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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

CALIFORNIA DEPARTMENT OF EDUCATION
1430 N STREET, ROOM 1101
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, JUNE 22, 2011
TIME: 4:20 P.M.

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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, Chief Deputy Director, Department of General Services, designated representative for Fred Klass, Director, Department of General Services

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 SHARON RUNNER

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER JOAN BUCHANAN

ASSEMBLY MEMBER CURT HAGMAN

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA SILVERMAN, Acting 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

1
2
3 CHAIRPERSON REYES: Some stuff that is just
4 informational and then we'll get into the action issues when
5 the members come in. I know that my preference is to have a
6 legislator and I see Mr. Hagman kind of making the way in,
7 so he counts as being in the room. So we'll start as a
8 Subcommittee. Thank you, Mr. Hagman.

9 Ms. Silverman, I'll turn it over to you.

10 MS. SILVERMAN: Yes. Grab your attention to Tab 3
11 and the **Executive Officer's Statement**. We're going to cover
12 four areas today.

13 One of the areas obviously has been quite an
14 extensive project as far as trying to provide some
15 regulation changes to the Seismic Mitigation Program. And
16 so with that, in Tab 16, we actually have the proposed
17 regulations that was actually formulated as a result of the
18 Board action last month in the Subcommittee discussion that
19 we had on June 18th. So that is enclosed in Tab 16.

20 And we're also announcing that we're also having a
21 joint agency workshop. The joint agency workshop would be
22 July 13th, which is Wednesday, the day after the Board, from
23 1:00 to 4:00 p.m. at the Department of General Services
24 headquarters in West Sacramento, at the Ziggurat Building.

25 And again the workshop is going to be hosted by

1 the Office of Public School Construction, Division of State
2 Architect, and Department of Education. And obviously this
3 Webcast will be a live event and we'll have it archived on
4 our Website for future purposes as well.

5 The other item is the Office of State Audits and
6 Evaluations actually audit the Proposition 1D bond funds.
7 So OSAE recently issued the audit report and last week, we
8 did provide a copy of that audit report to the Board
9 members.

10 And the last item I wanted to share with you is
11 next month staff is prepared to present information -- or
12 informational item related to the Project Information
13 Worksheet and included is an example of the type of
14 information we're able to capture from this Project
15 Information Worksheet. And so we wanted to graphically
16 illustrate some of the accomplishments of keeping the data
17 and tracking the data as far as what we built over 9,421
18 classrooms over the three-year period of collecting some
19 data from 2008 to 2011.

20 And it's just a great informational material as
21 far as outlining to the Board the classrooms, the
22 multipurpose room, cafeteria, kitchen, libraries, all the
23 facilities that we have built in the program, also
24 outlining -- that lower chart is the square footage
25 allotments provided for classrooms and multipurpose room and

1 ancillary facilities as well.

2 So we're looking forward to presenting more of
3 this kind of information in the future to kind of highlight
4 some of the accomplishments this program has provided.

5 CHAIRPERSON REYES: Good.

6 MS. SILVERMAN: With that, I'll open up to any
7 questions.

8 CHAIRPERSON REYES: Mr. Hagman.

9 ASSEMBLY MEMBER HAGMAN: Thank you. Am I supposed
10 to be using this mic or this mic?

11 MS. MOORE: The longer one.

12 CHAIRPERSON REYES: That one.

13 ASSEMBLY MEMBER HAGMAN: They're both mine. Okay.
14 I'm just wondering what would be considered other buildings?

15 MS. SILVERMAN: Good question. It's actually a
16 category we have on the worksheet itself and it could be
17 classified as another subsidiary facility and it's pretty
18 much to the district to disclose that.

19 Some of the information we collected, like in this
20 three-year span, which represents 567 projects, some of the
21 districts have disclosed what those facilities are.

22 ASSEMBLY MEMBER HAGMAN: So they couldn't fit in
23 the categories then? Because I'm trying to think what else
24 would be there besides the one you listed. So maybe just
25 they stuck another -- they didn't delineate. It probably

1 fits in one of those other categories then.

2 MS. SILVERMAN: Right. Well, yeah. Exactly. And
3 we can provide a little bit more detailed information. It's
4 just last -- we were actually requested to put this
5 information together rather quickly and so we can provide a
6 little bit more definitive information what does the other
7 category represent.

8 ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.

9 CHAIRPERSON REYES: One of the issues, Mr. Hagman,
10 is what are we doing with this information we're collecting.
11 So I thought it'd be informational for us -- it would be
12 good for us to see what it is that's out there that's
13 available to us based on what districts are submitting.

14 Any other questions? Comments from the public?
15 Okay. Hearing none, next item that we can dispense with.

16 MS. SILVERMAN: Is the **financials** on Tab 5.

17 CHAIRPERSON REYES: Thank you.

18 MS. SILVERMAN: So on Tab 5 is -- highlighted with
19 the Board, status of some of the fund releases we've been
20 providing to school districts as we are liquidating the cash
21 to the various bond sales.

22 And on page 89, March 2009, we actually have
23 dispensed of the entire bond sale there. We originally
24 received \$528 million and we actually released the remaining
25 funds this last month. And so again we wanted to highlight

1 that activity.

2 And then in the middle category, the April 2009
3 bond, we received over \$1.4 billion. We released
4 6.5 million and so we still have 57.5 million available in
5 that bond category.

6 And in your lower chart, we have received general
7 obligation bonds and commercial paper exceeding \$500 million
8 and we disbursed \$17 and a half million last month and we
9 still have a balance of 57.7 million.

10 And if I may direct your attention to page 90 on
11 the top of the page is we actually had disbursed in that
12 category no funds, although the original appropriation was
13 111 million. We still have a balance of 27 and a half
14 million in that category.

15 In the middle chart is the March 2010 bond sale.
16 We received over \$1.3 billion. We disbursed 3.2 million.
17 We still have a bond proceed balance of 190.5 billion.

18 And then November 2010 was a bond sale that we
19 received last year -- tail end of last year. We received
20 nearly \$1.5 billion. We had liquidated 61 and a half
21 million last month. There's still \$78.8 million available
22 that we still are processing fund releases for.

23 There's an illustration of the entire activity for
24 the month of May. We liquidated \$88.8 million. And that's
25 on page 91.

1 And again on page 92 is just a chart illustrating
2 graphically how much money is basically sitting in our
3 account. We \$412 million as of May 31st through the various
4 bond categories.

5 And then on page 93, it's an illustration of when
6 projects are set to expire which is we called time limit on
7 fund release. Again although we have been liquidating a lot
8 of projects -- a lot of funds as related to the priorities
9 in funding, in total these are the projects that are set to
10 expire. And so it's a graphic illustration. Even for June,
11 we have one project that's set to expire for \$10 million.

12 And likewise one of the biggest category which
13 represents the 18-month requirement that we disburse back in
14 April of 2010, there still is \$190 million committed in that
15 18-month category and that represents 27 projects. So again
16 that would -- we would be showing those liquidations as we
17 process fund releases, but as we speak today, there's still
18 190 million in that category.

19 CHAIRPERSON REYES: Ms. Moore.

20 MS. MOORE: This information is really good. I
21 was wondering if we could also have maybe going forward when
22 funding does come -- or when dollars do come back to the
23 program that we have a running tab of that so that we know
24 actually how much has come back from these, either they
25 weren't perfected or they were withdrawn, and then as we

1 move forward to our two funding cycles, we know what will be
2 added.

3 MS. SILVERMAN: We could certainly do that. We'll
4 add another illustration.

5 CHAIRPERSON REYES: Mr. Harvey.

6 MR. HARVEY: Thank you. I had a very similar
7 request and I thank you for that. What I'd like to
8 understand is on page 93, these are the projects that have
9 to cure by a certain time because they're on that 18-month
10 clock.

11 Can you remind me how much difference there is
12 between what we saw last month for the October spike and
13 what we show this month. Are people slowly coming in or are
14 they still lying in the weeds? I'm trying to get an idea of
15 how real that number may be and we may not know until
16 October I guess.

17 MS. SILVERMAN: I believe just speaking, last
18 month we actually did liquidate some funds, \$6 and a half
19 million dollars, in that particular category. So it was
20 mixed up with other priorities of funding. A good portion
21 of those funds, \$400 million was disbursed immediately as a
22 result of that initial priorities round, but there was still
23 \$900 million that were apportioned in April of 2010 that had
24 the 18-month time clock.

25 So respectively, it was -- what we liquidated in

1 that 18-month category last month was \$6 and a half million.

2 MR. HARVEY: And in our priority in funding round
3 we're looking back on, we really had 100 percent or did we
4 have anybody not cure in that category?

5 MS. SILVERMAN: We only had one project that
6 didn't cure in that category. So we had over a 99 percent
7 success rate. And so what's represented in that particular
8 bond sale -- we're still liquidating projects and so that's
9 why there still shows a balance in November of 2010.

10 When we come back in a few weeks, the balance will
11 be liquidated, not entirely because there's still money
12 associated with the charter program that hasn't come in.

13 MR. HARVEY: Okay. And then I guess we won't
14 really see a real drawdown of that 412- you allude to until
15 we go back out on another priority in funding round.

16 MS. SILVERMAN: Well, these projects have until
17 October to come in and so you're talking about that big
18 spike of 190 million.

19 MR. HARVEY: Actually I was going back to the 412-
20 on an earlier page. It's on page 92.

21 MS. SILVERMAN: Right.

22 MR. HARVEY: I was looking for the next
23 opportunity to make a big bite out of that.

24 MS. SILVERMAN: Yeah. We should show another
25 drawdown in the funds available. I think the most

1 significant drawdown has occurred already in the priorities
2 in funding.

3 MR. HARVEY: Right.

4 MS. SILVERMAN: So I imagine somewhere in the area
5 of about another 30- to 40 million drawdown because we still
6 have process -- are still processing fund releases --

7 MR. HARVEY: Okay.

8 MS. SILVERMAN: -- but -- so that would be almost
9 the last of that set-aside money, but there's also other
10 money set aside for the Charter School Program that hasn't
11 been liquidated.

12 MR. HARVEY: Got it. And my final question, we
13 don't know what that ultimate spike will be in October, but
14 whatever money is there, the Board will have some discretion
15 to put it in categories that they believe are needed --

16 MS. SILVERMAN: That's --

17 MR. HARVEY: -- necessarily important?

18 MS. SILVERMAN: That's correct. And then like --
19 I think like Ms. Moore shared as well her concern about
20 having an illustration of how much cash is really available
21 in the program for future rounds. So we'll definitely tie
22 down that illustration next month as well.

23 MR. HARVEY: Thank you very much.

24 MS. SILVERMAN: Any questions? We can go to
25 Tab 6. This is our **Status of Funds** --

1 CHAIRPERSON REYES: Is there any public comment on
2 this item? Hearing none, moving onto Tab 6. Thank you.

3 MS. SILVERMAN: Tab 6 is our **Status of Funds**.
4 It's again an illustration of the bond authority that's
5 available in the various propositions and it also summarizes
6 the activity of items that we processed at this Board in the
7 Consent Agenda.

8 On the top category is Proposal 1D. Voters
9 authorized \$7.3 billion. We do show activity in new
10 construction of one project of 1.9 million. We had 18
11 modernization projects of 25.8 million. We actually have a
12 high performance project which is one project here. We
13 actually reflect also a rescission.

14 So in total in Proposition 1D, we processed
15 25 million. That represents 20 projects this month.

16 And in your middle category is Proposition 55. We
17 actually provided eight projects with new construction
18 unfunded approvals and we have also some modernization
19 activity and we have one rescission in the Charter School
20 Program. So the net result is 10 and a half million
21 positive going out in that category.

22 And then Proposition 47, we actually had
23 opportunity to provide a fund switch from 1D to 55 -- excuse
24 me -- 47. That's a summary of that activity. And so in
25 total this month, we're providing in unfunded approvals

1 \$12.6 million which represents 30 projects.

2 And then on page 95, if I can draw your attention
3 to the center of the page, we're somewhat toward the end of
4 our processing of Emergency Repair Program projects. We're
5 processing 31 projects this month representing \$13.2 million
6 and so that brings the drawdown -- we only have less --
7 about \$560,000 available in Emergency Repair Program.

8 And so what we're planning to do is provide a
9 future item to the Board to kind of summarize the closeout
10 of the Emergency Repair Program, to some extent is how much
11 authority is still available -- settlement authority is
12 still available and provide the Board some options on how we
13 could get to the next grouping of projects.

14 So we'll be presenting that item in the
15 shortcoming.

16 And on page 96 -- thank you, Ms. Moore, for the
17 suggestion -- we actually put illustration together
18 representing the entire bonds -- active bonds, 1D, 55, and
19 47. The collective authority for all three propositions
20 represents over \$28 billion, and with that the blue-shaded
21 area represents the projects that were apportioned in all
22 three respective categories and we have 85.8 percent of the
23 bond authority still available.

24 And we have in the maroon-shaded area 7 and a half
25 percent have been committed to unfunded approvals and

1 6.7 percent of the bond authority still remains out of all
2 three propositions, which represents over \$1.9 billion.

3 And actually that would actually save us from
4 going through 97, 98, and 100. And we can jump to page 100.
5 Again the new construction bond authority, just highlighting
6 to the Board that we still have over 92.8 of the new
7 construction bond authority has been apportioned. There's
8 3.8 left of unfunded approvals on the unfunded list and
9 3.4 percent of bond authority or \$503 million remaining for
10 new construction.

11 And then the last illustration's on page 101,
12 again that represents the Emergency Repair Program
13 settlement authority. We have a slight sliver which
14 represents the remaining settlement authority and we'll be
15 bringing that item back to the Board for future discussion.

16 With that, I'll open to any questions.

17 CHAIRPERSON REYES: Thank you. Questions?

18 Mr. Harvey.

19 MR. HARVEY: On that last graph on 101 and the
20 whole subject of the Williams Act settlement, is it possible
21 going forward to consider the unfunded approvals for a
22 future bond? I mean this is now general fund dependent and
23 we have not had because of our situation any dollars for a
24 number of years.

25 These were obviously perceived as health and

1 safety issues that are important things to fix and we've not
2 really ever had the ability to say here's another funding
3 source.

4 Is it possible that that large 450 some odd
5 million which is not even -- it's more than half of what the
6 settlement amount was -- could be somehow folded into a
7 bond?

8 MS. SILVERMAN: That's general fund -- it would
9 have to be an appropriation from the general fund.

10 MR. HARVEY: You can't --

11 MS. SILVERMAN: Do you want to comment on that?

12 MR. HARVEY: I understand the settlement was
13 general fund. I was looking at the substitute. Come on,
14 Chris, find a way, Buddy. Where are we going to find this
15 money?

16 MR. FERGUSON: Department of -- or Chris Ferguson,
17 Department of Finance. The funding source specified in
18 statutes for this program, the Emergency Repair Program, is
19 Proposition 98 reversion account. It's specific to the
20 statutes.

21 The bonds are specific to whatever the voters
22 approve and whatever's negotiated between the Legislature
23 and the various parties, whatever's presented to the
24 administration.

25 At that point, I guess it could be considered for

1 a future bond, but again that would be entirely dependent on
2 future bond negotiations.

3 MR. HARVEY: And also it sounds like a change in
4 statute?

5 MR. FERGUSON: Yes.

6 MR. HARVEY: Okay. Thank you.

7 CHAIRPERSON REYES: Thank you.

8 MR. FERGUSON: Again I do want to highlight that
9 the Williams Settlement appropriated -- not appropriated but
10 approved a settlement of up to 800 million from that
11 account. It's a set determined amount.

12 MR. HARVEY: I understand. Thank you.

13 CHAIRPERSON REYES: Thanks, Chris.

14 MR. HARVEY: I think we all in good faith would
15 like to fund it. It's simply a matter of where we'd like
16 you to do it, but you've clarified that. Thank you, Chris.

17 CHAIRPERSON REYES: Oh, we're joined by our two
18 Senators. So I believe we now have a quorum.

19 SENATOR LOWENTHAL: The Assembly members are still
20 in education committee.

21 CHAIRPERSON REYES: Yes. Yes. We understand
22 Ms. Buchanan and Ms. Brownley are in that right now, so
23 thank you. So we could establish a quorum, please.

24 MS. GENERA: Senator Lowenthal.

25 SENATOR LOWENTHAL: Here.

1 MS. GENERA: Senator Hancock.

2 SENATOR HANCOCK: Here.

3 MS. GENERA: Assembly Member Brownley.

4 Assembly Member Buchanan.

5 Assembly Member Hagman.

6 ASSEMBLY MEMBER HAGMAN: Here.

7 MS. GENERA: Scott Harvey.

8 MR. HARVEY: Present.

9 MS. GENERA: Kathleen Moore.

10 MS. MOORE: Here.

11 MS. GENERA: Pedro Reyes.

12 CHAIRPERSON REYES: Here.

13 MS. GENERA: We have a quorum.

14 CHAIRPERSON REYES: Thank you.

15 ASSEMBLY MEMBER HAGMAN: Move the **Consent**

16 **Calendar**, Mr. Chair.

17 CHAIRPERSON REYES: Consent Calendar has been

18 moved. Is there a second?

19 MR. HARVEY: May I seek an amendment to that and I

20 hope, Mr. Chair, we have a discussion when you deem it

21 appropriate to perhaps think in terms of adding what I would

22 say are noncontroversial items to the Consent Calendar and I

23 that, without objection, I would suggest we could add Items

24 Tab 10 and 11 to the Consent Calendar.

25 There seems to be no objection. Staff is agreeing

1 with the districts' request. In an effort to expedite the
2 agenda, I would simply suggest that as a possible action.

3 CHAIRPERSON REYES: Any objections?

4 SENATOR LOWENTHAL: Not by me.

5 CHAIRPERSON REYES: Okay. Great. Any comments?
6 Any comments from the public? So, Mr. Hagman, are you okay
7 with that?

8 ASSEMBLY MEMBER HAGMAN: I'm okay.

9 CHAIRPERSON REYES: Okay. So it's been moved and
10 second. All in favor -- I mean I'm sorry. Roll call --
11 what do you do? Roll call.

12 MS. GENERA: Senator Lowenthal.

13 CHAIRPERSON REYES: Lowenthal?

14 SENATOR LOWENTHAL: Oh, it's me?

15 CHAIRPERSON REYES: Aye.

16 SENATOR LOWENTHAL: Thank you. Tell me how to
17 vote too. This is a great all purpose -- aye.

18 CHAIRPERSON REYES: Okay.

19 MS. GENERA: Senator Hancock.

20 SENATOR HANCOCK: Aye.

21 MS. GENERA: Assembly Member Hagman.

22 ASSEMBLY MEMBER HAGMAN: Aye.

23 MS. GENERA: Scott Harvey.

24 MR. HARVEY: Aye.

25 MS. GENERA: Kathleen Moore.

1 MS. MOORE: Aye.

2 MS. GENERA: Pedro Reyes.

3 CHAIRPERSON REYES: Aye.

4 MS. GENERA: Carries.

5 CHAIRPERSON REYES: Thank you. And in the future,
6 we can do that. We have a consent that we're all familiar
7 with and there's going to be some action items that are
8 noncontroversial and we can do it as a special consent just
9 to move forward, that'd be great. Thank you.

10 ASSEMBLY MEMBER HAGMAN: Do you have to move the
11 Minutes too, Mr. Chair, or --

12 MS. SILVERMAN: Yeah, we can go back to the
13 **Minutes**.

14 CHAIRPERSON REYES: Yes.

15 ASSEMBLY MEMBER HAGMAN: I'll move that as well.
16 I don't know if you have -- without object to any changes,
17 I'll move the **Minutes**.

18 CHAIRPERSON REYES: Moved.

19 MR. HARVEY: Second.

20 CHAIRPERSON REYES: Moved and seconded. Comments
21 from the public? Mr. Gonzalez had a comment on this.

22 MR. GONZALEZ: Thank you, Mr. Reyes. Richard
23 Gonzalez of Richard Gonzalez & Associates. At the last
24 meeting with regards to the cash management report on the
25 re-review of financial hardships, I had made a comment about

1 perceiving that that maximum six-month funds may be
2 available under a re-review process, was not included in the
3 regulations, and you shared with me that you perceived that
4 those were in there and I ask if that might be included in
5 the Minutes.

6 CHAIRPERSON REYES: I think the -- your comments
7 are duly noted. I think the transcripts will cover that
8 area, what was actually there. The purpose of the Minutes
9 is to pick up the essence of the conversation and as we all
10 know, there are times when issues that folks feel very close
11 to are not always picked up. I think Ms. Hancock was one
12 who came back and some of the issues to clarification.

13 So we'll take a look at the transcripts and see
14 what was there.

15 MR. GONZALEZ: Thank you.

16 CHAIRPERSON REYES: Okay? Thank you. Any other
17 comments? Already been moved and seconded. Roll call.

18 MS. GENERA: Senator Lowenthal.

19 SENATOR LOWENTHAL: Aye.

20 MS. GENERA: Senator Hancock.

21 SENATOR HANCOCK: Aye.

22 MS. GENERA: Assembly Member Hagman.

23 ASSEMBLY MEMBER HAGMAN: Aye.

24 MS. GENERA: Scott Harvey.

25 MR. HARVEY: Aye.

1 MS. GENERA: Kathleen Moore.

2 MS. MOORE: Aye.

3 MS. GENERA: Pedro Reyes.

4 CHAIRPERSON REYES: Aye.

5 MS. GENERA: It carries.

6 CHAIRPERSON REYES: Thank you. We will now move
7 to a **closed session** to have a conversation on potential
8 litigation issues and then we will come back and report out
9 and we will move to a **closed session** to see whether or not
10 we need to have a closed session for potential litigation
11 and if we do, we will report it out. Okay. Now if you'll
12 please clear the room.

13 (Whereupon at 4:42 p.m., the open meeting was recessed
14 for the closed session and resumed as follows at 5:10 p.m.)

15 CHAIRPERSON REYES: The Board met in closed
16 session to determine whether or not we should meet in closed
17 session to look at potential litigation issues and we -- the
18 decision was made to yes, meet in closed session, and we
19 discussed potential litigation issues and I think that's
20 what I need to report. Thank you, Counselor.

21 Now that we do have a quorum, I'd like to go back
22 and clean up some items. Senator Runner has requested that
23 we pull Item 15 and without objection from the Board, we
24 will do so. And Lynwood has been pulled and Assembly Member
25 Brownley has requested that Centinela Valley be pulled from

1 the agenda for a later date and unless there's objection
2 from the Board, we will do so.

3 Mr. Harvey.

4 MR. HARVEY: Point of clarification on Item 8, has
5 that been permanently pulled as opposed to carrying over?

6 CHAIRPERSON REYES: It is my understanding it has
7 and I have a letter that says so.

8 MR. HARVEY: Thank you very much.

9 CHAIRPERSON REYES: Okay.

10 MR. HARVEY: And we are going to discuss Item 9 at
11 a future time, Centinela.

12 CHAIRPERSON REYES: That is correct.

13 MR. HARVEY: Thank you.

14 SENATOR LOWENTHAL: Okay.

15 CHAIRPERSON REYES: Okay. Ms. Silverman, where do
16 we need to be?

17 MS. SILVERMAN: So if you'd like to jump to Tab 7.

18 CHAIRPERSON REYES: I'm sorry?

19 MS. SILVERMAN: Tab 7.

20 CHAIRPERSON REYES: Tab 7.

21 MS. SILVERMAN: Tab 7. I apologize.

22 CHAIRPERSON REYES: **Butte County Office of**
23 **Education**, the appeals items. Staff will present.

24 MR. LaPASK: Good evening. I'm Brian LaPask with
25 OPSC.

1 MR. HARVEY: That doesn't appear to be on.

2 CHAIRPERSON REYES: It's not.

3 (Interruption for sound check)

4 CHAIRPERSON REYES: Okay. Thank you.

5 MR. LaPASK: Okay. Tab 7. Once again I'm Brian
6 LaPask of the Office of Public School Construction. Tab 7
7 is the **Butte County Office of Education** request to change
8 its scope on a new construction project that would add a
9 library to the project that was not part of the original
10 scope of the project.

11 The original project as approved included six
12 classrooms, school administration, resource specialist
13 program room, speech rooms, and restrooms. The library was
14 excluded for budgetary reasons at the time of design.

15 Because the library was not part of the project as
16 approved, adding it now would be inconsistent with the full
17 and final provisions contained in Education Code. That's
18 noted in the authority section, also with regards to
19 financial hardship savings.

20 We received information that indicates there will
21 be some savings in this project, hence the request to add
22 the library. However, we have a regulation.
23 Section 1859.103 stipulates that financial hardship savings
24 can be used one of two ways. It can be either returned to
25 the State or it can be used as match on another financial

1 hardship project within the next three years. So it would
2 also violate that, if we were to allow them to use to build
3 this library and it would really kind of substantially
4 change the way that we deal with financial hardship savings
5 and projects in the past and the way that our regulations
6 stipulate that savings should be used.

7 The other thing with the savings is if it's
8 returned to the State, it could be used to fund other
9 projects on the unfunded list that we have currently, which
10 would carry over to other projects.

11 Other options for the district is they do have new
12 construction eligibility remaining and would be able to use
13 to that to request funding for classrooms and they could use
14 that money to also build a library on the campus.

15 But in considering all this information, we feel
16 that we can't support the district's request and we're
17 recommending denial of that and I'll answer any questions
18 you have.

19 CHAIRPERSON REYES: Thank you. Mr. Harvey.

20 MR. HARVEY: Clarification on your last statement
21 about other options. That's a separate option from using
22 the savings within three years to perhaps build a library?

23 MR. LaPASK: They could be combined. They do have
24 eligibility on file which they could use and they could --
25 you know, they'd have to request classrooms to be built.

1 They do have eligibility in each of their two high
2 school attendance areas, so they have lots of eligibility to
3 use and they could use those funds not just to build the
4 classrooms but also to build the library if they're were
5 able to design and construct.

6 CHAIRPERSON REYES: Mr. Hagman.

7 ASSEMBLY MEMBER HAGMAN: But that would mean they
8 go -- they start at the list for anybody else who's unfunded
9 at this point as well; right? They don't just go in front
10 of the line and keep their savings. That savings from the
11 project has to be, for all that we have in place, unless
12 they count -- because that's hardship money; right? So they
13 have to come up --

14 MR. LaPASK: Right.

15 MR. HARVEY: Thank you.

16 CHAIRPERSON REYES: Okay. Thank you. I see folks
17 standing. I presume you're from Butte County --
18 Ms. Hancock.

19 SENATOR HANCOCK: This is just a question of
20 clarification. It says the -- you refer several times to
21 the SFP. What is that?

22 MR. LaPASK: That's our School Facilities Program.
23 I'm sorry.

24 SENATOR HANCOCK: Okay.

25 MR. LaPASK: That's our entire program.

1 SENATOR HANCOCK: Thanks. I know. I don't think
2 it was every spelled out.

3 CHAIRPERSON REYES: Okay. If you could have a
4 seat, please, and allow Butte County folks to --

5 MR. BULTEMA: Good afternoon. My name is Kevin
6 Bultema and I serve as the Assistant Superintendent for
7 Administrative Services at Butte County Office of Education.

8 This project is very important to the students of
9 Butte County. The program that this project will house our
10 charter school and also our countywide special education
11 adult transition program. Currently those programs are in
12 rented facilities that were never designed specifically for
13 educational purposes.

14 BCOE is not asking for any additional money for
15 this additional scope. We have frankly received more
16 favorable bids with the value engineering work we did up
17 front and also in the planning stage and we believe that we
18 can provide a modular library building within the full and
19 final contribution from the State.

20 We would note that when we were in the planning
21 stage for this project, which was conducted almost three and
22 a half, four years ago, we didn't think we'd be able to fund
23 a library. So our intent was to provide for minimal library
24 services. However, we believe with these savings we can
25 actually provide for more adequate library services.

1 Our plans do show a location for a future library
2 building as well.

3 In response to the OPSC staff recommendation, a
4 couple things we'd like to note as counterpoints. We
5 believe the authority citing Education Code
6 Section 17070.638 is simply misapplied. We are not asking
7 for additional funds and we would be in compliance with the
8 full and complete and final contribution for the project.

9 As related to the School Facility Program
10 regulation, we have not at this point declared any savings
11 as of yet in the project. And as for the decision that this
12 would be precedent setting, we would actually point to the
13 Victor Valley Union High School decision in 2007 where staff
14 recommended for approval of a change in scope to increase
15 the size of a gymnasium.

16 Other funding options for library frankly are not
17 realistic. The size of the current lot that we have for
18 this project really wouldn't allow for additional classrooms
19 and a library. And again originally the schematic we added
20 a site for future purposes.

21 We believe this change in scope has a real benefit
22 to the students and the faculty by providing a full
23 education and a complete school. We believe this change in
24 scope represents fiscal responsibility by providing a
25 library during a larger construction phase which would

1 simply be at a lesser cost if we were to do it now than if
2 we were to do it at a later point in time.

3 We believe this change in scope represents the
4 best use of taxpayer money to provide a quality educational
5 facility within the resources we have been provided. And
6 with that said, we ask for your support on this appeal and
7 we believe the appeal has merit and is the right thing to do
8 for students.

9 So we want to thank you for your consideration of
10 our appeal.

11 CHAIRPERSON REYES: Board members, questions?
12 Mr. Hagman.

13 ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.
14 And I guess I'll start off with I think we all agree that we
15 would love to provide more facilities with the extra
16 dollars. A lot of times, our bureaucracy makes it where our
17 hands are tied in certain policy directions and litigious
18 state and it could go many different directions and I would
19 guess -- point the question to our legal counsel, is there
20 room for interpretation here or this is a -- pretty much the
21 policy that's been set.

22 I know with different funds, savings can be
23 applied different ways, but this is hardship dollars that we
24 pay out; correct?

25 MR. DAVIS: As it's currently structured, the

1 financial hardship savings return back to the bond to
2 reimburse the State for its portion of the project, but --

3 ASSEMBLY MEMBER HAGMAN: And new construction is a
4 different kind of policy; right? If someone has savings
5 there --

6 MR. DAVIS: If it's an SFP, if it's not, the
7 hardship -- there the savings can be applied to another high
8 priority -- capital outlay project.

9 ASSEMBLY MEMBER HAGMAN: Within the district.

10 MR. DAVIS: Within the district; correct.

11 ASSEMBLY MEMBER HAGMAN: So --

12 MR. DAVIS: The district can put that into an
13 account and use that for another project.

14 ASSEMBLY MEMBER HAGMAN: And this is pretty much
15 set up in statute and in our policies as far as what we
16 have?

17 MR. DAVIS: That's correct.

18 ASSEMBLY MEMBER HAGMAN: So in order to change
19 that policy, what would the procedures be? A statute
20 change, that be legislative, or that be bond -- this is bond
21 money, so --

22 MR. DAVIS: That I'd have to look at how much that
23 could be done through -- whether that would require
24 legislation or regulation change.

25 ASSEMBLY MEMBER HAGMAN: And I guess to

1 summarize -- even if we wanted to, do you see any way we
2 could legally do this?

3 MR. DAVIS: Not at this time, no.

4 ASSEMBLY MEMBER HAGMAN: Thank you.

5 MS. MOORE: Well, I have a different probably
6 approach. While I appreciate the concern about savings, as
7 we all know, we do like to have complete schools built in
8 California and when this project first came forward to the
9 Department of Education, it had a conceptual -- it had -- in
10 its conceptual stage, it had a library as part of the
11 project for the future. And we question that because we
12 want to ensure that library services as required by Ed Code
13 are available to students.

14 And because of the -- what they believe the
15 financial situation of this project, they had classrooms,
16 administration, and a library that the place that they could
17 cut was at the library.

18 We would maintain that it conceptually was part of
19 the project and that indeed they are providing library
20 services to this -- in this project because we had to ensure
21 that that was occurring and it's occurring -- you know, it
22 will have to occur in the classroom areas.

23 Now, the in Victorville -- is it Victorville?
24 Victor Valley?

25 MR. BULTEMA: Victor Valley.

1 MS. MOORE: -- we as a Board approved in a similar
2 circumstance a scope change to -- for additional gymnasium
3 area and if we would look at this creatively, I think that
4 we could say a scope change for additional library service
5 area for this project.

6 And the reason that I indicate that is these
7 students -- well, we say, well, maybe future students could
8 generate the eligibility to build a library. It's these
9 students that we shortchange with not having a full library.
10 They may have limited library services, but they don't have
11 the benefit of a full library.

12 And the real reality is we probably will never
13 return to place that library. This is the opportunity and I
14 don't know if we need to look at it as expenditure of
15 savings but actually a change of scope for extension of the
16 services -- the library services that were in the project.

17 ASSEMBLY MEMBER HAGMAN: Can we get a legal
18 opinion on that?

19 MR. DAVIS: The only thing I was -- staff's hands
20 are somewhat tied here because the application process
21 requires that the applicant come in with plans that are
22 approved by the architect, plans that are approved through
23 the Department of Education and that's the plans that we're
24 funding and when we're looking at now we're going to change
25 the plans after it's been funded, that's the issue that

1 staff's dealing with why they're not able to accommodate
2 them.

3 ASSEMBLY MEMBER HAGMAN: What's the difference
4 with that and the Victorville scope change?

5 MR. DAVIS: I am not completely up to speed on the
6 Victorville --

7 CHAIRPERSON REYES: Staff may be familiar with
8 Victorville.

9 MR. DAVIS: Staff might be able to --

10 CHAIRPERSON REYES: Staff.

11 MR. LaPASK: There are a few similarities I
12 suppose, but the main difference in the Victor Valley
13 project is that the gymnasium that they enlarged was
14 actually in the approved project. It was in the plans that
15 we approved initially and they expanded the size of it.

16 The difference would the BCOE is that the library
17 was not contained in the plans that were approved. So
18 that's the main difference that we see.

19 MS. MOORE: Conceptually the library is in the
20 project in that it's -- the services are being delivered
21 through the classrooms. I -- and that's what they have to
22 do because library services are required in a school.

23 And so those services are being through the
24 classroom area for this project. You could provide -- you
25 could look at the same logic of extending the gymnasium

1 which also had to go back through DSA. It was not -- it did
2 not exist at the time.

3 So I think there's some precedence there. I can
4 see the staff position. I just -- I'm looking at a
5 potential different position on that, that I think
6 ultimately in the end benefits these students in this time.

7 ASSEMBLY MEMBER HAGMAN: Can I have --

8 CHAIRPERSON REYES: Mr. Hagman.

9 ASSEMBLY MEMBER HAGMAN: -- Mr. Chair. If you're
10 basically changing the size of the building versus adding
11 additional facilities that are not on the approved plan, is
12 there a possibility -- I don't know what your time frame on
13 this is -- to possibly come back with an enlarged classroom,
14 part of it being dedicated to your library facilities and
15 when that -- that would stay within the same room.

16 MR. BULTEMA: I can just speak to the timeline.
17 We've already broken ground on this project and I would to
18 turn to some architects and find whether or not we could
19 make that work or not.

20 ASSEMBLY MEMBER HAGMAN: The problem I see here is
21 once you start doing regulations and rules on the fly and,
22 you know, our staff is not there to supervise these building
23 projects. They're there to formulate, get approval, and
24 move on and once you start doing that, it makes things very
25 critical for us to defend ourselves in every decision and

1 both legally and also policy-wise.

2 I could see, as you start into a project, two or
3 three years down the road, I don't think there's probably
4 not a project that hasn't changed architecturally or maybe,
5 you know, switch this room over here, that -- those type of
6 things and those have a standard process I believe that we,
7 you know, go through and yeah, you still have the scope.

8 But once you start adding physical buildings to a
9 site, that really changed the whole ballgame in some regards
10 and we could look as a Board later on to change rules and
11 regulations that we follow, but to do that
12 postspectively (ph) versus prospectively, it becomes an
13 issue and I'm wondering on the creative side is -- like you
14 said, this is a portable building. You need to --

15 MR. BULTEMA: We're simply proposing with the
16 dollars, we believe we can put in a modular. So we're
17 certainly not asking for a stick building.

18 ASSEMBLY MEMBER HAGMAN: A modular.

19 MR. BULTEMA: We're looking for something that
20 is --

21 ASSEMBLY MEMBER HAGMAN: Yeah. So it's a modular
22 building that may be -- I don't know if this even flies
23 legally as well with the codes, but if you already had that,
24 if you expand another modular, then that becomes a large
25 classroom and then later the district changes its use. I

1 don't know if there's anything different on that. Just an
2 idea.

3 CHAIRPERSON REYES: Staff, what are your thoughts
4 on that? I mean -- I don't know that the school district
5 has been approved on that -- has agreed to that. But is
6 there a concern -- I guess, Mr. Hagman, my concern with that
7 is, you know, when somebody comes in and makes \$99 donation
8 so we don't have to show the hundred dollars in a report and
9 we sort of as a Board are telling somebody, hey, make it
10 99.50 so that it doesn't show up. So as a Board, I'm kind
11 of uncomfortable with that.

12 ASSEMBLY MEMBER HAGMAN: I understand that and I'm
13 not advocating for getting around the rules. What I'm
14 trying to do is if there's a clear policy on the books
15 already in one instance, is there -- and there's clear
16 policy that you've followed in the past --

17 CHAIRPERSON REYES: Um-hmm.

18 ASSEMBLY MEMBER HAGMAN: -- in previous Boards for
19 the recuperation of dollars because that was not part of the
20 approved plan, I don't see another way of doing it.

21 CHAIRPERSON REYES: Yeah. Mr. Harvey.

22 MR. HARVEY: AS a follow-up, I think we all are
23 sympathetic to what Ms. Moore is saying, but I think
24 tragically we don't have a way of doing it neatly and again
25 the key word I heard from staff on the Victorville situation

1 was that the use started as a gymnasium and the scope was to
2 change the continued use into something larger.

3 What you're suggesting is a bit more of a slippery
4 slope by saying, hey, something that isn't a library call it
5 that. It's really a classroom and I think that is
6 unsettling precedent because you can suddenly find creative
7 ways to do things that are -- I think are probably not in
8 the public's interest.

9 So for me that's the distinction. If this were
10 the same use and you simply wanted to say gosh, we didn't
11 make it large enough because we were concerned about budget,
12 then I'd be even much more sympathetic to adding to the
13 scope and allowing you to use the savings.

14 Can I ask you, is there a -- if this district had
15 included the library in its project, the bids came in lower
16 than what would have allowed them to build their project, do
17 they have the opportunity to amend their definition of the
18 project? Or fund it to a certain level and then fall back?

19 I'm looking for a way for districts in the future
20 if they really want something, how can they build it into
21 their project definition so that if circumstances change
22 going forward, they can change the scope without having to
23 do what we're doing here, which is to deny them and make
24 them come back at some future time.

25 MR. LaPASK: We have in the past published change

1 of scope criteria in our publications that we have for the
2 public and we do have defined things you can and can't do.
3 I can go over them if you like, but as far as what you're
4 talking about, I think if they could do alternates and
5 things like that, you know, if they overdesign, take things
6 out of the project, for instance, there are ways to do those
7 things.

8 But in this case, it's something that, you know,
9 they're adding to the project that wasn't in there
10 previously. That's not something that's on our list of
11 things we can accommodate.

12 MR. HARVEY: But again going forward, I'm trying
13 to help districts understand what is the best way to
14 preserve their rights for something like this in the future
15 and it may be shoot for the stars. Have something a little
16 more like your complete campus and then if your budget
17 doesn't allow you to do it, you make some hard choices, but
18 at least you've created the foundation for you to make some
19 policy decisions going forward.

20 Juan, am I -- I'm leading them incorrectly. I
21 don't want people to go the wrong way.

22 MR. MIRELES: No. Mr. Harvey, that is an option
23 that districts currently have right now. Part of the
24 guidelines that Mr. LaPask mentioned do provide some
25 provisions for reductions to minimum essential facilities,

1 such as a library.

2 Of course those kinds of changes would have to be
3 approved by the Department of Education as well as the
4 Division of State Architect. There is also some provisions
5 for deletion of MEFs on a case by case.

6 So we have some guidelines that we have published
7 for reductions and deletions of minimal essential facilities
8 such as libraries. So had the district included the
9 library, not had enough money to move forward, there is a
10 mechanism to reduce the scope in that situation.

11 CHAIRPERSON REYES: Thank you. Senator Hancock.

12 SENATOR HANCOCK: I was just going -- I think that
13 I do agree with Assembly Member Hagman in terms of where we
14 are today. I was wondering if we could perhaps get a copy
15 of those rules of the -- of how people could go about
16 changing the scope when they get those kinds of indications
17 because the Board might want to go over those at a later
18 date and consider clarifications or some differences in --
19 you now, a policy that isn't the policy that's before us
20 today in terms of policy and practice.

21 CHAIRPERSON REYES: You have a colleague that came
22 up. Is there additional information that wants to be --

23 MS. BILSDAY: Regina Bilscday (ph), Conwith &
24 Teedy (ph) Architecture. I just wanted to add that in
25 hindsight, we're realized that we would have had the option

1 to add the (indiscernible) deductive alternate, but the
2 mindset that we had at the time that we designed project,
3 everything had to be value engineered and so we didn't
4 realize that that was really something that would even be an
5 option in the future.

6 At this point, we're realizing that we either get
7 the library today or we're probably not going to realize it
8 in the future.

9 CHAIRPERSON REYES: Mr. Hagman.

10 ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.
11 You know, always look for creative things. I want these
12 school districts to look for value engineering and save the
13 taxpayer dollars all the time if they can and the other
14 alternative for them to plan out a super school but not get
15 halfway through, I don't want that happening either because
16 then we tie up funds that we cannot get to the other areas.

17 So I see the dilemma on both sides. Fortunately
18 we do have a number of schools that are unfunded with a lot
19 of their facilities as well and that there has to be some
20 kind of guidelines one way or the other as far as procedures
21 to go as the economy change because all these projects start
22 three, four, five, six years in conception before they
23 actually get to reality of becoming a school and things
24 change. The economy changed. The makeup of the districts
25 change. You know, all these different things going.

1 But unfortunately I think with the rules that we
2 have today, I don't see being creative a way that we can
3 approve the appeal, so unfortunately I have to make a motion
4 to accept staff's recommendation at this time.

5 CHAIRPERSON REYES: So moved. Is there a second?

6 MR. HARVEY: Second.

7 CHAIRPERSON REYES: There's a second. Additional
8 comments? Ms. Moore.

9 MS. MOORE: Well, this will be my last additional
10 comment and that would be that as I said the services are
11 being provided and they're being provided. They have to be
12 provided in the classroom.

13 If the district had simply written on their plans
14 classroom slash library, we would be having a different
15 discussion and I think that it's tragic that we don't allow
16 for a library for a small group of students that probably
17 will not have one in the future unless we take a different
18 action.

19 CHAIRPERSON REYES: Okay.

20 ASSEMBLY MEMBER HAGMAN: And -- excuse me,
21 Mr. Chair. Maybe we can direct staff to maybe come up and
22 see if there is possibilities for future situations like
23 this where they -- districts have received savings and
24 there's -- or change -- you said there's --

25 CHAIRPERSON REYES: What alternative process may

1 be available so that people can have that flexibility in the
2 process.

3 ASSEMBLY MEMBER HAGMAN: Yeah, and there may or
4 may not be that option, but we can at least look at it.

5 CHAIRPERSON REYES: Recognizing that --

6 MS. MOORE: Perhaps -- I mean if --

7 CHAIRPERSON REYES: Recognizing that that would
8 have an impact on those who are waiting in line on the
9 savings. Ms. Moore.

10 MS. MOORE: I would take that further to be
11 talking about minimum essential facilities and anybody that
12 has left that out of a project and minimum essential
13 facilities are considered gymnasiums, libraries, and such,
14 that -- whether that is appropriate use of savings for
15 projects.

16 So if we're going to look at the policy, I'd like
17 it to extend out to those types of facilities.

18 CHAIRPERSON REYES: Okay. Additional comments
19 from the public?

20 MR. BULTEMA: If I could only make one last
21 comment. It does feel like that students will somewhat be
22 penalized in our effort to be good stewards of the public's
23 money and attempting to put forward a project and value
24 engineer a project that is the best use of the dollars that
25 we have. So I completely understand your difficulty, c

1 certainly the need to follow procedures.

2 I would just add in this situation it does feel
3 that students will be penalized for our efforts to be good
4 stewards.

5 CHAIRPERSON REYES: Ms. Ferrera.

6 SENATOR HANCOCK: Actually I had another --

7 CHAIRPERSON REYES: Ms. Hancock.

8 SENATOR HANCOCK: Since we had asked staff to
9 bring us back some options and language, I would like the
10 staff to also look at clarifying whether County Offices of
11 Education as it states in Article 16 of the California State
12 Constitution are able themselves with 55 percent vote of the
13 voters to issue bonds for projects like this.

14 I was surprised in questioning the staff about
15 this to find that all projects of all County Offices of
16 Education are deemed hardship and we pay a hundred percent
17 of the costs because somehow we have interpreted that they
18 can't do bonds, although it states in the California
19 Constitution that they can.

20 I just think we ought to clarify that going
21 forward again in the interest of being good stewards of the
22 public money, giving people options and making our money go
23 further.

24 CHAIRPERSON REYES: Thank you.

25 MS. FERRERA: Anna Ferrera, County School

1 Facilities Consortium. I think my presence here is timely.
2 We have actually done some research in that area about bonds
3 and there is conflicting code section. It's not just the
4 Constitution. There's statutory language also that says
5 something that's different and I'm happy to provide that to
6 the Board.

7 We do believe that that is not the case. And on
8 this issue, we --

9 SENATOR HANCOCK: You think that State statute has
10 overridden the Constitution --

11 MS. FERRERA: I think they're conflicting.

12 SENATOR HANCOCK: -- or vice versa? Okay.

13 MS. FERRERA: I think they're conflicting and
14 we've also had a legislative opinion request a couple years
15 ago, so I'm happy to share that with you as well.

16 And on this issue of clarification of the policy,
17 we would certainly welcome that as well given that LEAs
18 would -- you know, they've given up their eligibility and
19 especially on this minimum essential facilities question
20 because if you've given up your eligibility and the grant
21 amount, it's a, you know, local issue. You know, you should
22 be able to enhance your project if it's on -- and in dealing
23 with minimum -- as I said, MEFs.

24 I think that there's a question that really needs
25 to be answered there and we would be very concerned about a

1 precedent for that for other counties. Thank you.

2 CHAIRPERSON REYES: Senator Hancock, just so you
3 know that I wholeheartedly agree with you a hundred percent
4 on the Constitution trumps any government code or education
5 code you folks write. So I think --

6 MS. FERRERA: One last thing, it's up to a hundred
7 percent.

8 CHAIRPERSON REYES: Right.

9 MS. FERRERA: Yeah. So --

10 CHAIRPERSON REYES: Mr. Hagman.

11 ASSEMBLY MEMBER HAGMAN: Well, I was going to say
12 I mean this whole -- it leads to a bigger issue too of how
13 we allocate the dollars. I mean when this project was
14 approved without a library even though it's minimum, you
15 know, facility you're supposed to have, you know, do we
16 allow those type of projects to go in the future without the
17 minimum facilities that should be there.

18 CHAIRPERSON REYES: Right.

19 ASSEMBLY MEMBER HAGMAN: Secondly, on different
20 pots of money, you have different rules as far as how --
21 what do you do with the surplus and anyway we can encourage
22 value engineering and saving the tax dollars of our bonds
23 and -- those spread out, but as we allocate it now, once
24 we're done with the bond issuance, there's a lot of people
25 on that list to go down that are not receiving any

1 facilities whatsoever at this point.

2 And so we need to kind of one of these days have
3 maybe a strategic look at for new construction, you know,
4 the price for labor and materials come down dramatically in
5 the two or three-year process this goes down, what can we do
6 with those savings, how do we encourage that value
7 engineering which I appreciate your district doing that and
8 I hate to penalize you when you do that.

9 At the same time, we want that to happen and maybe
10 there's some way to incentivize that in the future
11 construction projects that would be the best benefit for the
12 taxpayers as well. So I look forward to coming up with some
13 creative ideas of that in the future.

14 CHAIRPERSON REYES: Okay. My recollection is we
15 have a motion.

16 ASSEMBLY MEMBER HAGMAN: Yeah.

17 CHAIRPERSON REYES: That's been seconded. Any
18 additional comments from the public?

19 MS. GENERA: Senator Lowenthal.

20 SENATOR LOWENTHAL: No.

21 MS. GENERA: Senator Hancock.

22 SENATOR HANCOCK: 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: No.

4 MS. GENERA: Pedro Reyes.

5 CHAIRPERSON REYES: Aye.

6 MS. GENERA: It does not carry.

7 CHAIRPERSON REYES: We still have two members who
8 still need to show up. So we'll leave it open. Leave it
9 open for now. The alternative is the district is requesting
10 an appeal, so we would then need a motion to provide for
11 that in the absence of not carrying, and so we'll need to
12 get six votes for that. In the absence of that, we would
13 need to table the item. Just so people know kind of what
14 the option -- where we are. Okay? Thank you.

15 MR. BULTEMA: Thank you.

16 CHAIRPERSON REYES: All right. Tab 8 we've
17 dispensed with. Tab 9 we've dispensed with. Tab 10,
18 Siskiyou County. Tab 11's Consent. Tab 12, **San Joaquin**
19 **County Office of Education.**

20 MR. ASBELL: Good evening, Mr. Chair and Board
21 members. My name is Rick Asbell. I'm a fiscal operations
22 manager over at OPSC.

23 The purpose of this report is to have the State
24 Allocation Board levy the statutory material inaccuracy
25 penalties for the San Joaquin County Office of Education.

1 As a reminder, at the November 10 -- or November
2 2010 Board meeting, the Board found that a material
3 inaccurate occurred for eight of the district's projects.

4 If you would please go to Attachment B on
5 page 193, we have a listing of those projects. And what you
6 will find on that attachment is a listing of the projects,
7 but if you look at the last two columns in the attachment,
8 we show that there's two views or scenarios on how to
9 calculate the interest associated with the material
10 inaccuracy.

11 The last column is associated with the County
12 Office of Education interpretation. The second to last
13 column is what the Board has consistently applied when it
14 has looked at the interest penalty.

15 You'll see there's a wide variance between the two
16 amounts. If you use the COE's approach, you're looking at
17 approximately \$1,400 in interest penalties as opposed to the
18 column next to it which is 257,000.

19 Now, once the Board makes a finding of material
20 inaccurate, statute requires the interest and loss of
21 certification penalties be imposed. However, for this
22 particular item, the Board wished to discuss the interest
23 penalty at a later date so to consider how the amount of
24 interest is calculated.

25 Concerning the interest penalty: Consistent with

1 law, regulation, and past Board practice, the Board has
2 assessed the material inaccuracy penalty using the full
3 amount of the premature fund release as the additional
4 funding received. This is because at the time a district
5 falsely certifies a fund release authorization, the district
6 is not entitled to the fund -- releases of any funds.

7 It's essentially a light switch. They either
8 qualify or they don't. Using this established standard, the
9 additional funding received for the eight projects that were
10 listed on the attachment was for \$16 million and the
11 resulting interest penalty is \$257,652.

12 And to kind of -- to go through the mechanics of
13 how we calculate the interest, what we've done is we've
14 highlighted one project in particular on stamped page 188
15 and that is the Kettleman Community School project.

16 So looking at the timeline on page 188, the
17 interest penalty as calculated is at 39,418 and this is
18 based on the April 25, 2003, warrant release of
19 \$2.3 million.

20 The general obligation bond interest rate at the
21 time the warrant was released was 4.28 percent and the
22 number of days between the warrant release and the date the
23 county met its fund release certification is 146 days.

24 If we look at the County Office's position, the
25 County contends that the additional funding received only

1 amounts to the interest earned by the County in their own
2 account which in this case was \$8,080 from the warrant
3 release date which is April 25th, 2003, to the time when the
4 County Office of Education met the requirements to have the
5 funds released which was on September 18, 2003.

6 Using the County Office's criteria, the additional
7 funding received for all eight projects equals \$79,529 and
8 the resulting interest penalty is \$1,439.

9 To illustrate this further, if you look on the
10 table on page 189, we've broken out kind of a side-by-side
11 comparison between what the Board has done previously and
12 what the County Office's approach is.

13 The base amount is considered to be the additional
14 funding received. In this case, in the first -- for the
15 first example is 2.3 million. That is the warrant release.

16 The County Office's approach is -- the amount
17 should be 8,080. There is no disagreement between what the
18 daily interest rate is and the number of days are in
19 calculating the interest. The result is we are advocating
20 39,418 as the interest penalty for this particular project.
21 The County Office's approach is that it be \$138.

22 If you take the County Office's approach, you
23 would basically reduce the amount owed for the interest by
24 96.5 percent compared to what the Board has done previously
25 on other material inaccuracy projects.

1 As far as the analysis of the -- a legal opinion,
2 at its November 2010 meeting, the Board found that a
3 material inaccuracy occurred as defined by the material
4 inaccuracy statute because the certification was false at
5 the time it was made.

6 Previously the Board's actions consistent with
7 statute and regulation consider the entire grant amount
8 released to the school district to be the additional funding
9 received. This material inaccuracy resulted in the County
10 Office receiving all the funds when it was ineligible to
11 receive any funds.

12 Assessing the penalty against the entire fund
13 effectively restores the School Facility Program bonds to
14 the condition that they were in but for the false
15 certification.

16 If you would go to the bottom of page 189, we have
17 laid out what staff's recommendations are. Staff's
18 recommendations are to require the County to pay \$257,652.
19 The second recommendation is that a loss of
20 self-certification based on the number of days that they
21 were out of compliance for all eight projects, that the loss
22 of self-certification be for a period of five years until
23 June 22, 2016.

24 I'd be happy to answer any questions you may have.

25 CHAIRPERSON REYES: Any questions? No. Okay. Is

1 there somebody from the district here?

2 MS. STARR: Chairman Reyes, members of the Board,
3 I'm Mamie Starr, the Director of Operations for the San
4 Joaquin County Office of Education.

5 I'd like to first present some context for this
6 discussion. First of all, these fund releases occurred in
7 2002, '03, and '04 and times now and how money is
8 apportioned is very different than what was going on in
9 those years.

10 And at that time, there were continuous
11 apportionments. There was continuous funding. There was
12 authority for bonds and they were being continuously sold,
13 so projects were being funded. So there was no unfunded
14 list and there really were not any line jumping issues back
15 then because it is -- it was very different than it is now.

16 Third, only a few people were really cognizant of
17 the PMIB and how the flow of bond dollars went. It's not
18 like now where we all monitor that.

19 And fourth, the legislation with a penalty concept
20 and the material inaccuracies that came through SB2066 in
21 2000 was new at the time that we took the fund releases. So
22 it was a young program. There were not experiences in the
23 concept of oversights becoming punishable as material
24 inaccuracies.

25 That's now coming forward because we are closing

1 out projects. We're coming to the end of the process.

2 And people who checked the boxes at least in our
3 organization and I would purport in others as well, they're
4 very long gone. So those who ignored the fine print aren't
5 there anymore.

6 We don't argue that we did file the 50-05 before
7 the contracts were -- thereby created an MI situation. We
8 don't have an argument with the chart that sets forth the
9 date and says well, under the definition, you have a
10 material inaccuracy and we've said that previously.

11 And we said that we would accept the five years'
12 noncertification which is in fact very punitive and very
13 embarrassing if nothing else. It does come with a lot more
14 paperwork for us and OPSC and we are willing to accept that
15 as punishment, so to speak.

16 And we said that we would accept the requirement
17 that we would pay \$100 an hour to OPSC for all of the added
18 paperwork review as part of that five-year noncertification.

19 And we do agree that the law does contemplate
20 punitive treatments for material inaccuracies. And fifth,
21 we did have our dollars early and we are not entitled to the
22 interest that we earned on those dollars during that time,
23 nor are we entitled to -- we need to pay that back plus the
24 interest on that.

25 Now, OPSC and we agree that the amount that we got

1 was an approved apportionment and therefore that money was
2 set aside for us for 18 months. We could take it at any
3 time.

4 What we did was, we said well, we signed contracts
5 when we had not really signed those contracts, but that
6 16 plus million dollars was set aside for us. It was ours.

7 That leads us into our argument which is, first of
8 all, we do not believe that there is a statutory interest
9 penalty. We do not believe that the statute says that.

10 The law says that the penalty for the material
11 inaccuracy is an amount proportionate to additional funding
12 received. Our argument is that we did not receive any
13 additional funding except for that amount which staff spoke
14 to that that money earned while it was sitting in our
15 coffers during that time period and that the concept of an
16 interest calculation is interest on the proportionate amount
17 of additional funding and that's what the statute says.

18 And there's nothing in the code about the State
19 recouping the interest. It doesn't say that. It just says
20 that you pay interest on the amount that is the additional
21 funding.

22 And we believe that the law speaks to additional
23 dollars and does not speak to premature fund releases. In
24 other words, there's a list of things that are MIs and the
25 law says here's some punishment that you get for doing an

1 MI, but it does not go back to every single MI and say okay,
2 this is the punishment that's to be applied. It's more of a
3 blanket punishment.

4 So in summary, we believe that the \$257,000 is a
5 penalty totally disproportionate to the transgression and it
6 is not contemplated by code, that it's taking a concept of
7 interest that the code does not state and the code doesn't
8 speak to every MI as I pointed out. It speaks to a blanket
9 punitive measure.

10 And the deterrence to take money early just
11 doesn't exist anymore. It's not there and there was no
12 intent to defraud or get money early at all back 2002, '03,
13 and '04. That's when our folks just -- they did not read
14 all the boxes that they were checking.

15 Now MIs are a part of the SFP lexicon and so just
16 that knowledge we believe is a sufficient deterrent.

17 We're hardship and all of the amount of money that
18 we would have to pay is coming straight out of our general
19 fund and it is -- we have no bond. We have no other capital
20 funds that we would apply. So it is general fund. It will
21 come out of program for kids.

22 And essentially what's happening is that we will
23 be paying out of our general fund to allow another district
24 to undertake some measure of construction and we don't
25 really believe that that's what the code contemplated and we

1 don't believe that that's what the Board's intent is.

2 So in summary, there were no additional funds that
3 we got and we believe that you can't create a conceptual pot
4 of additional funding just to have something upon which to
5 levy interest.

6 I'd be happy to try to answer any questions of the
7 Board and joining me is Mr. Bryce Chastain who is district
8 legal counsel and we have been working with him in terms of
9 the legal interpretation and he is prepared to try to answer
10 any questions the Board may have.

11 CHAIRPERSON REYES: Mr. Hagman.

12 MR. HARVEY: Thank you, Mr. Chair. Either staff
13 or both of you could answer this. At the time that you
14 received the funds, you're saying there's no additional
15 funds received. My interpretation is you weren't qualified
16 to receive any funds because you didn't meet the criteria at
17 that time and that's the way I believe it's been interpreted
18 in the past as well and so the entire money would not be --
19 you know, if you actually had and were looking at the boxes
20 and verified of that fact at that time, would you or would
21 you not receive any funds at that time?

22 MR. CHASTAIN: If I may. I think the conflict is
23 in the statute talking about an amount proportionate to the
24 additional funding received and I understand the argument
25 that you weren't entitled to receive it when you did. But

1 the apportionment had been made. It was an amount of money
2 that had been set aside for the County Office and it was
3 just -- it was a matter of meeting technical requirements
4 for when they got it.

5 So when the statute is talking about additional
6 funds, in a legal sense when you're reading the statute and
7 how it gets interpreted in the regulation, if there's
8 nothing else in the statute that tells you what is meant by
9 additional funds, you literally go to the dictionary.

10 And so it's funds in addition to what they were
11 supposed to be getting. Well, they were only supposed to
12 get the money that they got. They just got it early.

13 ASSEMBLY MEMBER HAGMAN: But at that time when
14 the -- you know, said we're ready to go. We got all our
15 boxes checked. We're ready to go get funded and in fact the
16 County or the district was not qualified to receive any
17 funds at that point if the thing was filled out accurately
18 at that point.

19 And I understand the context was different. Maybe
20 there was no one waiting in line at that time, but the
21 purpose for the regs were to get the money out to
22 shovel-ready projects, get it out there as quickly as we
23 can, you know, get those jobs going, get this stuff gone.

24 So -- and I believe in the past -- and I'd love to
25 have our counsel chirp in -- there's been other cases of

1 this that they have followed that literal interpretation of
2 either you're qualified or you're not qualified at that
3 point in time. Therefore everything in addition to that was
4 an overpayment at that particular time. It doesn't mean you
5 weren't qualified six months later or three months later,
6 whatever, but at that point in time, those funds are extra
7 outside.

8 And, you know, one of the things I'm afraid of
9 would be again, like our last discussion, if you change
10 policies, interpretations of law in midstream without doing
11 it statutorially or the proper way, then it may open up a
12 number of cases that have already been reviewed under the
13 same interpretation of those codes, almost like case law.

14 And my interpretation of it is you either qualify
15 or you don't qualify at that time that you got the funds.
16 You made assessment that you were and I understand that it's
17 the previous administration, so the people at this time are
18 not at fault, that you're paying for previous sins, but at
19 the time, they weren't qualified and that money could have
20 gone to another project at that time and maybe there was a
21 waiting line and maybe there wasn't, but that school
22 district was not ready to go at that time.

23 I'm looking for guidance. Is that the -- my
24 interpretation correct or --

25 MR. DAVIS: That's consistent with how the Board's

1 interpreted the material inaccuracy penalty. The -- and the
2 chart on 188 where it shows the timeline, on 4/25/03, the
3 warrant is released, at that time, the certification was
4 that the school was -- had their contracts in place and
5 based on that, the warrant is released.

6 But at that time, they didn't have them. If they
7 had certified correctly, they would have gotten zero
8 dollars. So the additional dollars they received, but for
9 the material inaccuracy, was the entire warrant.

10 ASSEMBLY MEMBER HAGMAN: And I guess the follow-up
11 on that, and that's been -- how many cases in the past has
12 this been interpreted in that legal way?

13 MR. DAVIS: I believe we've had six different
14 districts but about 39 --

15 MR. ASBELL: I believe it's 39, yes.

16 MR. DAVIS: -- projects which it was interpreted
17 consistently and now -- and just to give you a little bit of
18 my understanding. We talk about premature and early fund
19 release because we're looking at it years later the
20 project's done and we discover these issues after the
21 project's done.

22 But had it been possible for staff to jump in in
23 the middle and -- in this case, the warrant release was in
24 April 25th. If staff were to come in on May 25th or
25 June 25th and say -- and be able to audit at that time, see

1 the construction contracts weren't in place, they would have
2 been entitled to no money.

3 So we only call it premature -- early because we
4 know in hindsight that the contracts were finally made and
5 the project was finally completed.

6 ASSEMBLY MEMBER HAGMAN: And the purpose -- the
7 intent of the penalty were to again limit resources going
8 out to X amount of districts or projects that are available
9 at the time, we try to put the -- what, the most priority,
10 the most shovel ready, however you say it, the most ready
11 districts in the front of the line to receive the bond funds
12 and as I understand, the bonds were sold as needed in that
13 time period.

14 So would the State of California, if the projects
15 weren't ready, issue more bond funds at that time if the
16 projects weren't ready?

17 MR. DAVIS: Concept being that the funds are
18 staying with us until your project is ready. Other
19 districts may be coming in and they're ready to start
20 building their schools. They access the funds as they're
21 ready to go.

22 In this case, if we took away the disincentive to
23 come in for these funds without having the requisite
24 contracts, they're holding up dollars while there's no
25 contracts going -- there's no construction going on yet,

1 there's not -- doesn't look like it's going to be coming up
2 right away. Other districts are ready to go. They don't
3 get to those dollars.

4 ASSEMBLY MEMBER HAGMAN: Thank you.

5 CHAIRPERSON REYES: Ms. Buchanan.

6 ASSEMBLY MEMBER BUCHANAN: Yeah. I have sympathy
7 with all districts sometimes when you have to deal with
8 decisions that were made prior to when a superintendent or a
9 school board member came onboard, but when I was elected,
10 there were decisions that were made that I don't -- there
11 were decisions whether they were contract negotiations or
12 decisions to sue or not to sue or to build a school a
13 certain way, and I own it.

14 You can't go back and say well, it's not my fault,
15 I would have done it differently. And in this situation to
16 me, it's really pretty simple. I just do not understand why
17 when people sign a statement that says you're under contract
18 and ask for funding, they don't understand what that
19 statement is, particularly people who are in education who
20 are teaching people, you know, to read.

21 You sign a statement that says you're under
22 contract and you're not under contract and it's that simple.
23 And when you sell bonds -- just like when a school district
24 goes out and sells general obligation bonds, when we sell
25 those bonds, it's a pact that we make with the public and

1 there are requirements if they're local bonds that you have
2 to have so many -- so much under construction within a
3 certain period of time and a number of other requirements to
4 even maintain the tax deductibility of those bonds.

5 I mean districts know that. Now in this case,
6 it's State money. It's not your local general obligation
7 bonds, but when the voters of California approved those
8 bonds, they're expecting us to give the money to districts
9 to build schools and that's why we have some of those
10 requirements.

11 They're not expecting us to give the money to
12 districts to bank it, to earn interest arbitrage. That may
13 not have been your intent, but that's in effect what
14 happened here. And we can talk about interest rates, but if
15 you had been funded when you were under contract -- okay --
16 and the State had kept that money in the Pooled Money
17 Investment account, the State would have earned another
18 \$257,000 in interest.

19 And what the State would have done with that money
20 is given it to another school to build a classroom or a
21 career tech or do something else with their schools. So we
22 lost the ability to take that interest that we earned and
23 get it out to another project and help another school.

24 And when I read the regulations and you're saying
25 they're not clear, it says pursuant to repayment schedule

1 approved by the Board, no more than five years, a school
2 district shall repay to the Board for deposit -- go on and
3 on -- as the case may be an amount proportionate to the
4 additional funding received as a result of material
5 inaccuracy.

6 The additional money you had, I mean you could say
7 it was the whole amount that we're charging you the interest
8 on it and it said including interest at the rate paid on
9 monies in the Pooled Money Investment account or at the
10 highest rate of interest for the most recent issue of State
11 general obligation bonds as established pursuant to
12 Chapter 4.

13 That's pretty clear to me that the interest rate
14 that is assessed is what the State would have earned on the
15 money.

16 And so I -- while I have sympathy for you, I think
17 it's clear. It's consistent with what we've done before and
18 I'm inclined to support the staff recommendation.

19 MS. STARR: Mr. Chairman, if I may.

20 CHAIRPERSON REYES: Yes.

21 MS. STARR: We also agree that the statute is
22 clear, but we don't necessarily agree with the
23 interpretation. There was the \$16.4 million that we were
24 allowed to get -- and shovel ready wasn't a concept then.
25 But the concept of getting money out there to build schools

1 was certainly there. That's why there was an 18-month
2 requirement and so forth.

3 ASSEMBLY MEMBER BUCHANAN: You signed a statement
4 that said you were under contract.

5 MS. STARR: We -- I fully stipulate that we were
6 bad and we did sign a statement that was incorrect. Where
7 we start to part company is and what should actually be the
8 computation for the penalty and we agree with that part of
9 the statute that says proportionate to the additional
10 funding received.

11 And we're saying we got it early, but we got no
12 additional funding except we are saying we did earn some
13 money when that was sitting in our account, when we weren't
14 actually paying contractors and that is the additional money
15 and we have to pay that back to you and we have to pay you
16 interest computed upon that by the formula that's in the
17 code.

18 We feel that the code does not say that there was
19 additional funding over here. The fact that we got it early
20 was not additional and we didn't really reap any benefit
21 from having that money and whether somebody else is
22 disenfranchised or not, we don't believe that they were at
23 that time. Now, that would be the case.

24 ASSEMBLY MEMBER BUCHANAN: You know what, you
25 can't say that -- you just -- I don't think you can

1 interpret statutes to say that, well, if you have more
2 school districts asking for money that need it, it's not
3 okay. If you have less, it is okay or whatever.

4 It's really clear. You signed a statement that
5 said you were under contract. You weren't. You got --
6 because of that, you got the money early. You were able to
7 basically bank that money and keep it.

8 MS. STARR: Which we're going to give back.

9 ASSEMBLY MEMBER BUCHANAN: And what I would say is
10 that money -- that the additional amount you received was
11 that amount of money for the time period that you didn't use
12 it because you were entitled to zero and to me the
13 statute -- and we didn't -- good people can agree to
14 disagree.

15 The statute is really clear that the interest is
16 at the Pool -- I read it. It's at the Pooled Money
17 Investment account or the interest rate you would have
18 received on the bond.

19 And it's not at the interest you received. If
20 that were the case -- if we were to interpret the way you're
21 talking about, I could take money from the State, put it in
22 a zero interest earning account to make sure I got my share,
23 leave it there for a year or as long as I want, and then use
24 the money when I was ready and that's not the intent.

25 The intent is to get money to programs. So again

1 we can agree to disagree, but I truly believe the amount you
2 were overfunded was the full amount. You may have
3 eventually spent it, but was that full amount for the time
4 period where you shouldn't have had the money. You
5 shouldn't have had the money until you were under contract
6 and that's the statement that you signed.

7 CHAIRPERSON REYES: Counsel, it sounds like you
8 were going to say something.

9 MR. CHASTAIN: Yes. Thank you, Chairman. Again
10 just to be clear. We're not differing over the fact of the
11 violation, just want the penalty's going to be. And I think
12 what we would like to focus on is when we're talking about
13 amount proportionate, we're talking about something that,
14 you know, really is going to deter the behavior, what's
15 going to get it back.

16 You know, Mr. Davis, brought up -- you know, as
17 you are inclined, there's an issue as to when this issue was
18 brought up in time. Is it a few months after the money's
19 received but before the contracts are signed. Is it -- does
20 some entity take it, stick it in a bank account for zero
21 interest, just to be sure that they're going to get the
22 money, and sit on it and then maybe never spend it.

23 In either of those cases, there is a more
24 appropriate penalty. They haven't spent the money. The
25 money could be taken back.

1 If they put it in a bank account and they actually
2 have no use for it and they're just trying to hold it, the
3 money can be taken back.

4 The more common motivation one would suspect if
5 there is a motive as opposed to just error, instead of just
6 checking the boxes as some people would just do -- they're
7 checking the boxes because they think they need the money
8 right away. The only motivation is to put it in a bank
9 account and try and make money.

10 So that is the additional funding then that you
11 get. And so the approach that we are proposing as being
12 more consistent with the term additional funding achieves
13 all of these aims. It deters the behavior in context with
14 every other penalty that's available.

15 Another issue that we should address is, you know,
16 this money was drawn out in a period of time when the
17 allocation had been made. It was a funded allocation. That
18 money was set aside. It wasn't money that was going to be
19 made available to anybody else during that same time period.

20 This is not an issue of another district going
21 without the money because it was drawn out early. That
22 money was sitting there for a period of several more months
23 anyway until the County Office drew it out.

24 So nothing that we are proposing would encourage
25 or excuse or fail to penalize the bad behavior. It would

1 not penalize other innocent parties.

2 ASSEMBLY MEMBER BUCHANAN: Do you disagree that if
3 the State had that money in the bank, that it funded it at
4 the time it legally should have been funded, the State would
5 have earned another \$257,000 and been able to allocate that
6 money out to another district's project?

7 MR. CHASTAIN: I don't disagree that that interest
8 would have been earned. The problem is that the statute
9 doesn't say that you can take back an amount of interest
10 on -- the full interest on that early amount. It's an
11 amount proportional to the additional funding and then
12 interest on that.

13 ASSEMBLY MEMBER BUCHANAN: Maybe that's where we
14 disagree because as I read it, it's clear.

15 MS. MOORE: Can I ask a clarifying question.

16 CHAIRPERSON REYES: Ms. Moore.

17 MS. MOORE: The 257,000 gets paid back regardless;
18 correct? Or am I --

19 ASSEMBLY MEMBER BUCHANAN: No.

20 CHAIRPERSON REYES: No. They don't want to pay it
21 back.

22 MR. HARVEY: No. They don't want to pay it.

23 MS. STARR: The 257- is a computation and I
24 believe staff has done a good job laying out the numbers and
25 the background to it, but it's really a computation -- what

1 we're saying is I don't argue at all with the statute saying
2 you pay at this rate or you pay at this rate. The issue is
3 not the rate.

4 It's what do you apply the rate to and we're
5 saying the statute says to addition -- proportionate amount
6 of additional funding received and we're saying, well, yeah,
7 we got it early. We're not arguing that, but that the
8 computation of the penalty is not consistent with the
9 statute because it doesn't say the State recoups lost
10 interest during this time period when you weren't supposed
11 to have the money because you hadn't signed your contracts
12 yet.

13 CHAIRPERSON REYES: Mr. Harvey.

14 MR. HARVEY: Just for the record, I've got to
15 agree with Assembly Member Buchanan. I think not only is
16 the statute clear to me, but to do what you're asking us to
17 do would violate what we have done for other projects and I
18 am concerned about what that change in policy might do to
19 our prior actions.

20 So for that reason also I am supportive staff's
21 recommendation and if I can, Ms. Moore, to show the fact
22 that the 257- is not paid back, if you take a look at
23 page 193, the last column on that bar is what would be
24 returned to the State if we accept this applicant's appeal
25 of the \$1,439 and I think we have evidence that says they

1 really should be paying back 257,652.

2 MS. STARR: Mr. Chairman, if I may. We would
3 actually be paying the 70 plus thousand and this is the
4 amount of interest on that, so we would be paying what's
5 been sitting in our bank and then the interest on that.

6 CHAIRPERSON REYES: Okay. I have Mr. Hagman and
7 then I have Senator Lowenthal.

8 ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.
9 And just to take the concept, this logic further, if you had
10 a \$20 million project that you want to get out and the
11 school district says we're ready to fund, ready to build,
12 but they don't build for a year, that's, you know, interest
13 that either we're paying on our bonds that we issued or
14 interest we will not receive in the account for that year.

15 The same type of logic here. Not that there was
16 malintent in this whatsoever, but just to take your scenario
17 and apply it in a more obtuse way or, you know, a bigger
18 thing, you could see how much that logic does not continue
19 on with other projects -- is, you know, we're trying to sell
20 as minimal bonds as needed at the time to get it out as fast
21 as we can so we're not paying interest on it to the people
22 who buy our bonds as well as if we don't expend all the
23 money right away and we stick it in an account to try to
24 offset the interest the taxpayers are paying on those funds.
25 So if you didn't have some kind of rules or regulations that

1 say we're going to pull it out of this account that we're
2 receiving interest on because you need it right now to spend
3 it and this is not 90 days or three months like your period,
4 but it happened to be a year period and you were not
5 receiving any interest on that or not much, the State or the
6 taxpayers would be upside down even a greater distance.

7 And I think that's what the intent was for these
8 statutes. That's what -- you know, if it's clear or not
9 clear, I think most of us on the Board believe it's fairly
10 clear on the language and it's been applied several times to
11 other cases in the past.

12 But just the logical part -- even if there wasn't
13 other people waiting in line, it's either sitting in an
14 account earning interest to offset the interest we're paying
15 on those bonds or it's being utilized and that's why they
16 have the time periods in there.

17 And we could have some more discussion on it,
18 Mr. Chair, but I'll make a motion to approve the staff
19 recommendation.

20 MR. HARVEY: Second.

21 CHAIRPERSON REYES: Thank you. It's been moved
22 and second. Senator Lowenthal.

23 SENATOR LOWENTHAL: Yeah. I'm just trying to
24 understand on Attachment B on page 193, the fund release
25 authorization and the percentage of construction under

1 contract. So between -- and it looks to me as between
2 August of 2002, fund releases were given through May --
3 April of 2004 and that the percent -- and that's almost two
4 years and that the percentage of construction under contract
5 was either 1 percent or zero percent; is that not true?

6 MR. ASBELL: Yes. At the time that they signed
7 the fund release, we were able to go back in audits and
8 verify --

9 SENATOR LOWENTHAL: And there was zero or
10 1 percent.

11 MR. ASBELL: That's what they had under -- yeah.
12 Right. And remember the --

13 SENATOR LOWENTHAL: So this argument that you make
14 might -- and I tend to agree with Assembly Member Buchanan
15 and -- I mean there was -- had been an oversight, it was at
16 45 percent or that things -- they knew -- that's what the
17 rules were, but when it was either nothing under
18 construction -- under contract or 1 percent, this is -- and
19 lasted over two years and you kept doing that time after
20 time after time, this is -- we're talking about one, two,
21 three, four, five, six, seven, eight, nine times you said
22 that you were 50 percent under construction -- under
23 contract and you had 1 percent or zero percent makes it
24 appear to me that this was not just an oversight or not
25 understanding the law as you pointed out, which you said

1 occurred in 2000.

2 We're now at 2004 and you're still doing that four
3 years later. Makes it much more difficult for me to listen
4 to your appeal.

5 MS. MOORE: Can I just ask a clarifying question.

6 CHAIRPERSON REYES: Ms. Moore.

7 MS. MOORE: Sorry about the 257,000. I knew that
8 they were -- there was an interest amount. So the 79,000 in
9 interest that the County earned, the penalty is in addition
10 to that, so there's -- is there -- so they'll pay back the
11 79,000 that they earned or not?

12 MR. ASBELL: No. No. It would be just the 257-.

13 MS. SILVERMAN: Based on the PMIB rate.

14 MS. MOORE: That's -- so there -- that's the
15 double dip question. So they earn 79,000.

16 MR. ASBELL: There is no double dip question here
17 or issue. You're -- I think you're going toward talking
18 about financial hardship savings and recoument of that.
19 That's under a -- Regulation 1859.103.

20 What's happening with the material inaccuracy and
21 the interest penalty is statute. It's 17070.51.

22 MS. MOORE: So what happens to the 79,000 of
23 interest earned by the County Office?

24 MR. ASBELL: That's not the issue. We don't even
25 touch the 79,000. It's just the 257-.

1 MS. MOORE: I'm -- is it theirs then?

2 MR. ASBELL: Yes.

3 MS. MOORE: It's their -- so if theoretically they
4 had it, they could use it towards the 257,000 penalty.

5 MR. ASBELL: Yeah.

6 CHAIRPERSON REYES: Okay. The issue's been moved
7 and seconded. Is there any additional comments from the
8 public? One last comment, Counsel.

9 MR. CHASTAIN: One last comment which would be a
10 reevaluation of the actual interest rate because again the
11 statute discusses using the PMIB rate and in September of --
12 when the funds were drawn down, the rate actually was not
13 the same as the general obligation bond interest rate, which
14 is what's being used here in this column, but the PMIB rate
15 was actually in that month 0.651 percent.

16 CHAIRPERSON REYES: I think it's the higher of the
17 two is my understanding.

18 MR. ASBELL: It's the higher of the two. It's the
19 general obligation bond rate.

20 MR. TAO: Yeah. Our understanding is actually if
21 you look at the statute, it talks about the date of the --

22 CHAIRPERSON REYES: Would you identify yourself
23 for the record, please.

24 MR. TAO: Oh, I apologize. I'm Terry Tao. I'm
25 one of the attorneys with Mr. Chastain's firm. When you

1 look at the actual statute that's being applied, it actually
2 talks about the interest rate based on the date of the
3 finding of material inaccuracy, which as I understand it was
4 sometime in 2010; am I not mistaken? And the 2010 interest
5 rate is .6 no 4.

6 CHAIRPERSON REYES: I think it applies to the --
7 go ahead, staff.

8 MR. ASBELL: At the time that the -- the warrant
9 release date. That's --

10 MR. TAO: The statute right here says from the
11 date the Board made the finding of material inaccuracy not
12 the date of the release.

13 CHAIRPERSON REYES: Is that additional interest on
14 the money owed or is that on the penalty? Counselor, staff?

15 MR. DAVIS: Let me catch up with him where he's
16 reading that.

17 MS. SILVERMAN: The rate of interest is stated in
18 statute under Section B and it also talks about when the
19 funds were released. So that's the way we've been
20 statutorially assessing the interest when the funds were
21 released and it's based on the higher of the two rates. And
22 that's basically been the Board's interpretation.

23 CHAIRPERSON REYES: Yes. And I think you
24 complimented the staff on their calculation at the beginning
25 of the presentation. I find it interesting. Thank you.

1 And I am paying attention, even though I'm doing a bunch
2 of -- okay.

3 Please call the roll.

4 MS. GENERA: Senator Lowenthal.

5 SENATOR LOWENTHAL: And the motion is?

6 CHAIRPERSON REYES: Staff recommendation.

7 SENATOR LOWENTHAL: Aye.

8 MS. GENERA: Senator Hancock.

9 SENATOR HANCOCK: Aye.

10 MS. GENERA: Assembly Member Brownley.

11 ASSEMBLY MEMBER BROWNLEY: Aye.

12 MS. GENERA: Assembly Member Buchanan.

13 ASSEMBLY MEMBER BUCHANAN: Aye.

14 MS. GENERA: Assembly Member Hagman.

15 ASSEMBLY MEMBER HAGMAN: Aye.

16 MS. GENERA: Scott Harvey.

17 MR. HARVEY: Aye.

18 MS. GENERA: Kathleen Moore.

19 MS. MOORE: Aye.

20 MS. GENERA: Pedro Reyes.

21 CHAIRPERSON REYES: Aye.

22 MS. GENERA: It carries.

23 CHAIRPERSON REYES: Thank you.

24 MS. STARR: Thank you for your time. I know that
25 we disagree, but I appreciate the Board's time looking at

1 this and it's not an easy -- it's kind of a morass, the
2 whole --

3 CHAIRPERSON REYES: Yeah. I had dark hair when I
4 started reviewing this.

5 MS. STARR: Yeah, me too.

6 CHAIRPERSON REYES: Sue, would you please go back
7 on those items that we need to add.

8 MS. GENERA: Yes.

9 CHAIRPERSON REYES: Thank you.

10 MS. GENERA: This is for Tab 7, **Butte COE**, to
11 approve staff recommendation.

12 Assembly Member Brownley.

13 ASSEMBLY MEMBER BROWNLEY: It is to support the
14 staff recommendation?

15 MS. GENERA: Yes. That's --

16 ASSEMBLY MEMBER BROWNLEY: No.

17 CHAIRPERSON REYES: Which number?

18 MR. HARVEY: 7. Butte.

19 MS. GENERA: Approve staff recommendation which is
20 to deny the district's request.

21 ASSEMBLY MEMBER BROWNLEY: And my vote is no.

22 MR. HARVEY: She's voting no.

23 CHAIRPERSON REYES: Okay.

24 MS. GENERA: Assembly Member Buchanan.

25 ASSEMBLY MEMBER BUCHANAN: Aye.

1 MS. GENERA: It doesn't carry.

2 CHAIRPERSON REYES: Does not carry. Okay. So is
3 there a substitute motion to approve Butte's request of
4 approval.

5 ASSEMBLY MEMBER BUCHANAN: I think we're going to
6 have to bring it back because we're --

7 CHAIRPERSON REYES: Yeah. I don't think we have
8 the votes to do that unless somebody wants to change their
9 vote. So for now we will table this one. Okay?

10 MS. MOORE: Could we ask that they take -- staff
11 and the district take -- County Office of Education take
12 another look at this, if there's any possible way that we
13 can achieve the objective of the services are provided in
14 the classroom, do we -- can we possibly extend the classroom
15 to provide a better service of a library.

16 CHAIRPERSON REYES: Well, the problem is within
17 the existing regulations and code, we can't. That's kind of
18 the law we have in front of us. And so we could, you know,
19 philosophically disagree as to whether or not the library
20 should be included. There's a process of providing
21 resources or apportioning resources and that process was
22 adhered to.

23 And so we're asking if we were to do that as a
24 Board, we're asking folks to look for ways of circumventing
25 that. Unless we go forward and amend the statute or the

1 regulations, that is the law, the hands that tied us, to
2 begin with. Senator.

3 SENATOR LOWENTHAL: Yeah, except as I understand
4 the problem -- maybe we have to do -- is that they came to
5 the Department of Education wanting a library conceptually.
6 The Department said you don't have the money to do this.

7 They then went out and so they did it, even though
8 they know they needed to have a library, they said they'd
9 use those library services in a classroom because they
10 didn't have the money. They then did value added and they
11 ended up having the money and now we're saying you can't
12 build a library. That's -- and I understand that they're at
13 the --

14 ASSEMBLY MEMBER BROWNLEY: I mean they didn't do
15 anything wrong. The market conditions changed.

16 SENATOR LOWENTHAL: That's right.

17 ASSEMBLY MEMBER BUCHANAN: But my understanding is
18 that when you approve these hardship grants, you're
19 approving them for a specific purpose. So if they want --
20 they should be coming back to us because I think it's a very
21 bad precedent to say -- no, with a new application and not
22 to change the existing application.

23 SENATOR LOWENTHAL: I appreciate -- I understand
24 that.

25 ASSEMBLY MEMBER BUCHANAN: And I understand that

1 and in my school district and we've never had any finance
2 through facilities or financial hardships, we had plenty of
3 schools that had libraries in classrooms because of, you
4 know, facility limitation.

5 So I'm not saying it's ideal or anything else, but
6 I think the proper way to handle it is to fill out a new
7 application and come back and -- because if not, you know,
8 you're setting a precedent going forward for other school
9 districts.

10 ASSEMBLY MEMBER BROWNLEY: But then they don't get
11 the money because we are running out of money and they go
12 back of the line.

13 ASSEMBLY MEMBER BUCHANAN: Well, are you going to
14 let every school district who runs under -- in a hardship
15 situation like this decide that they want to spend money in
16 different ways?

17 ASSEMBLY MEMBER BROWNLEY: Well, here I'm just
18 saying that there was --

19 MS. MOORE: Well, I would answer that yes and how
20 I would answer it yes is if there was the situation that
21 there wasn't library, there wasn't an office, there wasn't a
22 gym, there wasn't an essential facility that they left out
23 because they thought that they could not afford it, would I
24 want to spend the savings on that? We're asking the direct
25 question. I would say yes and I would say maybe we should

1 relook at the policy that we say savings can only go towards
2 certain things.

3 And if that's -- if the Board would entertain that
4 discussion about how do we handle savings for financial
5 hardship projects, I'd love to revisit it.

6 CHAIRPERSON REYES: And I think changing the
7 policy moving forward and everybody being aware of the rules
8 of the game is something worthwhile -- some worthwhile
9 conversation that we can have, but to apply a wouldn't it be
10 nice if we could do it retrospectively, I'm not sure that
11 that really --

12 ASSEMBLY MEMBER BROWNLEY: But, you know, are
13 there -- I'm sorry I missed the discussion, but are there
14 past cases that fall exactly like this. I don't think that
15 there is.

16 CHAIRPERSON REYES: My understanding is --

17 ASSEMBLY MEMBER BROWNLEY: I mean this is about
18 taking advantage I think doing everything that -- you know,
19 right. They didn't do anything wrong, but market conditions
20 changed dramatically and how they have the ability to do
21 what they originally wanted to do which was to build the
22 library.

23 CHAIRPERSON REYES: Yeah.

24 ASSEMBLY MEMBER BROWNLEY: I'm just not sure that
25 there's -- you know, as we talked about the other issue,

1 there are other cases of which we have interpreted the
2 regulations. I'm just not sure there's a back history on
3 this one.

4 ASSEMBLY MEMBER BUCHANAN: Have we ever taken a
5 district that's had money left over in a financial hardship
6 situation and said keep it and use it for something else?

7 CHAIRPERSON REYES: We did and there's -- was it
8 Victor Valley or something Valley. We used it to change the
9 scope of a gym but not to add it. We sort of had that
10 conversation as well.

11 ASSEMBLY MEMBER BUCHANAN: Okay. So the gym
12 was --

13 CHAIRPERSON REYES: The gym was there and it was
14 made bigger over standard as opposed to a brand new --

15 MS. MOORE: Under minimum essential facility.

16 MR. HARVEY: That wasn't a hardship, was it?

17 ASSEMBLY MEMBER BUCHANAN: Right. Because --

18 MS. SILVERMAN: And Victor Valley was not a
19 hardship.

20 CHAIRPERSON REYES: It was not a hardship. I
21 stand corrected.

22 ASSEMBLY MEMBER BUCHANAN: So we've never done --
23 because I think -- and maybe --

24 MS. MOORE: It is a -- in the item that went
25 before the Board, it says financial hardship, yes. The one

1 that I have.

2 CHAIRPERSON REYES: Victor Valley?

3 MR. HARVEY: For Victor Valley? For Victor
4 Valley. Victor Valley was not hardship.

5 MS. MOORE: The item that I have in my book --

6 MR. HARVEY: In your book, that's Butte.

7 ASSEMBLY MEMBER BUCHANAN: Well, while you're
8 finding it --

9 MS. MOORE: No. The -- I have a copy of an item
10 for Victor Valley that says financial hardship, yes. So if
11 I have a wrong copy --

12 MS. SILVERMAN: I apologize. I don't have an
13 item, so --

14 MR. HARVEY: But the issue there was it was a
15 gymnasium that was part of the project that we simply made
16 the scope amendment to facilitate something that was part of
17 the project. This was adding after the fact and I think we
18 were all sympathetic. I wish you could have been here for
19 the full discussion because I don't want to relive it now.
20 As a point of order, we're going to have to carry this over,
21 but we were all sympathetic to having a more complete
22 school, but the way in which the current regulations read,
23 we could not do it.

24 And it maybe begs the question for revisiting that
25 question going forward.

1 ASSEMBLY MEMBER BUCHANAN: And I guess that's
2 where I am. I -- when you do financial hardship program,
3 the way I interpret it is if someone's coming to you and
4 saying we need to replace these roofs, we need to build
5 these classrooms, whatever, and we've tried to pass bonds,
6 we can't pass them, we have health and safety issues, and we
7 need to replace them, so can you please help us out and pay
8 for those projects; right?

9 And we're paying a hundred percent of it. And I
10 see us as funding specific projects not as writing a check
11 to the district to, you know, do what it can.

12 Now, if you're in a normal 50-50 match situation
13 or what else, if you happen to save money, then you have the
14 ability, but this is where we're funding a project and so I
15 think if we're going to change the policy -- and maybe we
16 should, maybe we shouldn't, you know -- but then I would --
17 then let's have that discussion.

18 But if we're going to apply the policy in the same
19 way we have, then they really should be coming back to us
20 and asking for another financial hardship grant I think to
21 add whatever the library, whatever facilities that they
22 need, and that's just --

23 CHAIRPERSON REYES: Okay. Let's go ahead and move
24 onto -- because that item failed, so it was tabled. So
25 let's move onto Muroc.

1 ASSEMBLY MEMBER HAGMAN: Mr. Chair, a point of
2 order on that too.

3 CHAIRPERSON REYES: Yes.

4 ASSEMBLY MEMBER HAGMAN: Basically there is a
5 motion -- I forgot what the motion was. I'm just wondering
6 does it really get tabled or there was an appeal made. That
7 appeal was not granted.

8 CHAIRPERSON REYES: Um-hmm.

9 ASSEMBLY MEMBER HAGMAN: So does it get tabled or
10 just it's off calendar at this point.

11 ASSEMBLY MEMBER BUCHANAN: Right.

12 ASSEMBLY MEMBER HAGMAN: So there is -- it's not
13 really a positive to approve a negative here. It is
14 basically you need a motion to approve the appeal. If not
15 approved, the appeals denied. It doesn't get re-taken up
16 again just because there's a lack of votes for the
17 alternative motion I guess.

18 The approve either has to be positively accepted
19 or by default denied. Just like passing a bill in the
20 Legislature, if you don't have the votes to pass the bill,
21 it dies.

22 CHAIRPERSON REYES: You're right. So the actual
23 request here is that the district has sought an appeal.
24 That's your position -- that the district is seeking an
25 appeal and the staff recommendation is not to provide the

1 appeal. So really the motion therefore has to be to approve
2 the appeal. Is that what you're --

3 SENATOR LOWENTHAL: We didn't vote on that.

4 CHAIRPERSON REYES: No, no, but that -- no. I
5 think --

6 ASSEMBLY MEMBER HAGMAN: I'm just saying the
7 motion I made probably was --

8 CHAIRPERSON REYES: Inappropriate.

9 ASSEMBLY MEMBER HAGMAN: Yeah. Basically it needs
10 enough votes, just like you're trying to move a bill out of
11 committee, to pass. Otherwise by default it fails and I
12 think -- just as a point of order; otherwise you're going to
13 have things all the time just taken out here. It's either
14 on or off.

15 ASSEMBLY MEMBER BUCHANAN: Right.

16 CHAIRPERSON REYES: So looking at the issue on
17 page 102 --

18 SENATOR LOWENTHAL: We voted for the -- just to
19 understand. We voted for the staff recommendation --

20 CHAIRPERSON REYES: Right.

21 SENATOR LOWENTHAL: -- like we always do.

22 CHAIRPERSON REYES: Right.

23 SENATOR LOWENTHAL: We did not have sufficient
24 votes for it. That's all I know.

25 CHAIRPERSON REYES: Right.

1 ASSEMBLY MEMBER HAGMAN: Yeah. So I think
2 there's -- I think basically we missed -- what we should
3 have done is, see, there's a motion to approve the
4 district's appeal and if that passes, then the appeal is
5 granted. If it does not pass, then I think the appeal is
6 not granted at that point. It just doesn't linger.

7 CHAIRPERSON REYES: So just to understand, the
8 default is really deny the request which has been made. So
9 really the motion before the Board is really to provide
10 Butte with the appeal and not really the staff's
11 recommendation.

12 ASSEMBLY MEMBER HAGMAN: Correct. And I think
13 that's just -- as a point of order, that's the way it should
14 have been handled in the first place and just like -- for
15 example -- and again I have only this relate to. Either on
16 a council meeting or a school board meeting or at the
17 Legislature, you need positive votes to make an action
18 happen.

19 If someone lays off a vote, that's an equivalent
20 to no because you don't have that positive vote to make
21 something happen. In this case, a positive vote needs to
22 happen in order to accept the appeal; otherwise the process
23 of denial is automatic.

24 The process administratively has been to deny the
25 district that request. They're asking for a positive

1 process appeal to override the staff's recommendation. If
2 that positive appeal does not be voted out on this Board,
3 then basically the appeal is denied and no process goes
4 forward.

5 ASSEMBLY MEMBER BROWNLEY: Although the
6 recommendation is to deny the district's request.

7 CHAIRPERSON REYES: Right.

8 ASSEMBLY MEMBER BROWNLEY: So if we don't pass it,
9 then it's not denied.

10 CHAIRPERSON REYES: Right.

11 ASSEMBLY MEMBER BROWNLEY: So then it's accepted.

12 ASSEMBLY MEMBER HAGMAN: Well, there is no
13 default.

14 CHAIRPERSON REYES: But the description is that
15 Butte County requests approval to change the scope. That's
16 the issue before us; right? Butte County's coming in asking
17 for approval.

18 ASSEMBLY MEMBER HAGMAN: Yeah. It's not like the
19 district's going to do it unless you have -- I mean the
20 Board's going to do it --

21 ASSEMBLY MEMBER BROWNLEY: Well, the staff's
22 recommendation is to deny the district's request.

23 CHAIRPERSON REYES: Um-hmm.

24 ASSEMBLY MEMBER HAGMAN: Deny the request.

25 ASSEMBLY MEMBER BUCHANAN: Right.

1 MR. HARVEY: Why don't I move that the appeal be
2 granted and we see what happens.

3 CHAIRPERSON REYES: Okay.

4 SENATOR LOWENTHAL: Well, I think -- can we ask
5 our attorney. Is this all legal what we're doing?

6 CHAIRPERSON REYES: Attorney -- Counsel?

7 MR. DAVIS: We haven't adjourned this meeting.
8 This is an interesting area and I'd somewhat defer to some
9 of the experienced members of the Board who have sat on
10 other bodies and their methodology on voting.

11 I would say that another motion is necessary. We
12 had a motion fail.

13 CHAIRPERSON REYES: Right. So now we have -- but
14 does the motion fail -- what is the significance of it since
15 the -- it seems to me --

16 ASSEMBLY MEMBER BROWNLEY: Because the motion
17 failed to deny --

18 CHAIRPERSON REYES: Right. Right.

19 ASSEMBLY MEMBER BROWNLEY: -- the district's
20 request.

21 SENATOR HANCOCK: I thought the roll was held
22 open.

23 ASSEMBLY MEMBER BROWNLEY: So it's -- therefore
24 it's not denied because it failed.

25 CHAIRPERSON REYES: Actually it was left open

1 until the Assembly Members came and then the motion failed.

2 But here's the issue though. I think Mr. Hagman
3 has a point in that the staff recommendation to deny is not
4 appropriate because what it is is really the -- the question
5 before us is the County's appeal of the issue. No, I
6 think --

7 ASSEMBLY MEMBER BUCHANAN: The staff
8 recommendation is behind the motion.

9 MR. DAVIS: And this issue -- the reason we're --
10 this is on the agenda is because the district had filed an
11 appeal --

12 CHAIRPERSON REYES: Um-hmm.

13 MR. DAVIS: -- objecting to staff's conclusions.
14 That's -- so they're the -- it's -- could call them the
15 moving party on this.

16 CHAIRPERSON REYES: Um-hmm.

17 MR. DAVIS: They move forward for this judgment by
18 this Board.

19 ASSEMBLY MEMBER HAGMAN: So basically, Mr. Chair,
20 if we don't take action to overturn staff recommendations,
21 then the staff recommendations stay in place.

22 CHAIRPERSON REYES: Right.

23 ASSEMBLY MEMBER HAGMAN: So we need -- if it stays
24 on the table, basically the things dies.

25 CHAIRPERSON REYES: Um-hmm.

1 ASSEMBLY MEMBER HAGMAN: My interpretation because
2 the staff has denied the request. There was an appeal
3 process made. The only way that the denial stays in place
4 is if the Board takes action to reverse staff's
5 recommendation because that's the process in place.

6 ASSEMBLY MEMBER BROWNLEY: But the recommendation
7 was they hadn't already denied it.

8 ASSEMBLY MEMBER HAGMAN: Yeah, they had denied it
9 and there was an appeal it.

10 ASSEMBLY MEMBER BROWNLEY: They had denied it.
11 But the --

12 ASSEMBLY MEMBER BUCHANAN: Which is why they're
13 appealing it to us.

14 ASSEMBLY MEMBER BROWNLEY: Okay. So the -- okay.
15 So it's the appeal, but the -- but it still says the
16 recommendation is to deny -- that's in the present -- the
17 district's request.

18 CHAIRPERSON REYES: Okay. So --

19 ASSEMBLY MEMBER HAGMAN: Which if we don't adopt
20 the district's request, it is denied.

21 CHAIRPERSON REYES: Okay. So we now have a
22 substitute motion to approve the district's request. Is
23 there a second?

24 SENATOR LOWENTHAL: To approve the appeal.

25 CHAIRPERSON REYES: To approve the appeal.

1 SENATOR LOWENTHAL: All right. Now we're voting
2 aye -- an aye vote is yes --

3 CHAIRPERSON REYES: To approve the appeal. So I
4 have a motion to approve the appeal. Is there a second?

5 ASSEMBLY MEMBER BROWNLEY: I will -- I'll second
6 that.

7 CHAIRPERSON REYES: Okay. So it's been moved and
8 seconded to approve the County's appeal.

9 ASSEMBLY MEMBER BROWNLEY: I'm just -- I want to
10 get concurrence --

11 CHAIRPERSON REYES: Yeah.

12 ASSEMBLY MEMBER BROWNLEY: -- from our lawyer that
13 what we're doing is correct.

14 CHAIRPERSON REYES: We have not adjourned. So any
15 one of these items can be taken up again.

16 MR. DAVIS: I believe we're in the right. The
17 original motion did not --

18 CHAIRPERSON REYES: Right. So --

19 MR. DAVIS: -- we are looking at a different
20 motion.

21 CHAIRPERSON REYES: Right. So this is a different
22 motion. So the motion now is to approve Butte County's
23 appeal. Okay.

24 MS. GENERA: Senator Lowenthal.

25 SENATOR LOWENTHAL: Aye.

1 MS. GENERA: Senator Hancock.
2 SENATOR HANCOCK: No.
3 MS. GENERA: Assembly Member Brownley.
4 ASSEMBLY MEMBER BROWNLEY: Aye.
5 MS. GENERA: Assembly Member Buchanan.
6 ASSEMBLY MEMBER BUCHANAN: No.
7 MS. GENERA: Assembly Member Hagman.
8 ASSEMBLY MEMBER HAGMAN: No.
9 MS. GENERA: Scott Harvey.
10 MR. HARVEY: No.
11 MS. GENERA: Kathleen Moore.
12 MS. MOORE: Aye.
13 MS. GENERA: Pedro Reyes.
14 CHAIRPERSON REYES: Aye -- no. No.
15 MS. GENERA: It does not carry.
16 CHAIRPERSON REYES: No.
17 SENATOR LOWENTHAL: Three nos make an aye.
18 CHAIRPERSON REYES: I was paying attention to the
19 ayes and nos and counting, I -- okay.
20 ASSEMBLY MEMBER HAGMAN: So if a motion fails,
21 then --
22 CHAIRPERSON REYES: The motion fails.
23 ASSEMBLY MEMBER HAGMAN: -- and the appeal is
24 denied at this point. It's not tabled. It's not put over.
25 It's basically the appeal's been denied because they did not

1 carry enough positive votes to make the appeal.

2 CHAIRPERSON REYES: Okay.

3 ASSEMBLY MEMBER HAGMAN: Mr. Chairman, am I now
4 the parliamentarian here --

5 CHAIRPERSON REYES: Yes. Thank you, sir. That's
6 a good point. I'm glad you brought that up.

7 SENATOR LOWENTHAL: We're using Hagman's rules of
8 order; is that it?

9 ASSEMBLY MEMBER HAGMAN: You need some rules --

10 ASSEMBLY MEMBER BUCHANAN: Did we vote on Item 10?

11 CHAIRPERSON REYES: Item 10 and Item 11 are
12 Consent.

13 ASSEMBLY MEMBER BUCHANAN: Under Consent. Okay.

14 CHAIRPERSON REYES: Could you go back on the
15 **Minutes** and the **Consent**, the original Consent, please.

16 ASSEMBLY MEMBER BUCHANAN: Are we done?

17 CHAIRPERSON REYES: Not yet.

18 MS. GENERA: All right. So we could start with
19 the **Minutes**.

20 CHAIRPERSON REYES: The Minutes.

21 MS. GENERA: And let's see. Assembly Member
22 Brownley.

23 ASSEMBLY MEMBER BROWNLEY: Aye.

24 MS. GENERA: Assembly Member Buchanan.

25 ASSEMBLY MEMBER BUCHANAN: Aye.

1 MS. GENERA: It carries. And next was the **Consent**
2 **Calendar** adding Tab 10 and Tab 11 to the Consent Calendar.

3 Assembly Member Brownley.

4 ASSEMBLY MEMBER BROWNLEY: 10 and 11? Okay. Aye.

5 MS. GENERA: Assembly Member Buchanan.

6 ASSEMBLY MEMBER BUCHANAN: Aye.

7 MS. GENERA: It carries.

8 CHAIRPERSON REYES: Okay. Thank you. Now we need
9 13, Muroc. We're on Tab 13.

10 MS. SILVERMAN: Yes.

11 CHAIRPERSON REYES: Thank you.

12 MR. ASBELL: Okay. So if you would go to
13 page 194, behind Tab 13. This is to present School Facility
14 Program Review Findings, to request the State Allocation
15 Board find that a material inaccuracy has occurred which
16 resulted in a funding advantage for the **Muroc Joint Unified**
17 **School District**, also to request to levy the appropriate
18 interest penalty as provided in law.

19 During an expenditure review of the Desert
20 Junior-Senior High School project, it was discovered that
21 the district falsely certified on its fund release. If you
22 would go to page 202, the district signed their
23 certification on April -- excuse me -- January 14, 2003.

24 At that time, they had zero percent under
25 contract. They did not reach compliance until 272 days

1 later. Based on previous Board actions and practice, we
2 calculate the interest at \$76,278.

3 Now the district's position behind this is they
4 don't dispute the premature fund release occurred but
5 contends the error was made by a prior administration and
6 was not done maliciously.

7 Because the premature fund release was isolated
8 and unintentional, the district does not believe it should
9 lose its self-certification privileges. The district
10 believes charging the interest penalty and taking away the
11 self-certification privileges for an isolated would be
12 unduly harsh.

13 Our response to that is it's not our intent to
14 unduly penalize any one particular district. Rather the
15 goal is to treat all districts as fairly as possible. The
16 recommendations in this item are consistent with material
17 inaccuracy law, regulation, and past Board actions.

18 Although the error was made by a prior
19 administration and may be unintentional, it resulted in an
20 early fund release giving the district a funding advantage
21 over other districts.

22 If you will look at the bottom of page 197, our
23 recommendations are as follows: find that a material
24 inaccuracy occurred for the project which resulted in an
25 early fund release; require the district to repay \$76,278;

1 and then based on the methodology on page 201, recommend
2 that a loss of self-certification for the project be for a
3 period of four years until June 22nd, 2015.

4 There is one other item of note. With the penalty
5 of 76,278, if that is levied, the district is requesting
6 that a five-year repayment plan be put into place.

7 CHAIRPERSON REYES: Thank you.

8 MR. ASBELL: Are there any questions?

9 CHAIRPERSON REYES: Any questions from the Board?
10 Comments from the public?

11 SENATOR HANCOCK: Move the staff recommendation.

12 ASSEMBLY MEMBER BUCHANAN: Second.

13 CHAIRPERSON REYES: It's moved and seconded.

14 Thank you, sir. Go ahead, make your comments.

15 MR. JOHNSON: My name is Byron Johnson and I'm the
16 Assistant Superintendent of Business and Operations for the
17 Muroc School District and thank you for having me come. I
18 was delayed in January, but we're here now.

19 I do not dispute the inaccuracy in '03 and it
20 was -- as it was stated in the letter, it was not
21 maliciously done. We had a firm that was our consultants,
22 since we are a small school district, that did all of our
23 paperwork and we signed the checked box that said we were
24 under 50 percent contract and we were not.

25 What I do dispute right now is the finding of

1 \$76,000 and some change. That's my lingo for a few dollars
2 there.

3 In 1966, up until that time, the State ran on a
4 cash basis accounting system. In '66, it was changed to an
5 accrual accounting system. Back in -- then it changed back
6 in 1973 back to a cash basis accounting and then in 1991, it
7 was changed back to the accrual accounting system and which
8 we now operate.

9 The thing is our interest was levied from
10 January 14th, 2003. Under the accrual accounting system,
11 that's when our penalty started. Our bank runs on a cash
12 basis accounting system, so we did not start earning
13 interest until January the 25th of 2003, which is 11 days.

14 It might not seem a lot. It's only a little over
15 \$3,000, but \$3,000 to us is a great deal of money. So I'm
16 asking that because of the two types of account systems that
17 are being held, one is at that State, ones at our banks,
18 that the difference be made up to where it is not 272 but we
19 reduce that by 11 days to make it 261 days. And thank you.

20 CHAIRPERSON REYES: Staff, do you want to comment
21 on that?

22 MR. ASBELL: Well, the way that we calculated the
23 interest is what we've done with Board practice in the past.

24 CHAIRPERSON REYES: Okay. Thank you. It's been
25 moved and second. Any additional comments from the public?

1 MR. JOHNSON: If -- I have a question then. If
2 that is the case, we're not earning any interest because the
3 State is still earning the interest because the check was
4 not deposited in our bank for 11 days. It was written. The
5 warrant was written on the 19th. It didn't get to us until
6 the 25th, so why are we paying interest when we were not
7 drawing any interest? That's my concern.

8 ASSEMBLY MEMBER HAGMAN: Mr. Chair.

9 CHAIRPERSON REYES: Mr. Hagman.

10 ASSEMBLY MEMBER HAGMAN: Just so I -- we get on
11 the right track as far as motions, instead of approving the
12 staff recommendations, we probably should entertain a motion
13 to approve the applicant's appeal.

14 ASSEMBLY MEMBER BUCHANAN: Deny the appeal.

15 ASSEMBLY MEMBER HAGMAN: Well, that would be a
16 positive action again. It should be, you know, the staff
17 goes on its course. If there's an appeal, you have to have
18 something to affirm the appeal; otherwise by operation it
19 would die.

20 So instead of -- the second reverse I made the
21 first time -- the same procedure.

22 ASSEMBLY MEMBER BUCHANAN: It also dies if you
23 deny the appeal, doesn't it --

24 MR. ASBELL: Mr. Chair.

25 CHAIRPERSON REYES: Yes.

1 MR. ASBELL: This is not an appeal.

2 CHAIRPERSON REYES: This is not an appeal.

3 ASSEMBLY MEMBER HAGMAN: Oh, this is not an
4 appeal.

5 CHAIRPERSON REYES: This is not an appeal.

6 ASSEMBLY MEMBER HAGMAN: Okay. Okay. Sorry about
7 that.

8 CHAIRPERSON REYES: So do I have a motion -- it's
9 been --

10 SENATOR LOWENTHAL: Motion to approve the staff
11 recommendation.

12 CHAIRPERSON REYES: It's been moved and second.
13 Call the roll.

14 MS. GENERA: Senator Lowenthal.

15 SENATOR LOWENTHAL: Aye.

16 MS. GENERA: Senator Hancock.

17 SENATOR HANCOCK: Aye.

18 MS. GENERA: Assembly Member Brownley.
19 Assembly Member Buchanan.

20 ASSEMBLY MEMBER BUCHANAN: Aye.

21 MS. GENERA: Assembly Member Hagman.

22 ASSEMBLY MEMBER HAGMAN: Aye.

23 MS. GENERA: Scott Harvey.

24 MR. HARVEY: Aye.

25 MS. GENERA: Kathleen Moore.

1 MS. MOORE: Aye.

2 MS. GENERA: Pedro Reyes.

3 CHAIRPERSON REYES: Aye.

4 MS. GENERA: It carries.

5 CHAIRPERSON REYES: Thank you.

6 MR. JOHNSON: Thank you, Board.

7 CHAIRPERSON REYES: Item 14 has been postponed.

8 Item 15, we've put over. Item 16, **Seismic Retrofit**.

9 Senator Hancock.

10 SENATOR HANCOCK: Mr. Chairman.

11 CHAIRPERSON REYES: Yes.

12 SENATOR HANCOCK: I would make a motion that we
13 adopt the staff Recommendation No. 1, adopt the proposed
14 amendments to the regulations on the attachment within the
15 regulatory process, and No. 2, authorize the Acting
16 Executive Officer to file these regulations with the OAL on
17 an emergency basis.

18 ASSEMBLY MEMBER BUCHANAN: Second.

19 CHAIRPERSON REYES: So the recommendations are on
20 page 221. Ms. Moore.

21 MS. MOORE: I just had a comment and obviously was
22 part of the Subcommittee and we were in agreement on
23 everything with one exception and that was that the
24 regulations state for any application for the seismic
25 mitigation of the most vulnerable Category 2 buildings not

1 apportioned or approved for placement on the unfunded list.
2 Pursuant to this section, the application shall be returned
3 to the applicant.

4 We were not in consensus on that item before. I
5 think we were two/one on that piece and I was the one that
6 did not support it and I just want to give the reasons to
7 the Board and then we can take the action however we would
8 like.

9 For all -- for the programs of modernization and
10 new construction, as a Board we have not taken the action
11 yet concerning a future unfunded list. We said when we
12 reach that point, we will make that decision. Is that
13 correct, staff?

14 MR. ZIAN: That is correct.

15 MS. MOORE: So I would -- the reason that I didn't
16 support it here is I believe that we should wait to make
17 that decision when that occurs. Otherwise we're making the
18 decision now on this program when we are leaving that
19 decision to a future time on other programs. And that was
20 my reasoning for not supporting it.

21 MR. HARVEY: If I may just offer the rebuttal, the
22 reason that we kept the recommendation in place is it is
23 consistent with two other actions and discussions by the
24 Board.

25 Most recently in August 2009, the Board determined

1 it did not want to create an unfunded for this program. So
2 we had a policy in place and respect what the Board had done
3 before. We kept it -- kept the language as proposed in this
4 item.

5 CHAIRPERSON REYES: Okay. Any comments -- Senator
6 Hancock.

7 SENATOR HANCOCK: Actually I did want to add
8 another recommendation and that is that we get a report back
9 from staff -- and I'm trying to think what would be an
10 appropriate time. Do we meet in September and October?

11 CHAIRPERSON REYES: We meet monthly.

12 SENATOR HANCOCK: So --

13 CHAIRPERSON REYES: There's only two months that
14 we don't meet; right? December -- one month that we don't
15 meet.

16 ASSEMBLY MEMBER BUCHANAN: What if we just did an
17 annual or semi-annual --

18 SENATOR HANCOCK: Well, I want one soon and I'm
19 trying to figure out --

20 SENATOR LOWENTHAL: September 28th.

21 SENATOR HANCOCK: -- whether October, November, or
22 whether we should wait till January and I'm actually open to
23 consultation with staff on this.

24 The purpose of getting these regulations was to
25 get that money out and on the street and doing the work and

1 so we tried to clarify, broaden the range of projects that
2 could be considered and, you know, we have \$194 million
3 waiting to create jobs and make kids safe in schools.

4 What would you suggest, Ms. Silverman.?

5 MS. SILVERMAN: Well, I think if the regulations
6 move through tonight, obviously -- somewhere in the window,
7 in you file on an emergency basis, it could be effect
8 potentially within 90 days.

9 So I think reporting back to January on the
10 activity of projects coming through, you know, Division of
11 State Architect or any filing for funding for the State
12 Allocation Board, we can certainly provide an update in
13 January.

14 SENATOR HANCOCK: Okay. Can we add that?

15 CHAIRPERSON REYES: Actually I would like to have
16 an update on this because the pot of money is so small
17 relative to what we have -- to actually have you incorporate
18 into your Executive Report on a monthly basis once the money
19 starts going out, so we know what's out there.

20 MS. SILVERMAN: We can certainly do that.

21 CHAIRPERSON REYES: Yeah. That'd be great. If
22 you can do it as one of your lines of what's going on this,
23 I think that would be helpful for us to know whether or not
24 we're moving in the right direction and we're getting the
25 money out.

1 SENATOR HANCOCK: I think that would be terrific
2 because you're right, the pot of money is small and the sort
3 of off-putting factor is that so little of it has been
4 spent --

5 CHAIRPERSON REYES: Correct. And so I think that
6 would --

7 SENATOR HANCOCK: -- in such a long time and we
8 would hope that these new regulations would result in a
9 rapid diminution.

10 CHAIRPERSON REYES: And if we're not seeing
11 movement of those funds out, we can then consider moving the
12 regulations someplace else and act faster than what we've
13 done in the past two years, so -- would that be okay?

14 SENATOR HANCOCK: Right. So thank you -- put that
15 into the motion.

16 CHAIRPERSON REYES: We can do that? Okay. Okay.

17 ASSEMBLY MEMBER BROWNLEY: So just a clarification
18 on the motion. It's not including creating an unfunded
19 list; right?

20 CHAIRPERSON REYES: Correct.

21 ASSEMBLY MEMBER BROWNLEY: Okay.

22 CHAIRPERSON REYES: Okay. Comments from the
23 public.

24 MR. SMOOT: Thank you. Good afternoon. Lyle
25 Smoot representing Los Angeles Unified School District.

1 I've got a specific request related to the
2 regulation draft. If you look at page 223, Category E there,
3 it says if an application cannot be fully apportioned or
4 approved for placement on the unfunded list because
5 insufficient funding is available, now I assume when you
6 talk about insufficient funding, you're talking about bond
7 authority not a bond sale; is that correct?

8 CHAIRPERSON REYES: Well, in seismic, you only
9 have 194- so --

10 MR. SMOOT: Well, but if you sell \$100 million --

11 CHAIRPERSON REYES: It's bond authority.

12 MR. SMOOT: Okay. Bond authority. I would ask
13 that you remove the approved for placement on the unfunded
14 list. Let me explain why.

15 Let's say you're down to the last \$3 million.
16 You've got projects on the unfunded list down to the last
17 \$3 million. The next project that comes in is for 5 million
18 Okay. The only way you can go on the unfunded list is if
19 you reduce your request to 3 million, but now you go on down
20 the line and when you actually start making apportionments,
21 it turns out there's \$5 million available. That project is
22 now going to get shorted \$2 million simply because of the
23 process not because of the reason -- the rationale behind
24 it.

25 If you just remove that, the district comes with

1 the last project -- there's no unfunded list. I understand
2 that or at least not at this point in time. But a district
3 that has to reduce their request to get on the unfunded list
4 then is out of line for the other 2 million even if it
5 becomes available when you're making apportionments. That
6 doesn't make sense.

7 Last piece of this is of course then it says you
8 may either -- at some point in time, you can either reduce
9 your request for the remaining funding. I would ask that
10 you say that we change that to accept a reduced funding
11 instead of having to reduce the request, but then it says if
12 funding is reduced, the Board shall consider funding the
13 next project eligible for funding.

14 Without an unfunded list, there is no next
15 project. So it doesn't make sense to limit that last
16 project before you know the answer of how much money you
17 actually have available for apportionment, to say nothing of
18 the fact that you're going to make apportionment at some
19 point and you might have savings that come in later that
20 that project should have gotten.

21 So I think if you just change that, delete those
22 words talking about approved for replacement on the unfunded
23 list. Just delete that. It has no relevance, no meaning
24 here. You can accept a smaller apportionment when you
25 actually know what the amount of money is available if

1 that's the right think to do at that time.

2 MR. HARVEY: If I may, I wish I could recall our
3 complete Committee discussion. If staff can help me.
4 Mr. Smoot, you raised this at the Committee and for whatever
5 reason, we did not change it at Committee and if you can
6 help me remember why we determined that this version of the
7 staff draft was accurate and sufficient under the
8 circumstances, I'd appreciate it.

9 MR. MIRELES: And just looking at this from --
10 right now, it seems like if you remove that approve for
11 placement on the unfunded list, the Board could approve
12 projects beyond the bonding authority on the unfunded list.

13 MR. HARVEY: There we go. That's what it was.

14 CHAIRPERSON REYES: That's what it was.

15 MR. MIRELES: So you could have over the
16 194 million on the unfunded list but not actually
17 apportionments. So that is one of the reasons why we put it
18 in there so you don't include more than the authority on the
19 unfunded list to not be committed beyond what's available.

20 CHAIRPERSON REYES: Ms. Moore.

21 MS. MOORE: Is there a way to address the concern
22 because I hear the concern being our list is 199 million --
23 really not because we've already apportioned some, but let's
24 take that for a theoretical. It's 199 million and the last
25 project comes in that would throw it to 202 million and what

1 the concern they have is that you could have a \$202 million
2 list because one of the 199 did their project less
3 expensively, value engineered it, whatever -- that that
4 money would be remaining and the last person could do a full
5 project.

6 So is there a way that we can accomplish not
7 exceeding bond authority but also not shortchanging the last
8 project?

9 CHAIRPERSON REYES: Ms. Silverman.

10 MS. SILVERMAN: Well, I think in concept -- I hear
11 what you're saying, but I mean you could -- basically like
12 you can consider the concept of the Emergency Repair
13 Program; right? You accept applications up to that limit or
14 authority and once project rescissions come in, you can
15 potentially keep that project in abeyance and if there is
16 credit that comes back to the bond authority, then you have
17 the ability to potentially fund additional projects.

18 So -- I'm not sure -- I mean I think to some
19 extent there is ability to create that cap but also have the
20 ability to -- the flexibility of once rescissions come back,
21 then you could fund the next project, like you would in
22 joint use.

23 Once you have cash that comes back to the program
24 or authority back in the program, you can create another
25 round or another cycle.

1 MS. MOORE: But meanwhile that last project
2 reduced down by 2 million forever.

3 ASSEMBLY MEMBER BUCHANAN: So what I was going to
4 say so maybe we should consider -- and you can comment on
5 this -- Lyle's recommendation and say the applicant may
6 accept the remaining funding amount. I mean so -- in other
7 words, if you've got a \$5 million project and you've got
8 3 million, they can accept the 3 million and they stay on
9 the list in case \$2 million comes back and they get full
10 funding so we don't actually -- I mean --

11 CHAIRPERSON REYES: So kind of what you did before
12 on another project where you took a lower amount and then
13 when money materialized, you were actually first in line for
14 that. So if that -- we can do it --

15 MS. MOORE: Except there is no line.

16 ASSEMBLY MEMBER BUCHANAN: There is no line --

17 MS. MOORE: There is no line.

18 CHAIRPERSON REYES: There is no line.

19 ASSEMBLY MEMBER BUCHANAN: There's no line, but it
20 would allow you if you accepted a lesser amount, would it
21 not then allow you to receive the full funding if cash came
22 back?

23 CHAIRPERSON REYES: Right.

24 ASSEMBLY MEMBER BUCHANAN: So would that --

25 MS. SILVERMAN: Right.

1 CHAIRPERSON REYES: So it only occurs in the case
2 which you pointed out, Lyle, where you would otherwise be
3 eligible -- would qualify for a pot of money, but the full
4 funding's not there. You take that portion with the hope
5 and the prayer that somebody will provide some savings and
6 not spend it on some activities that they were not allowed
7 to do.

8 MS. MOORE: Does the staff believe that we can do
9 that within the context of what the regulation is here now?

10 MS. SILVERMAN: I think you do as part of the
11 Board action, make that as a requirement that if there are
12 residual authority or rescissions that come back, that could
13 be something that we would consider if a project did receive
14 a haircut of some sort.

15 CHAIRPERSON REYES: Right. I would prefer to go
16 that route just so that we don't delay the regulations. I
17 would prefer that the regulations move forward as quickly as
18 tomorrow and we get the clock going.

19 ASSEMBLY MEMBER BUCHANAN: So could I suggest this
20 as a friendly amendment, Senator Hancock, that we move and
21 we say because special funding's available, the applicant
22 may accept the remaining funding amount or refuse funding
23 entirely. If partial funding is accepted, something along
24 the lines as the applicant may receive additional funding if
25 such funds become available. If funding is refused, the

1 Board will consider. So we just insert that sentence.

2 CHAIRPERSON REYES: Is that doable? Senator
3 Hancock, is that okay?

4 SENATOR HANCOCK: It's -- the concept is just
5 fine. I agree with not wanting to delay. If people are
6 comfortable putting that in and getting it off to --

7 MR. DAVIS: We're adding some -- the language in
8 Subsection E remains the same. We're adding some additional
9 verbiage?

10 ASSEMBLY MEMBER BUCHANAN: No. The language would
11 change slightly. If you go down to line 4 where it says --
12 starts with is available, the applicant may -- we're going
13 to cross out the words either reduce their request to and
14 substitute may accept the remaining funding amount or refuse
15 funding entirely. If partial funding is accepted, the
16 applicant will remain eligible for additional funding if
17 such funds become available and then you'd have the sentence
18 if the funding is refused, the Board shall -- so you -- so
19 if you come up with better wording --

20 CHAIRPERSON REYES: The idea is if there are any
21 reversions or savings coming back, those will be -- that
22 applicant would be the first in line to get that. And so
23 how do we do it so that we as a Board approve the
24 regulations now and so you folks can move forward? But that
25 is the concept. Mr. Hagman.

1 ASSEMBLY MEMBER HAGMAN: I was going to say can't
2 we just give staff direction on that and accept the --

3 CHAIRPERSON REYES: That's kind of what I'm
4 getting to.

5 ASSEMBLY MEMBER HAGMAN: -- accept the regs now so
6 they're published. Just give staff direction to bring it
7 back to us. If the scenario pops up, you can remind us of
8 this conversation that the last one came in for 5 million,
9 they only had 3-. They got 3-. They would like the other
10 2-. If it comes in, we'll give it to him. That can even go
11 out with the funding. I don't think you need to have it in
12 the regs.

13 CHAIRPERSON REYES: I'm told we need to read it on
14 the record now so that it's part of the regulatory process
15 and everybody's copasetic, particularly since we're doing
16 emergency regs. So let's get that sentence correctly,
17 Ms. Buchanan, take a couple minutes just so that we all
18 agree on what we're agreeing to.

19 SENATOR LOWENTHAL: Now this is a program that
20 hasn't gotten any money out the door and we're worried about
21 the last 2 million; right? I just want to --

22 MR. HARVEY: Well, it has got some money out.

23 CHAIRPERSON REYES: You are a troublemaker today.
24 I thought you were tired. Is this what happens at 7:00 with
25 you?

1 SENATOR LOWENTHAL: I just want to put it in
2 contest.

3 CHAIRPERSON REYES: Yes, staff.

4 MS. SILVERMAN: It could be part of the Board
5 action.

6 CHAIRPERSON REYES: Okay. So --

7 MS. SILVERMAN: As opposed to --

8 CHAIRPERSON REYES: Ms. Jones is telling me I need
9 to read it on the record.

10 ASSEMBLY MEMBER BUCHANAN: -- funding is accepted,
11 the district will remain eligible for additional funds up
12 to --

13 MR. DAVIS: If we're suggesting different language
14 to be part of this reg or suggest it's correct, we should
15 have it clear on the record what the language is that the
16 Board is --

17 CHAIRPERSON REYES: And you're saying don't amend
18 the language and point out that the Board will provide --

19 MS. SILVERMAN: Put it part of the Board action.

20 ASSEMBLY MEMBER HAGMAN: Yeah. Don't amend the
21 regs and just keep it as a --

22 CHAIRPERSON REYES: Ms. Buchanan.

23 MR. DAVIS: -- the Board is not changing the regs.

24 CHAIRPERSON REYES: One action is not to change
25 the regs and just leave it as a Board action later.

1 ASSEMBLY MEMBER BUCHANAN: Have it come back to --

2 ASSEMBLY MEMBER HAGMAN: No, just as a direction.

3 CHAIRPERSON REYES: Just when the funds come in,
4 it's a direction of the Board to then provide for those
5 funds when they come back -- when they revert.

6 ASSEMBLY MEMBER BUCHANAN: Let me just see if this
7 works for you because if it does, it would make sense to me
8 to get the regs right.

9 ASSEMBLY MEMBER BROWNLEY: Can't we do this as
10 part of the next meeting? All the money's not going to go
11 out the door.

12 CHAIRPERSON REYES: But we need to get the regs
13 in.

14 MR. HARVEY: But it would delay the regs going in.

15 ASSEMBLY MEMBER BUCHANAN: You've got the one that
16 says is available the applicant may accept the remaining
17 funding amount or refuse funding entirely. I would say if
18 partial funding is accepted, the district will remain
19 eligible for additional funds up to the initial funding
20 request if additional funds become available. Is that --

21 CHAIRPERSON REYES: Mr. Mireles.

22 MR. MIRELES: Mr. Chair, I just want to make sure
23 that I'm clear. There's two situations that this could --

24 ASSEMBLY MEMBER BUCHANAN: Additional seismic
25 funds we should probably say.

1 MR. MIRELES: Well, because this would affect
2 apportionments, cash, and projects being placed on the
3 unfunded list. What I want -- what I would need
4 clarification is are we talking about if a project gets
5 placed on the unfunded list and we don't have enough
6 authority, the remaining amount gets placed on the unfunded
7 list so that between the time that the project is on the
8 unfunded list till the time that cash becomes available to
9 get an apportionment, if money comes back, then they get the
10 additional amount. That's scenario number one.

11 Scenario number two is if they actually get an
12 apportionment and we don't have enough bonding authority for
13 the apportionment and we leave that project open for
14 projects -- you know, for additional funds that come back
15 later.

16 So there's a distinction to be made between
17 projects getting placed on the unfunded list versus projects
18 actually getting authority and whether we have --

19 ASSEMBLY MEMBER BUCHANAN: I think the assumption
20 was that we are not going to give an apportionment that
21 exceeds the bonding authority.

22 CHAIRPERSON REYES: The money we have. Right.

23 ASSEMBLY MEMBER BUCHANAN: And that if you got to
24 the very end -- we got lucky and everybody started coming in
25 and these buildings are getting fixed -- okay --

1 CHAIRPERSON REYES: Um-hmm.

2 ASSEMBLY MEMBER BUCHANAN: -- and you got down to
3 where you've got 3 million left, but the next request is for
4 \$5 million. That district could say we're willing to take
5 the 3 million and then basically gamble on whether or not
6 \$2 million comes back through savings in which case if
7 2 million did or however much came back, they would get that
8 money up to their full request before we would --

9 CHAIRPERSON REYES: Open it up for another project
10 or two.

11 ASSEMBLY MEMBER BUCHANAN: -- open it up for
12 any -- right.

13 CHAIRPERSON REYES: Okay? Is that clear? Yes.

14 MS. SILVERMAN: Right. It has to be within the
15 seismic authority --

16 ASSEMBLY MEMBER BUCHANAN: Right.

17 MS. SILVERMAN: -- clear.

18 CHAIRPERSON REYES: Yes. Yeah. We have -- okay.

19 ASSEMBLY MEMBER BUCHANAN: Right. So we can say
20 if additional seismic funds become available -- funding
21 becomes available.

22 CHAIRPERSON REYES: I just want to make sure we
23 get it right because it's going to go out to Administrative
24 Office tomorrow. Okay?

25 ASSEMBLY MEMBER BROWNLEY: You want to take it

1 from the top again, Joan?

2 ASSEMBLY MEMBER HAGMAN: Is the staff good? Legal
3 counsel's good.

4 CHAIRPERSON REYES: All right.

5 MR. DAVIS: It may be just be clear, why don't I
6 ask Ms. Jones to read back her notes that she's drafted.

7 CHAIRPERSON REYES: Okay.

8 MR. DAVIS: Make sure that we're getting -- she
9 does --

10 CHAIRPERSON REYES: Make sure we all understand
11 what we're --

12 MR. DAVIS: -- these regulations through --

13 CHAIRPERSON REYES: Okay.

14 MR. DAVIS: -- Office of Administrative Law for
15 us.

16 MS. JONES: I'd be happy to. I show that on the
17 fourth sentence -- or fourth line after is available, the
18 applicant may accept the remaining funding amount or refuse
19 funding entirely. New sentence: If partial funding is
20 accepted, the applicant will remain eligible for the
21 additional amount of seismic funds if those funds become
22 available.

23 ASSEMBLY MEMBER BUCHANAN: Additional up to the
24 project amount, do we need that or not?

25 MS. JONES: Okay. I --

1 ASSEMBLY MEMBER BUCHANAN: I don't know if we ever
2 requested --

3 CHAIRPERSON REYES: Yeah. We don't want to give
4 them everything that comes in.

5 MS. JONES: Yeah, I gotcha'.

6 ASSEMBLY MEMBER BUCHANAN: Right.

7 MS. JONES: Okay.

8 CHAIRPERSON REYES: Okay. Senator Hancock, are
9 you okay with that?

10 SENATOR HANCOCK: Yes.

11 CHAIRPERSON REYES: So the concept is there. It's
12 been moved and seconded. All in favor -- oh, go ahead. I'm
13 sorry. Roll call.

14 MS. GENERA: Okay. Senator Lowenthal.

15 SENATOR LOWENTHAL: Aye.

16 MS. GENERA: Senator Hancock.

17 SENATOR HANCOCK: Aye.

18 MS. GENERA: Assembly Member Brownley.

19 ASSEMBLY MEMBER BROWNLEY: Bradley?

20 MS. GENERA: Brownley.

21 ASSEMBLY MEMBER BROWNLEY: Aye.

22 MS. GENERA: Assembly Member Buchanan.

23 ASSEMBLY MEMBER BUCHANAN: Aye.

24 MS. GENERA: Assembly Member Hagman.

25 ASSEMBLY MEMBER HAGMAN: Aye.

1 MS. GENERA: Scott Harvey.

2 MR. HARVEY: Aye.

3 MS. GENERA: Kathleen Moore.

4 MS. MOORE: Aye.

5 MS. GENERA: Pedro Reyes.

6 CHAIRPERSON REYES: Aye.

7 MS. GENERA: It carries.

8 CHAIRPERSON REYES: I would like to thank the
9 staff and the Subcommittee who worked on this so hard. They
10 took a lot of time, a lot of testimony. Thank the
11 participants who were in the audience. Now there was a lot
12 of good input and I think we'll be able to move some money
13 out in a much needed program.

14 SENATOR LOWENTHAL: Good.

15 ASSEMBLY MEMBER BROWNLEY: Mr. Chair.

16 CHAIRPERSON REYES: Yes.

17 ASSEMBLY MEMBER BROWNLEY: Before you adjourn the
18 meeting, I wanted to record an aye on Item 13.

19 CHAIRPERSON REYES: Item 13. Okay. All right.

20 Ms. -- Sue, did you get that?

21 MS. GENERA: I did.

22 CHAIRPERSON REYES: Okay.

23 MS. MOORE: And Mr. Chair.

24 CHAIRPERSON REYES: Yes.

25 MS. MOORE: I have a -- before we conclude, I know

1 that we did not take up the Lynwood case and that they are
2 not coming back before the Board. However, I would like to
3 ask that the Chair and the Vice Chair consider an item that
4 we look at relocation costs as part of site acquisition of
5 multiple parcels because I think that there's an equity
6 issue involved there and we ought to take another look at
7 that.

8 CHAIRPERSON REYES: Okay. Thank you. And I'm
9 grateful to those folks who asked to be pulled from the
10 agenda; otherwise we'll be here till 8:00. Ms. Ferrera.

11 MS. FERRERA: Just not to belabor any -- keep
12 anybody any longer, but just on the Butte County issue when
13 we were discussing about the policy and requesting to look
14 at that information, is that something that's going to come
15 back or is that -- how would that go forward? There wasn't
16 an actual vote on -- you know, the vote happened, but --

17 CHAIRPERSON REYES: We will discuss it in the July
18 meeting.

19 MS. FERRERA: Okay.

20 CHAIRPERSON REYES: Okay?

21 MS. FERRERA: Thank you.

22 CHAIRPERSON REYES: Or as we get ready for the
23 July --

24 MR. HARVEY: Your question about the
25 constitutional --

1 MS. FERRERA: No -- well, it was about the policy
2 about MEFs and the broader issues and I am concerned about
3 the constitutional language that had handed out without the
4 other -- you know, the other statutory language as well.

5 But it was mainly Ms. Moore's point about looking
6 at this broader policy regarding if you are doing your due
7 diligence as Mr. Hagman pointed out, you don't want to deter
8 that, but at the same time what happens -- what's the best
9 course of action? If you add everything in at the
10 beginning, how does that impact you or should it be more
11 focused on everybody else? It's a broader question --

12 CHAIRPERSON REYES: I think it's important. We'll
13 need to have maybe the Implementation Committee look at this
14 issue moving forward, how do we do it so that folks can
15 legitimately come in and ask for what the amenities that
16 we're talking about or if they can because the cost -- do
17 you have -- you have savings there through, you know, being
18 frugal and good fiduciary responsibility. You're able to do
19 some cost savings and how can you maximize or share or do
20 something.

21 MS. FERRERA: Right.

22 CHAIRPERSON REYES: That's the thing that we can
23 do is maybe we split the savings, maybe we -- you come back
24 at some point and prepare a Plan B scenario that if funds
25 were available, these are the things -- but I don't think

1 we -- what we'd like to do is have staff go out there with
2 the Implementation Committee and come and look at how can we
3 resolve this so that people aren't penalized for being good
4 stewards over their limited resources and on the same token,
5 not have people take all that savings and keep other people
6 from coming back.

7 MS. FERRERA: I'd like to have -- thank you.

8 MS. SILVERMAN: Can I --

9 CHAIRPERSON REYES: Okay.

10 MS. SILVERMAN: -- clarify -- I'm sorry -- one
11 point with Kathleen Moore. You suggested that we have a
12 follow-up item with the site issue specifically to the
13 consultant fees? I just want to make sure that we're clear.

14 MS. MOORE: The relocation --

15 MS. SILVERMAN: Consultant fees.

16 MS. MOORE: Correct. As part of relocation costs
17 and at the, you know, guidance of the Chair and the Vice
18 Chair as to workload on that, but I -- as a policy
19 consideration.

20 CHAIRPERSON REYES: Mr. Hagman.

21 ASSEMBLY MEMBER HAGMAN: I was going to say on the
22 previous comment that we had I think that's the secret we
23 need in government in general. The whole concept of spend
24 it or lose it type of thing is on every level of government
25 and we need to put it anywhere we can for our government

1 departments to work more efficiently and be able to share
2 the savings for creativity and frugality.

3 CHAIRPERSON REYES: Senator Hancock.

4 SENATOR HANCOCK: I concur with Assembly Member
5 Hagman's remarks and I like your idea very much about this
6 whole concept -- things going to the Implementation
7 Committee and coming back to us with some discussion and
8 recommendations and I would then to pursue as well a look
9 the statute versus the Constitution in terms of County
10 Offices of Education being able to put forward bonds and not
11 necessarily having to be hardship or automatically --

12 CHAIRPERSON REYES: 100 percent hardship because
13 it is up to 100 percent and I think as a Board, for whatever
14 reason we've taken the position of doing the 100 percent.
15 Well, you're absolutely right, they can issue bonds.

16 SENATOR HANCOCK: Yes. Because different counties
17 have different --

18 CHAIRPERSON REYES: Means.

19 SENATOR HANCOCK: -- issues about that.

20 CHAIRPERSON REYES: Um-hmm.

21 SENATOR HANCOCK: And I do think we're going to be
22 running out of bond money and we do not know at this point,
23 given the State's financial situation, when anyone's going
24 to be comfortable going out for more bond authority or for a
25 new bond. So you need to look at everything.

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CHAIRPERSON REYES: Thank you. Adjourned. Thank
you.

(Whereupon, at 7:13 p.m. the proceedings were recessed.)

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