MS. MOORE: However, if we take action on the  
9 future items, you're going to cobble together those dollar  
10 amounts and fund them from each of the different pots until  
11 it reaches the amount, if it was approved by the Board.  
12 Then is that the intent with it?

13 MS. SILVERMAN: Well, we assumed in our  
14 calculations that the Board would approve those other items  
15 and so that's how we drew our calculations.

16 So if the Board doesn't take action on those items  
17 or does not approve those items, then obviously we have  
18 additional cash to play with. So --

19 CHAIRPERSON REYES: So does -- just so we do, we  
20 could just put this item over, move onto the others, see  
21 what we've done, and then that will then we deal with those  
22 according.

23 MS. MOORE: I think that would be more logical.

24 MR. HARVEY: Why don't we table this until we deal  
25 with the others.

1           CHAIRPERSON REYES: We can -- yeah. We can --  
2 that's -- that works. We can come back to this. I know  
3 there was a motion and a second. Are the movers of the  
4 motion and the second okay with that?

5           MR. HARVEY: Yes.

6           ASSEMBLY MEMBER BUCHANAN: That's fine.

7           CHAIRPERSON REYES: Yes. Okay. All right.  
8 Moving on then to -- so we'll put this over.

9           MR. HARVEY: So right to Calexico then and  
10 Belmont. Where are they?

11          MS. SILVERMAN: We're at Tab 11.

12          MR. HARVEY: Tab 11.

13          CHAIRPERSON REYES: Tab 11?

14          MS. KAMPMIENERT: Tab 11 is a request from  
15 **Calexico Unified School District**. This district was part of  
16 the earthquake that occurred in April of last year and on  
17 the Consent Agenda today, they had an unfunded approval for  
18 a modernization project at Jefferson Elementary School.

19                 This school did sustain damage during the  
20 earthquake last year and the Board previously in April 2010  
21 had granted the district accelerated funding for a different  
22 project, a high school project, to assist with the cash flow  
23 need so that the earthquake repairs could be completed.

24                 So the district is asking for consideration for  
25 accelerated funding on this unfunded approval as well. The

1 damages at this school site were in the ceilings and the  
2 modernization project that they're requesting deals with  
3 some of the work that's up behind the ceilings. So one of  
4 the reasons that they presented is that if they were to  
5 repair the ceilings now and just handle the earthquake  
6 damages, then they would have to rip out the ceilings to  
7 then do the modernization work which is not maybe the most  
8 efficient way to complete the project.

9           So the district is requesting that the Board  
10 provide an apportionment for this project and the  
11 apportionment is -- we have a -- show here on page 220 if  
12 the Board chooses to do so. The apportionment would be made  
13 under the traditional 18-month time limit on fund release  
14 because this project was not eligible to participate in the  
15 previous priorities in funding round since it's just now  
16 getting unfunded approval.

17           It does bypass about 511 projects on the unfunded  
18 approval list, but again they do have the cash flow issues  
19 in completing the earthquake repair work and it would be a  
20 duplicate effort to have to do the project twice.

21           So we are seeking Board direction and we have  
22 heard from the district that if the request is approved,  
23 even though there is an 18-month time limit on fund  
24 releases, they would be able to come in sooner than that,  
25 perhaps within the 90-day timeline.

1           So staff -- the Board could direct staff to  
2 provide quarterly updates on the fund release status until  
3 such time as the fund release request is made. And I  
4 believe the district is here if there are any questions and  
5 I'd be happy to answer any questions as well.

6           CHAIRPERSON REYES: Sure.

7           MR. MORENO: Good afternoon. If I'd have known  
8 all the topics that come before me and our topic all having  
9 to do with seismic activities -- I didn't realize today was  
10 earthquake awareness day and as an old school principal, I  
11 feel like a duck and cover exercise here for all of us.

12          MR. HARVEY: You're free to do that.

13          MR. MORENO: But thank you very much and with me I  
14 have the Director of Facilities, Raul Martinez, and our  
15 Board President, I'm not sure she's back. She had stepped  
16 out a few minutes ago before you canceled a couple --  
17 Ms. Gloria Romo, our Board President.

18                 But thank you very much for having this  
19 opportunity and the agenda item. It's very critical for us.  
20 We can boast, given that everybody else has been boasting, I  
21 don't think anybody in this room except the three of us have  
22 been through a 7.2 earthquake. So we've had the biggest  
23 earthquake of all.

24                 We're very fortunate -- thankful for all the  
25 regulations in terms of building codes and everything else,

1 not just for schools, but for civic buildings and those --  
2 since we're on the border next to Baja California, those  
3 have impacted Mexicali, Mexico. And a 7.2 which was right  
4 next to Mexicali, just south of us, only two people --  
5 fortunately only two people died on a 7.2. Given what we've  
6 just experienced in Christchurch, that totally amazed me.

7           But thank you very much. We also want to thank  
8 you for the help you've already given us in terms of -- you  
9 know what, I never introduced myself. Well, I'll get to  
10 that.

11           We also want to thank you for the help you gave us  
12 for the -- in accelerating the funding for Calexico High  
13 School. At that time, we did not request the acceleration  
14 for Jefferson because that assessment had not been completed  
15 and approval from DSA had not gone forward and, you know,  
16 we've been able to do that ever since.

17           My name by the way is Robert Moreno. For 11  
18 years, I was a -- I was born and raised in Calexico by the  
19 way as was Senator Huff. He was born in Calexico. He  
20 wasn't raised there, but he was born there. And for 11  
21 years I was the superintendent for Calexico before I  
22 retired. Now I assist them with facility issues and our  
23 superintendent would have been here except he was just hired  
24 six days ago. Richard Fragale -- some of you may have met  
25 him in the past at other meetings. He just came onboard six

1 days ago and he said, Robert, you've been working on this  
2 project, you go ahead and represent us today.

3 The -- as our Board President was telling me on  
4 the airplane as we flew up this morning, the important thing  
5 is bringing back to normality at that school site. We've  
6 had -- all the permanent structures are uninhabitable by  
7 students now. Have been since the April event, April of  
8 last year. And we need to bring them up to par and get  
9 those kids back.

10 Some of the kids, about 200 of them, are being  
11 bussed out of that area and -- bussed every day and ones  
12 that are there are in relocatables, not in the permanent  
13 facilities, do not have access to the offices, do not have  
14 access to the cafeteria, and we'd like your assistance on  
15 this.

16 I don't know if you have any questions, but that  
17 sums it up.

18 CHAIRPERSON REYES: Ms. Buchanan.

19 ASSEMBLY MEMBER BUCHANAN: I was just going to  
20 move approval of the district's request for the  
21 apportionment. There's precedent in terms of the State  
22 Allocation Board has done this before. It clearly is a  
23 waste of taxpayer dollars to go in and make improvements and  
24 then tear them out to make additional improvements and I  
25 would like to also add to that though that we do the

1 quarterly monitoring and just urge you to proceed with haste  
2 to get the project completed so that the students have the  
3 facilities they deserve.

4 MS. GREENE: Second.

5 CHAIRPERSON REYES: It's moved and second. Okay.

6 Any additional comments from the public? Any additional  
7 questions from the Board? Call the roll, please.

8 MS. GENERA: Senator Hancock.

9 Assembly Member Brownley.

10 ASSEMBLY MEMBER BROWNLEY: Aye.

11 MS. GENERA: Assembly Member Buchanan.

12 ASSEMBLY MEMBER BUCHANAN: Aye.

13 MS. GENERA: Scott Harvey.

14 MR. HARVEY: Aye.

15 MS. GENERA: Kathleen Moore.

16 MS. MOORE: Aye.

17 MS. GENERA: Lyn Greene.

18 MS. GREENE: Aye.

19 MS. GENERA: Pedro Reyes.

20 CHAIRPERSON REYES: Aye.

21 MS. GENERA: It carries.

22 SENATOR HANCOCK: Mr. President. I'd like to add  
23 on as voting aye. I would also like us to have a  
24 clarification perhaps at our next meeting of how districts  
25 that may now be passed by would -- if they had fire damage

1 or water damage and wanted to come and ask to be put at the  
2 head of the line too, what the procedure would be for them.

3 CHAIRPERSON REYES: Fair question. Thank you.

4 MR. MORENO: Thank you very much.

5 CHAIRPERSON REYES: Thank you. Okay. Next item,  
6 Ms. Silverman. **Belmont.**

7 MR. MIRELES: Next item is Tab 12. This is a  
8 request to **amend an apportionment and switch bond source**  
9 **from Proposition 55 to Proposition 1D.**

10 Back in March of 2009, the school district entered  
11 into a lease-leaseback agreement. In October of 2009, the  
12 district submitted a funding application. As part of the  
13 funding application, the district certified that they would  
14 be required to initiate and enforce a labor compliance  
15 program.

16 As we went through and processed the application,  
17 there was correspondence that was sent to the district from  
18 the OPSC. We did tell the district that at that time  
19 Proposition 1D funding would be provided for the project.  
20 However, should Proposition 47 and 55 be provided that the  
21 district would be required to initiate and enforce a labor  
22 compliance program.

23 The project received unfunded approval on May 26,  
24 2010. They received an actual apportionment at the December  
25 Board meeting and according to the district as they were

1 preparing to submit a fund release request, they discovered  
2 that the lease-leaseback agreement, although it did require  
3 the payment of prevailing wages and to track and to certify  
4 payable records, it did not require the lease-leaseback  
5 agent to initiate and enforce the LCP as they had originally  
6 believed so.

7           The school has been occupied in September 2010 and  
8 their -- staff did an analysis to see if there's additional  
9 funding that would be able to be provided for this project.  
10 We do have sufficient funds to provide them from  
11 Proposition 1D. So the basic request is to switch them from  
12 Proposition 55 which requires the labor compliance  
13 program -- requires the district to initiate and enforce a  
14 labor compliance program to Proposition 1D which it doesn't  
15 have that requirement since the district didn't initiate and  
16 enforce an LCP.

17           Again the district believed that the  
18 lease-leaseback agent was going to do this. They discovered  
19 that the district -- that the agent did not.

20           With that, we have a couple of options for the  
21 Board. Option 1 is to approve the district's request as  
22 shown in the Attachment A. Option 2 is to require the  
23 district to get a retroactive labor compliance program  
24 review by a Department of Industrial Relations approved  
25 third party or Option 3 is to deny the district's request

1 and require them to -- and then exchange bond source from  
2 Proposition 55.

3 One other thing that I do want to highlight for  
4 the Board is that the Board has switched bond sources before  
5 for other projects. With that, I'd be happy to answer any  
6 questions and the district is here also to answer questions.

7 MR. HARVEY: Mr. Chair, if I might put a motion on  
8 the table. I think it's abundantly fair with the precedent,  
9 people have been dealing in good faith. This is a  
10 no-harm/no-foul. I would move Option 1A.

11 CHAIRPERSON REYES: Is there a second? I don't  
12 think there's an A. I think it's just Option 1.

13 MR. HARVEY: It's the district's request to switch  
14 the funds.

15 CHAIRPERSON REYES: Yes.

16 ASSEMBLY MEMBER BROWNLEY: I'll second that.

17 MR. HARVEY: I'm sorry. I should not put a number  
18 on it.

19 ASSEMBLY MEMBER BROWNLEY: I don't have a  
20 Option 1A.

21 MR. HARVEY: Look at mine. Are we clear on what  
22 I'm trying to do?

23 CHAIRPERSON REYES: Yes. Option 1.

24 MR. HARVEY: Option 1 which is the switch.

25 ASSEMBLY MEMBER BROWNLEY: I will second

1 Mr. Harvey's motion.

2 CHAIRPERSON REYES: Ms. Buchanan.

3 ASSEMBLY MEMBER BUCHANAN: I have some questions  
4 because the option I was leaning to was Option 2 and I can  
5 explain why.

6 So the district has switched funds for other  
7 projects. Why did that happen with other projects?

8 MR. MIRELES: What staff tries to do is when we  
9 look at a project, we take a look at which districts have  
10 certified that they will be required to initiate and enforce  
11 an LCP.

12 If they have funding available from the three  
13 different bond sources, Proposition 47, 55, and 1D, we try  
14 align those projects with Proposition 47, 55 to give them  
15 the additional grant.

16 The projects that don't select that are the ones  
17 we try to align with Proposition 1D because they don't have  
18 that requirement.

19 We've had to make some bond source switching  
20 when -- during some of the bond sales to try and fund down  
21 the list. Because of the way the bonds are sold, they're  
22 sold a certain amount per proposition. We try to align the  
23 projects as closely as we can with the available cash so  
24 that we could down the list in order.

25 That was one of the reasons why we switched --

1 ASSEMBLY MEMBER BUCHANAN: No. I understand that,  
2 but I thought you said this district had in the past  
3 requested to --

4 MR. MIRELES: I'm sorry. No. The Board has --

5 CHAIRPERSON REYES: Other districts.

6 ASSEMBLY MEMBER BUCHANAN: Other districts, okay.

7 CHAIRPERSON REYES: Other districts have been --

8 MR. HARVEY: Other districts the Board had done  
9 it.

10 ASSEMBLY MEMBER BUCHANAN: I'll tell you what my  
11 only concern is is that, I mean we have labor compliance  
12 laws for a reason and when I have contracting firms come in  
13 and talk to me or labor come in and talk to me, I mean one  
14 of the big concerns is the underground economy and the  
15 impact it has on people who are licensed, legitimate  
16 contractors doing business on a level playing field.

17 And it just seems to me that if you're given money  
18 and you should be complying with the labor laws, then later  
19 on to switch -- you know, I don't want to deprive the  
20 district of receiving the funds, but I mean I just question  
21 is it really unreasonable to have a third party come in and  
22 do the labor compliance to ensure that the contractors were  
23 complying with all the laws and requirements at the time  
24 that they were doing the business.

25 They certainly still have to comply with

1 prevailing wage and if that's not a direction that, one,  
2 gets a district the money but also provides some assurance  
3 that the -- that they were complying with it.

4 I mean because it seems to me you can't just -- if  
5 you've given out money to someone to execute a contract and  
6 you assume that it's in compliance and you're not doing any  
7 checking at all that there's some responsibility there on  
8 the part of both.

9 So I -- that's why I would -- when I looked at it,  
10 I thought Option 2 was not necessarily a bad option. It  
11 sort of would meet the goals of both.

12 MR. HUNTER: I could actually speak to your  
13 comment on that. I'm Josh --

14 CHAIRPERSON REYES: You want to get the  
15 microphone.

16 MR. HUNTER: Sorry. I'm Josh Hunter. I'm with  
17 Blach Construction. We were the lease-leaseback provider on  
18 this project, so -- it was very clear in the contract  
19 documents, this prevailing wage, certified payrolls will be  
20 collected and tracked and produced upon request.

21 So we do hundreds of millions of dollars, you  
22 know, in K-12 construction. We are a union contractor. So  
23 this wasn't treated any differently than any other of our  
24 other projects with third-party LCPs, just because the  
25 district hadn't contracted for a third-party LCP.

1           So when the member said no-harm/no-foul, it was --  
2 it's just the routine contract. Whether or not there had  
3 been an LCP in place or not, the same procedures were  
4 followed. The certified payrolls were available upon  
5 anyone's request.

6           So I understand your point as far as fly-by-night  
7 contractors go, but we do have quite a bit of experience in  
8 this field and we're very respectful of prevailing wage laws  
9 and certified payroll tracking.

10           ASSEMBLY MEMBER BUCHANAN: I'm not arguing as to  
11 whether -- the integrity of your company. I was just saying  
12 that if we did -- if someone did go back and do an audit of  
13 that, then we would have an level of confidence.

14           MS. ORTA-CAMILLERI: I'm Emerita Orta-Camilleri,  
15 the Superintendent, and before I just -- I just want to say  
16 thank you first of all. Truly this news came in  
17 (indiscernible) felt like another Christmas because we are a  
18 continuing-growth district, so certainly we have some  
19 pending projects that we are waiting to move forward on  
20 based on a decision made today.

21           And I think that one of the things as soon as we  
22 discovered that it was a technical paperwork error, we began  
23 working very closely with OPSC and they have been very  
24 gracious in giving us time to work this out.

25           Certainly our goal is to look at moving forward.

1 We are planning on future projects and have already decided  
2 we will do a third party simply because we now recognize the  
3 importance and certainly to give us some flexibility in  
4 terms of future funding.

5 But at this point -- and when we began to discuss  
6 the implementation for the prior project, it does present a  
7 timeline issue for us. So that's why we're asking the Board  
8 to consider Option 1 knowing that in future projects, we  
9 will be doing the third-party process.

10 ASSEMBLY MEMBER BUCHANAN: Could you elaborate  
11 more on the timeline issue it creates for you if you're  
12 still funded under --

13 MS. ORTA-CAMILLERI: The way I understand it it's  
14 due by March 15th for the -- if we were to do a prevailing  
15 wage for the prior project. If it's the future project, we  
16 will continue to -- we will not put it into place and we've  
17 already discussed that.

18 ASSEMBLY MEMBER BUCHANAN: And what would have  
19 been a reasonable date instead of March 15th?

20 MS. ORTA-CAMILLERI: Since I have never done one  
21 before, I'm going to have to turn to someone that knows how.

22 MR. MIRELES: The March 15th date is the  
23 requirement. The district received an apportionment  
24 December -- according to the priorities in funding rules,  
25 they have to submit a funding request by March 15th. It is

1 the 90-day requirement.

2 ASSEMBLY MEMBER BUCHANAN: Okay. Thank you.

3 CHAIRPERSON REYES: So we have a motion and a  
4 second. Ms. Buchanan, your interest in 2, is that a  
5 substitute motion or --

6 ASSEMBLY MEMBER BUCHANAN: I can accept the motion  
7 I just -- like I said, I think when you switch it, it's an  
8 end run around labor compliance laws and I think -- the  
9 solution I would prefer would be to -- and I guess we can't  
10 in any way change this, would be to allow them to switch  
11 funding to 1D but at the same time require a labor  
12 compliance audit.

13 If that's not possible, I don't want to harm the  
14 district, but I do think it's critically important that --  
15 you know, if there's a way that the spirit of the law be  
16 followed there.

17 CHAIRPERSON REYES: Thank you. Mr. Hagman.

18 ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.  
19 And yeah, I do -- yeah. There are so many different school  
20 districts -- some of our regulations and rules, especially  
21 when you don't do a lot of things all the time, do get  
22 caught up in administrative feats and that's what I see  
23 what's happened here.

24 I'm supporting the original motion, but I also  
25 want to say that at this point, if you do switch funding

1 streams, nothing's being circumvented at this point. The  
2 rules and regulations are followed on the one source of  
3 funding as set by the voters through each of those bonds and  
4 those moneys that should have been done with the third-party  
5 labor compliance oversight will be still available for the  
6 next project that has to be done in that particular way.

7           So basically I don't think we're getting around  
8 anything. We're just kind of moving the different pools of  
9 money which is not something that you like to do all the  
10 time because you want to keep track and there's a lot of  
11 extra work for the staff to keep track of things going back  
12 and forth and hopefully there's not too many exceptions, but  
13 as we have as many number of school districts as we do  
14 throughout the State, there's bound to be some  
15 administrative errors now and then and again we have to look  
16 at each individual case separately.

17           CHAIRPERSON REYES: Thank you. Any additional  
18 public comment on this issue? Okay. Thank you. It's been  
19 moved and second. Please call the roll.

20           MS. GENERA: Senator Hancock.

21           SENATOR HANCOCK: Aye.

22           MS. GENERA: Assembly Member Brownley.

23           ASSEMBLY MEMBER BROWNLEY: Aye.

24           MS. GENERA: Assembly Member Buchanan.

25           ASSEMBLY MEMBER BUCHANAN: Aye.

1 MS. GENERA: Assembly Member Hagman.

2 ASSEMBLY MEMBER HAGMAN: Aye.

3 MS. GENERA: Scott Harvey.

4 MR. HARVEY: Aye.

5 MS. GENERA: Kathleen Moore.

6 MS. MOORE: Aye.

7 MS. GENERA: Lyn Greene.

8 MS. GREENE: Aye.

9 MS. GENERA: Pedro Reyes.

10 CHAIRPERSON REYES: Aye.

11 MS. GENERA: It carries.

12 CHAIRPERSON REYES: Thank you. Okay. That will  
13 take us back to Tab 9 now. **(Priorities in School**  
14 **Construction Funding)**

15 And now you're in position to tell us how the  
16 numbers on page 196 should be amended.

17 MS. SILVERMAN: Well, I think -- obviously the  
18 Board took action to carve out the \$11 million and so that  
19 action brings us back down to, with the approvals today,  
20 \$12.2 million available in cash.

21 MS. MOORE: Can I just ask -- I'm sorry. Calexico  
22 was 3.8 million; correct?

23 MS. SILVERMAN: Right.

24 MS. MOORE: And so -- I'm sorry. I should go  
25 through the Chair?

1 CHAIRPERSON REYES: Now that you --

2 ASSEMBLY MEMBER BROWNLEY: Go ahead.

3 MR. HARVEY: No. Ask it in unison.

4 CHAIRPERSON REYES: Yeah. There you go.

5 ASSEMBLY MEMBER BROWNLEY: I'm assuming you're  
6 going to ask my question, but go ahead.

7 MS. MOORE: Okay. 12.8 was Calexico. The fund  
8 switching should be a wash; right? Revenue neutral because  
9 the -- whatever money they -- whatever fund they had  
10 received it from, it should be going back to.

11 So wouldn't we have more?

12 MS. SILVERMAN: I'll let Michael speak to that.

13 MR. WATANABE: The money freed up by Calexico in  
14 Prop. 55 by doing the fund switch you just did is not enough  
15 to fund the next project in line within Prop. 55. And  
16 that's why no extra projects can be added at this point.

17 MS. MOORE: Say that again.

18 MR. WATANABE: The Belmont project put 8.7 million  
19 back into Proposition 55 pot with the action you just took,  
20 that money is not enough to fund the next project in line.

21 If you look at stamped page 200 --

22 MS. MOORE: Um-hmm.

23 MR. WATANABE: -- right now the only project you  
24 can fund out of Proposition 55 is the one highlighted in  
25 yellow for 11.6 million. There's two other projects that

1 fall on that same Board receive date and application receive  
2 date. The project that's just above it is for 2,289,000 and  
3 we don't have enough residual money in Prop. 55 to fund that  
4 particular project.

5 MS. MOORE: I'm seeing the project below the line  
6 at 7.9. Am I missing something?

7 MR. WATANABE: The line was actually drawn -- the  
8 order of the projects wasn't switched, expending just the  
9 unfunded list. When we pick those three projects on that  
10 Board receive date, you'll see the Board receive date's  
11 August 25th, 2010. You have three projects that have a  
12 November 2nd, 2009, receive date.

13 All three of these projects belong to the same  
14 district, so they prioritized which ones they wanted in an  
15 order, and we do not have enough to fund that \$10 million  
16 project, the middle one of the three.

17 MS. SILVERMAN: So, Kathleen, by adding the  
18 \$8 million back to Proposition 55, that just raises the bar  
19 that we have nearly -- is it 11 million or \$10 million  
20 available in Proposition 55 and so if you look at the  
21 Proposition 55 at page 200, those particular projects that  
22 Michael pointed out just above the line represent the  
23 critically overcrowded school projects. They actually quite  
24 large in sum and we don't have enough residual cash to fund  
25 those particular projects in line. We don't have the exact

1 amount. We're probably short about -- I think close to  
2 about a hundred, 200,000 that we may be short on to provide  
3 at least one funding to one of those projects.

4 MR. WATANABE: See the end balance on the far  
5 right the 1,499,000 in yellow, when -- with your Belmont  
6 action, that put money back into that 1,499,000 to bring it  
7 up to 10,222,147.

8 MS. MOORE: I don't have the revision. I'm sorry.  
9 Okay. Is there any other possibility of funding a project  
10 today with the funds that remain?

11 MR. WATANABE: Out of the 12 million that's  
12 stranded, half of that is in Prop. 1A and I have switched as  
13 many projects as I can possibly do on the entire unfunded  
14 list from beginning to the end to use up all the bond  
15 authority in Prop. 1A to use that cash up and I've touched  
16 every project.

17 MS. MOORE: So what you're saying is that we have  
18 maximized the amount of funding that can go out and the  
19 residual funding that is remaining is unable to go down to  
20 the next projects, so we wouldn't be disenfranchising  
21 them -- I mean we wouldn't -- it is fair as much as it can  
22 be and your recommendation is to move that into the  
23 discussions on how we will prioritize projects in the  
24 future.

25 MR. WATANABE: Correct.

1 MS. MOORE: Okay.

2 MR. WATANABE: We maintained date order and date  
3 received for the entire list. We didn't skip anybody and  
4 we -- going down the list, everyone that certified that they  
5 could come in 90 days, if they can move, we moved them.

6 MS. MOORE: Thank you.

7 CHAIRPERSON REYES: Ms. Brownley, does that take  
8 care of your --

9 ASSEMBLY MEMBER BROWNLEY: Yeah, it does, but just  
10 one follow-up question. So if we have on books -- we have  
11 this balance that's going to be -- will be permanent for a  
12 while, what does that mean to other decision makers relative  
13 to going out, you know, and selling other bonds and so forth  
14 if they're continuing seeing -- what we would perceive, you  
15 know, is not a healthy balance, but a balance nonetheless,  
16 that's -- you know, so I'm just wondering, you know, what  
17 that means and --

18 MS. SILVERMAN: I think what we've tried to do and  
19 we try to be proactive then is, you know, we're learning a  
20 lot through this priority process and I think outside of a  
21 bond sale in the future, I think it would be -- our goal is  
22 to shake the list up, do a certification round if that's  
23 what the will of the Board at the cash management  
24 discussion. Shake up that cash management round and  
25 restructure the list.

1           So when they go out for a future sale, they know  
2 exactly what categories that we need to hit, taxable bonds,  
3 exempt bonds, what have you, Proposition 47, 55, 1D, they  
4 can hit all the specific categories, so that way we cover as  
5 much projects as we possibly can.

6           There is a possibility with this priority round  
7 closing in the middle of March that there could be some  
8 residual cash coming back. If that, then again we can have  
9 that discussion in March 1st of what we would decide to do  
10 with the residual funds coming forward.

11           CHAIRPERSON REYES: Mr. Hagman.

12           ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair. I  
13 was just curious for the next project down, how far off --  
14 from my numbers, it's a few hundred thousand or something  
15 like that; right?

16           MR. WATANABE: In Proposition 55, yeah, about 70-  
17 to a hundred thousand dollars.

18           ASSEMBLY MEMBER HAGMAN: 70- to a hundred  
19 thousand. And has anyone possibly -- just to suggest maybe  
20 contact the project that was next in line and say hey, can  
21 you do with 70,000 less and get this thing out the door  
22 because by the time it comes back around, it maybe costs  
23 them more than 70,000 to do it. If there's something they  
24 could cut out from some other place in their internal funds,  
25 they could make this project happen with that 70,000 less.

1 MR. WATANABE: We have contacted the district on  
2 all three of their projects.

3 ASSEMBLY MEMBER HAGMAN: And they said no.

4 MR. WATANABE: They didn't want partial  
5 apportionments. They're willing -- they are foregoing their  
6 (indiscernible) for the time being, but they did not want  
7 partial grants on the remainder of their funds.

8 CHAIRPERSON REYES: Ms. Brownley, I don't think  
9 your question was answered.

10 ASSEMBLY MEMBER BROWNLEY: You know, I think -- so  
11 what I'm concerned about is for the decision makers, the  
12 treasurer who decides, you know, when they're going to go  
13 out and sell bonds and how much they're going to sell,  
14 et cetera, if they see this balance, what is that indicate  
15 to them? Does that mean, oh, well, schools don't need it;  
16 we'll go sell some other bond because they're got a balance  
17 here and we'll wait, you know, a few more months before we  
18 do this.

19 And of course we don't -- can't anticipate what  
20 their timing is going to be nor the amount, but --

21 MR. HARVEY: Finance is going to advise --

22 CHAIRPERSON REYES: Let me have Finance.

23 MR. FERGUSON: Chris Ferguson, Department of  
24 Finance. Given the nature of this program as a  
25 multi-billion dollar bonding program, the limited amounts

1 that would remain would be -- would not affect the decision  
2 of future bond sales in terms of providing funding for this  
3 program.

4 ASSEMBLY MEMBER BROWNLEY: Okay. You heard it  
5 here.

6 CHAIRPERSON REYES: Anybody else? Yes, public.

7 MR. SMOOT: Good afternoon. Lyle Smoot, Los  
8 Angeles Unified School District. Am I given to understand  
9 that we're like 60- or \$70,000 off of a project?

10 MS. SILVERMAN: That's correct.

11 MR. SMOOT: And your question is would we take the  
12 project without the 60,000?

13 ASSEMBLY MEMBER HAGMAN: Yes.

14 MR. SMOOT: Can I have about ten minutes to call  
15 the district? Half of me says go, but I don't have the  
16 authority to actually say that, but I feel reasonably  
17 certain if given the opportunity to take a \$10 million  
18 project less than -- \$60,000 less, we would absolutely take  
19 it, I'm sure.

20 CHAIRPERSON REYES: Is staff confident with the  
21 numbers that that's what is there or are we flying off the  
22 cuff here and we may have to --

23 MR. SMOOT: You can bring it back next month as a  
24 Consent Agenda as far as I'm concerned.

25 ASSEMBLY MEMBER HAGMAN: Yeah. Mr. Chair, can we

1 just authorize staff to work that out and they work it out  
2 with the school district to bring it back to us as --  
3 because that's what we're kind authorizing. That would be  
4 the next one in line if they could do it.

5 CHAIRPERSON REYES: If they can do it within  
6 existing resources and LA Unified is willing to take the  
7 existing resources, then it has the blessing, and if not,  
8 then it sits there in the balance; is that what I'm hearing?  
9 Is everybody okay? Your comment.

10 MS. GREENE: Can we do that and vote closure?

11 MS. SILVERMAN: We can't actually technically vote  
12 on the item other than bringing back the item if we can fund  
13 it partially.

14 CHAIRPERSON REYES: I think it will be part of the  
15 consent item because --

16 MS. SILVERMAN: Right. That's right.

17 CHAIRPERSON REYES: -- it's not an agenda.

18 MS. SILVERMAN: That's correct.

19 CHAIRPERSON REYES: So we want to put it on the  
20 agenda, but technically vote on it and just put as part of  
21 the consent with the agreement from LA that it would be --  
22 rather than just closing it out altogether.

23 MS. SILVERMAN: Right.

24 CHAIRPERSON REYES: So it's sort of the same thing  
25 as the election of the Chair. Horrible precedent setting.

1 MR. HARVEY: See what you've done.

2 MS. MOORE: And you've only been here one day.

3 CHAIRPERSON REYES: I know.

4 ASSEMBLY MEMBER BROWNLEY: But you're only the  
5 symbolic Chair.

6 (Laughter)

7 CHAIRPERSON REYES: So I want to hear from staff  
8 what's the downside of doing this.

9 MS. SILVERMAN: You know, I think it's better for  
10 us to do a full cash accounting, cash reconciliation of  
11 switching of the funds now that Belmont comes back to 55 and  
12 trying give them the proper number so that then way we can  
13 communicate to LA what the exact number is. If they're  
14 comfortable with the partial funding, we can bring that back  
15 to the Consent Agenda next month.

16 CHAIRPERSON REYES: As part of the Consent Agenda.

17 MS. SILVERMAN: As part of the Consent Agenda.

18 CHAIRPERSON REYES: Okay. Is everybody okay with  
19 that? We don't have to take any action. Just direction to  
20 staff. Since it's not an agenda item, we really can't vote  
21 on it, but thank you. Thank you, Mr. Hagman.

22 MS. SILVERMAN: But we do have to approve the --

23 CHAIRPERSON REYES: We have the approval, yes.

24 Yes. Could I -- yes. Clarification, yes.

25 MS. MOORE: So point of clarification. We are

1 closing this funding round today with this action. This  
2 issue will either resolve and come back as a consent item or  
3 we will have 12 million remaining.

4 MS. SILVERMAN: That's correct.

5 MS. MOORE: Thank you.

6 CHAIRPERSON REYES: Correct.

7 MR. DAVIS: And just be clear, we're voting on  
8 recommendation -- the vote would be on 1 and 2 and excluding  
9 3?

10 ASSEMBLY MEMBER BROWNLEY: I didn't think we were  
11 voting on anything.

12 CHAIRPERSON REYES: No, no, no, no. On Tab 9, we  
13 do have -- approve the State apportionments. Those we can  
14 do.

15 ASSEMBLY MEMBER BROWNLEY: Oh, okay.

16 CHAIRPERSON REYES: So the item that we're sort of  
17 allowing staff to go out there and close it out in terms of  
18 what the dollars are and LA Unified will then have a chance  
19 to say whether or not they'll take the haircut --

20 ASSEMBLY MEMBER BROWNLEY: Okay.

21 MS. SILVERMAN: Right.

22 CHAIRPERSON REYES: -- given the resources  
23 available now as opposed to waiting until other resources  
24 are available.

25 MS. KAPLAN: And this item was tabled, but there

1 has been a first and a second.

2 CHAIRPERSON REYES: Correct. So we're going back  
3 to this item.

4 MR. DAVIS: Clarification of what the motion is on  
5 this item, which one we're voting on.

6 MR. HARVEY: As the maker of the motion, I would  
7 clarify that we are voting on 1 and 2.

8 ASSEMBLY MEMBER HAGMAN: And with the direction --

9 MR. HARVEY: And the direction to staff to --

10 ASSEMBLY MEMBER HAGMAN: If you can make 3 happen,  
11 we'll come back --

12 ASSEMBLY MEMBER BUCHANAN: Isn't that 3?

13 CHAIRPERSON REYES: That's 3.

14 ASSEMBLY MEMBER BUCHANAN: If you add 3, where we  
15 were is the second sentence is direct staff to disburse  
16 excess cash in the future depending on the outcome of cash  
17 management discussions. So even if you have --

18 MR. HARVEY: It was declare the round closed. Do  
19 we need to strike declare the round closed and do the rest  
20 of 3? I'm still confused about --

21 CHAIRPERSON REYES: I think it's important that we  
22 close the round.

23 ASSEMBLY MEMBER BUCHANAN: This round is closed.

24 MR. HARVEY: Is it?

25 CHAIRPERSON REYES: We close the round with the

1 amendment of the LA Unified added on --

2 MS. SILVERMAN: Right. Right. Right.

3 CHAIRPERSON REYES: -- to the extent --

4 MR. HARVEY: So you're carving out LA. Everything  
5 else -- all right. So then I am back to 1, 2, and 3 --

6 ASSEMBLY MEMBER BUCHANAN: Right.

7 MR. HARVEY: -- with a carve-out for the direction  
8 we've given staff on LA Unified.

9 ASSEMBLY MEMBER BUCHANAN: Do you need the  
10 carve-out though because the second sentence here allows  
11 them to come back in the future depending on the outcome of  
12 cash management.

13 CHAIRPERSON REYES: The carve-out is specific  
14 though to the LA deal that we're going to be shorting LA a  
15 few thousand dollars and they're willing to take that  
16 haircut in the interest of getting the funds now.

17 ASSEMBLY MEMBER BUCHANAN: Okay. I apologize. I  
18 thought that was going to come back to us next month.

19 MR. HARVEY: On consent.

20 CHAIRPERSON REYES: On the consent item.

21 ASSEMBLY MEMBER BUCHANAN: On consent.

22 MR. HARVEY: And this still would allow them going  
23 forward to do the cash management once we take action on  
24 that Subcommittee's work.

25 MR. DAVIS: So we're closing out, but we're making

1 an exception for --

2 ASSEMBLY MEMBER BUCHANAN: LA.

3 MR. HARVEY: LA.

4 CHAIRPERSON REYES: Yes.

5 MS. SILVERMAN: For the allocation for  
6 Proposition 55 funds.

7 CHAIRPERSON REYES: Correct.

8 MR. HARVEY: Yes. We got it?

9 MS. SILVERMAN: Yeah, we got it.

10 CHAIRPERSON REYES: Okay. Are we good? All  
11 right. I think it was moved and seconded. It was amended.  
12 Okay. Moved and second. Please call the roll.

13 MS. GENERA: Senator Hancock.

14 SENATOR HANCOCK: Aye.

15 MS. GENERA: Assembly Member Brownley.

16 ASSEMBLY MEMBER BROWNLEY: Aye.

17 MS. GENERA: Assembly Member Buchanan.

18 ASSEMBLY MEMBER BUCHANAN: Aye.

19 MS. GENERA: Assembly Member Hagman.

20 ASSEMBLY MEMBER HAGMAN: Aye.

21 MS. GENERA: Scott Harvey.

22 MR. HARVEY: Aye.

23 MS. GENERA: Kathleen Moore.

24 MS. MOORE: Aye.

25 MS. GENERA: Lyn Greene.

1 MS. GREENE: Aye.

2 MS. GENERA: Pedro Reyes.

3 CHAIRPERSON REYES: Aye.

4 MS. GENERA: It carries.

5 CHAIRPERSON REYES: Thank you. Okay. So we now  
6 then move to Tab 13.

7 MS. SILVERMAN: Tab 10.

8 CHAIRPERSON REYES: Tab 10. Sorry. We jumped  
9 around. I knew I was going to --

10 MS. GREENE: It's all right. You're --

11 CHAIRPERSON REYES: All right. Thank you.  
12 Tab 10.

13 ASSEMBLY MEMBER HAGMAN: **(Charter Schools)**

14 Mr. Chair, I'm going to see if we could bypass this a little  
15 bit based on research and talking to different folks. Can I  
16 make the motion for 180 days unless you want to make this a  
17 big -- Option 1.

18 CHAIRPERSON REYES: Option 1.

19 ASSEMBLY MEMBER BUCHANAN: I'm willing to second  
20 it. It's the charter schools.

21 MR. HARVEY: It's charter schools only. We're not  
22 talking about changing the 90 days -- yes.

23 ASSEMBLY MEMBER BUCHANAN: Right. Right.

24 CHAIRPERSON REYES: Okay.

25 ASSEMBLY MEMBER BUCHANAN: I second that.

1           CHAIRPERSON REYES: Moved and second. Any  
2 comment -- public comment on this? Any questions? Call the  
3 roll.

4           MS. GENERA: Senator Hancock.

5           SENATOR HANCOCK: Aye.

6           MS. GENERA: Assembly Member Brownley.

7           ASSEMBLY MEMBER BROWNLEY: Aye.

8           MS. GENERA: Assembly Member Buchanan.

9           ASSEMBLY MEMBER BUCHANAN: Aye.

10          MS. GENERA: Assembly Member Hagman.

11          ASSEMBLY MEMBER HAGMAN: Aye.

12          MS. GENERA: Scott Harvey.

13          MR. HARVEY: Aye.

14          MS. GENERA: Kathleen Moore.

15          MS. MOORE: Aye.

16          MS. GENERA: Lyn Greene.

17          MS. GREENE: Aye.

18          MS. GENERA: Pedro Reyes.

19          CHAIRPERSON REYES: Aye.

20          MS. GENERA: It carries.

21          CHAIRPERSON REYES: Thank you. Now Tab 13. **Labor**  
22 **Compliance Program proposed regulations.**

23          MS. SILVERMAN: Ms. Tracy Sharp will be presenting  
24 the item.

25          MS. SHARP: Hello. I'm presenting the item on

1 proposed regulations for Labor Compliance Program. And  
2 these proposed regulations will provide a transition period  
3 in the School Facilities Program regulations for school  
4 districts to change from the Department of Industrial  
5 Relations labor compliance monitoring program to a third  
6 party.

7           The reason for the change in regulations was that  
8 the Department of Industrial Relations' regulations were  
9 repealed and districts were directed to seek out a  
10 DIR-approved third party to continue their labor compliance  
11 monitoring of projects funded from Propositions 47 and 55.

12           To facilitate this discussion, I prepared a  
13 handout -- a timeline so that you can see the chronology of  
14 events that have occurred here to help the discussion.

15           So I'll start with a little bit of background that  
16 follows the timeline here. In November of 2002, Assembly  
17 Bill 1506 was passed that added sections to the Labor Code  
18 that required that all projects funded from 47 and 55 have a  
19 labor compliance program and the labor compliance program  
20 just be performed by a DIR-approved party or a DIR-approve  
21 in-house program.

22           Then in 2009 -- and this I apologize does not show  
23 up on your timeline -- Senate Bill X29 was passed and this  
24 changed the -- amended the 2002 sections of the Labor Code  
25 and established the DIR monitoring program.

1           Districts could still use their in-house approved  
2 program, but they could no longer use a third party. And  
3 these -- this Senate Bill applied to all State bond funded  
4 projects, 47, 55, and 1D.

5           But it didn't take effect until the DIR's  
6 regulations were put in place, which occurred on August 1st,  
7 2010. And all contracts awarded after August 1st of 2010  
8 were subject to the DIR program.

9           Then the DIR submitted a request to the Office of  
10 Administrative Law to repeal those regulations on  
11 October 21st of 2010, and at that point, they began  
12 notifying the impacted parties, basically districts who were  
13 utilizing the DIR Labor Compliance Enforcement Program.

14           They were advised -- districts were advised to  
15 seek out a third party from the DIR list of approved vendors  
16 if they were funded from Propositions 47 and 55. If they  
17 were funded from 1D, they didn't have to continue this labor  
18 compliance monitoring program.

19           On November 4th, the Office of Administrative Law  
20 approved the repeal of those regulations. So these  
21 regulations are in recognition of additional time that a  
22 district might need to get that third party in place to  
23 continue their labor compliance monitoring program.

24           Staff presented the proposed regulations at the  
25 January and February Implementation Committee meetings. We

1 proposed amendments to the fund release authorization form,  
2 the Form SAB 50-05, and two regulation sections pertinent to  
3 fund release and the audit.

4           As I noted previously, the purpose of the  
5 regulations is to ensure that the transition is provided for  
6 in regulation and these proposed regulations don't waive in  
7 any way the existing requirements in law for paying  
8 prevailing wage, et cetera. The sole purpose is just to  
9 provide additional time to get this third party in place.

10           So with that, I'd like to direct your attention to  
11 the stamped page 233 that actually shows the changes that  
12 we're making to the regulations. The first section is a  
13 change to Section 1859.90, the fund release process, because  
14 at this point districts are required to provide  
15 documentation that they have an LCP in place if they're  
16 funded from 47 and 55 when they submit their fund release.

17           So this section basically states that all  
18 contracts associated with the project as defined in Labor  
19 Code 1720 and Labor Code 1720 defines a public works  
20 project, that were awarded between August 1st and  
21 November 4th -- that was the DIR enforcement period -- they  
22 must have a DIR-approved third party labor compliance  
23 program or their own in-house approved program if they were  
24 required to and the reference there to the Labor Code  
25 Section identifies these projects as being funded from 47 or

1 55 no later than November 1st, 2011.

2 Then we make the same statement in the audit  
3 section of the School Facility Program regulations. That's  
4 Section 1859.106, the program accountability expenditure  
5 audit. The exact same language is proposed to be placed  
6 there.

7 And the on Attachment B starting on page 234, we  
8 have the changes that we are recommending being made to the  
9 action Form 50-05. Under general information, that same  
10 statement is included so that districts know which projects  
11 are applicable to this change.

12 Then we've also changed Part 5 of the form. The  
13 main change there is we are asking districts on page 235 to  
14 include their contract award date because that is how we  
15 identify the projects that are impacted by this DIR  
16 enforcement period is by their contract award date.

17 And we've given additional space for them to  
18 include multiple contracts if there are more than one for  
19 the project.

20 You'll see the exact same changes mirrored in  
21 Part 7 under joint use projects because these projects could  
22 also be impacted and a technical change at the bottom where  
23 we've asked for the districts to print out the name and  
24 title of the person signing the form, their email address,  
25 and their telephone number to facilitate communication

1 should there be a question.

2           So we've presented all of these changes except for  
3 the Part 7 at the Implementation Committee meetings. We  
4 received consensus on these items there and are bringing  
5 them forward here today.

6           There was a concern raised about projects that  
7 were immediately after the repeal of those regulations, for  
8 example, November 5th forward. Could they be impacted  
9 adversely by the repeal and we are not -- staff is not aware  
10 of any that fall into that category at this time, but as I  
11 said a concern was expressed and the -- we did not reach  
12 consensus on that item, so at this point, we're only  
13 bringing forward the up to November 4th.

14           And staff's recommendation at this point is for  
15 the Board to approve the regulations as shown in  
16 Attachments A and B and as well to authorize the Acting  
17 Executive Officer to file these regulations on an emergency  
18 basis.

19           With that, I'd be happy to entertain any questions  
20 you might have.

21           CHAIRPERSON REYES: Before I take Board comments,  
22 can I take comments from the public so we can have a  
23 different perspective.

24           MR. DUFFY: Mr. Chairman, members of the Board,  
25 Tom Duffy for CASH. We have been concerned that there

1 hasn't been adequate direction to districts in a period  
2 that's really verging on about five months.

3           We've been in the hallway working, Mr. Diaz and I,  
4 on some language that we would suggest to you that could be  
5 utilized by the Board for direction to your staff. I  
6 realize you have the regulatory process and I'm not talking  
7 about putting this into the regulatory process. I'm talking  
8 about direction to your staff of inclusion of this language  
9 in the audit guide that would essentially identify that  
10 districts would have an LCP in place by May 1st of this  
11 year, that the district would enter into a contract from the  
12 period of time when the CMU was basically pulled back which  
13 was November 4th, so November 4th forward through May 1st;  
14 that any district entering into an agreement during that  
15 period of time would have an LCP in place by May 1st, that  
16 retroactively they could enforce that labor compliance  
17 program to make sure that labor compliance was in place.

18           I apologize for the fact that what you have is a  
19 handwritten document or you should have. We were working  
20 this out in the hallway just over the last hour or so with  
21 the assistance of a DIR attorney, so it's not simply lay  
22 person's language, and we'd be happy to answer any  
23 questions.

24           I realize that you have a regulatory process and  
25 that's something that maybe you need to deal with with your

1 staff and the attorney, but I think it'd be really important  
2 for direction to come from the Board to your staff to  
3 communicate with districts that this would be in place now  
4 so that districts would understand what the expectations  
5 are.

6 We believe that this has gone almost five months  
7 without adequate direction. So the intent is that labor  
8 compliance would be in place based upon the prior law,  
9 AB1506, that was in operation up through at least August of  
10 last year.

11 I'd be happy to answer any questions, be happy to  
12 work with you and your staff. The intent is let's make sure  
13 districts know what's expected, that there be an LCP in  
14 place by May the 1st for any projects that have entered into  
15 a contract between that period of time in August -- or I'm  
16 sorry -- in November through the May 1st.

17 CHAIRPERSON REYES: Before Mr. Diaz speaks, I  
18 think the first question I have is has staff seen this.

19 MR. DUFFY: No.

20 CHAIRPERSON REYES: Was staff included in your  
21 conversation with Mr. Diaz?

22 MR. DUFFY: They weren't included in our  
23 conversations outside just over the last hour because this  
24 has been emergent. We asked to meet with DIR and your staff  
25 in -- there were a number of communications during the

1 course of the months in 2010, but we asked to meet with your  
2 staff in December. We asked that an item come to you in  
3 January. We were concerned that there were not  
4 communications to districts. For a variety of reasons, it  
5 was put over and further discussions have taken place.

6           So we have talked to them not specifically about  
7 this language, but about the need, one, to make sure that  
8 there was a line of demarcation as to when districts would  
9 need to be compliant and I realize that it's shorter space  
10 of time than what was in their proposal, but we think that  
11 this is reasonable for districts to be able to comply with  
12 communication from your staff and as the CASH organization,  
13 we have communicated in the past with districts and will  
14 communicate again, but official action from the Board to say  
15 this is the expectation I think is what's needed.

16           CHAIRPERSON REYES: There's an Implementation  
17 Committee that apparently had not reached consensus. So if  
18 the issue's brought out the Implementation Committee and  
19 consensus not reached, I mean does that qualify as having  
20 conversation with staff?

21           MR. DUFFY: The -- we were at the Implementation  
22 Committee, Mr. Reyes, and we brought up the concern about  
23 the time frame and there was a discussion of bringing in  
24 this option, if you will, to talk with you. We have high  
25 regard for the Implementation Committee and the people that

1 were there.

2           There was a recognition that something needs to b  
3 done, but I think you're correct. There wasn't necessarily  
4 a full-on consensus that was arrived at that.

5           The CASH organization represents school districts.  
6 We communicate with school districts. We want to make sure  
7 that what we believe the law in California should be absent  
8 the CMU from SB2X9, that 1506 requirements would be in place  
9 and we really do urge you to take action because, although  
10 we've alerted districts that we believe that this is what  
11 they should be doing, there hasn't been any official  
12 communication from you as a body or from your staff as a  
13 body at least to my knowledge.

14           MS. KAPLAN: Mr. Reyes, as Chair of Implementation  
15 Committee, what was discussed and there was consensus  
16 amongst the Imp. members that were there, which is in front  
17 of you right now, so that's the item of where the  
18 Implementation Committee had consensus of what's in front of  
19 you.

20           There was another item brought that CASH brought  
21 up that wasn't part of the original discussion which I  
22 believe is what you're trying to address right now. And so  
23 there was no discussion really on this other than we need to  
24 have another discussion. Staff needs to be involved. OPSC  
25 needs to look at this and maybe have it come back to the

1 Implementation Committee.

2 But what you have in front of you in the language  
3 that was written was there was consensus, but this was not  
4 fully discussed.

5 CHAIRPERSON REYES: What I have in front of me is  
6 what?

7 MS. KAPLAN: Sorry. Tab 13. What's in Tab 13.

8 CHAIRPERSON REYES: Tab 13 is what --

9 MS. KAPLAN: Tab 13, what was discussed at the  
10 Implementation -- and those who were there of the Imp.,  
11 there was consensus on this language of which Mr. Duffy's  
12 bringing up is another item that we had not -- staff, OPSC  
13 had not prepared anything for discussion this.

14 CHAIRPERSON REYES: Okay. Mr. Diaz.

15 MR. DIAZ: Thank you, Mr. Chair. Cesar Diaz and  
16 we have the State Building and Construction Trades Council.  
17 This item was brought up at the Implementation Committee in  
18 which as representative of the council, we had serious  
19 concerns with what the staff was proposing with regards to  
20 labor compliance programs and actually just allowing a --  
21 basically a school district to have proof that they  
22 enforced, initiated, and contracted with a third party or  
23 did it in house.

24 The nature of the labor compliance program is to  
25 hold a pre-job conference and to monitor the public works

1 project to ensure that there's prevailing wage are paid  
2 during the construction of the project.

3 Our concern was that given the ample amount of  
4 time that staff was recommending that the school district  
5 would then get into construction, finish construction, hire  
6 a third-party labor compliance program or do it in-house and  
7 then review payroll records, in which case there is no point  
8 to have a labor compliance program.

9 We objected to that. The issue came back the  
10 following month. I was not able to attend unfortunately  
11 because I had a sick child and they reached consensus. So  
12 the only reason that they reached consensus is because  
13 basically I was not there representing labor.

14 We have then had subsequent conversations because  
15 we have our issues of concern is basically the commencement  
16 of the construction without the LCP, basically eliminates  
17 the protections of AB1506 which is what our members  
18 advocated for with regards to labor compliance.

19 We've had some meetings with Mr. Duffy and  
20 understand their concerns of what these school districts are  
21 now hearing concerns of mixed messages.

22 That being said, the language that is in front of  
23 you, which is Tab 13, still presents us with that same  
24 problem. We've had a conversation outside with Mr. Woo-Sam  
25 with the DIR to try to reach a consensus that would address

1 the building trades' concern which is to have labor  
2 compliance during the construction and then prior to actual  
3 construction of a project for these projects that fit within  
4 this window.

5 I mean another thing that we're doing here is  
6 we're speaking hypothetically. We don't know exactly how  
7 many projects are impacted by this. One thing would be for  
8 OPSC or maybe DIR to provide us with a list or maybe through  
9 communication from CASH to identify which of these projects  
10 are actually impacted by it so that we're not creating  
11 regulations for the exceptions.

12 CHAIRPERSON REYES: Ms. Sharp.

13 MS. SHARP: I would just like to add that before  
14 the January Implementation Committee, we sent out an email  
15 blast to districts asking them to contact us if they were in  
16 this window of the DIR enforcement period.

17 We were given a list of approximately seven  
18 districts by DIR and we met with them in November or  
19 December. From that and then the additional email  
20 communication to districts, we were contacted by eight more  
21 districts. So we know of a total of about 15 that awarded  
22 contracts during this period and we received confirmation  
23 from all of them that they were in the process of switching  
24 to a third-party LCP or they had 1D funding, so it was not  
25 required to pick up and move forward and all of them by this

1 date theoretically would have them in place based on their  
2 communications with us.

3           They are either already did or they were in the  
4 process at that time. Those are the -- that's the known  
5 universe of projects out there. Could there be others?  
6 Yes, there could be. We have not heard from them.

7           CHAIRPERSON REYES: I'm hesitant to take action on  
8 language that I'm just seeing and staff has not had a chance  
9 to read and give me feedback. This is my first day on the  
10 job and this committee and this is significant issue. And  
11 while I'm somewhat cavalier on some issues and I would be  
12 willing to vote, on this one because it's labor compliance  
13 issues and it's important to my boss, I'm kind of not quite  
14 there yet.

15           The fact that you two worked it out, while I  
16 appreciate that the two party working it out, I always like  
17 to see our staff in those meetings much like the way the  
18 legislators like to see their staff on conversations from  
19 both parties when Finance cuts a deal with the LAO. But  
20 that's just my gut reaction right now. I will --  
21 Mr. Hagman -- Ms. Brownley first, then Mr. Hagman.

22           ASSEMBLY MEMBER BROWNLEY: Well, I agree with the  
23 Chair. I think it's prudent for us to just take a pause  
24 here and take a breath and make sure that we have all of the  
25 appropriate information before us before we make this

1 decision.

2           At the same time, I hope school districts  
3 understand the importance of compliance with LCP and we get  
4 that message out loud and clear. But until then, I think  
5 it's important for us to kind of fully vet this. It makes  
6 me uncomfortable to have, you know, this information coming  
7 up on the dais. After years of making bad decisions based  
8 on that situation, I think it would be prudent for us to  
9 defer till the next meeting.

10           CHAIRPERSON REYES: Mr. Hagman, then Senator  
11 Hancock.

12           ASSEMBLY MEMBER HAGMAN: Thank you. I was just  
13 going to throw a question out to maybe all three groups  
14 here. We have contacted school districts who have projects.  
15 They are in your mind complying with what you want them to  
16 comply with at this point.

17           I was going to say from CASH or from labor, would  
18 anybody see a problem for this to go back and come back to  
19 us next month with maybe some of your suggestions and  
20 timelines put in place. Is there something that may fall  
21 through the cracks right now that I'm not seeing at this  
22 point? It sounds like the schools are pretty much requiring  
23 on it. It sounds like there's -- this is a regulation  
24 change that may affect staff in the future, that there are  
25 some disagreements between major stakeholders here.

1           It sounds like there may be a solution on the  
2 table at this point, you know, proffered to us, but it has  
3 not been to the vetting that we would all feel comfortable  
4 with. I'm just wondering pros and cons from each group and  
5 let me know what you've got.

6           MR. DUFFY: Mr. Hagman, if I may try to answer  
7 your question. As soon as we'd understood that SB2X9 was  
8 being pulled back in terms of regulations, we as an  
9 organization communicated with districts to say it's not  
10 official, but we believe you should continue to comply as  
11 you did in the past with AB1506 requirements and we have  
12 continued to say that. That was back in November.

13           We will -- and if the Board doesn't take any  
14 action today, we will redouble that effort and communicate  
15 again. And I realize bringing in a handwritten document to  
16 you is not normal order, but we have a concern that there  
17 has been now almost five months since there has been  
18 anything really official for districts to really understand.

19           So we were -- and I can't speak for Mr. Diaz at  
20 this moment, but in the hallway, we had looked at each other  
21 and talked about a postponement if that was necessary, but  
22 we believe in the wisdom of this Board. This Board is very  
23 deliberative and very careful and you look out for all  
24 parties as you can.

25           So if it's the will of the Board to put this over

1 so that there can be something official so we can work with  
2 your staff, CASH will certainly do that, but we will also  
3 communicate that this discussion took place and that  
4 districts need to move on in terms of making sure an LCP is  
5 in place.

6 ASSEMBLY MEMBER HAGMAN: Follow-up, Mr. Chair.  
7 I'm sorry. And just so I may understand this. Basically  
8 we're talking about this one time period that basically took  
9 out the third party to review the contracts basically and  
10 then when that got turned over by regulations by DIR, now  
11 the old standard, which is the third-party oversight, is in  
12 place.

13 That kind of took back November 4th when that  
14 happened, the ruling came out, but obviously it takes a  
15 while for school districts to adjust, you know, to get --  
16 hire that third party, whatever, and what you're trying to  
17 do is finalize a date certain when this program has to be in  
18 place and a date certain when going backwards and forwards  
19 to make sure that compliance was there.

20 So from this point forward, we have compliance and  
21 to have some kind of date where you pick to go backwards to  
22 look to see if compliance was done.

23 MR. DUFFY: Yes.

24 ASSEMBLY MEMBER HAGMAN: I would assume these  
25 school districts who have these projects have been well

1 communicated probably through several sources that this  
2 requirement is in place because on November 4th, it kicked  
3 out, and so by the old function of the law, that was the  
4 case. It's just they don't know if they're going to get in  
5 trouble if they didn't have it done December 1st or  
6 January 1st or February 1st by the time they got that  
7 third-party component in there because we haven't given them  
8 direction when that cutoff date is.

9 MR. DUFFY: That -- yes.

10 ASSEMBLY MEMBER HAGMAN: The staff's proposed a  
11 date of November 1st, 2011. It sounds like that's pretty  
12 far -- much further off than the May 1st date that you're  
13 suggesting. But what else am I missing in here for all the  
14 paragraphs. Is that just a date changing but also to be  
15 notified going backwards or --

16 MR. DUFFY: It is -- if I may answer from our  
17 perspective. It's to give districts a date in the future to  
18 say you must have a program in place. If you put a program  
19 in place before that date but the contract was actually let  
20 let's say on December the 1st, did you have the ability to  
21 go back and to check to make sure that prevailing wage was  
22 paid during that time and any violations were covered.

23 By virtue of what's suggested here, we believe  
24 districts can do that and they will have to have some work  
25 with contractors to do that because the language may not be

1 in a contract --

2 MR. HAGMAN: Maybe get the documents together and  
3 things like that.

4 MR. DUFFY: Yes.

5 ASSEMBLY MEMBER HAGMAN: And such.

6 MR. DUFFY: And boards enter into a contract with  
7 a labor compliance entity, so it's something that's  
8 typically noticed, as you know, at the local level. Just  
9 like this Board, something's noticed, the Brown Act's  
10 followed, and all that.

11 They may do a -- ask for quotes from five or six  
12 entities, just some time frame is what we're envisioning to  
13 need to do that and such is not in place at this time.

14 ASSEMBLY MEMBER HAGMAN: And correct me if I'm  
15 wrong, other members too. From most of my dealings with  
16 school districts in the past and present, I don't know  
17 anybody who does anything because they have requirements for  
18 prevailing wage anyway. It's just whether or not they keep  
19 their records a certain way or not with a third-party  
20 auditor versus if they do it in-house at this point;  
21 correct?

22 ASSEMBLY MEMBER BUCHANAN: Well, the contractors  
23 are keeping records not the school district.

24 ASSEMBLY MEMBER HAGMAN: Okay. So it's who keeps  
25 the records and whose oversight basically.

1           MR. DUFFY: AB1506 put in place requirements that  
2 made it very -- a very proactive force of people or third  
3 party at the school district level to comply. So the  
4 policing is taking place at the local level rather than at  
5 the State level and so what we're saying is that that  
6 policing needs to be reestablished if there's been an  
7 interruption.

8           ASSEMBLY MEMBER HAGMAN: Down at the local level  
9 again.

10          MR. DUFFY: Yes.

11          ASSEMBLY MEMBER HAGMAN: With a third party.

12          MR. DIAZ: Assembly Member, yes, that is correct.

13          You have to understand that also the use of a labor  
14 compliance program has been in place for these two bonds  
15 for -- the experience has already (indiscernible). There is  
16 a website on the Department of Industrial Relations that  
17 lists all the certified LCPS --

18          ASSEMBLY MEMBER HAGMAN: Qualified.

19          MR. DIAZ: -- involved. So basically a school  
20 district right now, whether they, you know, basically knew  
21 that as of November 4th, the old regulation -- the old law  
22 was in place. They could go out and begin that process to  
23 hire the third-party labor compliance program.

24                 So providing a year out -- even providing a  
25 May 4th is way too much time. You're talking about a

1 meeting, (indiscernible)-days notice, Brown Act, all that  
2 could be done within weeks. We understand that.

3 So the more we wait, the longer we push it out,  
4 the more, you know, problems we're creating because we're  
5 allowing more projects to fit within that window.

6 ASSEMBLY MEMBER HAGMAN: Okay. And then again  
7 part of -- I hope you indulge me here, Mr. Chair, but I  
8 just -- understand this.

9 So the difference between what staff's proposing  
10 which is the November deadline and what you guys worked out  
11 in the hall is this May deadline. Okay. We're toward the  
12 end of February right now, so even if you decide to take  
13 that action today and if a district wasn't compliant at this  
14 point, they would have to have the 30-day notice and stuff  
15 like that. That cuts it close. I mean so you can't really  
16 put it off and still concur with that May 4th deadline if  
17 you want to do that because you won't have the 30 days.

18 I'm hearing also from staff that from their survey  
19 of the projects they have that those contracts -- those 17  
20 school districts are in some form or another following 1506,  
21 just not official because we don't have the rules and regs,  
22 but they technically are following it.

23 I would agree that seems like a year or -- all  
24 the way out to November probably too far. Some time you  
25 can't reduce any more, if we actually physically make a

1 regulation than what's proposed because if they weren't in  
2 compliance, you wouldn't be able to do it -- legally give  
3 notice and do it.

4           So it sounds the earliest date you could  
5 physically put in there is the date you suggest and -- but  
6 you're out to November and too long, but I don't know what  
7 the Board's pleasure is, but at least I understand it now.

8           CHAIRPERSON REYES: Before I go to Senator  
9 Hancock, Finance, do you have a comment?

10           MR. FERGUSON: Chris Ferguson, Finance. Yeah.  
11 Just to clarify, the regulations that are in that binder  
12 address only those projects that were affected by the  
13 regulations that were put in place by the Department of  
14 Industrial Relations and then suspended.

15           They do not affect any project after that date.  
16 The proposal -- the handwritten proposal you have in front  
17 of you will allow projects after that date until May 1st of  
18 2011 to comply with an LCP.

19           It is the Department of Finance's position that we  
20 would support the regulations in the binder with the caveat  
21 that we move it to a July 1st date of 2011 for those  
22 projects and we would posit that the -- upon suspension of  
23 those Department of Industrial Relations regulations that a  
24 school district was legally required to have an LCP in place  
25 for any contract let after that date.

1           CHAIRPERSON REYES: Thank you. Senator Hancock.

2           SENATOR HANCOCK: Well, that's confusing again. I  
3 thought I was tracking very nicely with Assembly Member  
4 Hagman's questions.

5           And my question was simply does putting this off  
6 for a month give any window of opportunity for work to go  
7 forward without a labor compliance agreement or are the two  
8 of you in agreement that putting it off for a month is not a  
9 problem. It does seem to me that we ought to move the date  
10 up.

11           MR. DUFFY: I think what staff has relayed,  
12 Senator, is that there's projects that are complying and  
13 we're looking at the possibility with this regulation and  
14 honestly the more I think about it, the less sense it makes  
15 that we have anything down here and to just say, you know,  
16 you have to comply with labor compliance programs after  
17 November 4th, if we had that --

18           SENATOR HANCOCK: Yes.

19           MR. DUFFY: -- do it immediately. Maybe even July  
20 is way too long and maybe it should be April. I just -- I  
21 agree with you that it sends a very confusing message to the  
22 rest of those that don't fit in that window that labor  
23 compliance is not needed until (indiscernible).

24           SENATOR HANCOCK: So if we took the position that  
25 labor compliance was needed on November 5th, that by default

1 as soon as the previous regulations were suspended or  
2 eliminated, the old rules kicked in, 1506, that would mean  
3 the only issue would be to go back and make sure that  
4 everybody who started the project after November 5th  
5 actually did have a labor compliance agreement.

6 MR. DUFFY: And, Senator, if I may respond, that's  
7 essentially what we, the CASH organization, is attempting to  
8 ameliorate because we believe that that is not reasonable  
9 when the agency that was to implement the new rules under  
10 the new law under SB2X9 with the CMU, the districts that had  
11 been following 1506 were now believing something else would  
12 take place.

13 And for the State to make a change dramatically  
14 and say the next day you must comply with the old law is  
15 confusing and I believe it's unfair especially if it would  
16 damage their funding source. And remember during this  
17 period of time, we were in a mode, Senator, where you as a  
18 Board were trying to make sure that you were having projects  
19 go out and get under contract and you were funding these  
20 projects in the 90-day window.

21 We actually met with the Chair of the Allocation  
22 Board and others starting last June, identifying that there  
23 may be pressures because of SB2X9 implementation in which  
24 you were trying to do funding priorities.

25 So we anticipated that there may be some issues

1 and began to discuss that. There was indeed an issue and  
2 what we're after here is that there be no harm to any  
3 district that was not within that window period and I agree  
4 with what Finance said, that certainly what these  
5 regulations address.

6 We're trying to make sure that projects after that  
7 period of time -- and you funded in December \$1.4 billion  
8 worth of projects -- that no district is harmed there  
9 because the State really -- it may have changed because DIR  
10 said whoops, there was a mistake here, but affected policy  
11 change from the body that basically apportions the funds and  
12 then audits the expenditure of those funds, there was  
13 silence. That's why we asked for a meeting with the Chair  
14 and DIR and OPSC in December because there was no discussion  
15 of this and we believe that some official communication from  
16 the Board was important.

17 So what we're asking for is -- and if you don't  
18 take action today, that's fine, but what we're asking for is  
19 an official communication from the Board that a labor  
20 compliance program needs to be in place by a particular time  
21 and we have basically agreed with the 60-day period. It's  
22 approximately 60 days -- for all projects, those that were  
23 under the CMU window and those after.

24 CHAIRPERSON REYES: Ms. Silverman, you had body  
25 language that told me you wanted to say something.

1 MS. SILVERMAN: Well, I think really all we've  
2 tried to do is bring clarity and you're right, Cesar. I  
3 mean it's going back to the old rules. That's really what  
4 we're talking about and I think the package here really  
5 outlines going back to those rules.

6 I think we were trying to provide a date --  
7 because we did hear from some of the community, we did meet  
8 with CASH. There were some concerns, but again we're  
9 talking about what the package here is trying to accomplish.

10 I think we have a narrow gap of projects or school  
11 districts that may have this issue, but they knew the rules  
12 were going back. They knew the rules were going back to a  
13 labor compliance program.

14 So I mean I think staff is open to being flexible  
15 to changing that date to November 1st to something else and  
16 I think we need to move this package on. I think we've  
17 communicated districts. I think the Implementation was  
18 trying to provide some date certain so that way we gave some  
19 people clarity as far as if the audit issue came up.

20 I think we shared with you, Mr. Duffy, with DIR if  
21 there's some issues that came about that obviously we'd work  
22 closely with you and DIR to try to resolve those issues and  
23 I think that's exactly what that package is doing today.  
24 And I think at some point we have to move on.

25 MS. KAPLAN: And just --

1           CHAIRPERSON REYES: All right. Thank you. Hold  
2 on, Ms. Kaplan. Hold on. I have Ms. Moore and then I have  
3 Ms. Buchanan, then Mr. Harvey.

4           MS. MOORE: I think this has been an incredibly  
5 confusing issue for school districts and we have two laws on  
6 the books, one that removes the LCP program from being  
7 monitored at the local level to being monitored through the  
8 DIR and then November 4th, that was -- the regulations  
9 around that ceased and we say that the school districts are  
10 now to comply with old law with -- while the new law still  
11 sits on the books.

12           I think it's confusing to school districts, and I  
13 thought it was important that we should take action today so  
14 that it is clear particularly because we apportioned about  
15 1.7 billion over December and January.

16           And the -- I had one question and that is many  
17 people have said that everyone should have known that it  
18 changed back on November 4th. But how would districts know  
19 that? There wasn't an action of this Board. There was  
20 perhaps promulgation by the DIR that said we're not moving  
21 forward with our regulations and that's what stopped this --  
22 that's what we have this group of projects.

23           But I don't -- I'm not sure that all districts  
24 know as of November 4th they're now under the new -- the old  
25 law -- the new-old law and so I think that's very important

1 that we say that to them.

2 I'm curious -- because we never talked about it  
3 when we apportioned 1.7 billion. LCP was not an issue we  
4 discussed. It's been an underlying program all this time.  
5 47 and 55 have always been under LCP. What changed -- and  
6 it was a dramatic change to be at the State level because  
7 then you're all those third parties out there and all  
8 those -- the infrastructure that existed for that program  
9 was told it's moving to a centralized infrastructure.

10 So I'm wondering -- and I do think that November  
11 is a long time for projects that we now may be 18, maybe  
12 more, we don't really know that universe yet, and I think  
13 that we could have agreement probably on a more current  
14 date.

15 But I also think that we should be empathetic to  
16 districts that may be after November 4th and prior to this  
17 meeting today have been confused and don't know what they  
18 should be doing.

19 We say they should be doing LCP because it's the  
20 law, but we also created a lot of confusion when we  
21 promulgated regulations and then we ceased those. Not we.  
22 Not this we, but another we.

23 So I'm wondering if there's a compromise that says  
24 that the group of projects -- you know, I think you call  
25 them Project A, that you were -- that you all teed up for

1 November date, we move that date to July and that all  
2 projects after November 4th are well notified that they are  
3 47 and 55. They are under the LCP program.

4           However, if they let a contract between  
5 November 4th and today and they are in a -- and they do not  
6 have an LCP in place, well, let's surface those as well and  
7 we say today everyone is under the LCP program. That's the  
8 underlying law, but come forward to us and the Board will  
9 have -- will hear any of those problems that may have ensued  
10 because of the I think confusion out there for school  
11 districts. I don't know. I'd be curious your response or  
12 others' responses on that.

13           CHAIRPERSON REYES: I'd like to go to Ms. Buchanan  
14 now, then Mr. Harvey, and then Mr. Hagman and then turn it  
15 back to staff. You've heard a lot of comments from folks  
16 and then you can address all those issues.

17           ASSEMBLY MEMBER BUCHANAN: I know you've done a  
18 great deal of clarifying, so I just ask you to indulge me  
19 along with everybody else.

20           I think I was the one that asked for this chart.  
21 So if I understand everything correctly and read this chart  
22 correctly, prior to August 1, 2010, AB1506 was in effect for  
23 labor compliance; correct? And AB1506 allowed you to either  
24 have an in-house program or to contract with an outside  
25 labor compliance agency; right?

1           But the local school district was responsible for  
2 ensuring that one of those two things happened for labor  
3 compliance; right?

4           Then in 2009, SB2X9 passed. That took away the  
5 ability to contract with a third party, so you either had to  
6 have a program in-house or a contract with the DIR; correct?

7           MR. DUFFY: As of August 1st.

8           ASSEMBLY MEMBER BUCHANAN: And of August -- yeah.  
9 It was passed in 2009, became effective August 1, 2010.  
10 Okay.

11          MR. DUFFY: And you had to be given --

12          ASSEMBLY MEMBER BUCHANAN: Right.

13          MR. DUFFY: -- approval by DIR if you ran it  
14 in-house.

15          ASSEMBLY MEMBER BUCHANAN: Right. But you --  
16 basically your two options were in-house -- okay -- because  
17 DIR said you could or DIR, but DIR was in control there.  
18 Okay.

19          So then in October of that year, less than two  
20 months later, the regulations were repealed and it says here  
21 that school districts were directed to follow 1506. So were  
22 school districts then notified that the SB2X9 was no longer  
23 effective and they had to follow 1506? Because I'm picking  
24 up from some people that districts were -- didn't know. Did  
25 they -- were they notified?

1 MS. SHARP: That information was taken from the  
2 DIR website.

3 ASSEMBLY MEMBER BUCHANAN: Right.

4 MS. SHARP: And on the website, they posted their  
5 appeal package and they also posted a series of frequently  
6 asked questions and one of those specific questions was kind  
7 of a what do I do now and the direction was depending on  
8 your funding source, you seek out a third party.

9 ASSEMBLY MEMBER BUCHANAN: Okay. So --

10 MS. SHARP: But the only thing --

11 ASSEMBLY MEMBER BUCHANAN: -- but we don't know if  
12 they -- we don't know if districts were actually sent a  
13 letter though. It was on a website. Do we know if they  
14 were sent a letter notifying them of this change?

15 MS. SHARP: I don't know the specific form of  
16 communication from DIR was.

17 MS. SILVERMAN: We actually have CIR in the  
18 audience though.

19 MS. KAPLAN: But I also know on behalf of OPSC  
20 that an email was sent out and a blast was sent out to  
21 school districts that the regs were repealed afterwards. I  
22 do know I have that email.

23 ASSEMBLY MEMBER BUCHANAN: Okay. So I'd just like  
24 to know -- so were school districts notified of the repeal  
25 of SB2X9 and that they needed to comply with AB1506?

1           MR. WOO-SAM: Let me answer it this way, if you'll  
2 indulge me. There were -- my name is Mark Woo-Sam. I'm the  
3 Deputy Director of Legislation for the Department of  
4 Industrial Relations.

5           And in -- contracts which were entered into after  
6 August 1st were subject to the SBX29 new program. For  
7 school districts which complied with that obligation to  
8 contact DIR and provide funding, we did contact those  
9 distinct schools about our appeal and notified them of what  
10 to do next.

11           ASSEMBLY MEMBER BUCHANAN: Okay. So in other  
12 words all the contracts that were out there prior to  
13 August 1 that were subject to AB1506 went by those rules.  
14 Contracts that were out there between August 1, 2010, and  
15 October 21st, 2010, any of those contracts, you notified  
16 those school districts to tell them that DIR would not be  
17 doing the monitoring and they had to comply with AB1506.

18           MR. WOO-SAM: To the extent the school district  
19 came to us with the respect to utilize --

20           ASSEMBLY MEMBER BUCHANAN: Okay. So there could  
21 have been one. So then on August -- excuse me --  
22 November 4th is when the regulations were actually suspended  
23 and it says here 1506 became effective again.

24           Now, if I read this correct, any contracts that  
25 were signed after November 4th, 2010, had to comply with

1 AB1506; correct?

2 MR. WOO-SAM: Correct.

3 ASSEMBLY MEMBER BUCHANAN: So the only contracts  
4 in question are the ones in this little, you know, say  
5 three-month time period where they thought that they were  
6 going to have to do their compliance through the DIR, but  
7 that changed. So that's just that three-month window.

8 So now we're talking about potentially having a  
9 deadline for compliance that's another year out. I would  
10 suggest that most of those projects will have been completed  
11 by the time the deadline is in effect.

12 So if they're going to comply, it seems to me they  
13 need to get -- and it's going to be anything that's going to  
14 be meaningful, it seems to me that they need to do something  
15 sooner. Now, that's not to say that, you know, there  
16 couldn't be a project that fell through the cracks or a  
17 district, but if the districts were notified, were sent the  
18 email, then they should be doing something because I  
19 can't -- it's hard for me to believe that a district  
20 would -- if they thought the DIR was doing the compliance, I  
21 mean they've got to know something's happening.

22 So from that point of view, it makes sense to me  
23 to move it up because like I said, you could have full  
24 schools built in that time frame. If you let out a contract  
25 August 1, 2010, and you're -- you don't have to have

1 anything in effect till November 11th, 2011, that's well  
2 over a year.

3           So I think since we're just talking about that  
4 window, it makes sense to if we -- to notify districts and  
5 for them either to hire a labor compliance firm off the  
6 website or hopefully -- you know, any district that has  
7 ongoing projects and it wasn't just a single project would  
8 have to have something in place anyway, if they would have  
9 had a contract that they would have signed either before  
10 August 1, 2010, or after November 4th, 2010.

11           So I don't know if I'm missing something there,  
12 but that's --

13           CHAIRPERSON REYES: Before you go -- yeah. I  
14 think your -- your point's well taken. In fact what I was  
15 proposing that when I looked at the regulations and I wrote  
16 down here instead November 1st, July 1st, but I'm hearing  
17 everything. I think May 1st is more reasonable giving that  
18 word out there and I'm looking at page 233.

19           The question that -- if we were to move with -- on  
20 page 233 instead of having the two sections of  
21 Section 1859.90 and 1859.106, I would suggest that the  
22 November 1st date of 2011 be changed to May 1st of 2011 and  
23 that is keeping folks in notification of the LCP.

24           The question that this action would not address is  
25 those projects after November 5th and on for that window and

1 that's what they were attempting to work out with the  
2 language that we really just got today.

3 Arguably we can bifurcate this I think and take  
4 this action now and if the issue really surfaces of those 15  
5 school districts that have an issue, they can come forward  
6 and we can take a look at them then.

7 ASSEMBLY MEMBER BUCHANAN: I thought my -- my  
8 question was contracts that were signed after November 4th  
9 have to comply with the old AB1506, so why does it apply to  
10 them?

11 CHAIRPERSON REYES: I think the issue that CASH  
12 raises -- and correct me if I'm wrong -- is your view is  
13 that because there were no regulations in place, they should  
14 to be required to and that was an issue the Implementation  
15 Committee looked at and could not find consensus.

16 So what I'm saying is that is not something that  
17 we're going to excuse them for in this action or should we,  
18 in my opinion. So the action that the Board ought to  
19 consider now is moving forward, when do the new LCP kick in  
20 and I think your point is well taken --

21 ASSEMBLY MEMBER BUCHANAN: Right.

22 CHAIRPERSON REYES: -- that going to November 1st  
23 of 2011 is too far forward. So we really need to move it  
24 out closer to -- I mean it could be immediate.

25 ASSEMBLY MEMBER BUCHANAN: I agree with you. I

1 just thought -- my understanding was that 1506 went back  
2 into effect November 4th, 2010. So there were regulations  
3 in effect then.

4 CHAIRPERSON REYES: Right. So we would not have  
5 to do anything to that.

6 ASSEMBLY MEMBER BUCHANAN: Right. That's exactly  
7 right.

8 CHAIRPERSON REYES: Yeah.

9 MR. DUFFY: Mr. Chairman --

10 CHAIRPERSON REYES: Yes.

11 MR. DUFFY: -- if I may. On this, when SB2X9 was  
12 to go in effect, DIR did a number of things to communicate  
13 over a period of months to get ready for this. I don't --  
14 and CASH doesn't believe it's good governance to be able to  
15 change direction in one day and expect compliance to occur  
16 after a long period of readiness for a new law.

17 So we believe that something that's worth  
18 proposing is reasonable to give a notice because maybe there  
19 was something that was sent out by DIR, but this is the  
20 entity that provides funding and this is the entity that  
21 does the audits to make sure that districts are compliant.

22 When 1506 began, we asked this body to basically  
23 intervene because DIR has no allocation board to provide  
24 input to it and through this Board at that time, we brought  
25 together a communication that made things work and that's

1 what we're asking for here.

2 We believe that 1506 does apply. We believe as  
3 Ms. Moore has said that this has been a confusing time and  
4 what we're asking for is for communication -- because that  
5 has not occurred -- from this body to go out. And again we  
6 started asking for this right after the November 4th date  
7 occurred and we realized there was issue.

8 So we're asking for you to give -- to be patient  
9 with districts and not to be harsh in saying immediately you  
10 need to be compliant when they were expecting that they  
11 needed to compliant with a different law.

12 So we think that's reasonable and what we do is we  
13 communicate the actions of this Board, the direction of this  
14 Board, and again we're not asking for a regulation change.  
15 And I appreciate what you said there a minute ago. You said  
16 you wanted to bifurcate and I think that that may satisfy  
17 your staff and be hopeful that thinking that --

18 CHAIRPERSON REYES: Well, no, it doesn't satisfy  
19 my staff. I'm looking to provide what is -- you know, what  
20 people are looking at. So it's not satisfying staff --

21 MR. DUFFY: Okay. Okay. Well, the intent is --  
22 my comment was they brought something to you and I've  
23 brought something a bit different with Mr. Diaz.

24 CHAIRPERSON REYES: Um-hmm.

25 MR. DUFFY: And so as not to confuse things, if

1 you were to take the action of those projects that were in  
2 that window period, that's one thing. If there is direction  
3 that we're suggesting here, even it was simply directing  
4 your staff to communicate to a district that you need to be  
5 in compliance by this date, then we will communicate to a  
6 district, says well, they paid attention to our  
7 communications to say you really need to put this in place.  
8 The Board has recognized that there's been inaction and a  
9 lack of communication and that we now as the Allocation  
10 Board are saying please get this done by this time frame.

11 That's what we're recommending to you.

12 CHAIRPERSON REYES: Mr. Harvey and then  
13 Mr. Hagman.

14 MR. HARVEY: This is a very healthy and worthwhile  
15 conversation. I mean that, but it is not an easy one. I'm  
16 wanting to know why we need regulations at all. Why can't  
17 we communicate simply, directly with school districts  
18 because on the one hand I am not wanting to create  
19 forgiveness for districts that should be complying and I  
20 understood that one of the elements of Mr. Duffy's proposal  
21 is it brings more projects into the forgiveness.

22 We really need to be looking at those projects  
23 that were in the window period only.

24 So I don't know if regulations are necessary  
25 either. Why can't we simply communicate. And I say that

1 knowing full well that we haven't had the best of luck with  
2 the Office of Administrative Law getting regulations  
3 approved timely so we can be whipping off very quick time  
4 frames and it languishes in another body. We don't control  
5 that.

6           In fact we've had some angst over some very  
7 necessary changes in the seismic area. I mean, ye gods, so  
8 if we can do it administratively without involving another  
9 body that may take umpty-ump months, I would prefer doing  
10 that and personally I would prefer only addressing those  
11 projects that Ms. Buchanan referenced, those that were  
12 caught in that -- that no-man's land. Everybody else should  
13 have know what the rules are. Ye gods.

14           ASSEMBLY MEMBER BUCHANAN: Could I suggest then  
15 that what would make sense is to deal with those projects  
16 but in a letter to districts explain that, you know, this is  
17 the dates for those projects, but all projects, you know,  
18 funded through Prop. 47 or 55 are expected to comply with  
19 AB1506. I think that's really what we're saying; right?

20           MR. HARVEY: Yes.

21           CHAIRPERSON REYES: Mr. Hagman.

22           ASSEMBLY MEMBER HAGMAN: Thank you again,  
23 Mr. Chair. And this does bring up a lot more questions than  
24 solutions out of here. I mean why we can't actually  
25 physically write a letter when we change something as major

1 as this to get someone to sign that says they received that  
2 notice and get them in compliance, it's taken us four months  
3 to address something that happened back in November. That  
4 goes to the system again. You know, an email that posts up  
5 on the website isn't the best way to communicate with anyone  
6 doing this stuff.

7 I also know from, you know, previous contracts  
8 that anything -- you know, I don't know if we have different  
9 forms, but you'd sign for acknowledgement when you have your  
10 projects updates. You have all these different things. It  
11 could be a change order. God, it's probably 200 sheets of  
12 paper you have to fill out the make the change order and put  
13 a door one place or the other.

14 There's no way that we have any way to back up  
15 from back from the time November 4th to current that our  
16 office or the rules have been changed up here when you start  
17 pulling funds down that you sign and acknowledge that things  
18 have changed, especially if we had that big allotment back  
19 in December, the billion plus. I hope the rules are very  
20 clear for those who took that money that the rules were in  
21 place.

22 And, you know, I think somebody suggested pretty  
23 much the same thing. I think we should basically write a  
24 letter, you know, do whatever regulations you have, write a  
25 letter to each person who has a project during the time in

1 question and say where are you at this point. Are you in  
2 compliance, are you not, have them sign, you have something  
3 on record.

4           Anybody that falls out of that, then we can deal  
5 with them separately based on their circumstances and try to  
6 figure out. But to have, you know, months to go on and  
7 making new rules on top of old rules, you know, to -- like  
8 you said, Scott, they should make a phone call -- or not a  
9 phone call. I want everything in writing. I mean you have  
10 document everything as a contractor very much. Everything's  
11 documented -- to send out some kind of documentation and say  
12 where you at, this is there. But that should have been done  
13 since November 5th probably way back when.

14           But come back and say where you at right now, are  
15 you in compliance, are you in trouble, let's work with you  
16 now to bring you in compliance if you're not in compliance  
17 but do so very much hands on versus making more rules that  
18 you have to propagate out and make sure, well, I didn't get  
19 the second rule that changed the first rule and I didn't get  
20 the notice. It seems like it gets more complicated versus  
21 doing the one on one handout stuff.

22           CHAIRPERSON REYES: Well, let's hear from our  
23 attorney before hear from our Executive Officer.

24           MR. DAVIS: Mr. Chairman, just a couple of items I  
25 wanted to bring up. One of them's just a point of order.

1 I'm looking at the way this item in Tab 13 is drafted and it  
2 looks like as far as what's on our agenda is either to  
3 approve it or not approve this specific regulation.

4 I'm not clear that we can make a modification to  
5 the language that's already been here, but we can decide to  
6 put it over for another meeting. If we -- if this had  
7 options to it or if it had something that could change these  
8 parameters -- I'm a little nervous about us ad-hoc changing  
9 the language of the reg here as this item is set.

10 CHAIRPERSON REYES: So procedurally staff makes  
11 recommendations and as a Board, we have to take their  
12 recommendation or nothing? We can't alter the  
13 recommendation one way or the other?

14 MR. DAVIS: I think the item can be drafted in a  
15 way that would have allowed more options to the Board. This  
16 one doesn't seem to give us a whole lot.

17 CHAIRPERSON REYES: Ms. Silverman.

18 MS. SILVERMAN: All we're recommending is changing  
19 the date. I think everyone's comfortable with that.

20 CHAIRPERSON REYES: Yeah. Changing the date from  
21 November 1st to May 1st and even though Mr. Harvey's point  
22 is well taken, that the Administrative Office of Law may not  
23 review this until sometime in the summer. We will then go  
24 public in saying we do want to have this in May.

25 MR. DAVIS: I (indiscernible) that as

1 consideration.

2 CHAIRPERSON REYES: Okay. All right.

3 MR. DAVIS: The other issue is just to make clear  
4 to the Board that this -- the original AB1506 and this  
5 statute in the Labor Code, it has certain requirements on  
6 the board as far as auditing and that was a lot of the  
7 reason why we were looking for certainty of how we would go  
8 back and audit to find whether or not there's compliance  
9 with that statute.

10 We have some -- statute does provide this Board  
11 some flexibility as far as -- the way I interpret it --  
12 provides some flexibility on how we carry out that duty, but  
13 the Board has a duty to make sure that there's a labor  
14 compliance program in place and that's why these regs were  
15 suggested in a way to make certain to the school districts  
16 when we're going to be looking for compliance since there  
17 was this confusion as far as the change in regulations.

18 CHAIRPERSON REYES: So you're looking at the  
19 regulations as more of a force of law sort of thing for  
20 audit purposes?

21 MR. DAVIS: AB1506, yes. It does require us to do  
22 an audit for labor compliance.

23 CHAIRPERSON REYES: Okay. Ms. Silverman, the  
24 suggestion's been made can this be administratively and not  
25 have regulations or amending existing regulations to have.

1 I think the Board has been pretty vocal that we do want the  
2 labor compliance program retroactively and prospectively.

3 MS. SILVERMAN: Right. Well -- I'm sorry. Yeah.  
4 We have been communicating since the repealing of the  
5 regulations. So we've been doing it by building blocks. We  
6 have a monthly publication out there. We also have been  
7 sending email blasts to school districts, especially with  
8 those ones recently awarded on the apportionments.

9 So that communication has been ongoing, about if  
10 you have been awarded Prop. 55 or 47 funds that you have to  
11 have a labor compliance program in place. So I just wanted  
12 to clarify that.

13 But as far as administratively, I think that's  
14 something that obviously we can do and if there are issues  
15 that come up, we can raise and elevate those issues to the  
16 Board prospectively.

17 ASSEMBLY MEMBER BUCHANAN: So are we going to  
18 change the date or what are we going to do?

19 MR. HARVEY: So for clarity, are you suggesting  
20 that we --

21 SENATOR HANCOCK: Through the Chair.

22 MR. HARVEY: I'm sorry.

23 ASSEMBLY MEMBER BUCHANAN: Just put me in line.

24 CHAIRPERSON REYES: Okay. Okay.

25 SENATOR HANCOCK: I mean I wanted to follow up on

1 what Mr. Harvey said which seemed like the best way out is  
2 something that we can move ahead and do, which is send a  
3 clarifying letter that from November 5th on or upon repeal,  
4 the 1506 is in effect and --

5 CHAIRPERSON REYES: Has been in effect.

6 SENATOR HANCOCK: -- has been in effect and that  
7 if districts have not been in compliance, they're expected  
8 to be in compliance for audit purposes by May 1st.

9 CHAIRPERSON REYES: Ms. Sharp, will that work?

10 SENATOR HANCOCK: I mean I would make that as a  
11 substitute motion.

12 CHAIRPERSON REYES: Well, actually we haven't had  
13 a motion.

14 MR. HARVEY: We haven't had a motion.

15 SENATOR HANCOCK: Yes. I thought you --

16 CHAIRPERSON REYES: We didn't really know what we  
17 wanted to do. What I suggested -- I suggested I would  
18 entertain a motion that takes on the attachment -- the  
19 amendment to the regulations, but rather than November 1st,  
20 for the point brought by Ms. Buchanan, that we make that  
21 May 1st and that would be the motion that I would like -- I  
22 would entertain.

23 You're coming up with -- and then the question was  
24 can we do it administratively instead of through a  
25 regulatory process and I guess I'm concerned that while

1 administratively we can convey the message of what the  
2 expectation is, does that give the auditors enough force of  
3 law to compare it to -- do they have a big enough  
4 two-by-four when they have to go audit and I don't know the  
5 answer to that question.

6 ASSEMBLY MEMBER BUCHANAN: And what do we do when  
7 we have an appeal?

8 MR. DUFFY: Mr. Chairman, if I may.

9 CHAIRPERSON REYES: Yes.

10 MR. DUFFY: The -- you -- through the actions of  
11 this body, you have taken great steps toward audits and  
12 clarifying that there should be an audit guide so that from  
13 the beginning of a project on, a district knows what to  
14 comply with.

15 CHAIRPERSON REYES: Um-hmm.

16 MR. DUFFY: And that's been an issue in the past.  
17 What our suggestion is with the language that we provided to  
18 you about May 1st is that your direction to staff could  
19 be and a communication to districts that the audit guide  
20 will reflect that May 1st -- in the direction I think of  
21 Senator Hancock's comment a few minutes ago -- on or before  
22 May 1st for audit purposes, a labor compliance program will  
23 be in place within the district for projects that have been  
24 funded that are 47 and 55 projects.

25 That avoids this whole question of how long the

1 Office of Administrative Law has to look at this, if you go  
2 through the regulatory process because it's something that  
3 you must do, but there this a communication that this will  
4 be in the audit guide so that districts know that they have  
5 to comply because an audit will take place looking for an  
6 LCP.

7 CHAIRPERSON REYES: Mr. Davis, does that satisfy?

8 MR. DAVIS: Well, just to be clear, the concern  
9 was not that the auditors have power to look for LCP. Right  
10 now they've got a lot of power.

11 CHAIRPERSON REYES: Okay.

12 MR. DAVIS: Right now if we leave things just the  
13 way they are, technically those who don't have an LCP in  
14 place, that what their contract after November 1st --

15 CHAIRPERSON REYES: Um-hmm.

16 MR. DAVIS: -- yeah -- November 5th would be found  
17 out of compliance.

18 CHAIRPERSON REYES: Okay.

19 MR. DAVIS: The purpose of the regulation is to  
20 add a little time for easing in to getting their LCP into  
21 place because of the confusion. This would give a clear  
22 indication that, hey, an auditor can't ding me for not  
23 having -- on November 5th not having my LCP in place. I  
24 have until -- May 1st, July 1st, whatever date we decide on,  
25 to get that in place. I had it in place by then. Auditor

1 goes back and looks at it, yep, you did. I don't have to  
2 look to see if you had it in place on November 5th.

3 MS. GREENE: Mr. Chair.

4 MR. DAVIS: Is that clear?

5 CHAIRPERSON REYES: Yes. Ms. Greene.

6 MS. GREENE: I move that we take Attachment A, we  
7 change the date, and we vote on this in order to support  
8 what Mr. Davis says, that the auditor has something in place  
9 when all of us gone because this will be six or seven years  
10 from now, there's a date in place. That's the date.  
11 There's no question about whether it came in a letter,  
12 whether it was an email. It's a reg and that way it's  
13 absolutely clear for the auditor to go back and say this is  
14 labor compliance and this is the date.

15 CHAIRPERSON REYES: Is your motion for  
16 November 1st or May 1st?

17 MS. GREENE: May 1st.

18 CHAIRPERSON REYES: Okay. I have --

19 MS. MOORE: Second.

20 CHAIRPERSON REYES: I have a motion and a second.  
21 Ms. Sharp.

22 MS. SHARP: I have one comment. The date also  
23 appears on Attachment B on page -- so we would need to --

24 CHAIRPERSON REYES: That would be a  
25 corresponding -- we'll do the corresponding --

1 MS. GREENE: Corresponding changes.

2 CHAIRPERSON REYES: So if it's okay with the  
3 mover --

4 MS. GREENE: Absolutely.

5 CHAIRPERSON REYES: -- and the second that we do  
6 that. Okay.

7 Staff, do you have any other words of wisdom  
8 before we move forward? I think we beat this to --

9 MS. GREENE: Well, it's labor compliance.

10 CHAIRPERSON REYES: Anybody have -- yes. Okay.

11 It's been moved and second. Having no further comments --

12 MR. DUFFY: May I ask you a question?

13 CHAIRPERSON REYES: Yes, sir.

14 MR. DUFFY: Ms. Greene, does that take care of  
15 only those window projects or after the window?

16 MS. GREENE: According to this, this is --

17 MR. HARVEY: It's the window.

18 MS. GREENE: It's the window.

19 MR. DUFFY: Only the window projects, so everybody  
20 else is bare which means that the issue that we brought  
21 before you remains unresolved.

22 ASSEMBLY MEMBER BUCHANAN: No, no, no. Everyone  
23 else is supposed to be compliant with AB1506.

24 MR. HARVEY: Is supposed to be compliant.

25 Exactly.

1 MS. GREENE: 1506.

2 CHAIRPERSON REYES: Yes.

3 MR. HARVEY: So we didn't want to give them any  
4 more time.

5 ASSEMBLY MEMBER BUCHANAN: Right.

6 MR. DUFFY: But -- which is the issue that we  
7 brought before you that if they're supposed to be in  
8 compliance with AB1506 by November the 5th --

9 ASSEMBLY MEMBER BUCHANAN: No. They're supposed  
10 to be in compliance at the time the -- any contract after  
11 November 5th must be in compliance with AB1506. It's just  
12 the ones in the window where there was that uncertainty that  
13 we're giving the extra time.

14 CHAIRPERSON REYES: And if any district is found  
15 to be out of compliance and they have a legitimate reason,  
16 they're welcome to bring it up to the Board and appeal their  
17 case and there should be no more than 15 is my  
18 understanding. Okay. Call the roll, please.

19 MS. GENERA: Senator Hancock.

20 SENATOR HANCOCK: Aye.

21 MS. GENERA: Assembly Member Buchanan.

22 ASSEMBLY MEMBER BUCHANAN: Aye.

23 MS. GENERA: Assembly Member Hagman.

24 ASSEMBLY MEMBER HAGMAN: Aye.

25 MS. GENERA: Scott Harvey.

1 MR. HARVEY: Aye.

2 MS. GENERA: Kathleen Moore.

3 MS. MOORE: Aye.

4 MS. GENERA: Lyn Greene.

5 MS. GREENE: Aye.

6 MS. GENERA: Pedro Reyes.

7 CHAIRPERSON REYES: Aye.

8 MS. GENERA: It carries.

9 CHAIRPERSON REYES: Okay. Thank you. Yes.

10 ASSEMBLY MEMBER HAGMAN: Can I follow up just with  
11 some guidance letter for those because I do have a concern  
12 that was brought up. Okay. We addressed those projects in  
13 the window now.

14 CHAIRPERSON REYES: Um-hmm.

15 ASSEMBLY MEMBER HAGMAN: Did our forms meet the  
16 criteria on November 5th if -- I'm sure they did in December  
17 or something like that. There may be a fudge -- we don't  
18 need a regulation or anything, but we at least address that  
19 to staff so they have some guidance to say can you give some  
20 lenience to those contracts after November 5th to December  
21 to give them some time to comply if because of the confusion  
22 that these rules and regulations --

23 MS. MOORE: How about an --

24 MS. KAPLAN: What I would actually suggest -- and  
25 I brought this up at the Implementation Committee meeting is

1 that we address these window projects now but the discussion  
2 that was brought up by the building trades and CASH that it  
3 go back to Implementation, have staff look at it. If there  
4 any issue, if there needs to be or come up and address that  
5 or as the Chairman has stated, if we find that there are  
6 projects that have come up maybe then staff brings a  
7 recommendation to the State Allocation Board at that time  
8 for discussion.

9 CHAIRPERSON REYES: Okay. Yes.

10 MS. MOORE: If I may. I would prefer to hit it  
11 head-on and that is that I understand, Ms. Silverman, that a  
12 letter went out on the 1.8 -- or the 1.7 billion that we've  
13 done in December and January from your response, that in the  
14 funding letter to them, this issue was emphasize; is that  
15 correct?

16 MS. SILVERMAN: We did notify them that they had  
17 to be compliant with the requirements.

18 MS. MOORE: Okay. So there was one communication.

19 MS. SILVERMAN: And there was also notification in  
20 our monthly building blocks as well -- our monthly  
21 publication.

22 MS. MOORE: What I -- in support of Assembly  
23 Member Hagman's direction, can we send another letter to all  
24 those projects, 47 and 55, that were funded and emphasize  
25 again that they are subject to the LCP -- they are subject

1 to the LCP and then as the Chair said, if there are concerns  
2 that get raised because of that, we're just made aware and  
3 can deal with them on a case-by-case basis.

4 MS. SILVERMAN: We'll certainly do that.

5 MS. MOORE: Is that okay?

6 ASSEMBLY MEMBER HAGMAN: Yeah. I just --  
7 follow-up question. I assume there's contracts that we  
8 signed or they signed for the monies. Did those -- all that  
9 language for the compliance was in there for anybody who  
10 signed up after November 5th? Was that in the physical  
11 documents they would sign to apply or -- the grant letter,  
12 all that stuff was in there; right?

13 MR. MIRELES: Yeah.

14 ASSEMBLY MEMBER HAGMAN: Okay. So immediately on  
15 November 5th, that was in the forms.

16 MR. MIRELES: The form didn't change.

17 ASSEMBLY MEMBER HAGMAN: Okay. That should be  
18 pretty clear.

19 CHAIRPERSON REYES: Okay. All right. Okay.

20 MS. SILVERMAN: Tab 15.

21 CHAIRPERSON REYES: No. Lift the call on the  
22 **Minutes.** Ms. Hancock.

23 SENATOR HANCOCK: Yes. Thank you, Mr. Chairman.  
24 I would like to move the Minutes with a correction to the  
25 paragraph about Ms. Oropeza -- what she said to the Board.

1 CHAIRPERSON REYES: What page --

2 SENATOR HANCOCK: It's page 1 of the Minutes.

3 CHAIRPERSON REYES: Okay.

4 SENATOR HANCOCK: It's three paragraphs from the  
5 bottom. It simply is not clear. If we could simply say  
6 Ms. Oropeza requested the Board wait to hold the election of  
7 officers notwithstanding the rules and procedures adopted in  
8 December until such time as the new designee of the  
9 Department of Finance would be present, the February meeting  
10 of the SAB. I think it would be much clearer. She  
11 acknowledged rules. She asked -- not because she was  
12 confused, but simply because she was only -- she was not  
13 going to be there permanently that we delay until February  
14 which we did.

15 CHAIRPERSON REYES: That was added.

16 MS. SILVERMAN: Yeah. Can we get the recommended  
17 changes and we can modify the Minutes.

18 CHAIRPERSON REYES: I wasn't here, so I'm looking  
19 to you. Is that the accuracy --

20 MR. HARVEY: I wasn't here either.

21 MS. SILVERMAN: Yeah. We'll look at the  
22 transcripts to confirm.

23 CHAIRPERSON REYES: Okay. Can we -- look at the  
24 transcripts --

25 SENATOR HANCOCK: No, I move the Minutes with

1 that.

2 CHAIRPERSON REYES: Actually they've been moved  
3 and second. So we would have to --

4 SENATOR HANCOCK: And check the transcript. If we  
5 decide that she was really confused and said all the garbled  
6 things --

7 CHAIRPERSON REYES: We get into a problem if we --  
8 the Minutes have been moved and second.

9 SENATOR HANCOCK: Uh-huh.

10 CHAIRPERSON REYES: We put up the vote and if we  
11 amend the motion, we would have to take a new motion, a new  
12 second, and I don't have enough members voting because a  
13 couple of us have to abstain.

14 SENATOR HANCOCK: Well, so you're saying if you  
15 wouldn't mind checking and just --

16 CHAIRPERSON REYES: Would you check the accuracy,  
17 please, and --

18 MS. SILVERMAN: We'll check the accuracy.

19 SENATOR HANCOCK: That would be fine.

20 CHAIRPERSON REYES: Would that be okay?

21 SENATOR HANCOCK: Yes.

22 CHAIRPERSON REYES: Thank you, Ms. Hancock. So  
23 please lift the --

24 MS. GENERA: Senator Hancock.

25 SENATOR HANCOCK: Aye.

1 MS. GENERA: Thank you.

2 CHAIRPERSON REYES: Thank you, Senator. Okay.

3 Yes.

4 ASSEMBLY MEMBER HAGMAN: I don't know if it's good  
5 for our comments at all, but since I'm still in the learning  
6 phase of this thing, I noticed there were three different  
7 ways to get out contracts and bids and if -- maybe at some  
8 point down the road, we're not so busy, if we can just maybe  
9 have a little staff presentation, the lease-leaseback,  
10 the -- you know, all these different kind of things just for  
11 us new members. Thank you.

12 CHAIRPERSON REYES: Absolutely. And new Chairs  
13 too. Thank you. Okay. Item 15, **three-month workload**.

14 MS. SILVERMAN: Yes. Actually we're presenting  
15 the three-month workload. The first sheet reflects the  
16 March 23rd workload. Again those are potential items that  
17 we're moving forward.

18 And obviously with new assignments, they'll be  
19 added onto the workload list as well.

20 The following page represents April.

21 CHAIRPERSON REYES: Let me go back to page 240,  
22 the seismic update, does that address Ms. Hancock's issue  
23 that she brought up earlier?

24 MS. SILVERMAN: That's correct.

25 CHAIRPERSON REYES: Okay. Thank you. All right.

1 Because she did request that and I wanted to make sure it  
2 shows up. Okay. Thank you.

3 MS. SILVERMAN: And then 241 reflects the April  
4 workload as it stands now.

5 CHAIRPERSON REYES: Okay.

6 MS. SILVERMAN: And then the following page  
7 represents the May workload.

8 CHAIRPERSON REYES: Would that be a good time to  
9 bring the issue of Mr. Hagman in terms of --

10 MS. SILVERMAN: A presentation?

11 CHAIRPERSON REYES: -- a primer on the contracts?

12 MS. SILVERMAN: Yeah. We can definitely work that  
13 in.

14 CHAIRPERSON REYES: Okay. Just so we get it. Is  
15 there any public comment on this issue?

16 No? Thank you. Tab 16, **Board meetings** coming up.

17 MS. SILVERMAN: We did hear from Ms. Buchanan that  
18 obviously the breaks in the summer --

19 ASSEMBLY MEMBER BUCHANAN: Right.

20 MS. SILVERMAN: -- potentially may impact our July  
21 meeting, so something for consideration. Because the  
22 legislative summer break is between July 15th and  
23 August 14th and we had slated here our July 27th Board  
24 meeting and that may have some impact.

25 ASSEMBLY MEMBER BUCHANAN: I may be the only one

1 impacted.

2 MS. SILVERMAN: Just wanted to share it --

3 CHAIRPERSON REYES: Nobody else -- no. That's  
4 good.

5 ASSEMBLY MEMBER BUCHANAN: When it gets closer, we  
6 can see what happens.

7 CHAIRPERSON REYES: We need to survey the other  
8 members as well.

9 MS. MOORE: The July meeting, is that --

10 MR. HARVEY: Yes.

11 CHAIRPERSON REYES: Yes. So let's do a check on  
12 that for purposes of quorum as well. Okay? Anything else?

13 All right. Any public comment on any of the items  
14 or further comments or quizzes --

15 MR. HARVEY: Oh, how about all of the above. Very  
16 quickly, I would like to make certain those in the audience,  
17 if they weren't at the CASH luncheon and the Board members  
18 who may not have been able to be there, Kathleen Moore  
19 received a very special recognition, a very -- it's an honor  
20 to receive an award. It's the Murdock Award and it's given  
21 only once a year and her service to CASH and to school  
22 children and to construction management was duly  
23 acknowledged and it was a very special award and I want to  
24 acknowledge that and congratulate her yet again.

25 CHAIRPERSON REYES: Congratulations.

1 (Applause)

2 CHAIRPERSON REYES: Mr. Duffy.

3 MR. DUFFY: Thank you. And before my comments,  
4 thank you very much, Mr. Harvey, for recognizing Kathleen  
5 Moore. It's the James L. Murdock Award in honor of Jim  
6 Murdock who passed away a number of years ago who is an icon  
7 here in Sacramento in representing school districts and  
8 speaking of another icon, it's -- certainly Kathleen Moore  
9 fits into that category.

10 I had wanted to talk to you about two items --  
11 send a communication to you on these items. The first item  
12 is the general site development allowance.

13 This Board I believe in June of 2010 readopted the  
14 allowance. The allowance was established as a temporary  
15 item for review by the Board a number of years ago and it  
16 has continued on.

17 You reestablished it, but for whatever reason it  
18 hasn't gone through the Office of Administrative Law  
19 process.

20 MR. HARVEY: Ah, my point exactly.

21 MR. DUFFY: And Mr. Harvey's point exactly and I  
22 was thinking of that earlier, Mr. Harvey, when you talked  
23 about it.

24 I believe -- and your staff would potentially  
25 clarify this, but I believe that since it hasn't gone

1 through the process that it's no longer in effect, although  
2 the Board's intent that it be, so projects that are approved  
3 January and after do not have that general site allowance  
4 included.

5           And this was put in place as a remedy after a  
6 study that was done by OPSC a number of years ago. So I  
7 wanted to bring that to your attention. I don't know how we  
8 can fix that. We want to make sure that that's put in  
9 place.

10           Secondarily to this but as important, the  
11 Department of General Services convened a group referred to  
12 as the expert work group. A number of things were suggested  
13 to improve the program and processing and one of the  
14 items -- and this was discussed before the Board in  
15 November -- was to take that same general site allowance and  
16 make it permanent.

17           So there was an underscoring of this by the expert  
18 work group. So if you could ask your staff to look at that  
19 and we can see what the remedies may be for districts that  
20 haven't received that funding. So that's one. And I  
21 realize that's additional work for your staff, but it was an  
22 intent of the Board that this be put in place and maybe it's  
23 because of not having enough staff that that occurred.

24           The second communication to you is an item that I  
25 talked to you about last -- at the end of the last meeting

1 last month and it's the Project Information Worksheet  
2 requirement that's within your regulation. This was put in  
3 place to inform the discussion the Board would have about  
4 increasing the pupil grants for new construction only.

5 This was added into AB127, the bond bill that gave  
6 us Prop. 1D. The intent there was to again referencing back  
7 to a study that was done by OPSC, it found the grants to be  
8 wanting compared to the prior program, and so there was a  
9 6 percent provision provided under the statute so the Board  
10 could consider increasing the grants January 1st, 2008, and  
11 thereafter. And OPSC said what we need to do is to query  
12 districts, get information from them, and this Project  
13 Information Worksheet was put in place.

14 The point is the worksheet -- and we had some  
15 issues with the worksheet and the one study that was done,  
16 but the worksheets are still being collected. There's still  
17 a requirement they be submitted by districts. There's a  
18 good deal of work that goes into that and the Board has not  
19 used them and OPSC hasn't used them for any consideration of  
20 increasing the grants.

21 So we're asking that you bring the regs back and  
22 dispense with the requirement of filing those PIWs.

23 CHAIRPERSON REYES: In the absence of the PIWs,  
24 how would that study that was done would have been  
25 conducted?

1           MR. DUFFY: In the absence of the PIWs -- and  
2 first of all, we believe that they're a flawed document, so  
3 they don't provide accurate information and the study that  
4 was done was also flawed for other reasons.

5           But you could as a body, if you chose to, ask for  
6 an entity such as the Center for Cities and Schools at  
7 Berkeley as a separate, independent entity. I think this  
8 Board has heard from that entity at least twice -- ask them  
9 to conduct the study.

10           But again the Board has not, Mr. Reyes, looked at  
11 an increase in the grant since 2008, so in essence it's been  
12 a mute point. The law provides the Board may increase the  
13 grants. We've talked to the Board about that, but because  
14 of all the other issues that the State has had fiscally that  
15 are now in your lap within the Department of Finance, the  
16 Board hasn't made an increase.

17           They did make the increase in 2008, the very first  
18 year it could. But it wasn't based on the PIW because the  
19 PIW did not exist at that time.

20           CHAIRPERSON REYES: Ms. Buchanan.

21           ASSEMBLY MEMBER BUCHANAN: I actually think  
22 both -- as you said, both studies are flawed, so to do one  
23 versus the other doesn't necessarily get you a better  
24 result. When I look at -- I think this is a deeper subject  
25 that we need to look into and really think about what is it

1 that is included in the grant amounts because, you know, we  
2 talked at one meeting about -- was it ADA or whatever where  
3 you had add-on where we now if you're taking it from  
4 construction now, it should be part of it.

5           As I recall the study -- it's the one you gave me.  
6 When I say flawed, it would have been more expensive to  
7 build an elementary school than a high school, looking at  
8 the grants didn't -- so I mean I think we need to take a  
9 look at the grant amounts, but we've got a -- what do you  
10 have a committee that studies or whatever, but I think it's  
11 a fairly in-depth discussion.

12           I think Ms. Moore brought up the very first  
13 meeting I attended as a sub, we were talking about, you  
14 know, should we -- you have the same grant amounts for  
15 portables or relocatables as you do for permanent  
16 stick-built construction. So I would like to see something  
17 like that happen as a deeper conversation in terms of, you  
18 know, what's fair and reasonable and take a look at not just  
19 the base grant amounts but take a look at the -- you know,  
20 how we administer that program in general.

21           MR. DUFFY: And the -- if I may respond,  
22 Ms. Buchanan. The issue that you brought up and we have  
23 talked about this would really go beyond the scope --  
24 authority of the Board because of the statute and the grants  
25 and that the grants aren't separated for add-ons as opposed

1 to full-ons.

2 ASSEMBLY MEMBER BUCHANAN: Right.

3 MR. DUFFY: But the issue of the Project  
4 Information Worksheet is that districts are filling them out  
5 and it's for naught. They're not being utilized and it is  
6 work for districts. Some districts pay construction  
7 managers and others to come in and do this work.

8 So if they're filing them and they're going into a  
9 file cabinet, nothing's being done with them. Your staff is  
10 not at the strength that it was before. Districts are  
11 decimated as you well know and so can we dispense with this.  
12 It's not doing anything.

13 ASSEMBLY MEMBER BUCHANAN: Well, I'd be willing to  
14 have the conversation. I'm just saying I don't think  
15 changing the grant amounts at this -- is something that's  
16 simple that can be done at just one meeting. I think it  
17 takes a more thoughtful process.

18 CHAIRPERSON REYES: Yeah. Yeah. I agree with  
19 you.

20 MR. DUFFY: So could we agendize that for the next  
21 meeting is our request.

22 CHAIRPERSON REYES: I will look at it.

23 MR. HARVEY: I will rely on staff to --

24 CHAIRPERSON REYES: I'll look at it.

25 MR. HARVEY: You and the Vice Chair get to --

1           CHAIRPERSON REYES: The Vice Chair and I will have  
2 that conversation and we'll go through the agenda. Thank  
3 you.

4           Go ahead, Ms. Moore.

5           MS. MOORE: I have a couple of comments. One --  
6 and concerning the Project Information Worksheet. I will  
7 say having been on the Board when all that was occurring  
8 that it was in the effort of advising on the AB127 increases  
9 or not because we had the problematic issues around the  
10 studies and that it is an incredible amount of work for  
11 school districts to do.

12           And I also as a Board member would want to hear  
13 maybe as you say in a greater context around this, but if  
14 we're asking school districts to provide information that  
15 we're not utilizing in a time period when it's very tough  
16 for school districts to operate period, we should ask  
17 ourselves that question.

18           And if we're not going to utilize the information,  
19 I don't think it should be required of school districts.

20           Now, if we are seeing that we'll utilize that  
21 information in the future and that it will assist with, you  
22 know, these types of issues, then by all means, but it is  
23 onerous and we have not taken up an AB127 discussion ever  
24 since it's been put into place. So I think it's a point  
25 well taken.

1           The second one is the grant adjustment we put -- I  
2 know as a Board, we did that in June so that we could make a  
3 January date. And it's very disappointing to understand  
4 that we're not and so I have a couple of questions. I  
5 didn't know this was occurring.

6           Are we not providing that grant increase to all  
7 those that just got funded?

8           MR. MIRELES: Grants are based on the regulations  
9 in effect at the time of submittal. So the projects that  
10 would be affected would be the projects after January 1st.  
11 The regulation sunsetted December 31st, so between  
12 January 1st and now or until the regulations become  
13 effective, there is no regulation that it's affected again  
14 on the issue on general site.

15           MS. MOORE: Did we leave that open or is that  
16 because of full and final, those districts are out of that  
17 funding amount?

18           MR. MIRELES: I don't believe we left them open  
19 for these increases or --

20           MS. MOORE: Okay. So that's a problem for those  
21 districts. So everybody that got funded in December has the  
22 amount for general site and everybody that has -- or the  
23 increase and everybody that was funded in January does not;  
24 is that correct?

25           MR. MIRELES: No. They probably did because they

1 were submitted when the regulations were in effect.

2 MS. MOORE: Submitted. Okay.

3 MR. MIRELES: Yes.

4 MS. MOORE: That's what you're saying.

5 MR. MIRELES: So it's only applications that are  
6 submitted now.

7 MS. MOORE: Submitted now. Okay.

8 MR. MIRELES: Until the regulations become  
9 effective.

10 MS. MOORE: And then when do we anticipate the  
11 regulations to be effective?

12 MS. SILVERMAN: There's a 45-day public comment  
13 period that ends April 14th.

14 MS. MOORE: And then when would it come before the  
15 Board?

16 MS. SILVERMAN: It came before the Board last  
17 June.

18 MR. HARVEY: It would be effective at that point.

19 MS. MOORE: Oh, it would be effective in April?

20 MS. SILVERMAN: Effective at that point. All  
21 right.

22 MR. MIRELES: It'd be effective.

23 MS. MOORE: So we have a window period of January  
24 to April that's a problem.

25 CHAIRPERSON REYES: Well, they take public comment

1 and then they'll go through the process to make them  
2 effective.

3 MS. MOORE: So it could be 30 days after April?

4 CHAIRPERSON REYES: Yes.

5 MS. MOORE: So we have a window of January to May  
6 that's a problem when we as a Board I know took action on  
7 this in June in anticipation of that January Board meeting.  
8 So it didn't come to fruition because of the process or  
9 whatever, but I think that we owe those districts that are  
10 in that time period some resolution and I would ask that we  
11 have as an action -- a Board action.

12 MS. KAPLAN: And I think that could be working  
13 with legal counsel maybe a legal discussion because they  
14 were submitted in a timely manner. Once they're approved,  
15 are those regulations in effect where they would backdate  
16 till January because they were in in a timely manner. So I  
17 think that's something that --

18 MS. MOORE: Can we ask legal -- can we through the  
19 Chair ask legal to look at that?

20 CHAIRPERSON REYES: Please.

21 MS. MOORE: Thank you.

22 MR. DUFFY: Well, and just you reminded me of  
23 something, Ms. Moore. The last time that this occurred I  
24 think the Board took action at a November meeting and in  
25 anticipation of the sunseting occurring in January -- the

1 following January, so there was a shorter period of time  
2 than the period of time that we're discussing here. So I'm  
3 really confused as to why this has occurred if we're talking  
4 about -- we're in February now, so this is eight months  
5 later.

6           So I don't understand why there would have been a  
7 lack of follow-through there and if I may ask the question  
8 of your staff. So were projects that were funded today  
9 would they absent this funding of the general site  
10 allowance?

11           MR. MIRELES: No. They include a general site.

12           MR. DUFFY: They're included. But anybody that  
13 applied for anything after January 1st would not receive  
14 that until these regulations are in place? So you have an  
15 opportunity to remedy that; is that accurate?

16           MS. SILVERMAN: We've --

17           MR. MIRELES: Yes. Between now and when they  
18 become effective -- unless there are changes in the  
19 regulations that have a retroactive provision, they will not  
20 be eligible for general site.

21           MR. DUFFY: And so --

22           MS. MOORE: General site at all?

23           MR. MIRELES: That section --

24           MS. MOORE: General site at all. No general site  
25 funding.

1           MR. MIRELES: The additional grant for general  
2 site allowances that we had in regulations sunsetted  
3 December 31st, so they will not be eligible.

4           MS. MOORE: That's a very significant issue. I  
5 mean general site, that's a significant component of a  
6 project and I think that we should look at the resolution  
7 for these projects because it was fully the intent of the  
8 Board back in June I think with the six-month period for  
9 regulatory action -- I know that now there's been a lot of  
10 impact on government, but we fully anticipated this and this  
11 is a significant part of a budget for a project and I don't  
12 believe that projects from January till whenever this  
13 becomes effective should have to suffer the delay of this  
14 regulation.

15           So I would ask if legal counsel could look into it  
16 through the Chair and report back to us at the next Board  
17 meeting. It's hundreds of thousands of dollars for each  
18 project.

19           MR. DAVIS: To be clear, I will look into what --  
20 the regulations we have currently in process and whether --  
21 how they can be interpreted as far as these applications  
22 that were received since January 1 and if there's any other  
23 alternatives, I'll see what they are.

24           CHAIRPERSON REYES: Thank you.

25           MR. HARVEY: And not to delay this too long, but I

1 want to make it perfectly clear that OPSC staff processed  
2 this timely. There were other hiccups in this process, but  
3 our staff did what they should have done and did it timely.

4 MR. DUFFY: Okay. Thank you.

5 ASSEMBLY MEMBER BUCHANAN: Can we adjourn?

6 CHAIRPERSON REYES: Nothing? Adjourned. Thank  
7 you.

8 (Whereupon, at 5:33 p.m. the proceedings were recessed.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )  ss.  
COUNTY OF SACRAMENTO        )

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IN WITNESS WHEREOF, I have subscribed my name on March 9, 2011.

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