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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

STATE CAPITOL, ROOM 444
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, AUGUST 24, 2011
TIME: 4:03 P.M.

Reported By: Mary Clark Transcribing
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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

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

ESTEBAN ALMANZA, 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

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3 CHAIRPERSON REYES: In the interest of time, I
4 thought we'd get started with the stuff that does not
5 require an action by the Board and so we'll go ahead and do
6 that, if that's okay, Ms. Silverman, and Attorney says we
7 can do that. So -- okay. We're not taking any action, so
8 okay. Let's call this to order then. Thank you.

9 We won't establish a quorum.

10 MS. GENERA: No.

11 CHAIRPERSON REYES: Ms. Silverman.

12 MS. SILVERMAN: Okay. Yes. On Tab 3, we're going
13 to present the **Executive Officer's Statement**. We actually
14 have five things to announce tonight.

15 Again with the priorities in funding regulations,
16 they were actually put in effect on July 27th, 2011. That
17 actually made that effective the 30-day calendar filing
18 period and so with that, again the Board did approve those
19 regulations back in May and that actually created two
20 certification periods.

21 And with that, we actually did announce procedures
22 on how to access the certifications. Again the
23 certification round closes up August 25th and again we could
24 emphasize even more the certifications must be physically
25 received at our office, the close of business on

1 August 25th.

2 Last week we actually had an initiative and early
3 this week to kind of remind some of the school districts out
4 there that we do have -- the certification is open and we
5 actually did send an email blast at the initiation of the
6 filing period and we subsequently issued subsequent email
7 blasts as well and we also communicated with the school
8 districts that haven't submitted a certification, so we
9 actually reached out to those folks and made phone calls.

10 So as of Tuesday, we actually had 152 districts
11 that so far submitted. We actually did receive a handful
12 today. As of yesterday's count, we had 345 districts
13 submitted for 345 projects which valued close to
14 \$950 million. So that's great news.

15 And again just remind folks the certification
16 period is valid through January 10th, 2012.

17 The second item is the Seismic Mitigation Program
18 public meeting. DSA will be hosting a meeting tomorrow to
19 discuss the proposed procedures and the project requirements
20 related to a DSA review and approval. And so with that,
21 they will be updating their procedure -- DSA Procedure 0803
22 and they're looking for obviously input into that procedure
23 and that actually corresponds with the regulations that the
24 Board adopted back in June.

25 So again the public meeting is tomorrow from 1:00

1 to 3:30 at the DSA headquarters, 1102 Q Street on the fifth
2 floor. So we encourage those folks to participate in that
3 venue.

4 The next item is the Labor Compliance Program
5 grant regulation update. The Board actually moved forward
6 with the regulation change back in March I believe and to
7 that extent, we actually submitted the regulations on an
8 emergency basis and we actually received communication from
9 the Office of Administrative Law that the regulations were
10 going to be rejected on an emergency basis and they also
11 rejected the context of the structure of the regulations.

12 So with that, we are reporting out to the Board.
13 They thought that the regulations would invalidate the
14 statute and that would create a conflict. So what we are
15 advising the school districts as of today -- or excuse me --
16 that we have to have a Labor Compliance Program if they're
17 receiving funds from Proposition 47 and Proposition 55.

18 The next item is the appeals process update.
19 Public comment came in at the last April Board and with that
20 it was a comment as far as could we split a matter if part
21 of the item is a consent, meaning the project funding, and
22 another piece of that consent -- or the project is an
23 appealed item. Could a portion of that project move forward
24 on the consent agenda and leave the appeal item separate.

25 And staff is obviously agreeable and can work out

1 that process. So with that we also will be presenting those
2 items in the future. Where we have a consent agreement on
3 one portion of the project, that will be moved forward, and
4 the appealable item will be subject to bringing forward
5 to -- at another Board.

6 So we're just kind of laying out the ground rules
7 for that.

8 And then lastly the Joint Agency Workshop, we
9 hosted a Joint Agency Workshop on July 13th and with that we
10 partnered with CDE and Division of State Architect. We
11 actually had 55 participants that actually came out to that
12 venue. We had 19 folks also participate via webcast.

13 And for those folks who didn't have the
14 opportunity to attend, we actually have that recorded
15 webcast and the slide show on our website. So you can click
16 onto the resources page of the OPSC website training section
17 and you'll be able to access that presentation.

18 So with that I'll open up to any questions.

19 CHAIRPERSON REYES: Okay. Ms. Moore, do you have
20 a question?

21 MS. MOORE: No.

22 CHAIRPERSON REYES: Are you good?

23 MS. MOORE: I'm fine. Thanks.

24 CHAIRPERSON REYES: Okay. Members, we only have
25 the room until 7:00. So we just got started with the

1 Executive Report.

2 ASSEMBLY MEMBER HAGMAN: I just love staying here
3 till 10:00 o'clock, you know.

4 CHAIRPERSON REYES: We can open 1145 for you.
5 I'll give you my key.

6 Okay. We still do not have a quorum. We may not
7 have a quorum. So, Sue, would you take the roll, please, so
8 we can establish a quorum.

9 MS. GENERA: Senator Lowenthal.

10 SENATOR LOWENTHAL: Here.

11 MS. GENERA: Senator Hancock.

12 Senator Runner.

13 Assembly Member Buchanan.

14 Assembly Member Brownley.

15 ASSEMBLY MEMBER BROWNLEY: Here.

16 MS. GENERA: Assembly Member Hagman.

17 ASSEMBLY MEMBER HAGMAN: Here.

18 MS. GENERA: Esteban Almanza.

19 MR. ALMANZA: Here.

20 MS. GENERA: Kathleen Moore.

21 MS. MOORE: Here.

22 MS. GENERA: Pedro Reyes.

23 CHAIRPERSON REYES: Here.

24 MS. GENERA: We have a quorum.

25 CHAIRPERSON REYES: Thank you. Excellent.

1 SENATOR LOWENTHAL: All right.

2 CHAIRPERSON REYES: Okay. So we do have a quorum.
3 Let's go back to the beginning. I did announce that we were
4 going to have a closed session at 5:00 for a personnel
5 matter.

6 Hello, Ms. Runner.

7 SENATOR RUNNER: Hello.

8 CHAIRPERSON REYES: Tab 2, the **Minutes**. Is there
9 a motion?

10 ASSEMBLY MEMBER HAGMAN: Mr. Chair, I'll move, but
11 can I have a comment on those Minutes too.

12 CHAIRPERSON REYES: Absolutely.

13 ASSEMBLY MEMBER HAGMAN: And you can tell me
14 what's an appropriate time to bring this up, but in our last
15 discussion, we had one of our appellate people -- Orange
16 County Department of Education come up and there were a
17 number of questions that they didn't feel they properly were
18 able to respond to at that time.

19 I have met with them in the district. That's kind
20 of my area and I got a lot more information and I'd like to
21 have at some point maybe public comments or -- either now or
22 later -- (a) you know, the record reflect those
23 conversations and (b) having a chance just to explain a
24 couple points that were brought up, if that's a possibility
25 for you.

1 CHAIRPERSON REYES: Yeah. I actually had a chance
2 to meet also with the folks from Orange County. So -- and
3 if you're around, you want to come up and speak to the issue
4 of the Minutes.

5 SENATOR LOWENTHAL: We're talking about the
6 Minutes now?

7 CHAIRPERSON REYES: Yes.

8 MS. SULLIVAN: Actually Nina Boyd will be
9 discussing --

10 CHAIRPERSON REYES: Okay.

11 ASSEMBLY MEMBER HAGMAN: See, we're trying to
12 confuse everybody with a different room each meeting and
13 that way they don't know where to go.

14 CHAIRPERSON REYES: And they still manage to find
15 us. Look at the audience.

16 ASSEMBLY MEMBER HAGMAN: Then we pull out chairs.

17 CHAIRPERSON REYES: Go ahead.

18 MS. BOYD: Go afternoon. My name is Nina Boyd.
19 I'm the Assistant Superintendent with the Orange County
20 Department of Education and I'd like to read a letter from
21 the Superintendent into the record.

22 CHAIRPERSON REYES: Any chances we can get the
23 highlight and just get the letter since we only have the
24 room till 7:00.

25 MS. BOYD: Sure.

1 CHAIRPERSON REYES: Thank you.

2 MS. BOYD: We can do that. Andrea will distribute
3 the letter and the exhibits to you, but what we wanted to
4 reference was that on the meeting last month on July 12th,
5 many inferences were made with regards to previous project
6 approvals in 2002 that we feel inferred negatively on our
7 office as well as county offices in general and we wanted at
8 least state for the record and also to ensure that we moved
9 forward in a credible fashion.

10 We had approached OPSC prior to moving forward
11 with doing any type of COP to buy property. We wanted to
12 ensure that we were not doing anything to negatively impact
13 our financial hardship and after numerous meetings with the
14 OPSC staff and then submitting our project to SAB, we were
15 approved.

16 So annually those documents have been given to the
17 SAB through the Office of Public School Construction and we
18 have been reapproved for our projects as we've moved
19 forward.

20 It was stated that there was \$4 million eligible
21 for us to utilize in projects and the \$4 million that was
22 referenced is in unrestricted funds and those were approved
23 as a part of the COP to ensure that there would be
24 maintenance funds available for any tenant improvements as
25 well as ongoing routine and/or restricted maintenance type

1 of things on that project.

2 It was also agreed in that document that any
3 additional funds beyond what was stipulated in the
4 unrestricted that would be perceived as eligible would be
5 contributed and we have never had any additional funds that
6 have been available.

7 So that's the short context --

8 CHAIRPERSON REYES: Okay. Great. Thank you.
9 Appreciate that.

10 ASSEMBLY MEMBER HAGMAN: Appreciate it and if we
11 can make sure that your letter gets submitted to the
12 Minutes.

13 CHAIRPERSON REYES: Yes. That would be great.
14 Thank you.

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

16 CHAIRPERSON REYES: That will be incorporated by
17 reference.

18 ASSEMBLY MEMBER HAGMAN: And I'll move the Minutes
19 with whatever side note they need to put on it.

20 CHAIRPERSON REYES: Thank you. Is there a second?

21 SENATOR LOWENTHAL: Second.

22 CHAIRPERSON REYES: Second by Senator Lowenthal.

23 Any additional questions or comments from the public? All
24 in favor say aye.

25 (Ayes)

1 CHAIRPERSON REYES: Opposed? Abstentions. Thank
2 you. The ayes have it. Thank you.

3 We're going to move -- we -- you did Tab 3. Is
4 there any comments from the public on Tab 3, Executive
5 Report? Thank you.

6 Moving onto Tab 4 is the **Consent**. And before we
7 do the Consent, I would like to take a moment to thank staff
8 for a lot of the work that goes into putting this Consent
9 stuff. We spend a lot of time on the appeals and the action
10 items, but it is because of all the work that goes in
11 preparing this stuff that we don't have to spend more time
12 doing those. So thank you.

13 Is there a motion --

14 ASSEMBLY MEMBER HAGMAN: Move it.

15 ASSEMBLY MEMBER BROWNLEY: Second.

16 CHAIRPERSON REYES: Been moved and seconded.
17 Mr. Hagman, if I may, can we incorporate into that motion
18 also Item No. -- which one is it? 11?

19 MS. SILVERMAN: Tab 11.

20 CHAIRPERSON REYES: -- 11? It's the Special
21 Consent. This is the mitigation issue. It's going to be
22 approved.

23 ASSEMBLY MEMBER HAGMAN: Yeah.

24 CHAIRPERSON REYES: Without objection? The maker
25 of the second, are you okay with that?

1 ASSEMBLY MEMBER BROWNLEY: Yes.

2 CHAIRPERSON REYES: Okay. Yes. Okay. It's been
3 moved and seconded. Consent plus Tab 10 -- Tab 11. I'm
4 sorry. All right. Any questions/comments from the public?
5 Okay. All in favor say aye.

6 (Ayes)

7 CHAIRPERSON REYES: Opposed? Abstentions? Ayes
8 have it. Thank you. Tab 5.

9 MS. SILVERMAN: Tab 5 is on page 141 and we would
10 just share with the Board our highlighting the **fund releases**
11 that we've disbursed for the month. And on page 141, the
12 top chart represents the April 2009 funds disbursed. In
13 that particular bond category, we released 4 and a half
14 million dollars.

15 In the middle category, which is another bond sale
16 that this program received over \$509 million, there was no
17 funds being disbursed for the action of the month. And the
18 lower item is the November 2009/December 2009. There was no
19 funds disbursed in that category.

20 On page 142 o the top of the page, the March 2010
21 bond, we actually did disburse \$16 million, but there's
22 still a bond proceed balance of \$159.4 million in that
23 category.

24 In November 2010, this program received nearly
25 \$1.5 billion and we disbursed \$14.2 million and there's

1 still a bond proceed balance of \$46 and a half million. So
2 in total is a summary on page 143. We've released
3 \$34.7 million this month for projects.

4 So again it's kind of dropping off because we
5 actually had a successful rate in priorities of funding and
6 so some of the projects that are being funded are just the
7 residuals of those projects, but we still have some projects
8 on the 18-month timeline that are still coming in.

9 CHAIRPERSON REYES: Okay.

10 MS. SILVERMAN: And on page 144, here's actually
11 our cash balance in this category for all the bond funds for
12 this program. We still have \$295 million that still
13 allocated to the program. So again we encourage those
14 districts secure your contracts so then you can access the
15 funds. And then -- yeah.

16 CHAIRPERSON REYES: Any questions on that from
17 Board members? No. Okay. Go ahead.

18 MS. SILVERMAN: Tab 6 is **Status of Funds**.

19 CHAIRPERSON REYES: Hold on. Before you move to
20 Tab 6, any questions from the public on Tab 5? Okay.

21 SENATOR LOWENTHAL: These are all the bond
22 funds -- all the bonds --

23 MS. SILVERMAN: All the general obligation bonds
24 that the Treasurer went out and sold for this program.

25 CHAIRPERSON REYES: Okay. I'm sorry. Go ahead.

1 SENATOR LOWENTHAL: And the 295- is the total
2 that's still available.

3 MS. SILVERMAN: Right. From all the categories.

4 SENATOR LOWENTHAL: From all categories.

5 MS. SILVERMAN: Yes.

6 CHAIRPERSON REYES: Okay. Thank you. Tab 6.

7 MS. SILVERMAN: 6. Tab 6 is the **Status of Funds**
8 and this is just speaking to the bond authority and the bond
9 authority that we have left in the program and although it's
10 a rather complicated issue, we actually have nicer sheets in
11 the back that actually depict what's left in the bond funds.

12 But this is a summary of the activity of, as you
13 mentioned before, the Consent Agenda. There's -- here's the
14 activity that summarizes the Consent Agenda.

15 So in Proposition 1D, which is your top category,
16 we actually processed over 29 applications for \$42 million
17 this month. So that comprises a modernization project, a
18 high performance project, and conversions of some charter
19 schools.

20 And then the middle category under Proposition 55,
21 we actually did have a small activity that represents five
22 projects for new construction or 8.9 million and then in
23 your lower category, the blue segment there, we actually
24 processed nine projects for \$17.1 million and a design
25 release for a charter school.

1 So in total for the program, we processed
2 \$67.7 million in the Consent Agenda and that represents 52
3 projects.

4 On the following page, page 147, what we wanted to
5 highlight in the middle category is the Emergency Repair
6 Program. We actually have cash in the Emergency Repair
7 Program, so we actually did provide some approvals this
8 month of actually apportioning projects with awarding them
9 with cash.

10 So there's \$11.6 million that was actually going
11 to be awarded to those projects. So we are actually
12 processing those this month. So that's good news. And so
13 any other residual cash that comes in the program from the
14 emergency repair we would definitely be putting that out as
15 soon as possible.

16 CHAIRPERSON REYES: Okay.

17 MS. SILVERMAN: But there is still a total need of
18 the unfunded accumulation for the settlement program of
19 \$456 million. So there's still a large gap to fill there.

20 On page 148, here's a summary of all the
21 propositions, the bond authorities. There's \$28.78 billion
22 that was awarded out of Proposition 1D, 55, and 47, and so
23 out of that, we still have \$1.7 billion left in bond
24 authority from the respective categories and that's that
25 yellow shaded area in the pie chart.

1 So there's still 6 percent of the bond authority
2 left in the program and a good majority of that blue is
3 being shaded. So respectfully there's still a maroon shaded
4 area and those are projects that are on the unfunded list
5 waiting for cash.

6 I'm not sure if you want to go through all the
7 charts, but we can -- there's actually information on the
8 Project Information Worksheet. We have a new chart to show
9 on page 154.

10 MR. MIRELES: This is a breakdown of all the
11 expenditures. It includes State and local match. As you
12 can see, this is from the same sample that we had last month
13 which includes 567 new construction projects.

14 The chart basically states that we had a total of
15 about 10.4 billion. Then you can see just how that money
16 was distributed in terms of building costs and contracts,
17 whether they were part of contingency fees, furniture and
18 equipment. So it just gives you a broad array of how that
19 money was distributed for the projects that we had in the
20 sample.

21 On page 155, we have a different chart just to lay
22 out how much we have in terms of the facilities. This is
23 another part of the data that we catch in the PIW in terms
24 of playgrounds, softball fields, tracks, how many we had in
25 terms of number of facilities and then we also have some

1 data in terms of the parking lot space that was constructed.
2 That was a total of \$2.6 million in terms of the square feet
3 and again from the same sample.

4 On page 156, we show some data in terms of the
5 square footage per pupil housed. And this is broken out by
6 elementary, middle, and high school and whether it was a new
7 school or an additional project. So you can see what the
8 average square foot was per pupil based on different types
9 of grade levels.

10 And then on page 157, we also have other questions
11 on the PIW in terms of whether the project was modified due
12 to cost. There are some questions in there that ask the
13 districts did you change your plans and if so asking them
14 why.

15 So this gives you a breakdown that only 8 percent
16 of the projects in the sample did modify their plans and
17 then there's different reasons varying from building
18 material cost and the design was modified through site
19 development modifications. So it just gives you a nice
20 layout of what happened during the design and then whether
21 there's modifications and then some reasons why.

22 Those are the new charts that we have. We have
23 some information on pages 158, 159 that we've had before and
24 this is in regards to the different types of components.
25 This is information that we previously have included. So

1 unless there's any questions, I can -- or I can go through
2 them, but if there are no questions, we had them before.

3 CHAIRPERSON REYES: Yep. We got them ahead of
4 time. Any questions from members? No? Okay. Thank you.
5 Moving onto Tab -- 7 has been pulled -- Ceres has been
6 pulled.

7 SENATOR LOWENTHAL: Has been pulled, 7?

8 CHAIRPERSON REYES: Yes. 7 is pulled. We move
9 onto to Tab 8, **Fresno**. And this is Fresno County Office of
10 Education.

11 MR. ASBELL: Good afternoon, Mr. Chair, Board
12 members. My name is Rick Asbell. I'm the Fiscal Operations
13 Manager at OPSC.

14 So this item is to present Fresno County Office of
15 Education's request to change the scope of a
16 previously-approved new construction project. The COE
17 requests approval to change the scope of its new
18 construction project to add a solar powered generation
19 system that was not included in the plans submitted with the
20 original funding application that received an apportionment
21 in December of 2007.

22 For this project, the State has fully funded in
23 the amount of \$8.9 million to build a new community school
24 whose scope was 12 portable classrooms, administrative
25 facilities, kitchen/multipurpose area, library, and restroom

1 facilities.

2 During the course of the project, the COE decided
3 not to construct a handicap access pool that was a deductive
4 alternate in the original approved plans.

5 According to the COE's appeal, this decision was
6 made due to ongoing maintenance liability issues and the
7 inability to use the pool in the cool season. Due to the
8 removal of the handicap access pool, the COE has
9 approximately half a million dollars in residual funds which
10 they would like to use to add the new scope to the project.

11 It should be noted that the classrooms for this
12 project were occupied in 2009. Based on the COE's most
13 recent expenditure report from February of 2011, the project
14 is 99 percent complete and has expenditures totaling
15 \$7.7 million.

16 The COE is not requesting any additional funds for
17 the additional scope. The COE has received feedback from
18 the CDE that reviewed the project and found that it remains
19 consistent with the California Code of Regulations Title V.

20 The COE has stated that the receiving DSA approval
21 should require minimal review because the additional scope
22 includes structures that have already been prechecked by
23 DSA.

24 Now, staff has reviewed the COE's request and
25 because the new scope was not a part of the original

1 project, adding it to the existing approval would expand the
2 scope that is inconsistent with Education Code 17070.63(a).
3 This Education Code states specifically the total funding
4 provided under this chapter shall constitute the State's
5 full and final contribution to the project.

6 As a reminder, this project was approved as a
7 financial hardship with 100 percent State funding.
8 Currently the SFP regulations do not allow financial
9 hardship districts to retain State's share of savings.
10 Savings must be returned to the State to reduce the grant on
11 this project or to be used as contribution to other
12 financial hardship projects within the district for a period
13 of three years from when the savings were declared by the
14 district or determined by an OPSC audit.

15 As recent as the June 2011 SAB meeting, the Board
16 did not approve a similar appeal for the Butte COE to add
17 additional scope which was a library to its new construction
18 project. Both the Fresno and Butte projects received a
19 hundred percent State funding. Approving this appeal would
20 set a precedent that would substantially change the
21 Financial Hardship Program by allowing financial hardship
22 districts to retain the State's share of project savings and
23 potentially allow an advantage to financial hardship
24 districts.

25 However, the COE has another option for applying

1 for State funding for this additional project scope. If the
2 COE were to construct additional classrooms in the future,
3 it may be possible to add the new scope as a part of the
4 future funding application.

5 The COE currently has new construction eligibility
6 available and its enrollment has increased over the last
7 three years.

8 So based on this information, staff is
9 administratively denying the district's request.

10 CHAIRPERSON REYES: But isn't the Butte County
11 slightly different because Butte County, basically they
12 built the facility and then came back and said, by the way,
13 I built it with savings. What they're asking is to change
14 the scope of the project and their coming out essentially
15 ahead of the final. So isn't there slightly different --

16 MR. ASBELL: The four-year window?

17 CHAIRPERSON REYES: Yeah.

18 MR. ASBELL: Yeah, but I mean -- you know, when
19 we're looking at this -- the project essentially looks like
20 it's complete. It's at 99 percent. They have occupied the
21 classrooms as of 2009.

22 CHAIRPERSON REYES: Mr. Hagman.

23 ASSEMBLY MEMBER HAGMAN: Just a couple questions.
24 We have two different funding sources, the one that the
25 school district's go 50-50 with and then we have other ones

1 that we pay a hundred percent on. This is the 100 percent.

2 As far as criteria, I mean we still -- both those
3 programs pay a per pupil allotment for a new structure;
4 correct?

5 MR. ASBELL: That's correct.

6 ASSEMBLY MEMBER HAGMAN: And then we just had in
7 the previous report a number of changes, 8 percent of that
8 pie chart that you made up on that last thing. That
9 8 percent would have changed from, you know, building
10 materials or square footage or those type of things. Are
11 those not considered scope or that's just design-build as
12 you go changes? What's the definition of the scope change
13 versus that kind of --

14 MR. ASBELL: It would be something that would
15 substantially change one of the line items as they are
16 getting their apportionment. So, for instance, if you're
17 talking about materials and so forth, I don't -- I wouldn't
18 consider that to be a scope change. That's minimal.

19 But if you're talking about adding another
20 structure --

21 ASSEMBLY MEMBER HAGMAN: Sure.

22 MR. ASBELL: -- then I think that's where you kind
23 of cross that line.

24 ASSEMBLY MEMBER HAGMAN: I just want to make sure
25 that we have some -- so let me go back to this chart here.

1 We have the categories. You have building materials, which
2 I can see building construction type change, site
3 development modified I can see. If you get -- start
4 bulldozing a site and you find some other problems in there.
5 Other buildings change. We have -- out of that 8 percent is
6 other building change and building square footage modified,
7 classrooms modified.

8 I'm just wondering at what point do we get --
9 cross that line of modification versus scope. Scope to me
10 means change of use, change of -- you know, I was going to
11 put this here, but now I'm going to put that there. You
12 know, I don't -- I just don't know what that is.

13 If you scoped for 16 classrooms and all of a
14 sudden, you built 10 and you wanted to build a pool, that
15 would say, hey, you really changed your formula here, what
16 you're doing, and obviously not servicing those children any
17 more than you did before.

18 And I'm just trying to get from the legal end
19 view, what is considered a change in plans and what's the
20 process for that versus what's a scope change just so we
21 could be consistent on it, and is there a difference for
22 that for the projects that are hardship that we pay a
23 hundred percent for versus ones that we do 50-50 with the
24 school districts.

25 MR. ASBELL: There is no difference between the

1 two types of programs and --

2 ASSEMBLY MEMBER HAGMAN: But one requires return
3 the excess money --

4 MR. ASBELL: That's right.

5 ASSEMBLY MEMBER HAGMAN: -- but the 50-50, if they
6 save money through design engineering, they keep it

7 MS. SILVERMAN: Right.

8 MR. ASBELL: Yes.

9 ASSEMBLY MEMBER HAGMAN: Is that -- I'm --

10 MR. ASBELL: Yes.

11 ASSEMBLY MEMBER HAGMAN: -- layman's terms here
12 for me, but -- so that's the main difference in the funding
13 streams on that; correct?

14 MR. ASBELL: Right.

15 MS. SILVERMAN: That's correct.

16 ASSEMBLY MEMBER HAGMAN: Okay. So what's -- what
17 would you consider a change of use or scope versus a change
18 in these types things we --

19 MR. MIRELES: The way staff has approached this is
20 we've looked at, for example, a project that included
21 portable classrooms -- ten, let's say -- and they decided to
22 change those ten classrooms from portable to permanent.
23 This is something that we have reviewed and we have allowed
24 as a change of scope but because it was an original -- the
25 classrooms were originally part of the project. It was

1 changing the type.

2 That we consider to be an allowable scope change.
3 In this particular case, the component was never part of the
4 scope. It's a new component altogether and that's I think
5 where we made the distinction between something that -- an
6 expanded modified in terms of it -- whether it's included in
7 the plans versus something that's a brand new component.

8 ASSEMBLY MEMBER HAGMAN: But when you fund them --
9 when we fund them, you get a per price per pupil, period.

10 MR. MIRELES: Yes.

11 ASSEMBLY MEMBER HAGMAN: So if they wanted to --
12 in that budget that we give them for an X amount of
13 students, if they want to put gardens or a swimming pool or
14 solar, whatever, as long as they fit within that budget, is
15 that allowable or within certain things? I mean do we allow
16 solar on other projects because they asked for it ahead of
17 time because it still fits within that budget or is that not
18 an allowable expense to begin with.

19 MR. MIRELES: The per pupil grant amount is
20 designed to cure the cost to construct -- in this example,
21 it's to build classrooms.

22 ASSEMBLY MEMBER HAGMAN: Um-hmm.

23 MR. MIRELES: So they get a per pupil grant amount
24 to build the classrooms, to build the ancillary facilities
25 and it's a per pupil grant amount. It's a base grant and

1 they use it for the classrooms and for any other eligible
2 costs.

3 For a new construction project, the solar panels
4 and the parking structure could be used -- the base grant
5 could be used to cover those costs if they were included in
6 the original plans. That wouldn't be a problem.

7 The problem here is that they weren't in the
8 original plans that we reviewed and approved.

9 ASSEMBLY MEMBER HAGMAN: Um-hmm.

10 MR. MIRELES: Had they been, then this wouldn't
11 have been a problem.

12 ASSEMBLY MEMBER HAGMAN: I have a whole other
13 issue about allowing the same amount per student for a
14 portable building that may have a life shelf of 10 years
15 versus a 30 or 40 or 50 year life shelf and I think that's
16 something the Board should take a look at for the future
17 because they're not apples and apples. They're apples and
18 oranges and we're basically -- be paying on those buildings
19 long after their use is done. But that's a separate
20 discussion.

21 But as far as the number of capacity for the
22 students to do -- go to school and stuff, it's still the
23 same under this case; correct?

24 Thank you. That's my questions.

25 CHAIRPERSON REYES: Okay. I have Ms. Buchanan.

1 Then I have Senator Lowenthal.

2 ASSEMBLY MEMBER BUCHANAN: I've met with --

3 SENATOR RUNNER: We want to hear from the other
4 side.

5 ASSEMBLY MEMBER BUCHANAN: -- a number of people
6 on this and I really struggle because --

7 SENATOR HANCOCK: So -- but I want to hear from --

8 CHAIRPERSON REYES: Oh.

9 ASSEMBLY MEMBER BUCHANAN: We can hear first; then
10 I'll talk. Go ahead.

11 SENATOR HANCOCK: Yeah. I mean we're all talking
12 and we haven't heard their --

13 SENATOR RUNNER: The other side.

14 SENATOR HANCOCK: There are people that want to
15 speak on this issue.

16 MR. BECKER: Good afternoon, Chair Reyes and
17 members of the Allocation Board. At the pleasure of the
18 Chair, before I give the County Office position, I would
19 like to invite a representative from Assembly Member Perea's
20 office to read a letter of support into the record.

21 CHAIRPERSON REYES: Okay.

22 MR. ARAMBEL: My name is Jonathan Arambel. I work
23 at Assembly Member Perea's office. He wanted to submit a
24 letter of support to you guys on behalf of the Fresno County
25 Office of Education regarding the project. I know you guys

1 have a lot, so I'll kind of just give you the highlight of
2 it.

3 CHAIRPERSON REYES: Thank you.

4 MR. ARAMBEL: The Fresno County Office of
5 Education's request aligns with the State's objectives of
6 increasing the use of clean and renewable energy and it's
7 going to be at no extra cost to the State.

8 And so Assembly Member Perea would just strongly
9 urge the SAB Board to approve the request.

10 CHAIRPERSON REYES: Okay. Thank you, Jonathan.

11 MR. BECKER: Go afternoon again. I'm Jeff Becker,
12 Director of Facilities for the Fresno County Office of
13 Education. Thank you for the opportunity to present this
14 important appeal on behalf of the students of Fresno COE.

15 FCOE serves as a safety net for students with
16 special needs and community school students. Both of these
17 at-risk student populations are served at the current
18 education complex to which this appeal pertains.

19 We are requesting to enhance our project by
20 installing a solar power generation system in lieu of a
21 swimming pool. The swimming pool in the already-approved
22 plans would certainly benefit our students, but we don't
23 want to miss the educational and cost-saving opportunities
24 that a solar power generation system would provide.

25 In fact we anticipate that the school site will be

1 grid neutral after the installation of the solar power
2 system.

3 It's important to the Fresno County Office of
4 Education to be good stewards of limited school facility
5 program funds and this appeal will not result in any
6 additional cost to the State.

7 We are simply asking to substitute the swimming
8 pool for the solar power generation system at a cost equal
9 to that of the swimming pool.

10 Each appeal for a change of scope is unique and
11 should be weighed by the Allocation Board on its own merits.
12 OPSC has compared our appeal to the Butte County Office of
13 Education appeal that you heard in June of this year.

14 Our appeal differs from Butte in that we're asking
15 to substitute already approved scope for the solar power
16 generation system. The net dollar value of the project
17 scope will not change.

18 In the case of Butte, the request was to build
19 100 percent of the approved scope and then build additional
20 scope with residual State funds.

21 FCOE has not yet built 100 percent of the approved
22 scope for this project as we held off on building the
23 swimming pool in 2008 and at that time contacted OPSC to
24 discuss installing a solar power generation system instead.

25 We believe that our request fully complies with

1 State law and respectfully disagree with the staff analysis
2 of the Education Code and School Facility Program
3 regulations.

4 First, staff has stated that the request is
5 inconsistent with Education Code Section 17070.63(a), the
6 full and final provision. This section is intended to limit
7 the State's liability for cost overruns to no more than
8 funding provided for the project.

9 As granting our request would not result in the
10 State providing any additional dollars to the project, there
11 would be no change to the State's full and final
12 contribution and no violation of this code section.

13 Second, we also disagree with the staff's
14 application of Regulation 1859.103, the savings regulation.
15 This regulation states that savings declared by the
16 district -- or that savings -- beg your pardon.

17 CHAIRPERSON REYES: It's all right.

18 MR. BECKER: This regulation states savings
19 declared by the district or determined by audit, neither of
20 which have happened, must be returned to the State.

21 The funds that would be used to complete the solar
22 power generation system are not savings.

23 The issue before you is simply should FCOE
24 construct a swimming pool or a solar power generation
25 system. Your decision here today will not result in more or

1 less savings being returned.

2 Neither the full and final statute nor the savings
3 regulation prevents the Allocation Board from exercising its
4 authority to interpret regulations and modify projects.
5 Substitutions have been granted by the SAB three times in
6 the past and the full and final and savings provisions were
7 not obstacles.

8 This type of work is specifically encouraged in
9 Education Code Section 17072.35 which states that a grant
10 for new construction may also be used for the cost of
11 designs and materials that promote the efficient use of
12 energy.

13 The Fresno County Office of Education board could
14 and it is my recommendation to move forward with the
15 swimming pool if our appeal is not approved, but we don't
16 want to miss out on educational and cost-saving
17 opportunities that a solar power generation system would
18 provide.

19 Thank you for your consideration of this important
20 matter and we ask for your support.

21 CHAIRPERSON REYES: Thank you. I have
22 Ms. Buchanan, I have Senator Lowenthal, and then I have
23 Ms. Brownley.

24 SENATOR HANCOCK: And you can add me.

25 CHAIRPERSON REYES: And Ms. -- Senator Hancock.

1 ASSEMBLY MEMBER BUCHANAN: Could you refresh for
2 me when you bid the project with this pool as the deductive
3 alternate?

4 MR. BECKER: Yes. We went out to bid originally
5 in late 2007 and the contract was awarded in January 2008.

6 ASSEMBLY MEMBER BUCHANAN: Okay. And so the
7 contractor was notified that you were accepting the
8 deductive alternate or you were not accepting the deductive
9 alternate?

10 MR. BECKER: That's correct. We accepted the
11 deductive alternate to allow time to have the conversation
12 and investigation of doing the solar power generation system
13 in lieu of the swimming pool.

14 ASSEMBLY MEMBER BUCHANAN: Well, but that's 2008.
15 So between 2008 and 2011 is -- what happened? Is the
16 contractor -- you've not provided -- I mean if you took
17 occupancy of the building in 2009, normally at the time of
18 bid you either accept the deductive alternate or you don't.

19 If you accept -- I mean if you -- so if you
20 didn't, you'd have -- are you under contract to build --

21 MR. BECKER: Yes.

22 ASSEMBLY MEMBER BUCHANAN: -- the pool is my
23 question.

24 MR. BECKER: I think I understand your question.
25 In 2008, we awarded a contract to a general contractor for a

1 specified scope of work that did not include the pool, but
2 we did not preclude ourselves from going back and building
3 the pool through a separate bid and another contractor at a
4 future point in time.

5 ASSEMBLY MEMBER BUCHANAN: I understand that, but
6 I just want to say, so you had a project that may or may not
7 have included -- you know, depending on your decision,
8 included a pool and you did not at the time when you entered
9 into the contract to build the structures include the pool.

10 So clearly at least at that time there was no
11 intent to build the pool; correct?

12 MR. BECKER: Well --

13 ASSEMBLY MEMBER BUCHANAN: That -- I mean you -- I
14 don't want to say --

15 MR. BECKER: I would say that that -- that is not
16 entirely correct. There was no intent to build the pool at
17 that moment.

18 ASSEMBLY MEMBER BUCHANAN: As part of that
19 contract.

20 MR. BECKER: At the -- with that general
21 contractor.

22 ASSEMBLY MEMBER BUCHANAN: As part of that --
23 right.

24 MR. BECKER: We intended to investigate the solar
25 power generation system and that's evidenced by a letter

1 that we have that we sent to OPSC on the same date that we
2 awarded the contract to the general contractor, bringing to
3 their attention that we'd like to have a discussion of some
4 of these potential scope changes.

5 We've had ongoing discussions with OPSC on and off
6 throughout the past few years and now we're at the point
7 where staff did not feel they could make a decision
8 administrative --

9 ASSEMBLY MEMBER BUCHANAN: See, this is my problem
10 and I struggle with this because if you said, Joan, as a
11 school board member, do you build a pool or do you build a
12 solar. I'd say at this point in time I'd build solar, given
13 the fact the State keeps cutting back funding and it helps
14 with -- offset operational expenses and helps to put money
15 into the classroom. Okay.

16 But I struggle with the fact that when we fund
17 hardship cases and we're spending a hundred percent of State
18 money -- okay -- we funding a project. And when you have a
19 project that includes a pool -- in fact I have no idea when
20 we spend hardship money on swimming pools to begin with.
21 I'm going to be really honest with you, but I wasn't on the
22 Board and didn't approve that.

23 But you fund a hardship project, you're funding
24 that project. I mean with Butte we didn't fund a library
25 which I would include as a higher priority than a pool or

1 solar.

2 So the question becomes is not a scope change.
3 And when you didn't elect to add it in or include it in the
4 construction and you took occupancy in 2009 and the school
5 is 99 percent complete and now in 2011 you're saying, wait a
6 minute, we want you to on appeal approve a scope change to
7 solar, I find -- I have a hard time in my mind justifying
8 that's a real scope change.

9 I'm seeing districts all around me. I watched
10 Mount Diablo struggle to pass a bond so they could put solar
11 in for just the purpose of okay, we can -- it'll save us
12 money and we can have more money drop to the bottom line,
13 but districts are adding these now I mean on a separate
14 basis.

15 So to -- again to have a school that's -- where
16 you've -- it's been occupied for two years. This is not a
17 month or two -- for two years that is 99 percent complete
18 and with financial hardship cases, it -- you know, what I --
19 we're going to see more of this. There's no doubt in my
20 mind as the Allocation Board because you can talk to any
21 district around and bids are coming in 20 to 30 percent and
22 so what happens, it seems to me, is districts look at this
23 and they say, well, it's my money, you know, because the
24 State hasn't audited yet.

25 And that's -- you sort of implied that because you

1 said there's no savings because we haven't completed the
2 audit yet to return the money to the State.

3 So the question really becomes are we funding a
4 project or are we just giving you a specific allotment and
5 I -- someone's going to have to convince me that this is the
6 kind of scope change that was intended because I'm not
7 convinced at all even though I think solar's good and I know
8 it's good for years, but I mean financial hardship there
9 should be to fund, you know, core facilities, should be to
10 deal with situations where schools need to be modernized and
11 there's not the bonding capacity or the ability to pass a
12 bond and you're not able to fund and I know county offices
13 of education are a different situation.

14 But this kind of hammer to your head and say okay,
15 if you don't approve this, we're going to build a pool, is
16 that a real choice or is that sort of a -- I mean should
17 that kind of a hammer be at our head or -- I mean what is --
18 I'm just telling you that's where I struggle and I think at
19 this point in time two years after, I mean right now I'm
20 leaning to this is really a scope change in the project and
21 it's not that solar's not nice to have and it's not that
22 solar's not better than a pool, but when I go through the
23 timeline, it's hard for me to come to different conclusion
24 and I do understand -- I do believe there's a difference
25 between a financial hardship program and a normal program

1 where you're giving a grant amount and the district has
2 50 percent or more skin in the game and it decides it's
3 going to make that change.

4 CHAIRPERSON REYES: Okay. Thank you. Senator
5 Lowenthal.

6 SENATOR LOWENTHAL: Yeah. You know, I have some
7 questions and then I also want to comment on the financial
8 hardship issue.

9 The first one is scope changes in general are
10 allowed in the School Facility Program; is that not so? I'm
11 asking the staff now. We can do that.

12 MS. SILVERMAN: As Juan explained earlier, it's
13 certain items. If it was a part of the project, yes.

14 SENATOR LOWENTHAL: Well, we'll get back to that.
15 They are allowed.

16 MS. SILVERMAN: To some extent; right.

17 SENATOR LOWENTHAL: Right. And we've never
18 adopted any Board regulations on what those conditions are.
19 There are guidelines that were developed by staff, but the
20 Board has never approved what those are. So this is just
21 developed by staff. So we as a Board have never voted on
22 any of those; is that not true?

23 MS. SILVERMAN: It was guidelines that was
24 presented at Implementation Committee and it had much
25 dialogue go --

1 SENATOR LOWENTHAL: I'm talking about the Board.

2 MS. SILVERMAN: The Board, it was never elevated
3 to the Board.

4 SENATOR LOWENTHAL: Right. So we have never
5 really dealt with this issue of what is an appropriate scope
6 change or not as a Board.

7 MS. SILVERMAN: But that's why we're presenting
8 the appeal.

9 ASSEMBLY MEMBER BUCHANAN: Have we not dealt with
10 it indirectly by not approving, for example, the library?

11 SENATOR LOWENTHAL: But we have also approved
12 three others. We've done Victor Valley. We've done Gerber.
13 So we have done before you were here.

14 ASSEMBLY MEMBER BUCHANAN: But they were to
15 existing plans.

16 SENATOR LOWENTHAL: No. No.

17 ASSEMBLY MEMBER BUCHANAN: They weren't adding
18 it -- it wasn't adding something new.

19 SENATOR LOWENTHAL: No. They were changes.

20 ASSEMBLY MEMBER BUCHANAN: No. They were -- when
21 they --

22 SENATOR LOWENTHAL: But what I'm getting at is
23 that we never dealt with this issue what is a scope and what
24 is not a scope change, which is your issue, and I think
25 that -- and there are examples of the Board supporting scope

1 changes, even though Butte we voted not to, we have done
2 supporting.

3 So I think that it -- I am of the opinion that it
4 is appropriate for this Board to deal with this scope
5 change. We have done with scope changes. We've never
6 defined what the regulation -- what the Board's stance is on
7 scope changes and I differ with the Assembly Member about --
8 the implications about if this was a hardship whether there
9 should be a difference that they should not be allowed to do
10 a swimming pool or something like that and I just remind us
11 that we have the Williams' lawsuit settlement which is
12 brought against the State because there were inequities in
13 school facilities between impoverished communities and those
14 that are not and we -- the lawsuit said there shouldn't be
15 those differences.

16 So we should not be providing different standards
17 for hardship cases. If we allow swimming pools with regular
18 schools, we allow them with hardship. There is no
19 difference because they're a hardship that they get second
20 class citizenship, so I take strong exception that they
21 should -- I also believe that this is an appropriate use of
22 a scope change and I would be very supportive and I would
23 also be supportive of this Board struggling in the future if
24 we want to have rules about what scope changes are to come
25 before the Board.

1 We have not dealt with that issue and we have
2 approved individual cases in the past for scope changes and
3 we've denied.

4 And so it's unclear and I -- but I think in this
5 case since we have allowed it before because I do take
6 exception to the fact that hardship cases should be treated
7 differently in terms of what they're eligible for, I'd be
8 supportive of this -- of the appeal.

9 CHAIRPERSON REYES: Okay. Thank you. I think the
10 issue is that the staff doesn't have the authority to do the
11 type of scope changes and that's what's elevated up to the
12 Board. I think that's how I read this and it's entirely up
13 to the Board then to decide whether or not this is
14 consistent with the Board's vision of at what point you make
15 changes or -- you know, we -- so that's kind of how I see
16 it.

17 And there's an issue there. We talk about -- when
18 we dealt with Butte County and I think Mr. Hagman brought up
19 the issue of what do we do with savings when you have
20 efficiencies and we talk about that's one of the issues that
21 we need to set up and address. So I agree with you that we
22 need to deal with that.

23 Ms. Brownley.

24 ASSEMBLY MEMBER BROWNLEY: Thank you, Mr. Chair.
25 I want to agree with the Senator's comments and actually

1 prepared to make a motion to accept the appeal.

2 And I look at this more from a practical matter
3 and local schools -- local school districts have to make
4 priority decisions for themselves and I think -- in good
5 faith, I think the Fresno County Office of Education engaged
6 in this process back in 2008 and they -- it's been an
7 ongoing conversation with OPSC from that date.

8 I think -- certainly I think a pool is something
9 clearly that I think Fresno has stated is a need and I --
10 again this is a school that is servicing really high needs
11 children with special needs and so even beyond the hardship
12 argument, we even have a higher bar in terms of meeting
13 students' needs here.

14 And I think the pool was designed for
15 therapeutical purposes not for, you know, swimming meets and
16 the like. But I understand that the priority now and the
17 scope change now is about installing a solar system that
18 will provide better sustainability of their buildings over a
19 long term and perhaps will yield enough savings that would
20 contribute to some of the services that could be provided to
21 children in the longer term.

22 I have no question that probably Fresno will try
23 to figure out how to provide for a pool in the process.
24 Today and for now and for what's best in this moment, I
25 think from a practical matter we should honor what the local

1 folks believe is the most important priority for them at
2 this point in time and that we should allow scope changes
3 and that flexibility to be able to honor it.

4 So I'm looking at it from strictly a practical
5 perspective and hopefully from the monies that were
6 allocated and in some sense getting the best bang for its
7 buck in the moment.

8 So I am very much supportive and would make the
9 motion to accept the appeal.

10 CHAIRPERSON REYES: Thanks. I have a motion from
11 Ms. Brownley. Senator Hancock.

12 SENATOR HANCOCK: I would second Ms. Brownley's
13 motion for many of the same reasons that have been
14 mentioned. It does seem to me that there is a difference
15 between wanting to spend savings on another project
16 essentially and changing out to do another project and if
17 there are savings in that project, I'm assuming the money
18 will be returned to the State.

19 So -- and as you all know, I'm very interested in
20 seeing schools save money by having solar generation
21 systems.

22 I am wondering though because I honestly don't
23 know why is Fresno a hardship district. Do we have strict
24 definitions as a Board?

25 CHAIRPERSON REYES: That's the issue that you keep

1 raising and that we need to address, that the County Office
2 of Education -- most County Office of Education make a case
3 for hardship.

4 SENATOR HANCOCK: And do we have like in our
5 glossary a definition of hardship that we've adopted as a
6 Board?

7 MS. MOORE: (Nodding head.)

8 SENATOR HANCOCK: Good. I would like to see it
9 because I realize I've been on this Board for a long time
10 and we've had many of these discussions and I don't actually
11 know what it is.

12 MS. SILVERMAN: It's the one exception to the
13 rule. I mean where the hardship criteria, the County
14 Offices is one of the criteria in which they automatically
15 qualify.

16 SENATOR HANCOCK: Oh, just to be a County Office
17 makes you a hardship.

18 MS. SILVERMAN: Automatically qualify.

19 ASSEMBLY MEMBER BROWNLEY: Offices -- all County
20 Offices?

21 CHAIRPERSON REYES: All County Offices of
22 Education --

23 MS. SILVERMAN: They can qualify.

24 ASSEMBLY MEMBER BROWNLEY: They can --

25 SENATOR HANCOCK: Okay. Okay. That makes a lot

1 of sense. Because I have to tell you I'm also interested in
2 things like warm pools or whatever it was that you were
3 doing for disabled students and -- because those are very
4 expensive and highly valued in the places where they've
5 managed to get them -- make a big difference in kids' lives.
6 But I'm -- certainly I'm prepared to support the motion
7 today.

8 CHAIRPERSON REYES: Mr. Hagman.

9 ASSEMBLY MEMBER HAGMAN: Thank you, Mr. Chair.
10 Just a couple quick points too. I have a completely
11 different look on this, not so much on the merits of a pool
12 versus solar or anything like that. It's the mechanics of
13 how we're doing our bonds.

14 My understanding these classrooms are portable.
15 By definition to me, that means it's not going to last as
16 long as a permanent building would do and I thought we had a
17 limit of how much percentage portable versus permanent
18 structures and those type of things. I think that's
19 something if we don't have some clear definitions, it makes
20 no sense to me to spend 30-year bond money on things that
21 are not going to last at least 30 years.

22 You would never ever do that in a company or
23 either a private sector type of position or government would
24 you spend -- paying on something longer than is going to be
25 the life of it.

1 I don't know much about the solar, but the way we
2 have it structured and which I'm compelled to almost support
3 this because the we have it structured. We don't approve
4 your plans. You come in and say I qualify, I've got X
5 amount of kids, and we say this is your chunk of money.

6 Now, as long as you're able to service your
7 primary mission which is to educate those kids under that
8 amount of money, whatever structures you build with it,
9 we're kind of compelled to accept those within the building
10 codes that we set up through the State and make sure it's
11 safe and it's habitable.

12 Now, since you switched from permanent buildings
13 to portable buildings, obviously there's a lot of cost
14 savings involved there, so you have extra money to do other
15 things. And if we don't have criteria set up right now that
16 says you can do this or you can't do that, if you could
17 design engineer it for your total number of dollars, I don't
18 see how we could pick and choose what's a good project,
19 what's a bad project just because we've never defined that.

20 And tell me where I'm wrong on this, but if we say
21 you got 600 students going there and you got X amount of
22 dollars per student to build a structure, as long as you're
23 accomplishing that, you can throw them all in one big tent
24 it sounds like or a temporary thing --

25 MS. MOORE: If I may.

1 ASSEMBLY MEMBER HAGMAN: I'm sorry.

2 MS. MOORE: If I may. We do provide plan
3 approval. So --

4 ASSEMBLY MEMBER HAGMAN: Plan approval but it's
5 still for the primary mission. So if they --

6 MS. MOORE: The Department of Education approves
7 the plans for educational and safety reasons.

8 ASSEMBLY MEMBER HAGMAN: Sure. That's what I
9 said, within safety --

10 MS. MOORE: We look at classrooms. The Office of
11 Public School Construction approves the plans.

12 ASSEMBLY MEMBER HAGMAN: But that's health and
13 safety.

14 MS. MOORE: They look at --

15 ASSEMBLY MEMBER HAGMAN: It's not so much what
16 structures; right?

17 MS. MOORE: They look at classrooms and
18 multipurpose rooms and they quantify all those. The
19 Division of State Architect also approves the plans.

20 So the plans are approved by three State agencies.

21 ASSEMBLY MEMBER HAGMAN: I understand. That's not
22 the point I'm making. The point I'm making is you're
23 planning -- health and safety. Make sure it's safe for the
24 children, the environment they're in, and it provides the
25 function you're doing. Whether or not if it's a portable

1 building or a brick and mortar building that may have a
2 longer life structure, that doesn't seem to get a different
3 dollar amount for construction. So if you switched all the
4 permanent buildings to portable buildings, obviously it's
5 less expensive to build, at least we think it is, and
6 therefore you have excess savings.

7 Now the excess savings per student, you could say
8 I want to put it in the cafeteria, I want to put it on a
9 swimming pool, I want to put it in a parking structure, I
10 want to put it on solar at the time of application. Now
11 still the architects and everybody have to look at it, make
12 sure it's safe and good for the children, but we don't
13 really have -- at least my understanding and a criteria say
14 on that -- so that's what I'm looking at.

15 MS. MOORE: You are correct that we don't get down
16 to the details of what type of roof you use, what type of
17 siding you use, what type of flooring you use, whether you
18 have -- whether you use permanent or portable. In this
19 system, years ago we required that you build 30 percent
20 portable. That was the policy decision at that time.

21 And we came to find actually that that was not
22 probably necessarily the best policy decision because what
23 we came up with were portable structures that lasted on
24 school sites over 30 to 40 years.

25 And so we -- the Legislature actually chose and in

1 the reform of this program, they indicated that we're no
2 longer going to have that requirement.

3 I will say that I have seen -- I think that school
4 districts generally want to build permanent and that in the
5 course of our ebb and flow of how construction costs have
6 happened in California, they have had to make really hard
7 choices and at times they have had to move from permanent
8 construction to portable construction to meet bids.

9 And at that time, we said -- really sorry that
10 that's happening with you, but we're keeping the grant
11 amount at the amount it is now. It just so happens that at
12 this time -- this day and age right now, we have a fairly
13 good bid environment and now we're saying things to school
14 districts -- I think sometimes that we're telling them you
15 made bad choices when maybe five years ago when this project
16 started, we were not where we are today and they had to make
17 the choice then.

18 And if we want to have per square foot costs of
19 permanent or portable or we're actually going to pay for
20 buildings, that's not how our system exists right now and if
21 we want to choose to do something different, that would be a
22 legislative choice on how this system works.

23 But I do want to say that plans are reviewed and
24 to the most -- and for instance, in this instance, they came
25 to the -- I actually commend them in that I think that

1 they -- they took the right approach. They did a deductive
2 alternate and they immediately talked to -- began their
3 discussions with the Office of Public School Construction
4 about their choices.

5 Today they could go build a pool or if we make a
6 different determination, they could build their solar
7 project and we're asked to give them that permission. I
8 think there's a reasonable factor in that.

9 But before they did it, they came to the
10 Department and we said how are you going to provide physical
11 education for these students. How are you going to provide
12 the program that you would have provided should that you
13 have a pool.

14 And actually in California curriculum standards,
15 aquatics is a curriculum standard. So all those schools
16 that don't have pools, I don't know how they're
17 accomplishing their -- the California State standards.

18 But that -- so we had to weigh in and say and you
19 have -- you know, I think our letter's been distributed, but
20 we took a very thoughtful look at what they wanted to do and
21 they had to say to us how they were going to deliver their
22 physical education and then they wanted to make their local
23 choice of, you know, whether it's a pool or whether it's
24 solar that, you know, is more of a career technical
25 component or an ability of the district to go to grid

1 neutral which is what they represented to do.

2 I commend them on asking the permission instead of
3 the forgiveness and I think it's reasonable to grant this
4 scope change and we will support it .

5 ASSEMBLY MEMBER HAGMAN: Well, I think you're
6 basically -- you stated a lot of things I was saying is are
7 we here to second guess those decisions when we don't sit
8 there and say you have to do X, Y, and Z, where we give --
9 lack of a better word, a block grant with come in to make
10 sure -- you know, approvals and make sure it gets identified
11 by the State Architect and by the Department of Education
12 and make sure it's safe, make it does its primary mission,
13 make sure about the rest of it, as long as you spend the
14 money within that block grant, we basically can approve. If
15 it was submitted at the beginning with that, this -- we
16 wouldn't be here in the first place probably, if you could
17 fit it within your budget, would have been part of it.

18 So whether or not I like the decision, whether I
19 think the children are better served by a swimming or by you
20 saving operational costs and putting in solar, I don't know
21 necessarily that's our role is to -- if we have the system
22 set up for a block grant that you're going to serve X amount
23 of students and you come in and during -- a scope of five
24 years, a lot of changes can happen especially with the
25 economy and then you look at that scope and you look at your

1 plans. You're saying for us now this is the priority. Then
2 I think as long as it does its original mission, then I
3 think we let you do it and that's where we go back to local
4 control.

5 I would like further discussions on is this the
6 best system because I do have problems with spending 30
7 years' worth of bond money in five years and running out of
8 it next year, then saying what are we going to do for the
9 next five years.

10 You know, we have a hundred years' worth of bonds
11 out for 15 years' worth of construction. It doesn't add up.

12 And so I think we need to look at either
13 structures that last a long time, you know, and that we need
14 to have maybe a different price for permanent versus
15 portable and maybe we should say these are the minimum
16 components -- maybe if it's more structure. But we're going
17 to be out of these funds before we worry about it. We'll
18 have to worry about the next funding cycle.

19 But I think, you know, from that logic then I
20 would probably say, look, you're doing your mission. The
21 scope's changed. You haven't -- the scope hasn't change.
22 The scope of serving the students has not changed. What
23 you're doing is you're basically design engineering it as
24 you go through the process and saying this is more value to
25 those students versus one or the other.

1 But unless you're -- physically take away -- I
2 would have a problem if you took away classrooms. I would
3 have a problem if you took away some of the other mandatory
4 things you must have for those students because the primary
5 purpose is not for the school district to save money or to
6 have better parking for the faculty or anything like that.
7 It's to serve those students to the best that you can at the
8 minimum level of the Education Code and hopefully better, if
9 we could do that for every child out there.

10 And if that hasn't changed to me, then I don't
11 have a problem with it basically.

12 CHAIRPERSON REYES: Ms. Buchanan.

13 ASSEMBLY MEMBER BUCHANAN: Yeah. You know, if
14 you're asking me to vote between a pool and a solar, if I
15 were on your board, I'd be voting for solar. You know, I
16 think there are some issues here that I'd like to bring up
17 to the Board even if we pass this today that we need to
18 discuss.

19 One is I agree with Assembly Member Hagman on the
20 construction issue and I'm not saying that the school board
21 isn't making the best decision or the State Department of
22 Education or anybody.

23 But, you know, when you build -- when you --
24 you're in your hardship situation now and you're going to be
25 hardship 10 years from now, 20 years from now, 30 years from

1 now because --

2 CHAIRPERSON REYES: Well, your county's in
3 perpetuity.

4 ASSEMBLY MEMBER BUCHANAN: That's exactly right
5 because you can't bond and to save money and to be able to
6 do your pool or your solar, you're dealing with portables --
7 portables don't even last the 25 years to when they're
8 eligible to be modernized and that means that when you come
9 back, you're going to be hardship again and we're not going
10 to pay just to modernize, we're going to have to pay to
11 replace them.

12 I mean in our district we had to pay to replace
13 relocatables. So I'm not questioning it, but I do think
14 that this Board does need to have a discussion on terms of
15 do we want to incentivize in this situation permanent
16 construction or do we want rules that incentivize portable
17 construction because I do think it's in the interest of your
18 students -- I mean portables, after you're in them for five
19 years, you can tell you're in a portable.

20 There's a big difference between a portable and
21 stick built construction. So we need to ask ourselves, you
22 know, with our policies -- and maybe it's going into the
23 2012 bond, do we want to incentivize in this case permanent
24 construction or do we want to incentivize portable
25 construction because I'm not sure it's in the taxpayers'

1 interest.

2 I think that's one question I really do think we
3 need to discuss at some point in time.

4 The other question I would like to see us address
5 at some point in time, you know, we can talk is it a scope
6 change or not or whatever and I asked specifically the
7 question you asked and don't agree that the other three are
8 the same, but irrespective, I mean we all -- but, you know,
9 I do think there needs to be some discussion about when you
10 actually submit scope changes.

11 I don't think that just because a project hasn't
12 been audited you can still continue to submit a scope change
13 when a project is occupied and 99 percent complete makes a
14 lot of sense.

15 And I do believe you potentially are going to run
16 into the situation where you're going to have more that are
17 coming in with savings because of the bidding environment
18 and we need to have a discussion in terms of what is a
19 reasonable time to be coming to us for a scope change.

20 Usually a scope change is when you're either in
21 the design phase or where you're in the construction phase.
22 You know, I think most school districts, if they were taking
23 a look at that in their facilities department would consider
24 a change two years after occupancy to be a new project
25 again.

1 So I just u--

2 ASSEMBLY MEMBER BROWNLEY: But this was a
3 deductive alternative.

4 ASSEMBLY MEMBER BUCHANAN: But they elected not to
5 choose that three years ago. So I'm just saying again I'm
6 probably going to vote for this, if you want me to vote for
7 solar versus the pool, but I think there are some bigger
8 issues that we need to talk about because they're going to
9 be coming to us.

10 You know, all these bids -- I mean you can -- all
11 these school districts, I mean any financial hardship, if
12 you're dealing with cost estimates that were done, you know,
13 four years ago when construction prices were up here and now
14 you're going out and bidding them here, they're all going to
15 have that.

16 Then if you take extra time to audit, you're going
17 to have -- we're going to have more districts coming in and
18 saying, you know, we've got this savings, but we haven't
19 been audited, so what we want to do is we want to add solar
20 or whatever and then we're going to have other districts
21 coming to us because we're running out of new construction
22 money, desperately needing classrooms that we're going to
23 have to say we can't fund your classroom. And they're going
24 to say, yeah, but you funded solar here.

25 So I do think that there are some discussions that

1 we need to have as a Board if we're going to deal with this
2 in a thoughtful way going forward.

3 CHAIRPERSON REYES: Yes. We do need to bring that
4 up as a Board conversation. You're absolutely right.

5 MS. MOORE: If I may too.

6 CHAIRPERSON REYES: Yes.

7 MS. MOORE: I would just add -- and I agree. I
8 think a scope change discussion would be warranted and
9 fruitful and I would also ask the other side of the scope
10 change.

11 We have many projects that were out there that
12 were designed during the time when construction was at its
13 highest and many people had to make choices around what
14 facilities were in and were out.

15 I still -- you know, know I strongly supported a
16 library in Butte. Those communities do not get a second
17 chance at those types of facilities whether we say come back
18 in with another project, Butte that has 2,000 students, I
19 don't care, some small area in Riverside, some larger, that
20 had to make those choices and if we have savings, I want to
21 also have the other side of the scope discussion that
22 perhaps minimum essential facilities ought to be put into
23 these projects at the time that we have the opportunity to
24 do so. So I --

25 ASSEMBLY MEMBER BUCHANAN: I welcome that --

1 MS. MOORE: -- welcome that discussion.

2 ASSEMBLY MEMBER BUCHANAN: I welcome it too. I
3 think those are excellent questions because frankly, you
4 know, I do consider a library even more important than
5 solar. I'm sorry.

6 CHAIRPERSON REYES: Okay.

7 UNIDENTIFIED SPEAKER: Microphone.

8 CHAIRPERSON REYES: We consider a library more
9 important than solar. All right. It's been moved and
10 seconded. I think we've dissected it. Any comments from
11 the public I dare ask? Thank you, public.

12 Please call the roll.

13 MS. GENERA: Senator Lowenthal.

14 SENATOR LOWENTHAL: This is on the appeal?

15 MS. GENERA: To -- yes. To --

16 SENATOR LOWENTHAL: Then aye is to uphold the --

17 ASSEMBLY MEMBER BUCHANAN: It's your motion.

18 ASSEMBLY MEMBER BROWNLEY: To support the --

19 ASSEMBLY MEMBER BUCHANAN: To support your motion.

20 SENATOR LOWENTHAL: Support the motion. Aye.

21 MS. GENERA: Senator Hancock.

22 SENATOR HANCOCK: Aye.

23 MS. GENERA: Senator Runner.

24 SENATOR RUNNER: Aye.

25 MS. GENERA: Assembly Member Brownley.

1 ASSEMBLY MEMBER BROWNLEY: Aye.

2 MS. GENERA: Assembly Member Buchanan.

3 ASSEMBLY MEMBER BUCHANAN: Aye.

4 MS. GENERA: Assembly Member Hagman.

5 ASSEMBLY MEMBER HAGMAN: Aye.

6 MS. GENERA: Esteban Almanza.

7 MR. ALMANZA: Aye.

8 MS. GENERA: Kathleen Moore.

9 MS. MOORE: Aye.

10 MS. GENERA: Pedro Reyes.

11 CHAIRPERSON REYES: I'm not voting.

12 MS. GENERA: It carries.

13 CHAIRPERSON REYES: Thank you. All right.

14 (Applause)

15 CHAIRPERSON REYES: All right. You guys who have
16 made so much noise, please leave the room. We'll go into
17 close session on a personnel matter.

18 (Whereupon at 5:08 p.m., the open meeting was recessed
19 for the closed session and resumed as follows at 7:18 p.m.)

20 CHAIRPERSON REYES: Folks are ready here. We lost
21 the webcast? Due to technical difficulties, we lost the
22 webcast. Not that I want to throw anybody under the bus,
23 but it was Hagman -- if we check for fingerprints, it would
24 not be my fingerprints, not to throw Hagman under the bus or
25 anything like that.

1 Okay. We have made no decision at this point.
2 We'll bring it back to the Board a month from now. Next
3 Board meeting, we'll take some action on the personnel
4 matter we've discussed. Okay? So that's what we're
5 reporting out. Thank you.

6 So we did Fresno. Item 9 has been pulled and
7 hopefully we have administrative resolution. We have three
8 we are -- we have LA, we have San Joaquin, and we have
9 charter school issues and we need to leave by 8:00. So if
10 you could --

11 SENATOR LOWENTHAL: 7:30.

12 ASSEMBLY MEMBER BUCHANAN: 7:30.

13 CHAIRPERSON REYES: I'm losing members at 7:30, so
14 if you want your stuff approved, you will minimize the
15 discussion, so -- and I blame it on Orange County. All
16 right. Sorry. I'm making light of this. I apologize.

17 MS. SILVERMAN: So are we taking up Tab 10?

18 CHAIRPERSON REYES: Tab 10. Let's do it.

19 MS. SILVERMAN: Okay.

20 MR. MIRELES: Tab 10 begins on page 184. This
21 item involves an **appeal submitted by the Los Angeles Unified**
22 **School District** for a project on the Lincoln Elementary
23 School site.

24 Staff has been working closely with the school
25 district to resolve several issues surrounding this funding

1 application, but there's one outstanding issue that we were
2 unable to reach consensus.

3 The issue revolves around an additional grant for
4 energy efficiency. Back in 2002, the voters of California
5 passed Proposition 47 which included a total of
6 \$11.4 billion for new construction, modernization, charter
7 schools, critically overcrowded schools, and joint-use
8 projects.

9 From that 11.4 billion, 20 million was made
10 available for projects to supplement costs for energy
11 efficiency grants. Now in order to qualify for the energy
12 efficient grants, school districts have to submit a project
13 that includes plans where they exceed the nonresidential
14 building standards by at least 15 percent as prescribed in
15 California Code of Regulations.

16 Any project that met the criteria then was
17 eligible to receive an increase to the additional grants.

18 Now again the energy efficiency grant is an
19 additional grant that has to be tied into another program
20 such as new construction or modernization. So if you have
21 plans for a project and you have energy efficiencies, you
22 qualify for this additional bond.

23 The Lincoln project did meet the requirements to
24 qualify for the energy efficiency grant, meaning that they
25 exceeded Title 24 by 15 percent. However, because the

1 district requested funding for the project under the
2 overcrowded relief grant program which was not one of the
3 programs that was funded out of Proposition 47, staff denied
4 the district's request.

5 It is our interpretation that the bond act since
6 it included energy efficiency funding was made available
7 from the programs listed in that bond act. Again it was new
8 construction, modernization, charter schools, critically
9 overcr4owded schools -- that only those programs were
10 eligible for energy efficiency grant because the 20 million
11 was made available from those programs.

12 And again this is an additional grant that's tied
13 to a program.

14 We did try to find ways to allow this grant, but
15 we didn't feel that we had the authority since the bond act
16 was pretty specific in terms of where the 20 million came
17 from and from which programs.

18 We did consult with legal counsel. Legal counsel
19 has concurred with our finding. The school district does
20 believe that our interpretation is very selective, that
21 there is another interpretation that could be made to allow
22 them to receive the grant.

23 Although we are very supportive of energy
24 efficiency grants, we didn't feel that we had the authority
25 under the bond act from Prop. 47.

1 Another thing I wanted to point out is that the
2 rest of the project is ready to be approved on an unfunded
3 approval basis. So regardless of what action the Board
4 takes on this additional grant, we do have Attachment C that
5 has the rest of the project that's ready for the Board's
6 approval.

7 CHAIRPERSON REYES: Okay.

8 MR. MIRELES: So with that, I'd be happy to answer
9 any questions.

10 CHAIRPERSON REYES: Ms. Buchanan.

11 ASSEMBLY MEMBER BUCHANAN: Well, we met in my
12 office because I went back and forth basically with emails
13 and questions asking can we fund, you know, part of the
14 project under one bond measure and part under another. And
15 the opinion I got back was no, that the energy efficient --
16 and I don't have it here with me to quote it. Lance may
17 have it -- but that it had to be part of a project that was
18 funded under that bond.

19 So when we met, you said, you know, well,
20 legislative counsel had opined that you could split it, but
21 there's no written opinion or anything on that and we talked
22 about potentially -- I'm not -- delaying this, but, you
23 know, maybe possibly bringing this back at another meeting
24 where we could get legislative counsel to give us an opinion
25 on whether or not we can fund energy efficiency out of

1 Prop. 37 when the project itself does not come out it. In
2 other words, do they -- the two have to be tied together and
3 I don't know where the rest of the Board members are, but if
4 you're comfortable with that -- I mean I'm not comfortable
5 voting for something when --

6 CHAIRPERSON REYES: You're comfortable voting or
7 comfortable for --

8 ASSEMBLY MEMBER BROWNLEY: I'm comfortable with
9 Ms. Buchanan's opinion.

10 CHAIRPERSON REYES: -- Buchanan and just holding
11 off.

12 ASSEMBLY MEMBER BUCHANAN: And I --

13 SENATOR LOWENTHAL: She wants to obtain a legal
14 opinion.

15 ASSEMBLY MEMBER BUCHANAN: And I want to know that
16 there is -- you know, that there is a legal basis for making
17 this because clearly the project itself -- the only place it
18 can be funded is 1D and our legal counsel does not believe
19 that Prop. 47 you can fund energy efficiency if the primary
20 project has not been funded through that. So --

21 CHAIRPERSON REYES: Mr. Hagman.

22 ASSEMBLY MEMBER HAGMAN: Yeah. I have issue with
23 this too is, you know, we have these list of funding things
24 kind of like for each bond measure and we kind of apply as
25 the projects come up.

1 And this is kind of like leftover, little bit
2 residual funds from a different project or a bigger project.
3 I'm also -- if we're going to do this, which I have no
4 problem doing that, we also need to look at, okay, well,
5 let's say I get this one project approved under one bond
6 act, but I want to add in -- we just had one this morning --
7 solar panels energy out of another bond act.

8 Does that mean now that project that may be under
9 one list supersedes the projects on the other list and now
10 we start having those issues when we start combining or
11 merging lists.

12 Let's say a charter school is at the top of the
13 list, getting charter school funding, they're ready to go,
14 they could -- although energy efficiencies under charter
15 schools is kind of a bad example, but you be on multiple
16 different --

17 CHAIRPERSON REYES: Well, yeah, that's --

18 ASSEMBLY MEMBER HAGMAN: -- lists and then now
19 have an additional request for energy efficiency. It sounds
20 like more of a policy direction versus an interpretation
21 that we have to figure out how the mechanics work.

22 CHAIRPERSON REYES: Um-hmm.

23 ASSEMBLY MEMBER HAGMAN: And we kind of need to
24 work on that and say, okay, we like this concept, we want
25 this stuff to happen, and we want these things to go. But

1 how would the mechanics work going through if you start
2 bouncing on different priorities. This person's in line to
3 get a project now. Now that person is next on this list --

4 CHAIRPERSON REYES: Under this funding source, for
5 this other piece under another --

6 ASSEMBLY MEMBER HAGMAN: -- just lost a chunk of
7 their money because went over to this list because they got
8 energy efficiency now. That's the issue I have and I don't
9 know how to resolve that necessarily.

10 This is a small amount of money and this is not
11 going to make any kind of difference really to the -- going
12 out to the bigger project world, but this is a small
13 request. The next request may be for a million or two for a
14 solar panel array for another school or for another major
15 upgrade and I think we need to work on this policy.

16 I think it's a great policy question. I just
17 don't know if we have a direction yet without going through
18 those things and maybe another committee process --

19 ASSEMBLY MEMBER BUCHANAN: If people are -- with
20 my suggestion, maybe then we could find out, one, is there a
21 legal basis and, two, is there a procedural problem with
22 them having a project that's funded under another bond, take
23 the energy efficiency money over another project that's on
24 that list.

25 CHAIRPERSON REYES: I saw Lyle nod when we talked

1 about can we put it over and see what we can get.

2 MR. SMOOT: By all means. This is Shawn Atlow.
3 She'll answer that question.

4 ASSEMBLY MEMBER BUCHANAN: Right. And Assembly
5 Member Brownley, in our side conversation, just mentioned
6 does that also trigger a different labor compliance issue,
7 so --

8 CHAIRPERSON REYES: Yes. And that's what the
9 20 grand was for too. Go ahead, please.

10 MS. ATLOW: Shawn Atlow. We are comfortable with
11 holding over the discussion that you're talking about, but I
12 would ask that the Board take action on the --

13 ASSEMBLY MEMBER HAGMAN: The remainder.

14 CHAIRPERSON REYES: C -- okay.

15 MS. ATLOW: -- remainder of the project.

16 CHAIRPERSON REYES: Is there a motion on C?

17 UNIDENTIFIED SPEAKER: Move it.

18 ASSEMBLY MEMBER HAGMAN: Second.

19 CHAIRPERSON REYES: Been moved, seconded. Okay.
20 Any opposition to C? Can we take it as unanimous?

21 ASSEMBLY MEMBER HAGMAN: Yep.

22 CHAIRPERSON REYES: Thank you.

23 ASSEMBLY MEMBER HAGMAN: I do have a follow-up on
24 that one point though. If you do trigger a labor
25 compliance -- because I had this problem when -- on the

1 local council too. We had one aspect of one inch of like a
2 quarter acre of land that we added to a project that was
3 privately built and all of a sudden, it triggered labor
4 compliance for the entire hundred million dollar project.

5 Does that trigger compliance on the rest of the
6 project or strictly for the energy compliance and that may
7 be part of the legal interpretation that we need to have
8 too. What is the dominoes here.

9 CHAIRPERSON REYES: Okay. Senator Lowenthal.

10 SENATOR LOWENTHAL: The only question I -- the
11 issue that I -- it's not -- and I agree this is what we
12 should be doing. If you look in -- and I don't know if this
13 fits, but if you look in the Consent Calendar items pages 68
14 to 73, there are multiple items that are funded off multiple
15 bonds, the same project that may have multiple bonds.

16 CHAIRPERSON REYES: Um-hmm.

17 SENATOR LOWENTHAL: So we've done this before.

18 The question is does this meet it --

19 CHAIRPERSON REYES: Right.

20 SENATOR LOWENTHAL: -- the criteria, but the --

21 CHAIRPERSON REYES: -- comingling --

22 SENATOR LOWENTHAL: -- fact of having something
23 funded from the same project having some of the money come
24 from one bond and then from another, that's been done
25 before.

1 ASSEMBLY MEMBER HAGMAN: Does the labor compliance
2 go to the entire thing or just strictly the bond stuff?

3 SENATOR LOWENTHAL: I think we have to get an
4 answer on that, but I'm just saying this is not -- we have
5 done this before.

6 CHAIRPERSON REYES: Okay. All right. If you
7 could incorporate that into the analysis. Thank you.

8 MR. SMOOT: We believe that labor compliance would
9 apply to the whole project and that's why the
10 (indiscernible-simultaneous speaking) -- don't care --

11 ASSEMBLY MEMBER HAGMAN: But we should have that
12 out there so if people do apply and say I do want this
13 energy efficiency part of it, they know what they're getting
14 into unlike I'm three-quarters of the way through the
15 project and now I have to go backtrack labor compliance all
16 the stuff I already did, you know, I wasn't required --

17 CHAIRPERSON REYES: We changed funding sources.

18 ASSEMBLY MEMBER HAGMAN: Yeah. That just becomes
19 a big hassle. So that needs to be very clear.

20 ASSEMBLY MEMBER BUCHANAN: Okay. Are we moving
21 onto 11?

22 SENATOR LOWENTHAL: So this bill has been laid
23 over?

24 SENATOR HANCOCK: Yes.

25 CHAIRPERSON REYES: Yes, with the exception of C.

1 We did move C. Okay. Thank you.

2 SENATOR LOWENTHAL: Okay. Thank you. That was
3 great.

4 CHAIRPERSON REYES: Thank you. 11 was Consent.
5 12 is **San Joaquin**.

6 SENATOR LOWENTHAL: We're at 12.

7 MR. ASBELL: If you would go to stamped page 206.
8 So this item is to clarify whether the San Joaquin COE's
9 financial hardship status can be applied to its material
10 inaccuracy penalty.

11 In order to clarify the \$79,000 of the COE's
12 financial hardship savings can be applied to its 257,652
13 material inaccuracy penalty, staff is providing an
14 explanation of how the COE's financial hardship savings were
15 calculated.

16 Please keep in mind that all eight of these
17 projects for the COE were a hundred percent State funded
18 with no district contribution.

19 The authority for the calculation of material
20 inaccuracy penalty and the calculation of financial hardship
21 savings are found in two independent and unrelated parts of
22 Education Code and SFP regulation respectively.

23 Education Code 17070.51(b) provides the statutory
24 language governing material inaccuracy penalties. The
25 calculation of financial hardship savings is prescribed in

1 SFP Regulation Section 1859.103. This regulation states the
2 following. The State's portion of any savings declared by
3 the district or determined by the OPSC by audit must be used
4 to reduce the school financial hardship -- financial --
5 excuse me -- financial hardship grant of that project or
6 other financial hardship projects within a district for a
7 period of three years from the date the savings were
8 declared by the district or determined by the OPSC audit.

9 Any interest earned on a financial hardship
10 project not expended on eligible expenditures will be
11 treated as savings and will be used to reduce the SFP
12 financial hardship grant for that project.

13 The Board has applied the concept of a separation
14 of material inaccuracy penalty and financial hardship
15 savings in a past Board action. At the May 2007 Board
16 meeting, the Board found that Clay Joint Elementary School
17 had a material inaccuracy and the Board assessed a statutory
18 interest penalty.

19 Similar to this COE, Clay Joint Elementary had
20 both statutory material inaccuracy interest penalty and
21 financial hardship savings. In the district's case, none of
22 the financial hardship savings were applied to the material
23 inaccuracy penalty.

24 Financial hardship savings has been returned in
25 addition to the material inaccuracy penalties.

1 As a result of San Joaquin COE's written request
2 and agreement to return financial hardship savings, the
3 Board closed the eight projects in question and required the
4 return of financial hardship savings at the May 2011
5 meeting.

6 Additionally at the June 2011 meeting, the Board
7 required the COE to repay 257,000 as a part of the COE's
8 material inaccuracy penalties.

9 These two independent actions require the COE to
10 return the full amount of its financial hardship savings and
11 the full amount of the material inaccuracy penalty.

12 On seven of the eight projects in question, the
13 COE has fully repaid its financial its financial hardship
14 savings.

15 The following is the formula for determining the
16 amount of financial hardship savings. You have the State
17 grant plus the district match plus any interest earned less
18 eligible project expenditures equals the financial hardship
19 savings.

20 If you go to stamped page 209, based on what we
21 just talked about with the formula, if we look at the first
22 project, the 007 project, the grant was 3.1 million. There
23 was no district match. They earned \$33,958. They had
24 project eligible expenditures of roughly 3.1 million for
25 savings of 32,898. That's pretty consistent throughout all

1 eight projects.

2 As noted in the financial hardship savings
3 formula, interest earned is considered part of the financial
4 hardship savings.

5 While in the COE's possession, the State bonds
6 earned \$414,994 in interest of which 79,529 was attributed
7 to interest accrued during the signature fund release
8 period.

9 At the May 2011 meeting, the Board closed these
10 projects and required the return of financial hardship
11 savings.

12 Per Regulation Section 1859.103, the COE and all
13 financial hardship districts may choose one of two options
14 regarding their financial hardship savings: Option 1,
15 return the financial hardship savings to the State to reduce
16 the financial hardship contribution on that project or, 2,
17 retain the project savings to reduce the State's financial
18 hardship contribution on a future financial hardship project
19 within the next three years.

20 After that three-year timeline, any savings
21 remaining, including additional interest, must be returned
22 to the State.

23 In this case, the COE chose Option 1 for seven of
24 the eight projects and a combination of Option 1 and
25 Option 2 for the eighth project. As a result of these two

1 options, the return of financial hardship savings allows for
2 an equivalent reduction in the State apportionment.

3 No other options exist for the use of financial
4 hardship within SFP regulation or statute. Therefore there
5 is no provision in regulation that allows financial hardship
6 savings to be applied to a material inaccuracy penalty.

7 If the COE is allowed to apply some or the entire
8 amount of the financial hardship savings towards its
9 material inaccuracy penalty, the State apportionment would
10 not be reduced by the appropriate amount required by SFP
11 regulation.

12 Remember, these projects were fully funded by the
13 State. In essence you would be allowing the COE to use
14 State funds which is the financial hardship savings to pay
15 the material inaccuracy penalty.

16 Also if you take this one step further, the if
17 financial hardship savings is greater than the material
18 inaccuracy penalty, using the COE's logic, you could have
19 the financial hardship savings fully offset any kind of
20 material inaccuracy penalty. This would create an advantage
21 for financial hardship districts over nonfinancial hardship
22 districts.

23 As for the material inaccuracy penalty, at the
24 June 2011 meeting, the Board approved the amount of 257,652.
25 The material inaccuracy statutory interest penalty is

1 required by statute. Education Code 17070.51(b)(1), there
2 is no --

3 CHAIRPERSON REYES: Okay. Hold on. Hold on.
4 Let's just cut to the chase.

5 MR. ASBELL: Okay.

6 CHAIRPERSON REYES: There was an interest earned
7 that they paid.

8 MR. ASBELL: Right. Right.

9 CHAIRPERSON REYES: And then there's a penalty
10 calculated that was -- that is based on either the interest
11 being paid by the bond or the PMI.

12 MR. ASBELL: It's the higher of the two.

13 CHAIRPERSON REYES: Higher of the two and based on
14 that, it was 256-.

15 MR. ASBELL: 257-.

16 CHAIRPERSON REYES: 257-. And so the question was
17 then -- when the question was asked by Ms. Moore does the
18 76- apply, the answer was yes.

19 MR. ASBELL: And that was incorrect.

20 CHAIRPERSON REYES: Inaccurate.

21 MR. ASBELL: Yes.

22 CHAIRPERSON REYES: So because the interest is
23 based on the interest earned, that's State money --

24 MR. ASBELL: Right.

25 CHAIRPERSON REYES: It was State money and the

1 inaccuracy -- the penalty of the inaccuracy is the penalty
2 and inaccuracy and they're independent. So you're saying if
3 you earn a million dollars in interest, you would still be
4 on the hook for the penalty.

5 MR. ASBELL: Yes.

6 CHAIRPERSON REYES: Okay.

7 MR. ASBELL: Yes.

8 CHAIRPERSON REYES: Ms. Moore, you had a question.

9 MS. MOORE: Well, you asked it for me.

10 CHAIRPERSON REYES: I'm sorry.

11 MS. MOORE: Thank you. That's the reason I think
12 that we're back here today is because in the motion --
13 during the discussion of the motion at the last meeting --
14 two meetings ago, when I asked about the 79,000 and whether
15 it could be applied to the interest, the answer was yes.
16 And I voted accordingly.

17 There's also that we have an Attorney General
18 opinion on these issues where the Attorney General opined on
19 this issue and I know I've had discussions with Lance
20 concerning that, but their conclusion was that the interest
21 accrued during the premature release period and already
22 returned by the SGCOE [sic] allows -- overlaps with a
23 portion of the material inaccuracy interest payment and
24 should be credited against such penalty. That's why there's
25 confusion.

1 And I -- and that's why I asked the question at
2 the last Board meeting. I appreciate your coming back, you
3 know, with the information that you have, but we have
4 conflicting opinions on this and I think that in order to
5 make a decision concerning it, we have to consider both of
6 those positions, the position of the staff which is very
7 clear now and also that we have an Attorney General opinion
8 that is -- that is opposite of that.

9 MR. ASBELL: In regards to the Attorney General's
10 opinion, they talk about how the money had already been
11 returned. At the time that this opinion was rendered, there
12 had been no money that had come back from the County.

13 MS. MOORE: Well, maybe they misunderstood that.
14 I think there's another wrinkle in all of this as well and
15 that is in the middle of an appeal we took a portion of the
16 appeal to the Board under consent and that was the repayment
17 of the interest calculation.

18 We had this appeal -- I don't know when it
19 began -- in November. It was a known entity then and in
20 May, we took the interest calculation that is now
21 presented -- and correctly so. I think you say that it was
22 approved by the Board under consent, but it also was
23 material to this appeal and it was bifurcated out.

24 And so -- and it's now presented as fact, which I
25 think can cloud the review of the entire appeal at this

1 point.

2 MR. ASBELL: I believe we took those items though
3 at the request of the COE. They requested that those items
4 be taken to the Consent --

5 CHAIRPERSON REYES: I think -- as I recall, San
6 Joaquin did not question the interest earned and the
7 repayment of that. What they did question was the material
8 inaccuracy and the penalty associated with that.

9 And so when that was thrown out and the -- I for
10 one voted looking at the interest payment made in the past
11 as a done deal and then the material inaccuracy being
12 calculated. In fact I recall the staff getting complimented
13 on the calculations on how they arrive at the material
14 inaccuracy penalty.

15 So as one Board member, I voted looking at the
16 256- independent of the other and I understand the question
17 was asked, but in my mind the issue before us was the
18 material inaccuracy penalty because the interest, there was
19 no question on that.

20 MR. ASBELL: Right.

21 CHAIRPERSON REYES: And that's why it was in
22 consent.

23 MR. ALMANZA: Question.

24 CHAIRPERSON REYES: Yes, sir.

25 MR. ALMANZA: So per the statutes and regulations,

1 79,000 is due back to the State --

2 MR. ASBELL: That is a part of the amount that's
3 due back to the State, yes.

4 MR. ALMANZA: And 257,000 is due back to the State
5 for savings.

6 MR. ASBELL: No. That's under statute. That's
7 the penalty -- the material inaccuracy penalty.

8 MR. ALMANZA: Okay. I understand. Okay. So does
9 the Board have the authority to reduce either one of those?

10 SENATOR LOWENTHAL: The Attorney General says yes.

11 MS. MOORE: This is what the Attorney General
12 says. However, reducing the interest penalty to account for
13 the -- they didn't have the right amount, but 70,000 actual
14 overlapping interest previously returned is a fair and
15 reasonable interpretation that avoids any claim the State
16 has double dipped or imposed a penalty exceeding that
17 permitted under Education Code 17070.51.

18 MS. SILVERMAN: But there's a clear distinction.
19 The savings is a separate issue and it needed a return back
20 and -- I mean in any hardship district that had incurred
21 savings, they have the two options. That would -- that's a
22 given, but, you know, I don't think anybody --

23 MS. MOORE: It's the interest. It's not the --
24 we're -- the savings is a component of the interest, but
25 we're talking about the interest.

1 MS. SILVERMAN: It's the residual funds that the
2 district didn't spend that need to be returned back to the
3 State and the penalty is a strict penalty which is a
4 separate application. I don't think there was -- the
5 intention was to apply any hardship savings to a penalty
6 because that's State funds being paid for a State penalty.

7 I don't think it was the intention of establishing
8 that policy.

9 MS. MOORE: Well, in this opinion, the AG agreed
10 with the 257,000 penalty, but they did not agree with the --
11 what is termed the double dip. So --

12 ASSEMBLY MEMBER BUCHANAN: I read the opinion as
13 allowing us to -- if we want to interpret it that way,
14 they're saying it would. It's not --

15 CHAIRPERSON REYES: It's fair.

16 ASSEMBLY MEMBER BUCHANAN: -- there's not --
17 there's no -- I think -- the question is, is the material
18 inaccuracy penalty, is it a penalty or is it interest. Now,
19 it's calculated based on the interest you would have
20 received, but if you had a district that was a non --

21 CHAIRPERSON REYES: No. The material inaccuracy
22 penalty is based on what it cost the State.

23 ASSEMBLY MEMBER BUCHANAN: The interest we would
24 have earned. You're right. We would have earned. I
25 apologize.

1 So the question becomes -- I mean if you are a
2 district that's not a financial hardship district, you're --
3 you pay the penalty period. You don't offset it by
4 anything. It's just a penalty that you pay.

5 So the Board to date has treated that as a penalty
6 and it's treated the -- any interest earned and savings as
7 savings that comes back to it. So we -- the question is, is
8 do you want to change the interpretation because if you
9 interpret it as a penalty, it's not -- you know, it's a
10 penalty that's calculated based on interest we would have
11 earned, but it's a penalty and it's not -- you know, I don't
12 think the intent is to offset. So I think that
13 (indiscernible-simultaneous speaking).

14 MS. MOORE: Yes. I think you're right.

15 ASSEMBLY MEMBER BUCHANAN: And then you have to
16 ask yourself do you want to go back and, you know, change
17 the interpretation.

18 ASSEMBLY MEMBER BROWNLEY: Have there been any
19 hardship cases with --

20 MS. MOORE: There's been one -- you cite one
21 other; is that correct?

22 MR. ASBELL: Right. Clay Elementary.

23 MS. MOORE: There's been one other time and I
24 think that actually the Attorney General indicated -- and I
25 don't have it highlighted, but that perhaps you want to

1 review that.

2 ASSEMBLY MEMBER BUCHANAN: Right. And --

3 MS. MOORE: So it is the purview of the Board.

4 ASSEMBLY MEMBER BUCHANAN: And the other question
5 I think along with that is the -- there's a difference
6 between a penalty and the difference in the interest
7 arbitrage in terms of what the district earned and what the
8 State earned because you don't want to have -- the reason
9 you have a penalty is because I think you want to avoid a
10 situation where a district could go ahead -- you know, I'm
11 financial hardship, I could go ahead and ask for the money
12 early because I'm going to earn X amount interest on it and
13 the State's only earning Y, so the worst I have to do is
14 pay -- you know, this case it's more than 1 percent or
15 2 percent, but you -- if it's not treated as a penalty, you
16 potentially are encouraging that type of interest arbitrage.

17 So I -- you know, so that's our real issue --

18 MS. MOORE: I can also see from the district's
19 perception that it is -- or the County Office --

20 ASSEMBLY MEMBER BUCHANAN: Right.

21 MS. MOORE: -- that it is a double dip because
22 we're saying we're making the bonds whole --

23 ASSEMBLY MEMBER BUCHANAN: Right.

24 MS. MOORE: -- with the interest calculation
25 and -- I mean that's how it's been presented in the past.

1 Whether we strictly say it's a penalty or not, we say that
2 we are doing that to make the bonds whole because that's
3 what they -- that's what we would have earned in the coffers
4 if it had remained not apportioned to the school district.

5 And so it also can be reasonably seen as a double
6 dip and I do think it's the purview of the Board and whether
7 we have the -- you know, whether the majority of our Board
8 feels that way or not remains to be seen.

9 ASSEMBLY MEMBER BUCHANAN: I think you're -- we're
10 both talking about that's the question. Is it a penalty or
11 is it a --

12 MS. MOORE: And that's the question. So --

13 ASSEMBLY MEMBER BUCHANAN: -- difference in the
14 interest arbitrage -- the interest -- the arbitrage between
15 the two.

16 CHAIRPERSON REYES: San Joaquin in here. Sorry.
17 Thank you for your patience.

18 ASSEMBLY MEMBER BUCHANAN: We know where you
19 stand.

20 MS. STARR: Thank you, Chairman Reyes and members
21 of the Board. The SJCOE did not ask to have this put on. I
22 know it came up as a clarification point at the July
23 meeting.

24 And it stems from a question that we asked back in
25 November when we were first exploring what does the law

1 really say what should be the penalty amount. And the
2 question that we really asked among others was, all right,
3 you've got an amount of principal and it earned interest
4 sitting here and we're being assessed a statutory penalty
5 and it even goes into the -- it says statutory interest
6 penalty and that's in the write-up several times and that's
7 also what the AG referred to.

8 So our question was can the same principal earn
9 interest in two places and that goes to the State and that's
10 how it got the name double dip. Can you double dip on
11 interest in two places.

12 And so that was our question and we did have the
13 question about can we use our savings for our penalty and
14 we're clear that no, we can't do that.

15 So the question really gets down to what came up
16 at the end of the last meeting was if our penalty, which is
17 a statutory interest penalty and it's written in there
18 several times that way, if it's the 257,000 but we earned
19 79,000 while it was sitting in our bank, then should there
20 be a double dip on this and that's when the Attorney General
21 came back and said, well, it's never really been addressed
22 before, but it is probably something that should be avoided
23 and they came through with their information.

24 So what we're really asking -- and this came up
25 afterwards because I sent a letter to OPSC and said well,

1 how do you want us to do this accounting-wise. And really
2 what we were looking for was should we just take 257,000 and
3 subtract 79,000 from it. It doesn't affect the fact we've
4 already sent the savings back because one's savings and
5 one's coming out of our general fund and we're good to go.
6 And so --

7 CHAIRPERSON REYES: So I guess from one -- one
8 question. I guess from my perspective -- and whoever did
9 the calculations, please tell me if I'm off.

10 If -- purpose of the argument -- you receive
11 \$20 million and you earn a million dollars on that, is the
12 penalty interest calculated on 21 million or \$20 million?

13 MS. STARR: I believe as the Board applied it,
14 it's calculated on the 20 million using either the PMI --

15 CHAIRPERSON REYES: Okay. Then that's not double
16 dipping because you earn a million dollars of interest that
17 is by default State money and that money came back -- would
18 have come back if you had savings and that would have been
19 State money as part of the savings in which interest earned.

20 The \$20 million is subject to the interest penalty
21 that's a different calculation. As long as the
22 calculation's on the 20 million and not the 21-, there is no
23 double dipping.

24 The double dipping would occur if the penalty was
25 calculated on the additional million dollars. The penalty

1 is a penalty that we just use. It could be 10 percent. It
2 could be 15 percent. It could be whatever and the basis for
3 calculating the penalty is the interest paid by the State.

4 I don't view it as to offset State cost. I view
5 it as a penalty to discourage this action. So the fact that
6 the school district earned interest on sitting on, in my
7 example, the \$20 million and earned a million dollars and
8 then once you calculate the penalty on the 20-, the
9 \$1 million earnings should not offset that penalty. That's
10 my interpretation.

11 ASSEMBLY MEMBER BUCHANAN: My question would be
12 what would your response be if you earned more than the
13 State earned more than the State earned. Would you say
14 there should be no penalty for being funded a year early?

15 MS. STARR: Well, I think these were all questions
16 that we had at the beginning which is why it was sent back
17 to the Attorney General to say where should this be and so
18 the Attorney General of course advises the Allocation Board
19 and that was the conclusion that they came to.

20 So at the end of the last meeting -- or well, the
21 last time we were here, it was I thought how -- how do we do
22 this mechanically so that we can fulfill our obligations to
23 the State and we understand how the penalty goes and that --
24 Chairman Reyes, that was one of the questions was is the law
25 saying this is really a return in interest to make the State

1 whole or is it just a formula for calculating a penalty.

2 So if nothing else happens, I would just ask if
3 that could be clarified in the legislation so it's very
4 clear to districts so that it -- it's like, okay, there's a
5 penalty, this is how the math is done instead of mixing it
6 up with this whole concept of interest because even in the
7 write-up it says statutory interest penalty. It's not
8 saying penalty.

9 ASSEMBLY MEMBER BUCHANAN: In that write-up or in
10 the --

11 MS. STARR: Well, it's all written up in the staff
12 report and it has been consistently that and it's also in
13 the Attorney General --

14 ASSEMBLY MEMBER BUCHANAN: But I'm not sure it's
15 written in the -- I don't remember it being written that way
16 when we read it for the -- in the actual code or policy. I
17 don't remember it ever being described as statutory interest
18 penalty. I just remember it being the penalty was
19 calculated based -- it's equal to --

20 MS. SILVERMAN: Yeah. It's in code. You're
21 right, as far as how you calculate -- the material
22 inaccuracy provision.

23 ASSEMBLY MEMBER BUCHANAN: Right.

24 MS. SILVERMAN: So --

25 ASSEMBLY MEMBER BUCHANAN: But does it refer to

1 the statutory interest penalty? I don't remember that --

2 MS. SILVERMAN: No. No.

3 ASSEMBLY MEMBER BUCHANAN: -- in this section.

4 Right.

5 MS. SILVERMAN: It's just how -- it's a basis of
6 how you calculate the interest.

7 ASSEMBLY MEMBER BUCHANAN: That's exactly right.

8 MS. STARR: But that is the reference that's in,
9 you know, the staff reports and the implication was it's
10 interest lost.

11 ASSEMBLY MEMBER BUCHANAN: I know the report, but
12 I just wanted to go back to the --

13 MS. STARR: So with that concept, that's when we
14 came back and said, well --

15 CHAIRPERSON REYES: Okay.

16 MR. DAVIS: To be clear, Mr. Chair, is the Ed Code
17 on the material inaccuracy says the Board shall impose the
18 following penalties and then within that section, it goes on
19 to describe how we calculate that interest.

20 CHAIRPERSON REYES: The penalty which is separate
21 from the interest earned which is part of the State's money.

22 MR. DAVIS: Which is -- yeah. Which is a
23 different topic under the --

24 CHAIRPERSON REYES: Right. Different conversation
25 altogether.

1 MR. DAVIS: Exactly.

2 CHAIRPERSON REYES: Okay. So at this point,
3 staff's recommendation would stand that there would be the
4 256- or 257- unless there's a motion to do something
5 differently.

6 MS. MOORE: I will make a motion to -- well, I'm
7 going to put it this way. I would make a motion to review
8 in light of the Attorney General opinion the issue that's
9 been referred to as the double dip for both this school
10 district -- this County Office of Education and the prior
11 one that we did in light of this and bring it back to the
12 Board for action.

13 ASSEMBLY MEMBER BROWNLEY: I'll second that.

14 CHAIRPERSON REYES: Moved and seconded. Any
15 questions or comments? Mr. Hagman.

16 ASSEMBLY MEMBER HAGMAN: Just a comment. Once you
17 start changing policy on the fly -- I mean this is a
18 penalty. This is not becoming something -- this is
19 hopefully to discourage behavior that the Board does not
20 want to see, whether incidental or -- it's just, you know,
21 trying to avoid things like this. It's pretty clear that --

22 ASSEMBLY MEMBER BROWNLEY: But one way or another,
23 there's a penalty here.

24 ASSEMBLY MEMBER HAGMAN: Yeah. There is a clear
25 description of what that penalty should be and how it's

1 calculated. I think we come back even with a recommendation
2 and start changing things, you're going to have to start on
3 a lot of different things here.

4 CHAIRPERSON REYES: Okay. Been moved and second.
5 Call the roll.

6 MS. GENERA: Senator Lowenthal.

7 SENATOR LOWENTHAL: Aye.

8 MS. GENERA: Senator Hancock.

9 SENATOR HANCOCK: Aye.

10 MS. GENERA: Senator Runner.

11 SENATOR RUNNER: Aye.

12 MS. GENERA: Assembly Member Brownley.

13 ASSEMBLY MEMBER BROWNLEY: Aye.

14 MS. GENERA: Assembly Member Buchanan.

15 ASSEMBLY MEMBER BUCHANAN: No.

16 MS. GENERA: Assembly Member Hagman.

17 ASSEMBLY MEMBER HAGMAN: No.

18 MS. GENERA: Esteban Almanza.

19 MR. ALMANZA: No.

20 MS. GENERA: Kathleen Moore.

21 MS. MOORE: Aye.

22 MS. GENERA: Pedro Reyes.

23 CHAIRPERSON REYES: No.

24 MS. GENERA: It doesn't carry.

25 CHAIRPERSON REYES: Okay. So at this point, then

1 the staff recommendation stands. Thank you.

2 MS. STARR: Okay. Now, let me be clear in terms
3 of staff recommendation because at the end of the meeting in
4 June, it was the amount minus the 79,000.

5 CHAIRPERSON REYES: The staff recommendation at
6 the time was the 257-. That's what it was. That was the
7 action taken. The 70- was not part of the action. That had
8 already taken place.

9 MS. STARR: Okay. So the clarification then was
10 just clarification. It wasn't actually the motion then.

11 CHAIRPERSON REYES: Right.

12 MS. STARR: Okay.

13 CHAIRPERSON REYES: Okay? Thank you.

14 MS. STARR: Thank you.

15 CHAIRPERSON REYES: **Charter Schools, 13.** We
16 have --

17 MS. SILVERMAN: About two or three minutes.

18 CHAIRPERSON REYES: Okay. Can we do it in three
19 minutes. Come on.

20 ASSEMBLY MEMBER BUCHANAN: I have to leave in two,
21 so --

22 CHAIRPERSON REYES: Come on. Well, let's go
23 ahead.

24 ASSEMBLY MEMBER HAGMAN: Mr. Chair, move for
25 Option 3.

1 UNIDENTIFIED SPEAKER: Second.

2 CHAIRPERSON REYES: Second. In Option 3 --

3 ASSEMBLY MEMBER HAGMAN: Is for construction.

4 CHAIRPERSON REYES: Correct. And Option 3 also
5 talks about putting 1.6 million into the health and safety
6 projects too; is that correct? Of the 6.9 remaining and we
7 can move 1.6 million to deal with health and safety which is
8 the last line.

9 ASSEMBLY MEMBER HAGMAN: Within -- is that within
10 the charter school projects?

11 MS. SILVERMAN: No.

12 ASSEMBLY MEMBER HAGMAN: I'd rather see that go
13 back to maybe planning for the next round of charter school
14 funding, any kind of leftover. If the project's already
15 funded, we'll just see it pass on.

16 ASSEMBLY MEMBER BUCHANAN: You have the agreement
17 and -- support for Option 3. Maybe we should just let it
18 stand as it is.

19 CHAIRPERSON REYES: Okay. So then that means the
20 6.9 just sits there and we don't do the 1.6 million for --

21 ASSEMBLY MEMBER HAGMAN: No. I want to see that.
22 The projects go out in Option 3 for construction.

23 CHAIRPERSON REYES: Uh-huh.

24 ASSEMBLY MEMBER HAGMAN: There is a little bit of
25 residue.

1 MS. SILVERMAN: Right.

2 ASSEMBLY MEMBER HAGMAN: The only thing -- and
3 maybe I'm wrong in interpreting this. I just want to make
4 sure -- I don't leave the silo of charter school projects.
5 Once you do that, it's all new -- which I don't think we can
6 do -- you know, move -- mix pots. So is that still staying
7 in the -- I guess I'll listen to the report first. I'm
8 sorry.

9 CHAIRPERSON REYES: 20 second report.

10 MS. KAMPMIENERT: -- the questions in Option 3 and
11 what that option does do is fund the construction-ready
12 projects for charter schools on the unfunded list. There
13 are four projects there.

14 Contained within that, there is the option to do a
15 partial bond source which for one of the projects is funded
16 out of Proposition 55 because the cash we available is
17 Proposition 1D.

18 So (indiscernible-simultaneous speaking) we need
19 to know whether the Board wants bond source switch, but we
20 do not need 6.9 million of the 28 million we have available
21 to fund the four projects that are on the unfunded approvals
22 list. So under Option 3, you could either keep it for
23 future projects in the charter program that come onto the
24 unfunded list or the Board could take alternate action on
25 the remaining balance.

1 CHAIRPERSON REYES: Okay.

2 MS. MOORE: Would you accept a friendly motion to
3 transfer the remaining 6.9 to the unfunded list that would
4 allow for the health and safety projects of 1.6 million to
5 be funded as well and --

6 CHAIRPERSON REYES: Or just transfer the
7 1.6 million out for the --

8 ASSEMBLY MEMBER HAGMAN: What's the -- I mean
9 what's the health -- what --

10 MS. MOORE: They're the highest priority projects.
11 There's four of them at the top of the list.

12 ASSEMBLY MEMBER HAGMAN: But that's in non-charter
13 school things and I --

14 MS. MOORE: That is correct.

15 ASSEMBLY MEMBER BROWNLEY: But they still get
16 their money. I mean we're not taking --

17 CHAIRPERSON REYES: So what if we don't transfer
18 the 6.9, but we just transfer 1.6 to health and safety --

19 ASSEMBLY MEMBER HAGMAN: Well, it's -- the amounts
20 is that --

21 CHAIRPERSON REYES: Okay.

22 ASSEMBLY MEMBER HAGMAN: Yeah. I'm just worried
23 about -- so it's just transfer it. It's kind of like
24 borrowing from that account to get something else done --

25 CHAIRPERSON REYES: 1.6. Yeah.

1 ASSEMBLY MEMBER HAGMAN: -- but it'll come back to
2 that account?

3 CHAIRPERSON REYES: It'll come back; right?

4 ASSEMBLY MEMBER HAGMAN: That 1.6 --

5 CHAIRPERSON REYES: Yes? 1.6 would not come back?

6 Oh, then --

7 MS. KAMPMIENERT: The cash is not necessarily tied
8 into the charter program unless the Board wants it to be.
9 The cash was made available for charter school purposes, but
10 at the time that the hundred million was made available, the
11 Board wanted to have another policy discussion about any
12 cash that was remaining. So you could decide to leave it in
13 the charter program or you could decide to do something
14 different with it, but it's not tied to the charter program.

15 ASSEMBLY MEMBER HAGMAN: Now, if we're -- if I'm
16 correct, we still have bond authority in the charter school
17 program already.

18 MS. SILVERMAN: Right.

19 ASSEMBLY MEMBER HAGMAN: So this residual dollars
20 can basically go toward future charter schools, be ready to
21 go on the next round of bond issuance.

22 CHAIRPERSON REYES: Yeah. Right. Right.

23 ASSEMBLY MEMBER HAGMAN: I am concerned and I got
24 some code here basically says that leftover money has to
25 stay in that silo.

1 CHAIRPERSON REYES: Okay.

2 ASSEMBLY MEMBER HAGMAN: And I just want to make
3 sure -- it could be used for whatever we want in charter
4 schools, but I want to keep it in the charter school silo.

5 CHAIRPERSON REYES: Okay. That was the motion
6 that was second.

7 MS. MOORE: Then don't accept the --

8 CHAIRPERSON REYES: That was the motion that was
9 second. Any questions? Any comments? All right. Any
10 comments from the public?

11 ASSEMBLY MEMBER BUCHANAN: Could you clarify to me
12 what amendments -- what --

13 CHAIRPERSON REYES: We're not doing anything.
14 We're just going to go ahead and do Option 3 without
15 doing -- and leaving the 6.9 for charter schools. We're not
16 doing the 1.6. Okay. All right? Call the roll.

17 MS. GENERA: Senator Lowenthal?

18 SENATOR LOWENTHAL: Go on. Move on. I'll come
19 back.

20 MS. GENERA: Senator Hancock.

21 SENATOR HANCOCK: Aye.

22 MS. GENERA: Senator Runner?

23 SENATOR RUNNER: Aye.

24 MS. GENERA: Assembly Member Brownley.

25 ASSEMBLY MEMBER BROWNLEY: Aye.

1 MS. GENERA: Assembly Member Buchanan.

2 ASSEMBLY MEMBER BUCHANAN: Aye.

3 MS. GENERA: Assembly Member Hagman.

4 ASSEMBLY MEMBER HAGMAN: Aye.

5 MS. GENERA: Esteban Almanza?

6 MR. ALMANZA: Aye.

7 MS. GENERA: Kathleen Moore.

8 MS. MOORE: Aye.

9 MS. GENERA: Pedro Reyes.

10 CHAIRPERSON REYES: Aye.

11 SENATOR LOWENTHAL: Lowenthal, aye.

12 CHAIRPERSON REYES: All right. And then do we
13 need to take on the recommendations, item 2, based on the
14 Board's action of future bond sales by 20.7 million? We
15 need to do that too?

16 MS. KAMPMIENERT: Since the cash is no longer
17 available, prior Board action set aside 73 and a half
18 million to try to cover all the --

19 CHAIRPERSON REYES: Uh-huh.

20 MS. KAMPMIENERT: If that was still the Board's
21 intent, we would need additional Board action to bring
22 that (indiscernible) 4.2 million out of the next bond sale
23 proceeds.

24 CHAIRPERSON REYES: Okay. Without objection?
25 Okay. Without objection. And then we now declare that

1 preliminary charter school apportionments for which advance
2 funding's reserved will be reactivated effective at the
3 completion of the future six month filing period. Yes?

4 MS. KAMPMIENERT: That is staff recommendation
5 number 3. That does require Board action as well.

6 CHAIRPERSON REYES: Senator Lowenthal?

7 SENATOR LOWENTHAL: Yes.

8 CHAIRPERSON REYES: Without objection?

9 SENATOR LOWENTHAL: Without objection.

10 CHAIRPERSON REYES: Okay. Without objection.

11 Thank you.

12 ASSEMBLY MEMBER BUCHANAN: Can we give new
13 business quickly?

14 CHAIRPERSON REYES: Yes. Yes.

15 ASSEMBLY MEMBER BUCHANAN: I would like to
16 recommend under new business that the Chair think about
17 establishing a subcommittee to evaluate where we are in new
18 construction funds.

19 CHAIRPERSON REYES: Absolutely. Thank you. Yes,
20 we need to do that.

21 And then, Senator Hancock, do you want to add onto
22 the Minutes? I'm not sure you came on time for the Minutes.

23 SENATOR HANCOCK: I did not come on time.

24 CHAIRPERSON REYES: Senator Runner. Sue, who
25 needs to be added on? Anybody?

1 MS. GENERA: Senator Hancock was the only one, but
2 it wasn't an individual vote. It was on an aye vote.

3 CHAIRPERSON REYES: Okay.

4 ASSEMBLY MEMBER BROWNLEY: Can I get a
5 clarification on the request of Ms. Buchanan.

6 CHAIRPERSON REYES: yes.

7 ASSEMBLY MEMBER BROWNLEY: This is going to be an
8 item that will be up for discussion at the next meeting.

9 CHAIRPERSON REYES: Yes. Yes. And then we'll set
10 up a subcommittee to go through it. Okay?

11 MS. MOORE: Can we go to the existing priorities
12 in funding subcommittee or are you creating a new one?

13 ASSEMBLY MEMBER BROWNLEY: Can we talk about that
14 at the next meeting?

15 CHAIRPERSON REYES: Yeah. Yeah. We'll do that.

16 ASSEMBLY MEMBER BUCHANAN: I just think we need --
17 it's time to start the discussion because we know the funds
18 are --

19 CHAIRPERSON REYES: That's all my action items;
20 right?

21 MS. SILVERMAN: That's it.

22 CHAIRPERSON REYES: Okay. Any comments from the
23 public? Serious -- okay. Pardon? PIW? We put it over.
24 PIW, we put over.

25 UNIDENTIFIED SPEAKER: All of the reports are

1 acknowledged and accepted.

2 CHAIRPERSON REYES: All the reports are hereby
3 acknowledged. What else? And accepted by the Board. Thank
4 you. Anything else? Thank you.

5 (Whereupon, at 8:00 p.m. the proceedings were recessed.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

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That the proceedings herein of the California State Allocation Board, Public Meeting, were duly reported and transcribed by me;

That the foregoing transcript is a true record of the proceedings as recorded;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on September 5, 2011.

Mary C. Clark
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