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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, SEPTEMBER 19, 2012
TIME: 2:04 P.M.

Reported By: Mary Clark Transcribing
4919 H Parkway
Sacramento, CA 95823-3413
(916) 428-6439
marycclark13@comcast.net

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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

CESAR DIAZ, Appointee of Edmund G. Brown, Jr., Governor of the State of California

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

SENATOR LONI HANCOCK

ASSEMBLYMEMBER JOAN BUCHANAN

ASSEMBLYMEMBER CURT HAGMAN

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA SILVERMAN, Executive Officer
BILL SAVIDGE, Assistant Executive Officer

REPRESENTATIVES OF THE DEPARTMENT OF GENERAL SERVICES, OFFICE OF PUBLIC SCHOOL CONSTRUCTION (OPSC) PRESENT:

LISA SILVERMAN, Executive Officer
JUAN MIRELES, Deputy Executive Officer

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

JONETTE BANZON, Staff Counsel
HENRY NANJO, Staff Counsel

P R O C E E D I N G S

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CHAIRPERSON REYES: Just to clarify: We will do business as usual. We will start out with public testimony at a certain time. Once we're done with the action items and before we go onto reports, I will open it up again for public testimony if anybody wants to make public testimony of some sort. Not a dialogue. Just some issue that just can't hold back, you're welcome to do that.

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Historically, we start at 4:00 o'clock and a lot of you have to catch planes. So sometimes you feel compelled to make the public testimony at the beginning of the meeting so you can get it off your chest in case you have to leave.

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There are times when the items come in after you've left. There are times when your testimony has nothing to do with any of the agenda items, but it is public testimony.

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When the items come up, before we take an action on a particular item, you will have the opportunity to do public testimony. All I'm doing is creating a second window for public testimony out of courtesy since we have the time and at the request of a district.

24

Does that clarify for folks? Okay.

25

All right. Why don't we go ahead and get started

1 with the nonaction items.

2 MS. SILVERMAN: Yes. We can move onto Tab 3 which
3 is the **Executive Officer's Statement**.

4 And so I wanted to point out three items tonight.
5 One of them related to a recent event. On August 24th,
6 there was a series of earthquakes that impacted Imperial
7 County and Brawley encountered the most significant damage
8 as a result.

9 There was a 5.5 magnitude earthquake that actually
10 did damage the schools and other structures. So with that,
11 the Office of Public School Construction and Division of
12 State Architect was out in the field -- let me qualify that.
13 Division of State Architect was out in the field and they
14 assessed some of the buildings and we are working with the
15 school districts, Brawley Elementary and Brawley Union High
16 school. We're providing some outreach and be going out in
17 the field very soon within the next few weeks to try to
18 figure out what kind of funding opportunities that they may
19 have as a result of some of the damages they sustained.

20 So the next item we wanted to share is to remind
21 the Board that -- and remind the districts that we actually
22 have an upcoming deadline related to the priorities of
23 funding that was actually awarded on June 27th.

24 We allocated over \$637 million for 196 projects
25 and again the timeline to come in is specifically

1 September 25th and that deadline -- again we need all the
2 proper paperwork to be submitted with physically received
3 with original signatures.

4 We've disbursed so far over -- let me back up. We
5 actually did receive over \$526 million in requests out of
6 the original 637-. We have been communicating with these
7 districts, send reminder letters, trying to see if we can
8 help them make through the finish line.

9 So again it's important that you submit all the
10 documents prior to the deadline. Otherwise if they don't
11 meet that deadline, then they'll placed on the bottom of the
12 unfunded list.

13 The last item I wanted to share is we've been
14 accumulating our workload to the effect on the new
15 construction and modernization pots, we already have
16 overextended or overexceeded our bond authority. So we've
17 been creating this list and the Board actually had that
18 discussion last month on how to deal with this list.

19 But we wanted to share with the Board there is
20 actually five facility hardship projects that are on that
21 list that are worth about \$6.9 million. That is actually
22 beyond our bond authority.

23 And if you're not familiar with the facility
24 hardships, they actually do draw from new construction and
25 the modernization program.

1 So with that we -- again the health and safety
2 projects that we wanted to alert the Board on, how do we
3 want to deal with this issue. We've had a few discussions
4 in the past via the Cash Management Subcommittee and they
5 made their recommendation back in August 2010 to elevate
6 projects once -- the process to the top of the unfunded list
7 so they can compete for the cash very quickly.

8 They also had discussion reserving bond authority
9 based on conceptual approvals, but the Board has never had
10 the dialogue about what do we do with those projects once
11 we've exceeded the bond authority. So --

12 CHAIRPERSON REYES: So right now, just so I can
13 understand, when a facility hardship comes in, they are
14 automatically put to the top of the list.

15 MS. SILVERMAN: That's if they're processed and
16 then they're placed on top of --

17 CHAIRPERSON REYES: But because they are --

18 MS. SILVERMAN: -- the unfunded approvals.

19 CHAIRPERSON REYES: For the unfunded approvals,
20 but because we are where we are, that would mean that some
21 of the folks on the list then get bumped.

22 MS. SILVERMAN: Technically because we have this
23 workload list and we'll have this opportunity with those
24 projects that are on the workload list migrate over
25 potentially in the future to the actual unfunded approval

1 list because once we have bond authority trickle back in,
2 those projects can move over.

3 But what do we do with those facility hardship
4 projects? Do they automatically jump to the top of the
5 workload list or do they bump other projects? So I think
6 we've never had that discussion and it may be an opportunity
7 for us --

8 CHAIRPERSON REYES: It's time we have this
9 conversation.

10 MS. SILVERMAN: Right.

11 CHAIRPERSON REYES: So unless the Board objects,
12 I'd like to have them bring back some discussion item for
13 next Board meeting -- some action item with recommendations
14 because I think that facility hardships we recognize as
15 health and safety issues and on the other hand, you do have
16 folks who are in line and they're going to get bumped.

17 But as a Board, we need to decide who's going to
18 go in first on that one.

19 MS. MOORE: Can I just understand --

20 CHAIRPERSON REYES: Sure.

21 MS. MOORE: -- in the context of that. Are you
22 saying, Ms. Silverman, that we would consider facility
23 hardship to go onto the top of the authorization list?

24 MS. SILVERMAN: No.

25 MS. MOORE: Or just to the top of the whatever we

1 approve today called list, the approved list?

2 MS. SILVERMAN: We have a workload list
3 currently --

4 MS. MOORE: Right.

5 MS. SILVERMAN: -- that we have projects in the
6 queue. So do they bump the projects that are currently
7 within the queue within the bond authority. That's the
8 decision we have to make.

9 MS. MOORE: I thought we made that decision
10 already within bond authority, that they are at the top of
11 the bond authority list.

12 MR. MIRELES: Yeah. They currently -- once we
13 process applications, then they will go to the top of the
14 lack of cash list. What we haven't done is we haven't
15 discussed whether the Board wants to consider expediting the
16 processing of these applications.

17 We process them date they're received, whether the
18 Board is interested in expediting the health and safeties to
19 get them to the unfunded list faster.

20 MS. MOORE: Gotcha'. Thank you.

21 CHAIRPERSON REYES: Thank you for the
22 clarification, Ms. Moore. Okay. Thank you.

23 Why don't we go back -- or is that done -- okay.
24 So we'll open the Executive Officer Report for public
25 comment when we get to that part in our list.

1 So why don't you go ahead and take attendance,
2 please, Ms. Jones.

3 MS. JONES: Will do. Senator Lowenthal.

4 Senator Hancock.

5 Senator Wyland.

6 Assemblymember Brownley.

7 Assemblymember Buchanan.

8 ASSEMBLYMEMBER BUCHANAN: Here.

9 MS. JONES: Assemblymember Hagman.

10 ASSEMBLYMEMBER HAGMAN: Here.

11 MS. JONES: Esteban Almanza?

12 MR. ALMANZA: Here.

13 MS. JONES: Kathleen Moore.

14 MS. MOORE: Here.

15 MS. JONES: Cesar Diaz.

16 MR. DIAZ: Here.

17 MS. JONES: Pedro Reyes.

18 CHAIRPERSON REYES: Present.

19 MS. JONES: We have a quorum.

20 CHAIRPERSON REYES: Thank you.

21 MS. JONES: You're welcome.

22 CHAIRPERSON REYES: Tab 2, the **Minutes**. And
23 there's a clarification of the Minutes. Last time when we
24 met, the Minutes state that CASH supports Option 1 and I
25 think CASH supports status quo. Mr. Duffy, is that correct?

1 Okay. So we should correct that.

2 And Mr. -- and Lyle was there as well on that.

3 They supported status quo and not Option 1.

4 Okay. So with that correction, is there a motion?

5 ASSEMBLYMEMBER HAGMAN: So moved.

6 ASSEMBLYMEMBER BUCHANAN: Second.

7 CHAIRPERSON REYES: Moved and second. All in
8 favor say aye.

9 (Ayes)

10 CHAIRPERSON REYES: Opposed, abstentions. Ayes
11 have it. Thank you.

12 Officer's Report. So we gave you direction on
13 where to go with this. Is there any public comment on the
14 Executive Officer's Report? Seeing none, moving on.

15 Tab 4.

16 MS. SILVERMAN: **Consent Agenda** is ready for your
17 approval.

18 CHAIRPERSON REYES: Oh, I'm sorry. Consent Agenda
19 and may I suggest that we add Tab 12 and Tab 14 to the
20 Consent Agenda. Are there any objections?

21 ASSEMBLYMEMBER HAGMAN: So move.

22 ASSEMBLYMEMBER BUCHANAN: What are 12 and 14?

23 I've got to get to my --

24 CHAIRPERSON REYES: 12 is the Overcrowded Relief
25 Grant --

1 ASSEMBLYMEMBER BUCHANAN: Okay.

2 CHAIRPERSON REYES: -- to provide two funding
3 cycles.

4 ASSEMBLYMEMBER BUCHANAN: Right. Okay.

5 CHAIRPERSON REYES: And then the regulatory
6 amendments for the multipurpose room/gymnasium regulations.

7 ASSEMBLYMEMBER BUCHANAN: Okay.

8 CHAIRPERSON REYES: Without objection, we'll add
9 that to the Consent Agenda.

10 ASSEMBLYMEMBER HAGMAN: Yep. Move it.

11 CHAIRPERSON REYES: It's been moved.

12 MR. DIAZ: Second.

13 CHAIRPERSON REYES: It's been second. All in
14 favor say aye.

15 (Ayes)

16 CHAIRPERSON REYES: Opposed. Abstentions. Ayes
17 have it. Thank you. Thank you, Ms. Silverman. Tab 4.

18 MS. SILVERMAN: So Tab 5 is the **Financial Reports**
19 and very quickly, we have -- on page 123, we've provided the
20 Board an update on how much funds we've been releasing over
21 the last 30 days.

22 And we have disbursed over \$160 million in this
23 respective category and most of it has been released as a
24 category of the June apportionments. So we wanted to
25 highlight that activity.

1 And then on page 125, we also wanted to highlight
2 that in a snapshot in time on August 31st, we had at that
3 time \$202 million in projects that are the priorities of
4 funding that came in in June.

5 So again the timelines are really important and we
6 did provide the Board an update that that actually -- the
7 amount is actually a lot lower than what it is today.

8 And as far as the following -- the last chart on
9 the item is we highlight to the Board whether or not we
10 rejected folks that fall off the timelines with their
11 priorities in funding releases and we have nothing to report
12 in August.

13 CHAIRPERSON REYES: Okay.

14 MS. SILVERMAN: So the next item is the **Status of**
15 **Funds**, and we generally --

16 CHAIRPERSON REYES: Before you go there, is there
17 any public comment on Tab 5? Comments, questions? Okay.
18 Thank you. Move on Tab 6.

19 MS. SILVERMAN: Tab 6, we highlight to the Board
20 the amount of projects we actually processed on unfunded
21 approvals.

22 In the top category in Proposition 1D, we actually
23 processed 66 applications for 81 and a half million dollars
24 and high performance grants, there as \$3.2 million dollars
25 awarded. And there was actually one overcrowded relief

1 grant project that was also funded as well.

2 And in the middle category is Proposition 55. We
3 actually processed \$41.8 million in 13 new construction
4 applications, one modernization grant, and actually
5 \$12.6 million and that actually represented a critically
6 overcrowded school project that actually was converted.

7 We actually have on the lower category,
8 Proposition 47, a modernization project for \$2.6 million.
9 Two of them were processed.

10 So we actually processed about 93 projects this
11 month which represents nearly \$150 million.

12 CHAIRPERSON REYES: Okay.

13 MS. SILVERMAN: And then on 128, we wanted to
14 highlight in the lower category is Emergency Repair Program.
15 Since we had some basic provisions or authority left to be
16 disbursed, we actually processed \$11.4 million in 40
17 additional applications this month.

18 Currently we don't have any funds to award these
19 projects, but again we wanted to highlight the current
20 activity.

21 And is there's no questions.

22 CHAIRPERSON REYES: Okay.

23 MS. SILVERMAN: Moving on.

24 CHAIRPERSON REYES: Tab 7, **Sanger**. Ms. Sharp and
25 Mr. Watanabe.

1 MS. SHARP: Hello. I'm Tracy Sharp. We'll be
2 presenting Tab 7, the appeal from Sanger Unified.

3 The district is appealing the return of four fund
4 release requests for four new construction applications.
5 These requests for fund release were returned due to the LCP
6 requirements for Proposition 55 funded projects were not
7 met.

8 For these four projects, they are -- were all
9 submitted together and are being presented together as they
10 had similar scopes as well.

11 They were split into two phases. The first phase
12 built a new multipurpose room on each site under -- on each
13 site. And then phase two converted their existing
14 multipurpose rooms to new classrooms on all the sites.

15 So for purposes of following background on this, I
16 will point you to page 140 where there's a timeline of
17 events, give you some background on how we got to where we
18 are today.

19 So first the phase one contracts were awarded in
20 early 2009. At the time, most projects were being funded --
21 allocated with Proposition 1D funding. The district did not
22 put a DIR-approved LCP program in place for these two
23 contracts in this phase one portion of the work.

24 In May 2010, the district submitted their four
25 funding applications to the Office of Public School

1 Construction. On those funding applications, they had
2 checkmarked the box no to whether or not they would be
3 required to implement an LCP subject to Labor Code.

4 In response to a letter in July of 2010, the
5 district had been advised that we were out of 1D funding and
6 they be provided either 47 or 55 and they responded with an
7 updated 50-04 that said yes, we can meet those requirements.

8 Following that, the district received an unfunded
9 approval in 2010 and then in February of 2011, they awarded
10 their contracts for phase two of the project and put in
11 place a DIR-approved LCP for the phase two portion.

12 Then the district received their apportionment for
13 these unfunded approvals in December 2011 with a fund
14 release deadline of March 13th, 2012.

15 Since the 50-05, the fund release was not valid,
16 staff returned them and during the -- and then subsequently
17 the district submitted their appeal for that return.

18 During the appeal process, the district asked that
19 we consider the project at its phases.

20 And if you look at the chart on page 144, we took
21 into consideration the district's request for a partial fund
22 release and in looking at that request, there were two --
23 one of the important factors is in considering a partial
24 fund release, could they still meet the 60 percent
25 commensurate requirement.

1 And we've demonstrated on the chart there on
2 page 144 that in splitting it out, they couldn't meet that
3 60 percent requirement. Each of those was below the
4 60 percent.

5 And as well, we don't have a mechanism to process
6 a partial fund release at this point in the statute and
7 regulations. So that was the second reason why we didn't
8 process it.

9 So where we are today with these four projects is
10 that the district has a new unfunded approval date of
11 March 13th, 2012, and at this point, since they've been
12 unable to submit a valid fund release, they would remain on
13 the list of unfunded approvals indefinitely.

14 CHAIRPERSON REYES: Okay.

15 MS. SHARP: That's summarizes the item. Open it
16 up to questions.

17 CHAIRPERSON REYES: Mr. Watanabe, do you have
18 something you want to add or -- okay. Mr. Diaz.

19 MR. DIAZ: Thank you, Mr. Chair. So obviously
20 this is an issue that has come up I think in a couple of
21 instances already. There might be a few more that we know
22 about as well that have just popped up.

23 And so in looking at some of the previous actions
24 that the Board has taken on this particular instance, we do
25 believe -- from my perspective, it's very fair that the

1 district did at least attempt to have a Labor Compliance
2 Program I think once they realized that they were going to
3 receive funding from a pot of money that required them to
4 have to do so.

5 They didn't though initiate it from the beginning
6 and I think there was some issues at that point with that,
7 but the case with Monterey I think presents an opportunity
8 for the Board to perhaps look at that and my motion would be
9 to allow the district to receive Prop. 1D funds but with a
10 lesser penalty than what Monterey received, perhaps a
11 20 percent penalty on that.

12 And I know there are some options that have been
13 considered by the Board or by staff with regards to
14 splitting of the proposition and the funding resources.
15 There's a lot of questions, there's a lot of concerns that I
16 have with that and I would I think make a motion that it be
17 Prop. 1D funds with a 20 percent reduction.

18 SENATOR HANCOCK: I would second.

19 CHAIRPERSON REYES: Okay. So there's been a
20 motion to do a fund swap consistent with what we've done
21 before to find a funding source that does not have an LCP
22 requirement but provide for a 20 percent haircut on the
23 entire amount and that has been seconded by Senator Hancock.

24 Ms. Moore.

25 ASSEMBLYMEMBER BUCHANAN: When we gave the haircut

1 on the last one, it was because they took what funds were
2 remaining and obviously we want to help districts, but I
3 want to know where we have the legal authority in this case
4 to decide arbitrarily there should be a 20 percent haircut
5 versus a 10 percent versus a 30 or whatever.

6 And my other question there is all of our offices
7 have received calls from numerous districts who are in the
8 same situation coming back. So, one, what do we do because
9 this is clearly setting a precedent here. And my last
10 question is should this project have to go to the bottom of
11 the line to be funded or what are we doing.

12 I mean I -- on the one hand, I want to support
13 this, but on the other hand, I seriously ask whether or not,
14 you know, we should be waiting till the next meeting and
15 coming up with a policy or a precedent that can apply to all
16 of them because I guarantee you everyone's going to be in my
17 office and your office saying, you know what, we'll take the
18 same deal Sanger got.

19 So is there something in regulations that says we
20 can arbitrarily decide if you don't -- if you haven't
21 complied with an LCP, we can -- you don't have to and we can
22 give you a 20 percent haircut?

23 MS. BANZON: Well, I'm sorry. I haven't seen that
24 in regulation. However, that is within Board authority to
25 actually develop the regulation for that.

1 ASSEMBLYMEMBER BUCHANAN: So -- but we don't have
2 a regulation that would do that --

3 MS. BANZON: Not that I'm aware of.

4 ASSEMBLYMEMBER BUCHANAN: And -- because on some
5 of these, the 1D money, we're going to have run out and
6 people are still going to be coming back to us needing a
7 solution. And so I want to be sure because we said -- the
8 last time we said we had to notify all these districts that
9 we're out of money and we know that there would be some
10 money that comes back into the different programs.

11 But it seems to me that whatever we do should be
12 consistent and should be well thought out and anytime a
13 district waits two years to submit a funding application --
14 and, you know, I don't know whether Sanger -- I know I've
15 talked to some of you -- whether you assumed you would have
16 full eligibility with just conversion and you could get your
17 50 -- grants and you wouldn't need to submit it on the
18 multiuse room and then find out you didn't and you needed to
19 do all of it or what, but, you know, we're going to see
20 these situations.

21 So I just caution that there's got to be some kind
22 of consistency and something a little thoughtful in terms of
23 what we do.

24 So my preference would be to wait a month, but I
25 just want to bring these up as issues. I don't know if

1 anyone shares any of those concerns.

2 CHAIRPERSON REYES: Ms. Moore and then Mr. Hagman.

3 MS. MOORE: I have a quick question. So
4 20 percent, what -- how much is that?

5 MR. WATANABE: About 700,000, a haircut.

6 MS. MOORE: And because they're also in Prop. 1D
7 now, so they wouldn't be funded for the LCP that they did do
8 on the second phase too. Is that considered in that
9 700,000?

10 MR. WATANABE: Rough amount. We would take away
11 the LCP and then give them the haircut, it looks like.

12 MS. MOORE: Okay. Then I'll probably comment a
13 little more late, but I'll let --

14 CHAIRPERSON REYES: I'm sorry. Say that again.

15 MS. MOORE: I'm done for now.

16 CHAIRPERSON REYES: Okay. Anybody -- Mr. Hagman.

17 ASSEMBLYMEMBER HAGMAN: Thank you, Mr. Chair.
18 We've been through this a little bit before. When we start
19 running out of funds, when we start trying to help and
20 switch funds and switch your position in the funds -- and
21 hopefully we don't have this come in the future because
22 we're -- our staff should be checking in with them and
23 saying these are conditions. I know they signed the form.
24 This says they know, but part of the oversight would be to
25 make sure they're doing those requirements. We're not

1 waiting till after the fact.

2 Now, this one the timeline is such that a lot of
3 these things, you know, you're going for one set of funds,
4 you're going for the other, now we don't have that, you
5 know, option no more.

6 I'm in favor -- babble here -- but I'm in favor of
7 supporting, but I think what Ms. Buchanan said, we need to
8 come up with some kind of formula that we're going to do for
9 any future appeals and then how do we know we have the
10 resources to complete the formula. Do we have that -- for
11 the existing projects that are out there, do we have any
12 indication right now of how many districts? Do we have any
13 of their calls, any of their pleas, any of their like what
14 happens if type inquiries? Do we know what that universe
15 may be at this point, you know, how many more we have
16 outstanding without checking up on them and can we go
17 physically do whatever you do to check to make sure there's
18 not any more out there.

19 CHAIRPERSON REYES: So let me -- so here's sort of
20 a -- from my perspective. It's hard to say how many
21 districts are out there because there was self-certification
22 at that time.

23 It isn't until the rubber hits the road that we
24 then say okay and oh, no, we meant this, we meant that.
25 That's what we encountered earlier on.

1 We have done the fund swaps because we have the
2 flexibility and we have the money. And all along we kept
3 telling people and we have asked CASH to announce it as they
4 announce other stuff at their meetings that our ability to
5 do that will be diminished over time.

6 And it comes to a point where -- there will be a
7 point where we'll not have the resources to do a fund swap
8 and some of those districts that come in at the 11th hour
9 will not -- we will not be able to help them and we would
10 have a hundred percent (indiscernible) finding as it were.

11 In terms of the precedent setting, right now the
12 staff level -- the appeal -- the funding has been rejected.
13 They're appealing that.

14 As part of the appeal process, it's a negotiated
15 process. We can say take off a dollar, take off two
16 dollars, take out a million dollars and as the negotiators
17 agreed upon and that is our authority to do that. As a
18 Board, that's sort of what we do.

19 And so there's no statute or regulation that would
20 say a 20 percent, 30 percent. It's basically there before
21 us and we're going to say a 20 percent, a 10 percent. Would
22 that work for you -- work for both parties and then we shake
23 hands on that and that's the end of that.

24 So there's not a regulatory process that we're
25 using at that point. It's just the plenary authority of the

1 Board to negotiate that part.

2 ASSEMBLYMEMBER BUCHANAN: So we got -- I don't
3 know if it was a letter or a call from Sac. City today in
4 the same situation.

5 CHAIRPERSON REYES: But I --

6 ASSEMBLYMEMBER BUCHANAN: Is that -- I mean it
7 seems to me whatever we do, we need to be consistent and --

8 CHAIRPERSON REYES: I appreciate your concern. I
9 think -- and I think that's a very legitimate concern.

10 ASSEMBLYMEMBER BUCHANAN: And we've never
11 really -- I mean in the time I've been on here -- and so
12 you've been on much longer than I have -- you know, that
13 seems to be are we setting a precedent, you know, is this
14 consistent and if what you're saying is our policy's going
15 to be we negotiate the haircut, well, I mean people are
16 going to come.

17 Sanger came and said that you did this for Santee
18 and we said but Santee was different for these reasons. So
19 I'm just -- again I just question whether or not we should
20 be, you know, talking about -- you know, if we're going to
21 change the regulations, we should be talking about doing
22 something so going forward we could be consistent or
23 whether, you know, if you want to do this today and then
24 knowing -- there are some in the queue right now.

25 CHAIRPERSON REYES: Oh, yeah. Absolutely.

1 Absolutely.

2 ASSEMBLYMEMBER BUCHANAN: You know, and the ones
3 who are there when 1D runs out aren't going to be happy and,
4 you know, we've had people say, well, it says you have to
5 have an LCP, but it doesn't say you have to have it the
6 whole time you're under contract. So if we have it there
7 the last month, does that -- I mean we have all these things
8 that -- and can we have this done retroactively or whatever.

9 So I would just -- I would be more -- I want to
10 help Santee [sic], but I would be more comfortable if we
11 took time to have a little bit of discussion in terms of
12 what are those kind of qualifications and what are we going
13 to do because I -- it is going to come up.

14 CHAIRPERSON REYES: I'm with you a hundred
15 percent. The last thing I want to do is be arbitrary
16 because that really weakens our -- what our role is. I
17 think though that -- all I have is the fact that we -- you
18 know, we sit here and we do some exceptions and we say it's
19 not precedent setting. And this is kind of an interesting
20 Board because last week, we dealt with an appeal with
21 Whittier and staff brought to our attention that the code
22 required us to do a certain thing and as a Board we decided
23 that it was kind of late in the game to acknowledge that
24 statute and so we sort of looked at it the other way on that
25 one by not adopting regulation.

1 So we're sort of a Board that sort of has a lot of
2 autonomy, a lot of plenary authority and we try to build,
3 but I concur with you that we need to establish some
4 parameters to deal with this because there are quite a few
5 in the pipeline.

6 Mr. Hagman.

7 ASSEMBLYMEMBER HAGMAN: Yeah. I don't want to be
8 too much black and white either because there are different
9 shades.

10 In this particular case and Mr. Diaz brought this
11 up -- efforts were made to try to get -- you know, to phase
12 in the labor compliance as quickly as they could. So I
13 think we have to look at each individual circumstance and
14 see how it goes.

15 Just curious, has anyone talked to the district
16 and --

17 CHAIRPERSON REYES: The district are here, so
18 staff could --

19 ASSEMBLYMEMBER HAGMAN: Are you guys happy with
20 this or do you want to -- say anything else about that
21 before I guess --

22 CHAIRPERSON REYES: Want to shed some light.

23 MR. MARTINEZ: Good afternoon. Mr. Hagman, can
24 you ask the question again, please.

25 ASSEMBLYMEMBER HAGMAN: Sure. I'm just -- you

1 know, the motion that Mr. Diaz put out, is the district
2 satisfied with that basically?

3 MR. MARTINEZ: You know, I'm going to start off --
4 before we get to that point. First of all, I want to thank
5 everybody. This has been an incredible process. You're
6 talking to an old teacher. This is all new. I came from
7 the teacher -- on the business side and God as -- I thought
8 PTA carnivals were hard.

9 Again my name is Eduardo Martinez. I am the
10 Associate Superintendent for Sanger Unified and again we're
11 incredibly appreciative of the entire process.

12 And I can tell you that we want to be compliant.
13 We follow the rules. As a principal, that's what we
14 advocate for all of our kids.

15 If you look at Sanger Unified's record, that's
16 what we do. We want to make sure that everything is being
17 done the way it's supposed to be done.

18 When this initially started, we thought we were
19 doing that. And when we were guided to change, we changed
20 immediately. Absolutely.

21 ASSEMBLYMEMBER BUCHANAN: When you said you
22 thought you were doing that, it was really clear you didn't
23 have a Labor Compliance Program in the beginning. I'm
24 not -- I think you have an outstanding superintendent. I
25 think your district does a great job, but are you trying to

1 tell me you thought you had a Labor Compliance Program in
2 place when you built your multiuse rooms?

3 MR. MARTINEZ: No, not the labor compliance. We
4 were -- it wasn't required at that point because we were
5 doing to Prop. 1A. Okay. When we were told to change, we
6 changed.

7 And, Mr. Hagman, when you say, you know, do you
8 feel that's fair, I understand that there must be perhaps a
9 reduction. We completely understand that and we're prepared
10 to accept that.

11 When I look at these sort of circumstances, I
12 think of a teacher trying to correct a behavior from someone
13 and, Mr. Diaz, yeah, you're right, 20 percent is wholly
14 appropriate, but there's a portion that we did what we were
15 supposed to do and I got to go back to my board and to my
16 constituents and say this is a fair deal here, guys.

17 And for the first phase, absolutely. Apply it.
18 I'll take that whooping every day. The second piece, that's
19 challenging. And I respect your position and I respect what
20 you're recommending and we're prepared to do that, but if
21 you're asking me is that the best -- do I feel comfortable
22 with that, how do I tell my department you did what you were
23 told and this is appropriate.

24 And I know that perhaps within these rules and
25 these procedures, maybe it doesn't quite fit in the box and

1 it may end up having to be the 20 percent, but I also want
2 you to understand from my position as I look at that and my
3 community and trying to do and follow the rules.

4 When it came to phase two, we did that because
5 that's what we do for our community. That's what we do with
6 our vendors and our contractors.

7 ASSEMBLYMEMBER BUCHANAN: Why didn't you submit
8 your forms to OPSC in a timely manner, the first phase?

9 CHAIRPERSON REYES: The issue was when they -- on
10 the first phase at that time, they were thinking they were
11 going to get D money -- 1D money, so LCP was not an issue.

12 ASSEMBLYMEMBER BUCHANAN: I know it wasn't an
13 issue, but if they would have submitted their forms for
14 funding earlier, they would have been in line for 1D money
15 and because they had the lengthy delay in submitting those
16 forms, the money ran out.

17 A district could have a project in the queue
18 today. If they don't send the forms in and we've spent all
19 the money, regardless of which program, they're going to
20 have it. So I mean one big problem has occurred because,
21 you know, you had a lengthy delay between the time you
22 started the project and the time you submitted your forms
23 and then the 1D money was exhausted.

24 MR. MARTINEZ: Ms. Buchanan, I don't believe that
25 we detailed the submittal of the forms and I'm going to ask

1 Mr. Sepulveda here, our Operations Officer, to kind of
2 elaborate a little bit on that.

3 MR. SEPULVEDA: Richard Sepulveda, Chief
4 Operations Officer. We did submit the applications within a
5 timely manner. I believe on phase two we had to wait for
6 the DSA application. We had to wait for --

7 ASSEMBLYMEMBER BUCHANAN: Yeah. I'm not -- phase
8 two is -- I agree with you on phase two. I'm talking about
9 phase one.

10 MR. SEPULVEDA: As you can see, the applications
11 were submitted within a timely manner within one year.

12 ASSEMBLYMEMBER BUCHANAN: Is that -- I think -- I
13 thought I had the --

14 MR. MIRELES: Yeah. The timeline's on page 140,
15 Assemblymember.

16 MR. WATANABE: I believe that the reason why the
17 district couldn't submit the phase one work (indiscernible)
18 our office of the application was because phase one was just
19 to construct the multipurpose room and just as a project
20 alone, they couldn't submit a funding app for just the
21 multipurpose room. They actually had to request classrooms
22 which was the phase two component, which those plans --

23 ASSEMBLYMEMBER BUCHANAN: So the --

24 MR. WATANABE: -- I believe were approved later.

25 ASSEMBLYMEMBER BUCHANAN: The notice to proceed

1 was January 20th, 2009, and the funding applications were
2 received May 27th, 2010. So that's 17 months after you
3 started the projects.

4 MR. WATANABE: But the plans to convert the old
5 multipurpose room to two classrooms were a second set of DSA
6 approval. They would need those plans approved before they
7 could walk in the funding app to our office.

8 CHAIRPERSON REYES: Ms. Buchanan, earlier on you
9 indicated that your preference would be to hold off and see
10 if we could come up with a universal solution. Is that a
11 substitute motion?

12 ASSEMBLYMEMBER BUCHANAN: If the -- yeah, if the
13 author is willing to accept that --

14 CHAIRPERSON REYES: Okay.

15 ASSEMBLYMEMBER BUCHANAN: -- I -- you know, I'm
16 not trying to be obstinate here. I'm -- just like I said,
17 I've got all these districts that are already contacting us
18 that have similar problems and I -- my hope is that we can
19 come up with some kind of consistent regulation or policy or
20 direction so that everyone knows what to expect and we're
21 not all up here dealing with this individually.

22 ASSEMBLYMEMBER HAGMAN: Mr. Chair, I was just --
23 you know, my thoughts on this is they are -- most of these
24 projects take multiple years. We have been changing the
25 rules here in the Legislature even on building standards

1 much less funding and stuff.

2 The funding streams, we have to go back and forth
3 because we don't know how much money you have until you get
4 to the end.

5 I want to take all that in consideration, but I
6 think there's some kind of logic there just to apply. This
7 was done out of compliance. You know, this building, this
8 phase, this project out of it. This was done correctly even
9 though there's like one big funding stream.

10 I kind of agree with that. This part should be
11 left alone. You know, this part, yeah, you get a penalty
12 because you didn't follow the rules.

13 The rules are there to -- I mean primarily for the
14 health and safety of the children there, but secondary, to
15 hopefully get -- we follow labor compliance and the rules
16 and restrictions we have.

17 But they make a good faith effort to do that.
18 Most of these school districts are not general, you know,
19 contractors and we keep changing the rules almost yearly on
20 them. So I have a little bit of sympathy, but I like the
21 breaking it up and doing the penalty on one that they
22 violated and funding the other personally.

23 CHAIRPERSON REYES: -- this is different than the
24 20 percent, but -- so I'm going with parliamentary procedure
25 because this is a good discussion that needs to happen. So

1 I apologize to those parliamentarians who are trying to
2 figure out what's the motion. I think this is a healthy
3 exercise.

4 ASSEMBLYMEMBER BUCHANAN: I'll withdraw the motion
5 and let's talk about it, see if we can come up with
6 something that works.

7 CHAIRPERSON REYES: Okay. Mr. Almanza.

8 MR. ALMANZA: So if we did have regulations in
9 place to guide the decision in these kind of cases, then
10 that would allow them to be settled administratively and not
11 come before the Board?

12 CHAIRPERSON REYES: If the regulations were in
13 place, yes, that would be true. It's -- because then those
14 are the guiding principles for staff.

15 MS. MOORE: Does staff really think that we are
16 going to -- I'm sorry. I just started talking.

17 CHAIRPERSON REYES: That's okay. This is a -- you
18 know --

19 MS. MOORE: So much for parliamentary.

20 CHAIRPERSON REYES: No. That's what I said. This
21 is a conversation that I don't want to dictate, you know,
22 where the conversation goes.

23 MS. MOORE: With your permission, Chair.

24 CHAIRPERSON REYES: Go. Go.

25 MS. MOORE: Here's what I struggle with. I agree

1 with you it's always best -- and I think of school
2 districts -- to be able to kind of know the rules and make
3 their decisions accordingly.

4 We're kind of in this -- in all these
5 circumstances, we are looking backwards and trying to create
6 a framework that now districts can make decisions within and
7 I think that's fairly difficult for them.

8 I'm not so sure that each and every one of these
9 cases aren't different and I think they are. They've come
10 before us and they've had a slight -- they've had different
11 vents to this.

12 Personally on this one, I truly believe the
13 district was presented with a Hobbesian choice at the
14 beginning when they said -- when the funding shifted and
15 they said you get nothing or you check this box. I think
16 that's very difficult for districts and in fact we had
17 funding over time in that category.

18 So it wasn't actually -- it was true that staff
19 presented that at the time, but over time, those
20 circumstances did change and we did get Prop. 1D funds and
21 we could have solved some of these issues.

22 And ultimately we will apportion the Prop. 1D
23 funds and they won't have an LCP -- wait. They won't have
24 an LCP requirement on it. And then we're presented now with
25 a Hobbesian choice. Do I vote to ensure that the school

1 district at least gets some funding versus none and I think
2 that's really difficult.

3 What I have heard is that this district with this
4 particular issue is ready to move forward and I'm not sure
5 that the regulatory scheme that we come up with in the
6 future is going to necessarily help them.

7 It may. It may not. They may be in the same boat
8 next month when we come forward with regulations. So it's
9 really difficult and, you know, I think that they -- at the
10 point that they were asked to have the LCP in place that
11 they did and in 2009 when they started their project and it
12 was possibly going to be a 1D, they didn't.

13 I mean we could all go back and say, well, you
14 should have been a really conservative and put your LCP in
15 place so you were open regardless of funding choice. That's
16 really hard today to hold them to that standard back then.

17 So I'd prefer to split the funding, provide
18 Prop. 1D for that which was prior to the time that they then
19 signed the document that said that they would go forward
20 with an LCP and fund that with Proposition 55.

21 We have it and we could solve for this district.
22 \$700,000 for 200 student application is \$3,500 per student
23 that we are removing from this district.

24 ASSEMBLYMEMBER BUCHANAN: I want to help Sanger.
25 I'm not -- you know, and it's not that I can't vote for

1 this. I'm just asking the question should there be a
2 discussion in terms of is -- you know, how do you -- if
3 there's going to be a haircut and there should be some
4 penalty, are we going to have any discussion, even if we
5 approve this today, in terms of what's appropriate.

6 And for other districts that have checked that box
7 that don't have them, I mean we keep talking about
8 contacting them. It would have been much easier at the time
9 they checked the box to try and do something at that point
10 in time to verify records and everything going backwards
11 than to wait until after the whole project's done.

12 And so I don't know what the answers are here.
13 We're talking about it a little bit in the Audit Committee
14 and I agree that each case is different, but I think to the
15 extent -- but each time you have a case, you also are
16 creating some expectation out there for future districts
17 when they come to us.

18 And so I think even if we approve this today, you
19 know, we -- there should be some kind of conversation,
20 whether it's between OPSC at the staff level or whether it
21 involves a couple Board members, in terms of what the
22 outreach is and what is appropriate because there may be a
23 district later on that's looking at a \$30 million project
24 and, you know, is expecting that money to be able to pay for
25 a future project that's already underway or whatever and

1 there's no money left.

2 So there's -- whatever we do, I do think -- you
3 know, whether it's different or not, it's still precedent
4 setting and there's got to be a conversation.

5 CHAIRPERSON REYES: To your point, one of the
6 items that was pulled was those regulations that we're
7 trying to do to implement this and we're not there yet.
8 We've been working on this, but I think at the end of the
9 day, I think Ms. Moore and Mr. Hagman are right. They're
10 going to be different.

11 It's hard to come up with regulations that will
12 take every circumstance. In this particular case, you can
13 split about phase one or phase two. In other cases, you
14 will not be able to.

15 Some cases you'll be able to split it by date. In
16 other cases, you will not be able to.

17 This is -- you know, what we have before us is
18 folks who had the expectation of getting 1D money and
19 playing by those rules. Much -- and this sort of goes to my
20 concern with -- this is not on subject, but the unfunded
21 list.

22 People are playing by today's rules and we don't
23 know what the rules will be in 2014. Yet we're --
24 everybody's trying to protect the current rules and getting
25 this unfunded list, but don't play with that because in two

1 years, we'll be faced with but I played by the rules that we
2 knew, how'd you expect me to know the 2014 rules back in
3 2012.

4 But anyway, that's more -- Mr. Hagman and then
5 Mr. Diaz.

6 ASSEMBLYMEMBER HAGMAN: Just not to belabor the
7 point on this stuff, but I think there's a certain amount of
8 intent in compliance that I think that's why the feeling
9 thing. We have to look at each case a little bit
10 separately. Was there intent there; did they do it, you
11 know, maliciously, like you said, those who put in the last
12 month and the last contract and now I have it or was they
13 were trying to follow the rules and maybe, you know, just
14 knowing what bureaucracies do to change the stream and
15 course what the way to do business.

16 But going back to the point of -- I guess earlier,
17 do we not have some kind of process in place to go out to
18 those folks now who have contracts and do an audit or a --
19 send a letter about this form. Do you have this. I mean I
20 don't want to keep seeing this a year from now, these
21 projects coming back two years from now and saying I didn't
22 know or I switched midstream or something. I know we're
23 switching things back and forth.

24 MS. SILVERMAN: Yeah. Well --

25 ASSEMBLYMEMBER HAGMAN: I know we send out

1 notices --

2 MS. SILVERMAN: Right.

3 ASSEMBLYMEMBER HAGMAN: -- but that's different
4 than actually looking at their books.

5 MS. SILVERMAN: We have asked recently because we,
6 like the Chair -- we can stop midstream because we still
7 need to work out some of the issues with the regulations.

8 We did make some recent contact with those folks
9 on the list because we wanted to clarify whether or not you
10 have met the requirements because it's not penalize people
11 but it's just to get a basic understanding of what's the
12 universe.

13 And some of the feedback we've been receiving is
14 why are you asking the question. It's because we need to
15 inform. We know what the universe is potentially and if we
16 can wrap our regulations -- you can't fit everybody, but we
17 need to have that dialogue about how do you verify that.

18 Certification -- it's a big certification that
19 folks come in through the door, they check the box, and
20 hindsight --

21 ASSEMBLYMEMBER HAGMAN: I understand the
22 hindsight. I know part of our discussion is where we go
23 forward, but, you know, should be maybe some sort of
24 oversight that we're doing electronically in place,
25 something that, okay, you qualify -- you're two months into

1 it. You come up with the right forms or you do the right
2 processes, I don't know, but some kind of verification
3 system so we don't have this after the fact.

4 If we don't change the rules every year, we
5 probably won't have all these issues, but that's --

6 ASSEMBLYMEMBER BUCHANAN: But isn't --

7 CHAIRPERSON REYES: Mr. Diaz and then
8 Ms. Buchanan.

9 MR. DIAZ: I like the discussion, but I also want
10 to emphasize that there has been many school districts that
11 have come through this program, have followed every single
12 letter of the law. It's not intent to follow the law, it is
13 following the law as it is described under their specific
14 funding source.

15 You can't go back and do a forensic analysis and
16 ensure that there has been prevailing wage compliance on a
17 project that has already been finished. There is only one
18 way to go and do that and that is either having a Labor
19 Compliance Program with someone on site verifying payroll
20 records as there are people working on that project, making
21 sure that a specific worker is getting paid that right
22 amount, that that worker isn't performing other type of work
23 that justifies a different type of classification and
24 prevailing wage rate.

25 That's the only way that you can actually ensure

1 that you -- that there is compliance.

2 Other districts have come forward. They done it
3 the way that the program has required them to do so. And so
4 it is also unfair to, you know, look at -- you know, looking
5 at a specific case-by-case basis.

6 My understanding of that is also -- I share the
7 same concerns. I would like to have a standard where it is
8 applied to every single school district in a fair manner,
9 but those standards should not be developed to create gaping
10 roof holes to allow every single instance or circumstance
11 that happens when people are noncompliant or they don't
12 perform the responsibilities as they should.

13 It's a fall-through at the expense of others that
14 perhaps are following the law and doing the right thing.

15 ASSEMBLYMEMBER BUCHANAN: And I would say that
16 we're here to be partners with school districts in school
17 construction. We're not here to run facilities departments
18 for schools.

19 So if you're going to participate in the State
20 program and there are certain rules you have to follow, when
21 you check the box that says you've got an LCP, districts
22 should understand what that is. We shouldn't have to then
23 be big brother and go down and make sure they have it.

24 When districts check a box that say they're under
25 contract, you know, we shouldn't have to be there. I mean I

1 know with some of them now they're submitting that, but --
2 and I know this wasn't Sanger's first time participating in
3 the facilities program and you're a big enough district.
4 You know what an LCP is.

5 I do understand there are some problems with the
6 timeline. And in the short time I've been on this Board,
7 we've sent out notices twice telling districts, you know, if
8 you're in these programs, you have to have an LCP in place.

9 So if districts don't know, I don't think it's
10 because we haven't given them proper notice and I don't
11 think we should be big brother. We're here to partner with
12 you financially, but you're the ones that are responsible
13 for running your districts and complying with the rules of
14 the program so we can partner.

15 You know, having said that, I'm willing to -- if
16 Mr. Diaz wants to -- still stands by his motion or if you
17 want to wait, but I'm willing to support that, but I also
18 then would expect that at the next meeting either staff is
19 coming back or we're coming back with some general
20 guidelines whether, you know -- I don't know how general or
21 narrow they're going to be, but there's no doubt that we're
22 not going to have the money in the future and I don't know
23 how we decide what the appropriate haircut is or what we're
24 doing or do you go to the front of the line or the back of
25 the line and those sorts of things. But I do think that

1 that discussion has to take place.

2 CHAIRPERSON REYES: Okay. Just so that -- to
3 summarize where we are, Mr. Diaz has a motion to move -- to
4 do the funds with the entire amount and a 20 percent
5 haircut. Senator Hancock second that.

6 I heard Ms. Moore suggest that we do the
7 funding -- split the funding based on phases, phase one and
8 phase two, so the haircut's not applied to the entire
9 amount, but I did not hear that as a motion, although
10 Mr. Hagman supported that concept of phase one/phase two.

11 Is there a substitute motion by either Mr. Hagman
12 or Ms. Moore on that?

13 And to clarify, would you then apply a haircut to
14 the swapping of the funding for phase one?

15 MS. MOORE: Well, I would ask the author of the
16 motion if he would accept that and the 20 percent on the
17 phase one.

18 MR. DIAZ: I -- there's -- I think it sets a
19 precedent when you're looking future appeals of when you're
20 splitting for one project because even though this is a
21 phase project, this is one application.

22 And so if you're going to then look at a project
23 and break it down -- or one application, we're going to run
24 into the same precedent setting issues that will -- this
25 contract was covered because at the four month of a ten

1 month project, we had an LCP in place. What do we do for
2 those first four months and you're creating I think another
3 opportunity for staff's time I think to be yield on down
4 with all these percentages. I don't agree with that.

5 CHAIRPERSON REYES: So, Ms. Moore.

6 MS. MOORE: You do not have a substitute.

7 CHAIRPERSON REYES: We do not have a --

8 Mr. Almanza. I'm sorry.

9 MR. ALMANZA: How about a -- if we did a split
10 with the 20 percent reduction.

11 ASSEMBLYMEMBER BUCHANAN: That was her motion.

12 MS. MOORE: That's what I did.

13 CHAIRPERSON REYES: That's what she wanted.

14 MR. ALMANZA: Okay. I thought you wanted to split
15 to give them a hundred percent and no reduction.

16 CHAIRPERSON REYES: No. She still wanted a split
17 on the --

18 MS. MOORE: That's what I -- I would prefer, but I
19 also see what's --

20 CHAIRPERSON REYES: Mr. Hagman.

21 ASSEMBLYMEMBER HAGMAN: I mean I don't think we're
22 going to come up with consensus because we're short members
23 here because I'm not going to support the first motion. I
24 think that takes too much penalty out.

25 I would support the haircut on the first phase

1 when they're out of compliance because they transferred
2 funds, even though that was part of them not knowing.

3 But I think the second part of it they did do
4 things correctly and I think we should reward that aspect of
5 it.

6 CHAIRPERSON REYES: Okay. Let me throw this out.
7 I know we have a motion and a second. But what if we hold
8 off on this pending the regulations that we're working on
9 and see where we are on that.

10 They may or may not fit. They may not solve the
11 problem, but rather than take a vote on this and go where we
12 may not go, would folks be open to just sort of wait a month
13 and see -- or five weeks and wait and see how this plays out
14 with the regulations. It may or may not, we don't know.

15 But, you know, the regulations are still being
16 drafted. We've had conversations with DIR. We want to
17 have -- you know, it still has to come up to the Board to
18 make sure that we're onboard with what those regulation
19 would do and then we'd have to go through a regulatory
20 process.

21 But it's an option and I think that goes to sort
22 of what Ms. Buchanan's original substitute --

23 ASSEMBLYMEMBER BUCHANAN: Right.

24 CHAIRPERSON REYES: -- motion was.

25 ASSEMBLYMEMBER BUCHANAN: That was my original,

1 although I have to tell you I -- when I picked up from --
2 I'll leave it up to Sanger because it's really -- I mean
3 just like with Santee, it's up to you to decide do you want
4 to go in this direction and hopefully the regulations
5 support where we are now or do you -- what do you want to do
6 here?

7 MR. MARTINEZ: With your permission, Mr. Reyes.
8 We have -- we appreciate the dialogue. We appreciate staff
9 being able to work and come up with a regulation and just,
10 you know, I completely understand when it comes to we want
11 to be consistent.

12 We are more than fine with perhaps waiting till
13 next month so we have a little more time to look at that.
14 The only thing that I'd be just cautious of is I would hate
15 to think that we come up with a regulation that ends up
16 being less than what Mr. Diaz is suggesting.

17 MR. DIAZ: And guarantee that; right.

18 MR. MARTINEZ: Because, Mr. Diaz, then I'll be
19 back at PTA carnivals.

20 ASSEMBLYMEMBER BUCHANAN: But there is -- you
21 understand there is no guarantee.

22 CHAIRPERSON REYES: There are no guarantees.

23 ASSEMBLYMEMBER BUCHANAN: They could decide that
24 the penalty should be higher or whatever and I think the
25 reason -- I mean we all tend to agree that you had the labor

1 compliance in for phase two, but this project as submitted
2 is one project. You know, it's not submitted as two
3 different funding projects. It's submitted as one project.

4 MR. MARTINEZ: Well, that's a challenging
5 decision. You know, and -- by a good businessman, I would
6 say I got to take the deal now not knowing what's going to
7 happen --

8 ASSEMBLYMEMBER BUCHANAN: I'm not trying to put
9 pressure on you. I'm just trying to say --

10 MR. MARTINEZ: No, and I completely understand
11 that, but from a business standpoint, knowing that it could
12 possibly end up being a greater reduction, then --

13 CHAIRPERSON REYES: Okay. So the motion is that
14 we'll do a complete fund swap and 20 percent haircut and
15 it's -- the 20 percent haircut, you're in agreement with
16 that. So we're going to -- if the motion were to pass, it
17 will not go into litigation on our authority to do a
18 20 percent and -- authority for that. All right.

19 Call the roll, please.

20 Any public comment? Sorry. Any public comment?
21 Okay. Call -- Mr. Hagman.

22 ASSEMBLYMEMBER HAGMAN: Mr. Chair, just to
23 clarify. Is that on the entire project, 20 percent off? Is
24 that what that is? So they're get funded for both phase one
25 and phase two --

1 CHAIRPERSON REYES: It's a complete fund swap.
2 ASSEMBLYMEMBER BUCHANAN: Yeah. Right.
3 ASSEMBLYMEMBER HAGMAN: -- minus the 20.
4 CHAIRPERSON REYES: Okay. Call the roll, please.
5 MS. JONES: Okay. Senator Hancock.
6 SENATOR HANCOCK: Aye.
7 MS. JONES: Assemblymember Buchanan.
8 ASSEMBLYMEMBER BUCHANAN: Aye.
9 MS. JONES: Assemblymember Hagman.
10 ASSEMBLYMEMBER HAGMAN: Aye.
11 MS. JONES: Almanza.
12 MR. ALMANZA: Aye.
13 MS. JONES: Kathleen Moore.
14 Cesar Diaz.
15 MR. DIAZ: Aye.
16 MS. JONES: Pedro Reyes.
17 CHAIRPERSON REYES: Aye.
18 MS. JONES: Motion carries.
19 CHAIRPERSON REYES: Okay. Thank you.
20 MR. MARTINEZ: Thank you.
21 MS. MOORE: I'd like to register my vote as a no.
22 MS. JONES: Okay. Thank you.
23 CHAIRPERSON REYES: Sure. Thank you. Next item.
24 MR. MIRELES: I believe that brings us to Tab 13,
25 Mr. Chair, on page 205. This item is to report

1 **recommendations from the Rules and Procedures Subcommittee**
2 which met on August 15th, 2012.

3 The Subcommittee is recommending that the Board
4 make three changes to the rules and procedures.

5 The first is to move noncontroversial items from
6 action items to the consent.

7 The second one is to change the structure of
8 appeals, basically adding language to the appeal to state
9 that absent six positive votes to approve the appeal,
10 staff's administrative action stands.

11 And then lastly, that the SAB created working
12 groups that they also be webcast.

13 The conforming changes are included as part of
14 Attachment A and those are the recommendations from the
15 Subcommittee.

16 CHAIRPERSON REYES: Thank you. Senator Hancock,
17 you chair this Committee. Do you want to move the item or
18 do you want to make any statements?

19 SENATOR HANCOCK: Yes. I would move the items,
20 but I believe that Ms. Moore does have some second thoughts
21 and maybe some changes that she would like to suggest.

22 I could certainly move Items 1 and 3.

23 CHAIRPERSON REYES: Okay.

24 SENATOR HANCOCK: Why don't I start with that
25 motion.

1 CHAIRPERSON REYES: Okay.

2 SENATOR HANCOCK: And then we could back to No. 2
3 which is the six votes required to take any action on
4 appeal.

5 CHAIRPERSON REYES: Okay.

6 MS. MOORE: I'll second the motion.

7 MR. MIRELES: 205.

8 CHAIRPERSON REYES: 205 to 218.

9 ASSEMBLYMEMBER HAGMAN: So we're doing 1 and 3
10 right now.

11 SENATOR HANCOCK: 1 and 3. Get it off the books.

12 CHAIRPERSON REYES: Okay. It's been moved and
13 seconded. Any questions or comments? Any public comment on
14 either of those two?

15 Without objection, all say aye -- favor.

16 (Ayes)

17 CHAIRPERSON REYES: Opposed? Thanks. Ayes have
18 it. Onto Item 2.

19 SENATOR HANCOCK: Item 2 relates to the appeals
20 process and this has been a sticky wicket with this Board
21 for many, many years.

22 The Subcommittee thought about this at length and
23 recognizing that the general rules of the SAB require six
24 votes for the Board to take action, decided that we would
25 stick to that, that it would take six votes to overturn the

1 staff decision.

2 We subsequently received a letter from CASH
3 raising some issues that were actually fairly compelling,
4 among them what happens if there is a bare quorum of the
5 Board, and I thought those were interesting.

6 I believe that Ms. Moore's been doing a bunch of
7 thinking about them and I don't know if she has any
8 comment --

9 MS. MOORE: Sure. Thank you. I do have comment
10 and --

11 SENATOR HANCOCK: -- she would want to add.

12 MS. MOORE: While I did vote for this in the
13 Subcommittee, I have thought about it a lot subsequently and
14 I do know that at one time in this Board's history, I do
15 believe that we had -- that you took six votes either way.

16 You took it to approve an item or to disapprove an
17 item and I think that that keeps a lot -- I think it takes a
18 lot for a district to appeal an issue. They really have to
19 feel pretty strongly and they must -- and have a different
20 interpretation and to have -- to take it that way. It's a
21 lot -- a lot of work and it's a lot of cost.

22 And I just think that the six votes on -- or it
23 reverts back to the staff decision does not -- is not
24 compelling for the Board to be able to interpret their own
25 regulations at times.

1 And so perhaps in the interest of compromise, if
2 we did not come to a decision after three times -- I know
3 that we have right now in our rules and procedures that an
4 item can be withdrawn without penalty three times and then
5 it has to be heard.

6 But that it gives more opportunity to work out the
7 issue between the Board or gives the Board the opportunity
8 to interpret their own regulations. So I think that's six
9 vote piece is a little problematic on appeals or they revert
10 to the administrative decision.

11 CHAIRPERSON REYES: Mr. Hagman.

12 ASSEMBLYMEMBER HAGMAN: Thank you, Mr. Chair.

13 Well, we did sit on -- we had a lengthy discussion on this
14 in the Subcommittee. 99 percent of what we do in this
15 operation is done administratively. It's with those
16 exceptions that it cannot be agreed upon and the staff does
17 an excellent job at trying to work things out.

18 It's when there's not an interpretive way, there's
19 not something they could do on their own, that's when it
20 come for the appeals. But an action's already taken place
21 and I think that's where we had our major disagreement on.

22 An action's been taken place. Something has been
23 denied by staff. So an action has been taken place. So
24 therefore to overturn that action, they appeal. Just like
25 you would at appellate court. Okay.

1 At a local jurisdiction court, the judge already
2 makes the decision. If you appeal, it goes to appellate
3 court. If the appellate court does nothing, that issue
4 stands.

5 That's what we came up with the recommendation.
6 So I still support that and I still don't see a compelling
7 reason not to do that.

8 If you put things off and keep putting them off,
9 they're going to stack up and stack up and stack up and
10 everybody's going to come in with a different deal,
11 different deal, different deal.

12 We're assuming those parts have been done at the
13 staff level. We need to be as professional as possible to
14 keep moving forward. We have the ability even with six
15 staff on here, like we have today. We have seven. If we
16 don't agree upon something -- I was prepared to do this
17 earlier on the first appeal item -- just say put it off for
18 30 days till we get more bodies here because I didn't agree
19 with it. But since the school district did it, I
20 compromised as well.

21 We have the ability as an appropriate action item
22 to put something off with six votes if we don't agree to it.
23 If we basically don't get six votes or another compromise or
24 something like that, that's because we don't support it. We
25 did not think of a way to do it with the members we have

1 here.

2 We shouldn't keep bringing it up, bringing it up,
3 bringing it up. My opinion I think we should leave it the
4 way it is and if you'll entertain a motion, I'll motion
5 No. 2.

6 CHAIRPERSON REYES: So you're moving Item 2 then,
7 Mr. Hagman?

8 ASSEMBLYMEMBER HAGMAN: Yes.

9 CHAIRPERSON REYES: Okay. Is there a second to
10 Item 2?

11 MR. ALMANZA: I'll second.

12 CHAIRPERSON REYES: It's been seconded. Okay.

13 SENATOR HANCOCK: Mr. Reyes.

14 CHAIRPERSON REYES: Yes, Senator Hancock.

15 SENATOR HANCOCK: Okay. In the -- I'm going to
16 try a substitute motion because I am concerned about the
17 fact that we often don't have a full complement of members.
18 And especially like in this interim period where we have two
19 members running for Congress and another member who isn't
20 here.

21 So it makes it difficult to do that. I am
22 comfortable though with saying that you don't have to -- if
23 you don't get six votes, that the staff decision stands. I
24 think that's the way appeals are treated in local
25 government, at least my experience in local government.

1 So the substitute motion would be that if there's
2 not a full complement of Board members that rather than be
3 denied, an appeal would come back the next month. And that
4 would have to be worded a little more artfully, but you
5 understand what I'm trying to do.

6 If on the other hand we had a full complement
7 members and nobody chose to make a motion that could get six
8 votes, then I think it should revert to the staff decision
9 at that time.

10 CHAIRPERSON REYES: I don't think we've had a
11 complement full Board since March or February.

12 Ms. Buchanan.

13 ASSEMBLYMEMBER BUCHANAN: Yeah. This is -- I
14 agree with both of you. I mean if staff's made a decision
15 and they appeal to us because they want us to overturn the
16 decision, so I agree with the motion and the second.

17 But this is my issue. All you guys, you know,
18 Lyle, all of you, come and see us before on these appeals.

19 CHAIRPERSON REYES: Ms. Buchanan, just for record,
20 which motion and second are you agreeing with because
21 Mr. Hagman --

22 ASSEMBLYMEMBER BUCHANAN: Hagman and --

23 CHAIRPERSON REYES: Okay.

24 ASSEMBLYMEMBER BUCHANAN: And -- but you come to
25 us and you talk to us and we have all kinds of

1 correspondence and you talk to staff, so you have a pretty
2 good idea of where members are, questions they may have
3 before you come here.

4 The regulations that we have adopted allow you to
5 pull an agenda item up until, you know, a minute before the
6 item is heard. So, you know, in terms of having a
7 complement, I think -- I mean we're -- and then being able
8 to automatically have it come back, we rarely are going to
9 have the full complement of members, but you have -- you can
10 pull it three times up until the minutes it's heard.

11 So I think it's already really addressed in many
12 respects in terms of, you know, being able to say look, you
13 know, I know we've got these five and these two aren't here
14 or whatever and we'd like -- all they have to do is notify
15 staff that we'd like to have it come back at the next
16 meeting.

17 So I think that's working that way. That's what I
18 would suggest.

19 SENATOR HANCOCK: Well, that's a good point.

20 ASSEMBLYMEMBER HAGMAN: Can I make one more
21 comment too, Mr. Chair?

22 CHAIRPERSON REYES: Go ahead.

23 ASSEMBLYMEMBER HAGMAN: The reason why we have a
24 Subcommittee and we voted out and we have public comment is
25 to have these debates and discussions in that Subcommittee.

1 CHAIRPERSON REYES: At that level; correct.

2 ASSEMBLYMEMBER HAGMAN: I'm surprised that the
3 people that were on the Committee who voted out are the ones
4 who bring up the indecision on the decision they made in the
5 Subcommittee hearing all the evidence. I mean it just --

6 SENATOR HANCOCK: That's called not having the
7 bugaboo of little minds, Mr. Hagman. In fact, we --

8 ASSEMBLYMEMBER HAGMAN: I think we should be
9 consistent and if that's logical then, it should be here
10 too.

11 CHAIRPERSON REYES: Lyle.

12 MR. SMOOT: Well, I guess I better start out then
13 apologizing for not coming to the Subcommittee. I had some
14 personal issues that took place, so my comments should have
15 been at the Subcommittee, but I didn't make it, so I'm going
16 to have to say them here.

17 I think this conversation is contrary to the rules
18 of this Board. This Board has rules and procedures. Part
19 of those rules and procedures is that if your specific rules
20 and procedures aren't -- don't address a particular issue,
21 then you fall back to Mason's. And Mason's I believe is
22 very clear. Every action requires a vote.

23 And this Board has six members -- a requirement to
24 have six members. You're taking an action when you deny a
25 district's request and I think that's an extremely important

1 situation that you need to -- in following Mason's, and the
2 requirement of Mason's, you have to have a vote. Mason's
3 also says, by the way, you can't have one vote that has --
4 by failing that has the effect of being the opposite --
5 taking the opposite action.

6 So if you have a vote to approve a district's
7 request, it is contrary to Mason's I believe to say that
8 that means that something is denied as a result.

9 And I think you're missing an opportunity in this
10 item by saying if you don't have six votes to approve, it's
11 automatically denied. First of all, I don't think Mason's
12 follows that.

13 But the second part of it is you just had a big
14 conversation about Sanger. If you had a motion to approve
15 the district's request and it failed, you would never have
16 gotten to the 20 percent.

17 You as a Board need to know where everybody is
18 before you take these actions and districts need to know
19 these things.

20 So I have a real concern that this action does not
21 follow Mason's and Mason's is, you know, been around for a
22 million years.

23 This Board for as long as I remember required six
24 votes one way or the other. Okay. That changed sometime in
25 the last number of years. I don't know when. But this

1 Board always required six votes to an action, positive or
2 negative action, and I think it's a concern that you're
3 going to now have this in your rules and procedures that
4 establishes a situation where -- I'm going to do something
5 wild here. Okay. I don't mean this as a -- anything
6 against staff.

7 But if staff were to come up with something that
8 was totally contrary to the laws and regulations, for
9 whatever the reason, you by not voting have said that's a
10 reasonable interpretation of your laws and regulations and I
11 think that in itself alone ought to preclude this and you
12 ought to go back to requiring six votes to take any action.
13 Thank you.

14 CHAIRPERSON REYES: Thank you. Ms. Hancock.

15 SENATOR HANCOCK: I just -- I'm actually being
16 persuaded by Ms. Buchanan's argument which is that as long
17 as we do allow ex parte communication and we certainly get a
18 lot of it --

19 CHAIRPERSON REYES: You do.

20 SENATOR HANCOCK: -- that, for instance, Mr. Diaz
21 was able to come in today with a compromise that he thought
22 he could put on the table and move the agenda forward, that
23 districts will be doing that and I'm now assuming that some
24 of the pulled appeals are because that kind of agreement
25 wasn't reached and so we don't have to talk about it until

1 and unless it's possible to see if an agreement is reached
2 in some way; at which point, if we have the six votes, we
3 approve the appeal and if we don't, the staff measure would
4 stand.

5 And that might be adequate. I was concerned about
6 moving forward with no majority in any direction because we
7 didn't have members here.

8 CHAIRPERSON REYES: Mr. Duffy.

9 MR. DUFFY: Thank you, Mr. Chairman and members.
10 Tom Duffy for CASH. Thank you for recognizing a letter,
11 Senator, and I won't belabor what's in the letter.

12 We've made I think a lot of progress over the last
13 year and a half on appeals and I think that's very, very
14 positive.

15 The one comment I would make is that we're
16 embarking upon a new time with action you took last month on
17 the unfunded approvals and how you'll handle those. I don't
18 know all that we're going to face in the future, but I think
19 there'll still be some bumpy road ahead.

20 And I would just admonish that having OPSC staff
21 and school district and county office staff together
22 working, recognizing that they each have to make a
23 compelling argument to the Board makes sense.

24 And you would probably I think be able to go
25 forward into this unknown with a communication both to

1 districts and your staff that you need to solve things
2 before they come here and that's where we admonish in our
3 letter that the six up or six down. Thank you very much.

4 SENATOR HANCOCK: Mr. Reyes.

5 CHAIRPERSON REYES: Senator Hancock.

6 SENATOR HANCOCK: My actual experience of this is
7 that it isn't the staff and the school district. It's us
8 and the school district because people come to our offices
9 with various kinds of evidence.

10 We may call the staff and ask for clarification
11 and one thing and another, but it isn't the kind of double
12 jeopardy if they told us no and now we have to get them to
13 agree with us again. It seems -- so --

14 CHAIRPERSON REYES: Staff does a lot of work
15 behind the scenes in trying to get to the facts and
16 understanding what can be done.

17 Yes, Ms. Ferrara.

18 MS. FERRERA: Anna Ferrera. I'm with the County
19 School Facilities Consortium. I would only say that we
20 agree with the comments that have been made earlier.

21 It is a rules and procedures, the ex parte, and
22 the other issues that come up I think -- I think it comes
23 down to that question of, you know, if you don't make a
24 decision, will another decision be made and we agree with
25 the comments made by Mr. Smoot. Thank you.

1 CHAIRPERSON REYES: Thank you. Okay. So
2 Mr. Hagman.

3 ASSEMBLYMEMBER HAGMAN: I just want to -- just a
4 couple counters to that.

5 The Mason's manual goes into play where we don't
6 have rules. This is what we're voting on, the rules of this
7 Board.

8 And to say that a process is not taking place
9 before it came up here and that the staff has to prove their
10 process, I mean generally these are things that we're trying
11 to do on behalf of the districts because they weren't
12 following the rules to the letter of the law to begin with.

13 There hasn't been one up here in front of me so
14 far in two years that fit every box and we messed up. It's
15 been the other way around.

16 So my understanding is, you know, these are
17 exceptions and we do have a very good debate and we have a
18 compromising Board. And if for some reason we got, you
19 know, stuck for those things we needed clarified, we always
20 do put it off, just like the district has a right to pull it
21 off.

22 But there's going to be some times where we want
23 to say no, but we don't basically have the exact wordage for
24 no, but we say the motion fails just like you do on every
25 local jurisdiction -- that I've ever served one. County and

1 city council, courts, I mean you name it, everyone is the
2 same way.

3 You make a presentation, you get denied, you go
4 the appellate board. That's what we are. If they take up
5 the case, they want to hear it, they could rule in your
6 favor. If they decide not to take it up or say no, it's a
7 no.

8 And to go through the burden of evidence each
9 time -- because we do check our appeals first. We do meet
10 with everyone first. If they ask -- we meet with them and
11 we should have it in the case beforehand and I think that's
12 pretty -- you know, the ability to drop it off three
13 meetings to keep working with staff, to see if they come
14 up -- work with the Board members, one or two, to see what
15 they come up with -- they have discussions for us to put it
16 off via a simple majority motion. That should be enough.

17 Not to have this where we say no, they go well, I
18 want to work at it again, and they'll come back for a second
19 bite of the apple. We say no again, they'll come back and
20 negotiate for another month or two and if you put that
21 literally, you could have a hearing here. We don't get six
22 votes to say no, they come back, schedule for next month,
23 and they put it off for a month and a month and a month.

24 They come back that third month because they could
25 and they have another hearing from us. We don't get to

1 consensus. They go back to a month and a month. You put
2 all those things together, you could drag this thing on for
3 a year.

4 That's not the purpose of this. So I still agree
5 on the first motion.

6 CHAIRPERSON REYES: Okay. So we have additional
7 comment.

8 MS. SULLIVAN: Hi, Andrea Sullivan with Orange
9 County Department of Education. I also represent 27 school
10 districts in Orange County as well as county offices through
11 the facilities subcommittee with county offices,
12 superintendents of California.

13 And I really appreciate the dialogue and the
14 conversation and I think one of the things that we've been
15 challenged with when appeals are coming forward is that the
16 manner in which they're presented and/or described were not
17 necessarily in agreement with staff on their interpretation.

18 And so we are coming to the Board to relay, you
19 know, our side of the story. And there might have been a
20 previous decision made that you're -- that's now being
21 questioned. And so I think it -- you know, you're not given
22 a fair shot really. It's very difficult to count your votes
23 ahead of time.

24 Other conversations happen right before the
25 meeting. It's not a matter of us wanting to come back and

1 belabor the issue and have the discussion go on, but I just
2 don't think that there's necessarily an objective
3 presentation of the information and then we're already up
4 against a no that we don't agree with necessarily the facts
5 and how they're presented or being interpreted.

6 And it would be -- I think just very -- it's just
7 a disadvantage I think coming up to the Board with -- going
8 against the staff without having to have both sides have a
9 fair shot is really how I see it.

10 ASSEMBLYMEMBER BUCHANAN: My experience on this
11 Board is that we -- I don't want to say overrule staff, but
12 I'd say nine out of ten times, we -- staff is following the
13 strict letter of the law because that's their job and it's
14 our job to say no, we think an exception should be made.

15 In my experiences, just like with the Sanger
16 situation, if all of us were following the strict letter of
17 the law, it was submitted as one project. There wasn't an
18 LCP in place for the entire project. Technically it didn't
19 qualify, but my experience is, is that districts do do a
20 good job of representing themselves.

21 They come in to our offices. You've been in my
22 office. Staff doesn't lobby us not to approve it. They
23 answer the facts and any additional information, they get it
24 to us as quickly as they can.

25 But my experience is that nine out of ten times we

1 are finding a way to help the district. So I find it hard
2 to believe that, you know, the district is really that --
3 you know, the staff is really that biased in terms of what
4 they're presenting. It's just not -- it's not consistent
5 with the experience I have.

6 CHAIRPERSON REYES: Thank you. Okay. We have --
7 any additional comments? It has been moved and seconded.
8 Call the roll.

9 SENATOR HANCOCK: What has been moved and
10 seconded?

11 CHAIRPERSON REYES: The motion to Item 2 -- Item 2
12 on your recommendation as --

13 SENATOR HANCOCK: Okay. As written because I made
14 a substitute motion, but it didn't get a second.

15 CHAIRPERSON REYES: Right.

16 SENATOR HANCOCK: Okay. Got it.

17 CHAIRPERSON REYES: We got a substitute motion.

18 SENATOR HANCOCK: Yeah, but it didn't get a
19 second. That's why I didn't l--

20 CHAIRPERSON REYES: No. Kathleen second that one.

21 MS. MOORE: What --

22 CHAIRPERSON REYES: Didn't you -- no. Okay.

23 ASSEMBLYMEMBER BUCHANAN: No, no, no. It was --
24 no. We just discussed it.

25 ASSEMBLYMEMBER HAGMAN: It was discussed --

1 MR. DIAZ: It was discussed.

2 CHAIRPERSON REYES: It was discussed. Okay. So
3 we have a motion to take -- to recommendation 2 to approve
4 as proposed by the Committee.

5 SENATOR HANCOCK: Okay. Proposal No. 1.

6 CHAIRPERSON REYES: Recommendation 2.

7 ASSEMBLYMEMBER HAGMAN: Yeah, Item No. 2.

8 SENATOR HANCOCK: Right. But this is the main
9 motion because the substitute motion did not get a second;
10 correct?

11 ASSEMBLYMEMBER BUCHANAN: Right.

12 ASSEMBLYMEMBER HAGMAN: That's correct.

13 CHAIRPERSON REYES: Yes. Okay.

14 SENATOR HANCOCK: Thank you. I'm just trying to
15 be --

16 CHAIRPERSON REYES: So it goes with what is
17 written -- what the Committee came out with, just to be
18 clear, the recommendation by the Committee.

19 MS. JONES: Hancock.

20 SENATOR HANCOCK: Aye.

21 MS. JONES: Buchanan.

22 ASSEMBLYMEMBER BUCHANAN: Aye.

23 MS. JONES: Hagman.

24 ASSEMBLYMEMBER HAGMAN: Aye.

25 MS. JONES: Almanza.

1 MR. ALMANZA: Aye.

2 MS. JONES: Moore.

3 Diaz.

4 MR. DIAZ: Aye.

5 MS. JONES: Reyes.

6 CHAIRPERSON REYES: Aye.

7 MS. JONES: Motion carries.

8 CHAIRPERSON REYES: Okay. So Tab 4 was part of
9 the Consent. Tab 16.

10 MR. WATANABE: Michael Watanabe with the OPSC. We
11 are on page -- Tab 16, page 232. Just as a reminder, this
12 item is to present **proposed regulations for establishing a**
13 **method for accepting and tracking SFP projects once bond**
14 **authority has been exhausted.**

15 At last month's Board, the Board directed staff to
16 draft regulations to establish a new method beyond what's
17 currently in regulations for what's happening in funding
18 applications.

19 So in Attachments A and B, staff has presented
20 proposed regulations and Mr. O'Dell will walk you through
21 those.

22 MR. O'DELL: Hello. Bryan O'Dell, Office of
23 Public School Construction. The proposed regs would sunset
24 the current regulation that requires the OPSC to process
25 applications received once bond authority is exhausted and

1 to fully process them to the Board for approval to be placed
2 on an unfunded list.

3 Instead the proposed regulations for applications
4 received after the reg goes effect, or new construction and
5 modernization applications, the OPSC would accept the app
6 after it verifies that it has the minimum docs necessary,
7 DSA, CDE approval, those basic things.

8 And then instead of fully processing them just
9 place the applications on an applications received beyond
10 bond authority list.

11 This list would be presented as part of the Board
12 agenda and the Board would acknowledge the list, but the
13 project wouldn't be fully approved.

14 For districts that are requesting financial
15 hardship funds, in order to make it easier, the regulations
16 would suspend the requirement that that financial hardship
17 approval already have occurred prior to submitting the
18 funding application.

19 So that's the current process. What this would do
20 is allow districts who were requesting the financial
21 hardship funds to submit the application right away and that
22 financial hardship review would only occur if sufficient
23 bond authority becomes available for that project. So this
24 would actually make it easier for those districts.

25 The regulations would also require districts to

1 submit a school board resolution along with the funding
2 application stating that it recognizes that there is no bond
3 authority for the project, that there's no guarantee of
4 State funds, that a future State bond measure may not
5 grandfather those projects in, and that future bond measures
6 may have different criteria, and so this application may not
7 qualify depending on what the criteria is.

8 And if the district is asking for financial
9 hardship funds, the resolution would also state that the
10 district recognizes that it would have to qualify for the
11 financial hardship after bond authority becomes available if
12 ever in the future.

13 And finally the regs would have the OPSC also
14 accept but not process eligibility applications and it would
15 also allow districts to still be able to levy Level 2 fees.

16 CHAIRPERSON REYES: Ms. Moore.

17 MS. MOORE: So in our -- in this proposed
18 regulation, then we -- the office won't processing
19 eligibility, Lisa, so it's -- you could file an application
20 with -- and no one's looking at eligibility. Is that how --

21 MS. SILVERMAN: That's correct.

22 MR. MIRELES: Correct.

23 MS. MOORE: So we're -- so it could come to a
24 point where a district might not have eligibility that has a
25 filed application. I mean the rules can all change in that

1 respect, but that's one component that we will cease doing
2 is that eligibility determination?

3 MS. SILVERMAN: That's --

4 MR. MIRELES: That's correct.

5 MS. MOORE: And can you talk a little bit about
6 the thought process around that.

7 MR. MIRELES: The current eligibility guidelines
8 could change no different than the funding program could
9 change. So we were trying to be consistent with the Board's
10 action to not process applications, not just for funding but
11 also eligibility because they're based on current statutory
12 and regulatory requirements.

13 So going further and reviewing and processing and
14 approving applications for eligibility based on the current
15 rules could be subject to change later.

16 SENATOR HANCOCK: That implies going over the
17 application and saying yes, it needs the current rules and
18 that is of concern to me because I can only imagine the
19 appeals we're then going to have should we decide to change
20 the rules in a subsequent bond issue.

21 So I would be comfortable with some logging in of
22 what districts want to do because it would give us an
23 indication of need, but not that we're going through and
24 saying you're approved according to the existing regs --

25 CHAIRPERSON REYES: No -- no, no, no.

1 SENATOR HANCOCK: -- but you know they may change.

2 CHAIRPERSON REYES: They're not being approved by
3 existing regs.

4 MR. MIRELES: No, Senator. They're not being
5 approved. The terminology is just consistent with what we
6 had before in the regulations, but really what we're going
7 to do is no different than we do now which is going through
8 an intake review process but making sure that the
9 applications have major components to apply and that's it.

10 SENATOR HANCOCK: What would that be? What would
11 the major components?

12 MR. MIRELES: For example, for funding
13 applications, there's a requirement that the application has
14 to have plans approved by the Department of Education, the
15 Division of State Architect. Those kind of things would be
16 checked at the submittal stage and to make sure that they
17 have them.

18 Once they do, then they will be placed on this
19 acknowledge list for the Board to recognize that these are
20 applications that have been submitted, have not been
21 reviewed or processed by staff, but they're on an
22 informational list.

23 SENATOR HANCOCK: Okay. My question then is by
24 what criteria do these other agencies that review them
25 approve them or check them off or say they're okay.

1 MR. MIRELES: They have their own set of statutory
2 and regulatory guidelines on how to review their plans.
3 They're not part of the Green Act -- the School Facilities
4 Program.

5 ASSEMBLYMEMBER BUCHANAN: I didn't get an answer
6 to that. So I want to build a school or I want to build a
7 new classroom, like we were acquiring land across the
8 street. The Department of Ed has to come out and say yes,
9 this is appropriate for a school, you can build on it and I
10 have to go to DSA for them to say yes, you know, your plans
11 have passed structural, fire, life, safety, and ADA, you
12 know, all three of those requirements --

13 SENATOR HANCOCK: So those are existing --

14 ASSEMBLYMEMBER BUCHANAN: That's right -- to be
15 able to build.

16 Now whether I'm building with State funds or
17 without State funds, I have to have those approvals and that
18 has to be done before I can go to OPSC to request funds.

19 So those are the -- so, you know, you can't go to
20 OPSC and get a project in when it's in the idea phase. It
21 has to be where you have CDE and DSA approval.

22 So you're -- I think you're talking about that
23 level without saying -- agreeing to what program it would be
24 in or, you know, what the actual eligibility would be.

25 SENATOR HANCOCK: Okay. So let me just get it a

1 little further clarification. That means that even if a
2 district were to use all its own money, it would need to go
3 to the Office of Public School Construction for approvals
4 and also to --

5 ASSEMBLYMEMBER BUCHANAN: No.

6 SENATOR HANCOCK: No.

7 MS. MOORE: Not necessarily. What -- I'll speak
8 for CDE.

9 SENATOR HANCOCK: Yes.

10 MS. MOORE: If it is 100 percent district funded,
11 never to come and get another State dollar, they do not have
12 to submit to the Department of Education their project;
13 however, they have to have followed the regulatory structure
14 and if there is a complaint, we would investigate.

15 On -- for the Division of State Architect, no
16 matter what your funding source is, you must have an
17 approval from them.

18 SENATOR HANCOCK: Okay. And CDE would approve or
19 disapprove like you're building on an earthquake fault, I'm
20 sorry?

21 MS. MOORE: Again unless the district is going to
22 secure State funding, they are not required to have site or
23 plan -- correct me if I'm wrong, Fred -- site or plan
24 approval from our division.

25 SENATOR HANCOCK: At all.

1 MS. MOORE: The law states that you must have
2 followed the regulations and have it in your file, but you
3 don't have --

4 MR. SAVIDGE: DSA would cover the seismic
5 approvals or anything related to the Field Act, design
6 parameters under their regulatory structure.

7 SENATOR HANCOCK: Okay.

8 MS. MOORE: Most districts will come through the
9 Department of Education because there might be a -- you
10 know, that they're going to go after State funds at some
11 point in their process. So they're going to want that
12 approval.

13 CHAIRPERSON REYES: And then that will go through
14 LCP too just in case.

15 SENATOR HANCOCK: Right. And they might even
16 build high-performing schools just in case of seismic -- and
17 safe schools just in case, yeah.

18 MR. DIAZ: Compliance monitoring unit.

19 SENATOR HANCOCK: Okay. Because I'm comfortable
20 with that which means essentially we're keeping a list of
21 projects that districts want to do that meet other State
22 requirements.

23 ASSEMBLYMEMBER BUCHANAN: Right. In other words,
24 if there were a program in place, we could then process
25 them, but since there's no program, we're not going to

1 process them, but they have met all the requirements up to
2 that point to be processed.

3 SENATOR HANCOCK: The requirements that in law.
4 So that if --

5 ASSEMBLYMEMBER BUCHANAN: The requirements that
6 are in law.

7 SENATOR HANCOCK: -- if additional seismic --

8 ASSEMBLYMEMBER BUCHANAN: Right.

9 SENATOR HANCOCK: -- or project labor agreements
10 or seismic --

11 ASSEMBLYMEMBER BUCHANAN: Right.

12 SENATOR HANCOCK: -- requirements, green
13 requirements were in there, they would either have to
14 upgrade their application or they'd be told that their
15 application didn't work.

16 ASSEMBLYMEMBER BUCHANAN: Yep.

17 SENATOR HANCOCK: Okay. Thank you. That's what I
18 just wanted to clarify was -- and I would honestly like
19 to -- in addition to the regs which often are worded in a
20 rather complicated and formalistic way, if there is a letter
21 that's going out to districts that actually says to them
22 this is what we're doing --

23 MR. MIRELES: We do plan on doing -- providing
24 extensive outreach to school districts to explain --

25 SENATOR HANCOCK: Would you bring that to the

1 Board, Juan?

2 MR. MIRELES: Sure.

3 SENATOR HANCOCK: Okay. Because I've always, you
4 know, been concerned about how we communicate in a way that
5 your average very busy school principal can get right away
6 so that we're not getting people --

7 MR. MIRELES: We can surely do that, Senator.

8 SENATOR HANCOCK: Yeah -- confused. Thanks.

9 CHAIRPERSON REYES: Any additional comments from
10 Board members?

11 MR. ALMANZA: So I move to approve staff
12 recommendation.

13 MS. MOORE: I'll second.

14 CHAIRPERSON REYES: Moved and second. Comments?

15 MR. SMOOT: Well, hello again. I had previously
16 stated my concerns regarding this regulation and how it
17 relates to the law, so I won't reiterate that, but there are
18 two questions I have.

19 One is under the Administrative Procedures Act, if
20 you're going to adopt an emergency regulation, you have to
21 state the need for that emergency regulation and I don't see
22 that in the write-up. And so if it is there, I wish staff
23 could point it out to me.

24 And the second thing is, again according to the
25 Administrative Procedures Act, if you're going to create a

1 regulation, that regulation has to relate back to a specific
2 law code section and I don't see a code section that's being
3 stated here that you're creating this regulation to further
4 clarify. And I was wondering if you can have staff address
5 those two issues.

6 MR. MIRELES: We have three that we've cited. I
7 believe it's on the bottom of page 237. One is 17072.20.
8 Another one is 17070.35 and the last one is 17070.40.

9 MR. SMOOT: Okay. That answers one question. How
10 about the statement of need for emergency; is it in there?

11 CHAIRPERSON REYES: I think the OAL will raise
12 that issue as well, Lyle. So this public comments not
13 dialogue time.

14 MR. SMOOT: Okay. So there is no statement of
15 emergency need in here. Is that what you're saying?

16 CHAIRPERSON REYES: No. What I'm saying is
17 through the regulatory process, we'll need to address that
18 issue with OAL.

19 MR. SMOOT: Well, I understand that, but OAL's
20 going to ask you where you, you know, stated it.

21 CHAIRPERSON REYES: Well -- okay.

22 MR. SMOOT: That's all right.

23 CHAIRPERSON REYES: Thank you. Thank you.

24 MR. SMOOT: Thanks.

25 CHAIRPERSON REYES: Next public comment. Senator

1 Hancock.

2 SENATOR HANCOCK: If I could just now -- I would
3 like to go back to that too because that did sort of seem
4 jarring to me.

5 These are emergency regulations. We haven't even
6 spent the existing bond money yet. Aren't they interim
7 regulations of which -- or some other kind of thing.

8 CHAIRPERSON REYES: Emergency regulations are
9 generally interim regulations, just need to go back and
10 regulations; right?

11 MS. SILVERMAN: Right.

12 ASSEMBLYMEMBER BUCHANAN: Well, if we could have
13 Counsel take a look at them to make sure that what we're
14 doing is -- meets the test --

15 CHAIRPERSON REYES: Complies with law.

16 ASSEMBLYMEMBER BUCHANAN: -- and it complies, that
17 would be great.

18 MS. STEWART: All right. Susan Stewart. My first
19 comment is on behalf of Fresno Unified School District.
20 They submit multiple applications on many, many projects and
21 their concern is with submitting a board resolution for each
22 project and there was -- they were hoping that we'd come up
23 with some kind of blanket board resolution that would cover
24 all of their projects so they don't have to have a separate
25 board resolution passed for each project.

1 It's quite cumbersome for a district that is large
2 and has a lot of projects going through --

3 And the other -- just two more comments on behalf
4 of multiple school districts that I represent.

5 We're concerned obviously about not --

6 CHAIRPERSON REYES: Go ahead. Ms. Moore has a
7 question.

8 MS. MOORE: Can I just say something about that.
9 Can't a district put all their projects into one agenda item
10 for -- one resolution for their board and have it covered
11 for all --

12 CHAIRPERSON REYES: If they know all their
13 projects, yes.

14 MS. MOORE: Put all their projects into it --

15 MS. SILVERMAN: Yeah, we could definitely --
16 that's exactly right.

17 MS. STEWART: Okay. We just wanted to clarify
18 that.

19 MS. SILVERMAN: And modify it if you need to in
20 the future.

21 MS. MOORE: You can do that.

22 CHAIRPERSON REYES: Yeah. Yeah.

23 MS. STEWART: Okay. Thank you. And just two
24 other comments from other school districts I represent.

25 One is the concern obviously with not processing

1 applications is the backlog it's going to create once a bond
2 is passed and you're going to have -- it's going to delay
3 projects and money getting out and money hitting the streets
4 if the OPSC has to go through and start from scratch,
5 including eligibility for these projects.

6 We think that's a major problem and we really
7 believe this system has worked in the past and when the
8 State has run out of bonds funds in the past, it has really
9 worked when districts have been able to choose between which
10 program they get funded.

11 And they've decided it's worked and we'd love to
12 see that continue as it has in the past.

13 CHAIRPERSON REYES: Thank you.

14 MS. ALLEN: Well, good afternoon, Chairman Reyes,
15 members of the Board. My name is Cathy Allen and I'm the
16 Senior Director of Facilities and Planning of the San Juan
17 Unified School District and I currently serve as Chair of
18 CASH.

19 Thank you for allowing me the opportunity to share
20 my thoughts on the item before you. Normally when I speak
21 to you, I put my best PC foot forward. This afternoon,
22 however, I am speaking from my heart which might come across
23 as a tad more emotional than I would prefer.

24 Well, I respect the gravity of all the issues that
25 you face, I find myself deeply troubled with the item before

1 you and the action you may take. This item if acted upon as
2 written essentially suspends the State's obligations for the
3 foreseeable future while not allowing the districts the same
4 consideration.

5 I am still required to design and build facilities
6 that meet today's standards, most of which are mandated by
7 some department or another that may or may not be funded in
8 the future or even may be required in the future.

9 This proposed regulation will change the way you
10 do business with districts throughout California. While the
11 State Allocation Board suspends all the State obligations,
12 all the demands on the district remain in place.

13 So due to budget considerations, every day I have
14 to make decisions to eliminate elements in a project that
15 are designed to enhance the educational program just to
16 satisfy all the mandates that have been imposed on districts
17 over the years, while you are preparing to suspend the State
18 of its obligations and expectations of the voters.

19 44 school districts have bonds on the ballot this
20 November, including me, and assuming most of them pass, all
21 bond proceeds used to design projects in the near future
22 will have to be spent to meet the current State program
23 which may be very different as we've all acknowledged than
24 what the program will look like tomorrow.

25 I feel like I don't get a choice or a chance to

1 design and build something that actually meets the
2 educational needs of my district.

3 I also understand that any proposed changes in the
4 regulations will be pushed through using emergency
5 regulations without giving practitioners an opportunity to
6 work with the staff on how to implement these drastic
7 changes.

8 The stability of this program has always
9 benefitted the economy by encouraging districts to put jobs
10 on the street. The action that may be taken today could put
11 a serious dent in the good work that local districts are
12 doing to generate jobs in our local economies.

13 As CASH chair, I find myself in the unique
14 position of wanting to encourage districts to continue to
15 submit projects, to put work on the street, and help
16 demonstrate the huge need for modernizing and building
17 school facilities to justify the next school bond.

18 However, at the same time, I have to urge caution
19 to these same districts as they move ahead due to the
20 complete unknown of a future program.

21 Thank you for listening. I appreciate your time.

22 CHAIRPERSON REYES: Thank you. Mr. Hagman.

23 ASSEMBLYMEMBER HAGMAN: Thank you. Just to
24 respond to that. I mean we've pretty much stated where
25 we're at.

1 On one hand, I hear everyone saying we want the
2 same program, we want you to guarantee another \$10 million
3 of fund coming up and we want to keep going without stop and
4 then when you finally get the money, we want to get repaid.

5 We can't guarantee you that. So I can't guarantee
6 you that, so therefore you can't assure your district and
7 that's the whole point of this and that's why we want the
8 resolution.

9 By the urging of CASH and your representatives,
10 we're making this list. Okay. My preference a couple
11 months or a couple meetings ago was not to have a list. You
12 know, we're running out of money. The Legislature put it
13 off. We have a commitment to go in 2014. We don't know
14 what the program is going to look like and the more pressure
15 we get, the more lists that we have of people saying we want
16 this program that you already had back from 2010, 2008,
17 whenever the bonds came out, the more hard pressure's going
18 to be for us to say okay, let's keep the same program.

19 It has worked better than anything else in the
20 past, but I think there's a lot of improvement to come to it
21 before -- you know, I want to put my, you know, support
22 behind a new bond.

23 And that's my concern, exactly what you stated.
24 But is this better -- I'm going to ask your opinion now --
25 to have this list than nothing at all at this point.

1 MS. ALLEN: I believe that with the uncertainty
2 that surrounds all the potential changes down the road, all
3 those boxes -- it's been -- the whole topic this afternoon
4 has been about checking this box or that box and meeting
5 this requirement or that requirement and no -- possibly no
6 grandfathering just creates the huge uncertainty as we move
7 forward in trying to meet the needs of our local districts.

8 So I mean the process certainly has worked in the
9 past. We look for to the opportunity to be creating a new
10 program that meets the needs of everyone. You know, it's
11 been a long time, so it's probably a good time to do that,
12 but with all the layers that are being asked of districts
13 right now, not only of the mandates when we're out there
14 designing stuff, but to certify to all these things that I
15 may not have to comply with three years from now but I'm
16 going to pay for ahead time, I -- I just -- I
17 (indiscernible).

18 SENATOR HANCOCK: Okay.

19 ASSEMBLYMEMBER HAGMAN: And that was my point
20 earlier, Mr. Chair. So I don't know.

21 CHAIRPERSON REYES: Yeah. Ms. Buchanan.

22 ASSEMBLYMEMBER BUCHANAN: So when you say -- I
23 mean when we design schools, we design them to State
24 building standards; right? So whether there's a program or
25 not, they're still going to be in place. The program isn't

1 going to change what's required structurally of buildings.
2 It's not going to require -- it's not going to change the
3 ADA requirements. It's not going to change the
4 fire/life/safety requirements; right?

5 MS. ALLEN: Correct.

6 ASSEMBLYMEMBER BUCHANAN: I mean if the voters
7 never pass another bond, all that's going to be in place and
8 aren't we designing to those standards that you have to
9 design to regardless of whether or not there's a program?

10 MS. ALLEN: If those were the only standards that
11 I had to design to, then I wouldn't have an issue.

12 ASSEMBLYMEMBER BUCHANAN: Right.

13 MS. ALLEN: But what I have issues with now would
14 be, for example, LCPs. That doesn't add to my educational
15 program, and yet it costs me money. A Green Code that is
16 going to be talked about here before too terribly long is
17 going to add cost to my project but not necessarily benefit
18 my program.

19 Yes, we want to be green. We all want to be
20 energy efficient, et cetera, but it doesn't add to my
21 program, but it takes away from the ability --

22 ASSEMBLYMEMBER BUCHANAN: But you're assuming that
23 there's going to be a mandate. If -- there may be --

24 ASSEMBLYMEMBER HAGMAN: There is right now.

25 ASSEMBLYMEMBER BUCHANAN: Right. I mean if there

1 is, if -- it's part of what DSA is now, but if there is an
2 incentive for it later, then you may get funded for it or
3 you may not get funded for it, and when you talk about
4 suspending the State's obligation, the State's obligation is
5 being suspended because we're out of money, you know.

6 And that's not something any of us like. I know
7 many of you were frustrated when you came to us before and
8 kept trying to push to get a bond on the ballot this year
9 and we kept saying we're not going to have a bond on the
10 ballot this year.

11 I mean the economy has forced certain changes, but
12 the reality is, is we are out of money. You know, do I
13 believe we're going to have a program? Yes. Do I think
14 it's going to be -- change dramatically? No. We know we
15 still need to modernize buildings. We know we still need
16 new construction, but we feel like this is a point in time
17 where we can take a timeout and take a look and hopefully on
18 some these streamline them and make them easier for
19 districts.

20 But for us to go out and promise something with
21 the district making financial decisions on that promise, we
22 don't know if the entire Board or the Legislature's going to
23 agree with us. I'm not sure that's fair for districts
24 either.

25 CHAIRPERSON REYES: Senator Hancock.

1 SENATOR HANCOCK: I would only add the State
2 Treasurer may tell us we can't do any more bonds because
3 California's bonding authority and our ability to pay the
4 interest has run out.

5 So I would really urge districts to look at
6 whether or not the State is going to be able to stabilize
7 its expenditures, whether we're going to be able to pull out
8 of this recession because I'm uncomfortable frankly with the
9 idea of an unfunded list at all if it's going to be seen as
10 just something else where the State is making demands on us.

11 Really, in the old days, school districts used to
12 pay for it all themselves and -- so I think that really you
13 better -- you should be careful before one assumes it is an
14 absolute given that there will ever be another school bond
15 and that in fact --

16 Districts obviously would love to have no
17 qualifications at all, just give us the money, divvy it up.
18 And some districts come and say and we can't pass a school
19 bond, so give us a hundred percent funding.

20 You know, but we need to look together at how to
21 get an adequate financial -- stable financial base for the
22 State of California I think.

23 ASSEMBLYMEMBER HAGMAN: Mr. Chair.

24 CHAIRPERSON REYES: Mr. Hagman.

25 ASSEMBLYMEMBER HAGMAN: I was just -- one more

1 last comment. I know we've got more and I apologize.

2 I'd like to setup that was proposed. I'm just
3 wondering is there things we could peel off because those
4 things may or may not change, like the LCP, the green energy
5 stuff, and things that really streamline the process. You
6 still got a placeholder. You're still going through the
7 architect. You're still going through the State stuff, but
8 have that there in place so that way whenever a program
9 comes up, they can make the simple modifications without
10 spending money up front for the things that are in today but
11 may not be in two years from now.

12 CHAIRPERSON REYES: Ms. Silverman.

13 MS. SILVERMAN: Some of the provisions are in
14 statute already regardless of the program. It's in statute.

15 MR. DIAZ: Right. Yeah. The compliance
16 monitoring unit whether you know, it's supported by you or
17 not, it's already in statute.

18 CHAIRPERSON REYES: Thank you, Ms. Allen.
19 Ms. Ferrera.

20 MS. FERRERA: Anna Ferrera, County School
21 Facilities Consortium. I would simply say that from our
22 association's perspective, we believe that the status quo
23 was where we should have been -- where we should be and this
24 new framework is probably not going to work well for
25 schools.

1 And so our position is simply that Implementation
2 Committee discussion went on. I think that there was a
3 consensus around the status quo which was not really
4 reflected well during the SAB discussion.

5 So we simply would say we would continue to be of
6 that -- in that position. Thank you.

7 CHAIRPERSON REYES: Thank you. Next.

8 SENATOR HANCOCK: Again -- I'm sorry. What's the
9 status quo, Mr. -- what is that?

10 MS. FERRERA: To continue tallying and evaluating
11 projects the way they are now and, you know, we
12 understand -- I think schools understand when they sign
13 that -- you know, that things could change, that they may
14 not get funding.

15 And so, you know, creating a new framework with
16 multiple lists I think is -- you know, that's not where
17 Implementation Committee landed and that was all
18 stakeholders having that discussion and we would just simply
19 say that, you know, that's where we would -- where we
20 believe it should remain.

21 CHAIRPERSON REYES: Thank you. Next.

22 MR. DIXON: Thank you, Mr. Chair and Board
23 members. Joe Dixon, Santa Ana Unified School District.

24 You know, currently the unfunded approval says
25 there's no guarantee of State funding when we receive that.

1 But we do know that things are changing and we want to work
2 with the Board and with OPSC to come up with something that
3 gives districts some comfort I suppose that they've met all
4 the regulations, all the necessary pieces of a school
5 facility project.

6 So we would -- we'd like to keep it open and see
7 if we could have some more discussion and see if we could
8 come up with something a little bit different. Thank you.

9 CHAIRPERSON REYES: Next.

10 MS. HANNAH: Good afternoon, Chair and Board
11 members. I'm Jenny Hannah. I'm with the Kern County
12 Superintendent of Schools Office and I heard from Lyle Smoot
13 that you wanted to hear from some of us practitioners. I'm
14 not sure if I can be as eloquent as some of the other
15 speakers, but I do agree with a lot of what's already been
16 said.

17 And I was at last month's Allocation Board meeting
18 where you had this conversation and what I left with a
19 feeling of was a little bit emotional as well as Cathy
20 talked about is that in your fear to commit to districts
21 with this program -- and we understand that. We know the
22 economy is different. We know the program is changing. We
23 know the State's in a different position. Everybody knows
24 that.

25 But in that fear of commitment, you are

1 effectively disillusioning and causing some local folks to
2 forestall some projects that they could move forward with
3 with local money.

4 And after last month's Allocation Board meeting,
5 we went to our county. We have a JPA that has a membership
6 of almost all of our districts, 50 school districts in
7 Central California, many of them, you know, small school
8 districts and we came away with a consensus that, you know,
9 they're hands are tied.

10 We already -- as Joe mentioned, we already certify
11 on our funding application form that there is no guarantee
12 of funding, that that's not a guarantee of funding and, you
13 know, if there's additional certifications the district
14 should do to assuage this Board and make sure that they
15 understand that the local school district board understands
16 what they're committing to, but really in effect I sense
17 that this -- changing this process from its historical way
18 that it's been done and been effectively done is going to
19 send a ripple in the pond that maybe we don't all try and
20 understand at this moment.

21 So that's all I have to say. Thank you.

22 CHAIRPERSON REYES: Thank you. Ms. Moore.

23 MS. MOORE: Well, first, I'd like to withdraw my
24 second. I think I've had too much vacation time. Because I
25 was the lone vote opposing the change in the regulation and

1 I think part of it is -- part of the consternation is coming
2 forward at this Board meeting and I do think that it is
3 going to create about a year-and-a-half, two-year period
4 where districts really don't know what to do.

5 And my concern at last Board meeting as well as
6 this after hearing from the field is that issue of going
7 forward with local projects. That could be good for school
8 districts, good educationally as well as good for our
9 economy. This -- to go forward with construction projects.

10 But I can -- but they go forward with a hundred
11 percent risk and they will be weighing that whether to do
12 that or not because they won't know what the structure of
13 the program is or whether they're eligible or not.

14 So it really is that component that I -- that
15 although it was the minority and I do -- I think the Board
16 spoke pretty resoundingly at the last Board meeting that
17 they do not want the liability nor -- they wanted the
18 flexibility to change the program should they desire -- or
19 the Legislature I guess would change the program should they
20 desire to.

21 But this is the reality of what will happen for
22 schools and I do think we're going to create this period now
23 of uncertainty and school districts will be grappling with
24 what -- how to make their decisions best during this time
25 period.

1 CHAIRPERSON REYES: Ms. Buchanan.

2 ASSEMBLYMEMBER BUCHANAN: I -- when I go around my
3 Assembly District, I have regular classroom cabinet meetings
4 two or three times a year with all the school districts and,
5 you know, Dublin had a bond that they passed in June and I
6 told them, you know, we're probably going to see Level 3
7 developer fees suspended. That was my expectation based on
8 the Governor's budget.

9 And I also told them that, you know, this is where
10 we're running out of money and as you go forward, you need
11 to make those -- you know, take that into consideration
12 accordingly.

13 The school district where I was on the board has a
14 bond on the ballot this November.

15 I think the worst thing you do for school
16 districts is create more uncertainty by making promises that
17 you may or may not be able to deliver. And Senator Hancock
18 pointed out that where we are with California's debt service
19 right now, it's roughly -- what is it now, about 7 percent
20 of the budget. It's going to go up to about 10 and a half
21 percent if we don't pass another bond.

22 And we don't know what's going to happen with the
23 current initiatives and revenue and how fast our economy's
24 going to recover.

25 I think the worst thing that can happen to a

1 school district -- I mean what'll happen to some is if I
2 pass a hundred million dollar bond tomorrow, you know, I may
3 go ahead and I'll finance a hundred percent and hoping that
4 I get matching funds and I can work down the list with
5 projects. It's not going to stop that from passing.

6 But if you get down the list and they assume that
7 they're going to have money tomorrow to finish paying for
8 that project and they don't, then they've got to dig into
9 their general fund.

10 And then not only do they have a facilities
11 problem, but they've got a problem in their general fund
12 figuring out how they're going to pay for that bond.

13 And so I'd like nothing better than to stand here
14 to everybody and say no problem, we'll keep approving those
15 projects, you know, we will pass the bond and the money will
16 come and you will have it, but, you know, we hear this word
17 new normal, we are in a new normal.

18 And we don't know if the voters' appetite for a
19 bond is going to be \$2 billion or \$10 billion. I do know
20 that the 35 billion we passed over the prior decade probably
21 isn't going to happen again in the next decade.

22 So I would rather be -- as painful as it is, I
23 would rather be honest with people and have them make their
24 decisions accordingly. I would rather -- I mean I'd love to
25 see this Board have -- we keep talking about having our

1 meeting and maybe we need a subcommittee in terms of
2 questions or things we'd like answered in terms of how can
3 we -- you know, what's working, what's not working, how can
4 we streamline the process, how can we provide more
5 certainty, but, you know, to right now pretend everything is
6 going on as normal and to let these districts think that as
7 soon as the bond gets passed, they're going to get a big
8 check and so they can go ahead out there and, you know,
9 speculate it's wrong.

10 And where it's going to come off, it's going to
11 come off the general fund part of the budget and that is
12 potentially devastating to districts.

13 So do I like having to do this now? No. But I do
14 think we're sort of in a new normal and I think it makes
15 sense if we can come -- you know, as we get closer to, you
16 know, having our discussions, as we get closer to
17 organizations doing polling and we know, you know, whether
18 or not we can go forward and it looks like we're going to be
19 successful with a bond and I personally will do all I can to
20 work for the passage of a bond because I believe schools are
21 the responsibility of the State and we -- it's an absolute
22 good use of general obligation bonds and a proper use, I
23 think right now pretending that the current program's just
24 going to go in and trying -- giving that level of guarantee,
25 I just don't -- I -- that's not where I can go.

1 CHAIRPERSON REYES: Mr. Hagman.

2 ASSEMBLYMEMBER HAGMAN: And just to follow up on
3 those. I agree with everything just said, but those of you
4 in the room here, you're hearing us. You're seeing it. You
5 get it.

6 But for the hundreds of school districts out there
7 that don't attend our meetings who may be just reading a
8 little paragraph or missed a paragraph in your newsletter
9 and stuff like that, those are people I'm afraid of.

10 Those are people who are thinking that status quo
11 is going on and we're going to apply for it and go through
12 the process and all of a sudden, I misplan because I think
13 it's coming through.

14 That's why I think it's important for this
15 resolution. This is an affirmative -- something that they
16 have to put out themselves to understand that they get it
17 before they go forward and it's not just going to be status
18 quo.

19 CHAIRPERSON REYES: Thank you. I have a motion by
20 Mr. Almanza, but I do not have a second.

21 ASSEMBLYMEMBER HAGMAN: Second.

22 CHAIRPERSON REYES: Mr. Hagman seconds. Call the
23 roll, please.

24 MS. JONES: Hancock.

25 Buchanan.

1 ASSEMBLYMEMBER BUCHANAN: Aye.

2 MS. JONES: Hagman.

3 ASSEMBLYMEMBER HAGMAN: Aye.

4 MS. JONES: Almanza.

5 MR. ALMANZA: Aye.

6 MS. JONES: Moore.

7 MS. MOORE: Aye.

8 MS. JONES: Diaz.

9 MR. DIAZ: Aye.

10 MS. JONES: Reyes.

11 CHAIRPERSON REYES: Aye. Motion carries.

12 MS. JONES: And the motion does carry.

13 CHAIRPERSON REYES: Thank you. Next I have
14 reports discussion, but before we get into that, I want to
15 open up for public testimony any item not discussed already.
16 Any particular issues not discussed already.

17 Bruce, welcome.

18 MR. HANCOCK: Thank you, Mr. Chairman, members of
19 the Board. I'm Bruce Hancock, Hancock, Park, and DeLong.
20 Thank you for your indulgence while I repeat something that
21 you already know but something that's very important to a
22 number of school districts.

23 First of all, on behalf of our clients, the Lake
24 Elsinore Unified School District and the Sacramento City
25 Unified School District, we thank you very much for your

1 decision today to identify all of the projects that are
2 affected by the Labor Compliance Program issue and to search
3 for a global resolution. That is very much appreciated.

4 Our -- the two districts that I mentioned and
5 perhaps many more out there that I know nothing about are
6 severely impacted by this issue and even though many of them
7 believe that they have in fact complied with all Labor Code
8 requirements, they find themselves at this spot.

9 We do have a concern. I don't expect it to be
10 addressed today of course, but both districts also are
11 concerned that they are racing against a September 25th
12 priority funding deadline at which time they have to submit
13 a compliant fund release.

14 They believe they've done that. Obviously OPSC
15 does not believe they've done that, but it does leave a
16 problem where that date is obviously going to come and go
17 before there's a global solution. So that's perhaps one
18 thing to consider.

19 Again on behalf of Lake Elsinore Unified School
20 District, Sacramento City Unified School District, thank you
21 very much for your efforts on this.

22 CHAIRPERSON REYES: Thank you. Anybody else?
23 Okay. Thank you. Tab 17.

24 MS. SILVERMAN: Tab 17's just a brief **update to**
25 **the Board.** In June 2012, we actually did find some

1 available funds to fund three joint-use projects and we also
2 had award four and a half million dollars to those projects.

3 It's listed on page 252.

4 Funds were provided Redondo Beach and Alameda,
5 also Santee. These projects were awarded on an 18-month
6 timeline and so what we have been doing is giving the Board
7 a quarterly update.

8 Since then we've actually had two districts come
9 in for those funds. There's one district, Santee, that
10 hasn't come in for their funds, but we've actually had some
11 periodic updates from them. So we'll be reporting back in
12 the future.

13 There is about \$536,000 that was remaining and we
14 did award that also to a district as well. Redondo Beach
15 did take those funds and we're presenting a consent item
16 next month to provide for the cash. And that's all we have.

17 CHAIRPERSON REYES: Thank you. That's an
18 information item. Tab 18.

19 MR. MIRELES: Tab 18 is just another **report**. The
20 Board members have raised several topics at the Board. They
21 wanted to explore these topics further in detail for
22 potential future related -- program-related questions.

23 We've outlined the topics on pages 255 and 256. We
24 are now seeking Board direction on how to further discuss
25 these topics in the future.

1 CHAIRPERSON REYES: I think with Ms. Buchanan's
2 acceptance, I'd like to appoint her to be Chair for a
3 Subcommittee to start looking at this and I know Mr. Hagman
4 has expressed an interest on this and Ms. Moore has been
5 interested as well and I think this is a good time for
6 Mr. Diaz to get his hands wet on this one and Mr. Almanza as
7 well.

8 So if it's okay with the Board, I'd like to
9 appoint -- there's five of them. So it's not a quorum
10 and -- but it is a public meeting anyway. So we can just
11 have that. Is that okay -- to start --

12 ASSEMBLYMEMBER BUCHANAN: Sure.

13 CHAIRPERSON REYES: -- taking this on. As we all
14 know, please -- I invite you to come at the Subcommittees
15 and get into the weeds with us at that level and resolve
16 issues and bring your examples and your exceptions and all
17 that and your ideas because that's makes for a better
18 discussion at that point. Thank you.

19 Tab 18. Tab 19.

20 MS. SILVERMAN: Tab 19 is the **three-month**
21 **workload**. I'm not sure if we have any questions with that.

22 CHAIRPERSON REYES: Anything else we need to bring
23 forward that I'm forgetting? No.

24 MS. SILVERMAN: We have a closed session.

25 CHAIRPERSON REYES: Okay. We have a closed

1 session today. Tab 20 -- we're good.

2 Mr. Savidge, all votes make sense or --
3 Implementation has to interpret our votes again?

4 MR. SAVIDGE: Good job. Perfect.

5 CHAIRPERSON REYES: Okay. Good. We are going to
6 go into closed session to address some legal matters as are
7 authorized by certain sections of the Government Code
8 dealing with litigation -- potential litigation. I think
9 that's what I'm supposed to say.

10 MR. NANJO: Right.

11 CHAIRPERSON REYES: Okay. Thank you. And if I
12 could have the room clear, I'd like to have obviously
13 Counsel stay and Ms. Silverman, Mr. Mireles, can you join,
14 please, for background. Thank you.

15 (Whereupon at 4:00 p.m., the open meeting was recessed
16 for the closed session and resumed as follows at 4:40 p.m.)

17 CHAIRPERSON REYES: -- transcriber back on.
18 You're on. Fantastic.

19 We've been advised by Counsel on a couple of
20 potential litigation issues pursuant to Government Code. So
21 we're coming back from closed session. Any public comment?
22 Seeing none, motion to adjourn, adjourn. Thank you.

23 (Whereupon, at 4:40 p.m. the proceedings were recessed.)

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25 REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
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COUNTY OF SACRAMENTO)

I, Mary C. Clark, a Certified Electronic Court Reporter and Transcriber, Certified by the American Association of Electronic Reporters and Transcribers, Inc. (AAERT, Inc.), do hereby certify:

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That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on October 2, 2012.

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