

State Allocation Board Sub-Committee on the Priorities in  
School Construction Funding

Public Meeting

Legislative Office Building

1020 N Street, Room 100

Sacramento, CA 95814

Thursday, July 15, 2010

9:30 A.M.

Reported by  
Tahsha Sanbrailo

**APPEARANCES**

Subcommittee Members:

Cynthia Bryant, Chair

Scott Harvey

Kathleen Moore

Staff Present:

Lisa Kaplan

Juan Mireles, Policy Manager

Barbara Kampmeinerf

Public:

Lyle Smoot, Los Angeles Unified District

Tom Duffy, Coalition for Adequate School Housing CASH

Bruce Hancock, Hancock, Gonos & Park

\_\_\_\_\_, Esq.

1 P R O C E E D I N G S

2 JULY 15, 2010

9:30 A.M.

3 CHAIR BRYANT: I call this Subcommittee Meeting to  
4 order. I wanted to start out by saying thank you to  
5 everybody for coming. This is sort of one of those  
6 situations where, like the day after the Board meeting, we  
7 started thinking about this issue which Kathleen Moore had  
8 raised. In our previous subcommittee meeting, we also had  
9 discussed it at the full Board Meeting when we talking about  
10 the priorities and funding item, and I think what we  
11 realized, we started to think about how to develop this item  
12 for the Board, and we realized that this process worked  
13 really well for the overall priorities and funding, and so  
14 we went ahead and scheduled a subcommittee meeting, and  
15 obviously I have not - I have told a few Board members, as  
16 many as I can tell without getting into Bagley-Keene  
17 territory, I mean, everyone thinks it is a good idea, and so  
18 hopefully we can have a similar conversation about the  
19 question of Facility Hardships and how we should handle  
20 them. And so I think what I would do is go ahead and turn  
21 it over to staff, unless either one of you had anything to  
22 say.

23 MR. MIRELES: Thank you, Madam Chair. Before we  
24 get started, I wanted just to take a little bit of time to  
25 talk about what is a Facility Hardship, so we can put the

1 discussion into context. Facility Hardship are projects  
2 that have demonstrated an imminent health and safety threat.  
3 These types of projects generally include issues mostly  
4 dealing with structural issues. We have seen some other  
5 issues dealing with traffic, and this would include some of  
6 your seismic mitigation projects. But the main issue is  
7 that they have to demonstrate this to be a health and safety  
8 threat. There has to be a Specialist Report that has to be  
9 conducted, and the report has to state that the facility, or  
10 lack of a facility, represents an imminent threat to health  
11 and safety. That also is followed by State concurrence.  
12 The agency in charge, just to give you an example, let's say  
13 that the issue is a structural issue, then you would have an  
14 engineer do the report as the Industry Specialist, followed  
15 by the Division of State Architect concurring that there is  
16 an imminent health and safety threat and it identifies the  
17 minimum work necessary to mitigate the situation.

18 We also require a Cost Benefit Analysis. Now,  
19 this is important because we use this to determine what kind  
20 of funding the project is going to receive. Generally  
21 speaking, if the cost to repair, to mitigate the situation,  
22 are less than 50 percent of the replacement value, that  
23 would qualify as a rehabilitation, which is very similar to  
24 modernization and it also received the same type of funding,  
25 basically a 60-40 split. Now, if the cost to mitigate the

1 situation are higher than 50 percent, then we get into the  
2 replacement level, which is generally like a new  
3 construction project and also comes with a 50-50 match.

4           In the past, we have always considered these to be  
5 a priority internally. When we process these projects, we  
6 have a special unit that reviews the project to see if they  
7 qualify as a Facility Hardship. A lot of these projects  
8 also come in as a conceptual approval. The conceptual,  
9 again, gives Districts certain assurances that they qualify,  
10 and then they have either up to 18 months, or 24 months, to  
11 come in with the Funding Application. Now, that generally  
12 depends on what kind of project it is and whether, if it is  
13 a replacement, and there is site acquisition involved, they  
14 get the up to the 24 months. That is the process for a  
15 Facility Hardship and, generally speaking, what is the  
16 Facility Hardship. When we talk about it today, again, this  
17 also includes seismic. We realize that we have so many set  
18 aside from last PON\* [4:15] for seismic mitigation projects,  
19 but they are part of a Facility Hardship, so when we talk  
20 about Facility Hardships, we are talking about all of the  
21 projects.

22           Since March of '09, we created the Fund Funded  
23 List\* [4:29] due to the current fiscal crisis; since then,  
24 staff has been placing Facility Hardships at the top of each  
25 month's list. We also have some - in the past, we had some

1 cash that was made available for Health and Safety projects,  
2 this was made available by the Department of Finance, that  
3 also targeted health and safety projects. And, at the last  
4 - like you were saying, Madam Chair, at the last meeting,  
5 the May 12<sup>th</sup> Subcommittee Meeting, there was a recommendation  
6 that we discuss the priority of Facility Hardships in the  
7 broader context, whether, 1) we should continue to have  
8 priority, and 2) whether we should alternative or amend it.

9           So, before us today, there are some submissions  
10 for consideration. One is -

11           CHAIR BRYANT: Can I ask a question, which I did  
12 already ask you, but I think I would like to ask it on the  
13 record, is that, is it the placing of - in the old days, the  
14 days prior to the end of the PIMA loan situation, you put it  
15 at the top of the list, that was more of a display purpose,  
16 right? It was not so much that - it was not saying -  
17 because when it went to the Board, you were apportioning it  
18 so that it was immediately available, it was not putting  
19 them at the top of the list was more just for purposes of  
20 display. So that, internally, I am almost not really asking  
21 a question, but internally OPSC made it a priority by having  
22 a special unit moving the application through fast. So  
23 then, when we got to the fiscal situation a year and a half  
24 ago, the question of Facility Hardships really was not asked  
25 and we did not really address it. I think that is kind of

1 the thing I missed along the way, which I am always slow to  
2 figuring stuff out, so that your continuing to put it at the  
3 top of the list was a relic from the period of when you were  
4 just displaying the school Districts that were going to be  
5 in apportion in a month; but now, putting them at the top of  
6 the list had meaning because, as we are apportioning, first  
7 in, first down the list. So, you could get into a situation  
8 - which we did, where we got half way through July of 2009,  
9 when we apportioned the \$900 million, and that meant that  
10 most of the Facility Hardships in that month would have been  
11 funded and regular projects may not have been?

12 MR. MIRELES: That is correct.

13 CHAIR BRYANT: Is that right?

14 MR. MIRELES: Yes.

15 CHAIR BRYANT: So, I think the real question on  
16 the table now, for us, is, I mean, the policy decision has  
17 to be made, which is the question Kathleen has been asking,  
18 that I never understood totally, is should those always be  
19 at the top of the list, so to speak. Is that correct?

20 MR. MIRELES: That is correct.

21 CHAIR BRYANT: Okay, and Mr. Harvey, I think, had  
22 a question.

23 MR. HARVEY: Just to fall back on your description  
24 of what was a replacement project and what was a rehab  
25 project, is it safe to say that rehab projects are less

1 expensive, generally, because they are not as large, or not  
2 taking up the whole plan?

3 MR. MIRELES: They are compared to the replacement  
4 value, yes, they are less than 50 percent, so those would  
5 qualify as a rehabilitation and, generally speaking, they  
6 are less expensive.

7 MR. HARVEY: So, in a happy world, school  
8 Districts would do a far better job of identifying those  
9 needs earlier on, so they became rehab, rather than  
10 replacement, and therefore the dollars would go farther for  
11 everybody?

12 MR. MIRELES: Yeah, each situation is different.  
13 Again, we really rely on the industry specialist report to  
14 identify the minimum work necessary to mitigate the certain  
15 situation. As I mentioned before, most of the, not all,  
16 have been dealing with structural issues and, in those, we  
17 require a licensed structural engineer to give us a report  
18 and, again, to have DSA review and concur. And, again, for  
19 these types of projects, there has to be an imminent health  
20 and safety issue.

21 MR. HARVEY: Is there any mechanism that you would  
22 be aware of that DSA or OPSC could help Districts identify  
23 simply because of the age of their facilities, kind of nurse  
24 them through the process, of the advantages of identifying  
25 something when it is a rehab, rather than a replacement?

1           MR. MIRELES: We just recently recreated a  
2 checklist. We went to the Implementation Committee to  
3 create a checklist to identify all the components that are  
4 necessary to apply and qualify potentially for a Facility  
5 Hardship. In there, we have all the documentation that they  
6 need. We did talk about some examples. But we created it  
7 to give Districts a tool to see, to use, whether they do  
8 have all these kind of documentation to be able to submit a  
9 Facility Hardship. That was the goal that we had in mind,  
10 to basically give the Districts all this information up  
11 front so that they could go through and check it off, "Do I  
12 have the Industry Specialist Report? Do I have governmental  
13 concurrence? By which department?" And it was something  
14 that we used to, again, help the District so that they have  
15 a list of what is needed to come in and qualify for a  
16 Facility Hardship.

17           MR. HARVEY: What encourages them to do that? I  
18 guess maybe I am only interested in this if there is a real  
19 skewing of replacement as opposed to rehab. Would there be  
20 an advantage of catching the problems earlier so they are  
21 rehab rather than replacement? Or am I just barking up the  
22 wrong tree? Because there is not that much money to save.

23           MR. MIRELES: It is a good question and it is a  
24 difficult one to answer, but generally speaking, yes, if you  
25 catch a problem early on, it may be less expensive because,

1 it continues to grow, but all situations are different, so  
2 it is difficult to analyze -

3 MR. HARVEY: But you do not know, and we are just  
4 talking, and I would not expect you to, what the ratio of  
5 replacement to rehab numbers are?

6 MR. MIRELES: I do not have that information with  
7 me now.

8 MR. HARVEY: Okay, well, you see where I am going.  
9 I am just interested in if it means savings for not only the  
10 state, but Districts, and we could spend more money in other  
11 rehab projects, or replacement projects. Just an idea.

12 MS. MOORE: If I may, as well, I think that the  
13 ones that I have seen that come through the Department of  
14 Education around complete replacement have often times been  
15 because of identified environmental hazards. We have grown  
16 over time in knowing the environmental hazards, and do, I  
17 think, a good job now of, you know, "Don't place a site near  
18 a high-pressure gas line without having the proper knowledge  
19 of what impact that may have," very dissuasive of that. But  
20 sites that got cited, you know, 80 years ago, were things  
21 that have come to be over time in the planning of  
22 communities, that had posed a hazard to a school, those are  
23 the ones that I have seen be completely replaced.  
24 Rehabilitated, usually, as I understand, and maybe you can  
25 comment on, has been often times a building on a campus, it

1 is not an entire campus, and maybe there was one that was  
2 structurally not built as well, or over time has had an  
3 issue, and so we deal with a lot of one building on a campus  
4 that becomes rehabilitated. Is that -

5 MR. MIRELES: Yeah, no, that is correct. It is  
6 generally - for rehabilitation - it is not the entire  
7 campus, there is an identified issue on a certain building,  
8 as you mentioned, but not necessarily an entire campus is at  
9 risk.

10 MS. MOORE: The question I have is, it appears  
11 there is a very rigorous standard and that you have to have  
12 a third-party verification, as well as one of the  
13 governmental entities concurring with what is being  
14 proposed. Is that correct?

15 MR. MIRELES: Yes.

16 MS. MOORE: Do you have very many attempts at a  
17 Facility Hardship that you reject?

18 MR. MIRELES: I do not have that statistic with  
19 me. I know there have been some that have come in and  
20 submitted requests, but they do not have that state level  
21 concurrence. One of the reasons that we have this is  
22 because, frankly, we do not have the expertise to be able to  
23 determine whether these issues are really there, so the  
24 other state level concurrence with the Department that has  
25 that expertise can do that, they can be able to say, "We

1 concur with this," or, "We don't. We think that there may  
2 not be," or there is, "...imminent health and safety." So  
3 that is one of the reasons why we have another department  
4 that has that expertise make that verification for us.

5 CHAIR BRYANT: And is that just DSA? Or is it -

6 MR. MIRELES: No, it could be the Department of  
7 Toxic Substances Control if there are soil issues, it can be  
8 the - it depends on the issue.

9 MS. MOORE: Transportation has been involved, our  
10 department has been involved.

11 MR. MIRELES: Right, traffic issues.

12 MS. KAPLAN: CHP.

13 MR. MIRELES: It just depends on what the issue  
14 is.

15 CHAIR BRYANT: So anybody with expertise in  
16 whatever the health and safety concern is.

17 MR. MIRELES: Yes.

18 MS. MOORE: Thank you.

19 MR. HARVEY: Conceptual approvals, I mean, one way  
20 of ferreting out if they did conceptual approval first and  
21 got an idea of whether they were going to meet the standard  
22 or not, is there - do most people do the conceptual, or not?

23 MR. MIRELES: Most Districts do. Just to give you  
24 an idea, in the back of the agenda, we have a list that  
25 includes - the first on is the unfunded approvals that we

1 have as of June 23<sup>rd</sup>, which totals about \$20 million; then,  
2 the next sheet outlines all the conceptual approvals that we  
3 have approved as of June 23<sup>rd</sup>, for a total of \$16 million.

4 CHAIR BRYANT: So the conceptual approvals, then  
5 they are now going out and dealing with some State  
6 department and do you provide them advice for that?

7 MR. MIRELES: Yeah, well, at the conceptual stage,  
8 they have already submitted the documentation to qualify, so  
9 they already have the state level concurrence, they already  
10 have the industry Specialist Report. After the conceptual,  
11 then they have the 18 months or 24 months to go out and get  
12 the plans approved by the Department of Education, by the  
13 Division of State Architect. So, they have - and we have  
14 the due dates on when they have to come in with an actual  
15 Funding Application for the funding. But, they got past the  
16 first stage of qualifying as a Facility Hardship, now they  
17 just have to go out and get the necessary plan approvals to  
18 submit a funding request.

19 MR. MOORE: Juan, when the conceptual approval  
20 comes forward and there is an issue with the building, is it  
21 at that point that they are also removing students and  
22 staff, typically, from the building at that conceptual  
23 approval time?

24 MR. MIRELES: It can. Again, it depends on the  
25 situation, but, yeah, some Districts, they vacate the

1 buildings before they come in. Again, it just depends on  
2 the situation and the District. But one other thing just  
3 that we do as part of the review is we do a site visit, we  
4 go out and examine the situation. We usually ask Districts  
5 to not start the work until we go out there and do a  
6 verification just as part of the review, to make sure that  
7 we see the situation. Some Districts do move forward. We  
8 recommend that they come in before because, again, we do not  
9 want them to get into a situation where they move forward,  
10 but then they may not qualify. So, coming in early and  
11 talking to us is always what we recommend to help them.

12 MS. MOORE: One of the issues that we will be  
13 discussing today is, if we do provide a priority, is it for  
14 a final, or is for the conceptual? And I think, as we  
15 deliberate, the predicament that I see for a school District  
16 that comes in with a conceptual, is they are starting to  
17 take a lot of expensive actions, perhaps temporary housing,  
18 they have to address issues with their community, those  
19 types of actions, and their risk, if they are not reserved  
20 up front, is that they take these actions, they take the  
21 course, and lo and behold, when they come to the end of the  
22 process, we are out of funding, which I think we need to  
23 think about seriously. It may be a line that we have to  
24 draw because of the fiscal issues, but I will consider that  
25 heavily as we talk about this because I think that it has an

1 impact on Districts' decisions, the decision-making.

2 MR. MIRELES: Yeah, I agree, Ms. Moore. It is an  
3 issue that should be discussed, again, especially in the  
4 context of the current fiscal crisis, we recognize that the  
5 Board grants you conceptual approvals, but within a  
6 guarantee of future funding, they are at risk. So, the  
7 issue really comes down to, do we reserve funding for these  
8 conceptals --

9 MS. MOORE: That could sit for 24 months.

10 MR. MIRELES: -- ahead of others that are  
11 considered to be construction-ready.

12 MS. MOORE: Up to 24 months.

13 MR. MIRELES: Yes.

14 MS. MOORE: Do we have an average at all of how, I  
15 mean, I know legally or by regulation we give 18 to 24  
16 months, has there ever been a study of what the actual, you  
17 know, turnaround time is from conceptual to being ready for  
18 final approval? Is it typically within that time? Or do we  
19 know?

20 MR. MIRELES: I do not know. It is something we  
21 can take a look at, I do not think we have done that.

22 MS. MOORE: Okay, I just was curious.

23 MR. MIRELES: Just to see what the average number  
24 is.

25 MS. MOORE: All right.

1 MR. MIRELES: Okay?

2 CHAIR BRYANT: Okay, you can continue.

3 MR. MIRELES: So the issues for consideration is  
4 the authority to give priority for these kinds of projects.  
5 The education and the regulations are not very specific. We  
6 think that there is some room to create the priority, the  
7 discussion that we will obviously have take into  
8 consideration whether we do this through regulation or not.  
9 There is also the budget letter that requires that we give  
10 consideration to these types of priorities, to these types  
11 of health and safety projects, so we want to make sure that  
12 we also adhere to that to not jeopardize any future bond  
13 sales that come our way.

14 And then we have the general questions on the next  
15 page, which are really, you know, what we have been  
16 discussing, whether they should continue to be placed at the  
17 top of each month on the Unfunded List, or whether they  
18 should go to the top of the entire Unfunded List at the time  
19 of the bond sale. We should consider the date order vs. the  
20 unfunded approval date; of course, there might be some  
21 equity issues associated with how projects are ordered  
22 because you may have projects that receive funding that were  
23 approved much later than others that have been sitting on  
24 the unfunded list for quite some time. Then, we have some  
25 other options in terms of potentially reserving cash from a

1 future bond sale for these types of projects. That could be  
2 explored in terms of a pilot program, which could be  
3 revisited after a certain amount of time, whether it is six  
4 months, or 12 months, and whether we should have a  
5 reservation for these types of projects in each bond sale.  
6 Of course, we will have to discuss, if we do, how much to  
7 set aside. We have an idea based on the unfunded approvals  
8 up to the date of the bond sale, that is something that  
9 could be used, but should the Board establish and maintain a  
10 reserve for these types of projects.

11           And then, lastly, I mentioned this earlier, but  
12 basically the implementation - should we do this through a  
13 policy decision, or should we adopt regulations, and have a  
14 communication plan to Districts to let them know what the  
15 rules are for their types of projects.

16           We also have a separate sheet that you should have  
17 as a handout, and I think we have it in the back room, too,  
18 that outlines it a little bit more clearly, the possible  
19 methods for apportioning Facility Hardship projects. Unless  
20 you have any other questions, we can go through these.

21           CHAIR BRYANT: Maybe what would be good is, why  
22 don't we go ahead and hear from anybody who has some  
23 brilliant ideas out there? I can see brilliance all around  
24 the room, so maybe you can help us think this through and  
25 see if anyone has thoughts on this topic. When I was

1 speaking of brilliance, I am not sure - we made it easier on  
2 you guys this time, so we do not have this steaming over  
3 here thing.

4 MR. DUFFY: Thank you, Madam Chair, members, Tom  
5 Duffy for CASH. I think that this is a good discussion, and  
6 Mr. Harvey, your questions of Mr. Mireles were good  
7 questions, but, as he said, they are very difficult to  
8 answer. I have been involved personally with this kind of  
9 program in my old school District, and I have seen many  
10 others. And there are no two that I have seen that are  
11 alike. If the issue is brought to OPSC and brought to DSA,  
12 or some other entity, it is because the District believes  
13 that it has a problem and is seeking the State's help. So,  
14 it makes sense to have some sense of a priority because it  
15 is a health and safety or structural issue, structural in  
16 California and safety in California are, I think, considered  
17 beyond the educational program when you look at what we do,  
18 compared to other states. So I think it makes sense for the  
19 Allocation Board to consider looking at a Facility Hardship  
20 in a bit of a different light. But you may also have  
21 gradations of Facility Hardships. You may have an issue  
22 that is a structural issue, and I will use an example,  
23 Newport Mesa had a very very old building, and it was a  
24 building that the community did not want to have destroyed,  
25 but they had a structural problem, and they moved their

1 students out of the building. There was an entire class of  
2 students, Freshman through their Senior year and beyond that  
3 were not in the building, the building was empty. They  
4 spent about \$3 million on interim housing, an issue that I  
5 have discussed with you, I think, in other contexts.  
6 Gorgeous old building, but they had to knock it down. DSA  
7 had a concurrence letter. OPSC rejected their application  
8 at least twice, it may have been more than that. It was  
9 eventually accepted after a lot of discussion about the  
10 issue of safety and many visits to the building. You could  
11 compare that to an issue having to do with molds and what  
12 mold does through the roof membrane and in other parts of  
13 the building where you may cordon off a particular part of  
14 the building, or you may have students out of the building  
15 for a period of time and deal with it and have them get back  
16 in the building. But every instance, I think, has to be  
17 looked at on its own. But it makes sense to consider a  
18 priority for a Facility Hardship.

19 Let me strike an irony for you, though. The irony  
20 is that we have discussed the seismic program on and on and  
21 on and on since 2006, and that program, although we have  
22 made some recent changes, that program still does not seem  
23 to be a priority, although it, seismic, appears to be at  
24 least equal to Facility Hardship. It was built on a  
25 Facility Hardship frame.

1           CHAIR BRYANT: I think, I actually - could we talk  
2 a little bit about the seismic thing? I think in some ways  
3 Kathleen alluded to it a little bit, and I think that - and  
4 this is just sort of me thinking more than necessarily that  
5 I have actual knowledge - but that part of the problem with  
6 seismic, too, is that, if you come and you say, "We have a  
7 seismic issue," and you come and you seek funding for  
8 seismic, that you get into a little bit of a "Scarlet S," I  
9 have been calling it, is -

10           MR. DUFFY: A what? I missed that.

11           CHAIR BRYANT: A Scarlet S, that you have declared  
12 that you have a seismic problem, which sets up kind of a  
13 thing for Districts that I think must be extremely  
14 difficult, that you suddenly declared you have that kind of  
15 a problem at your school site, and then you have to figure  
16 out really fast how you are going to get it funded, and all  
17 of that. And so, I am wondering if some of the reason why  
18 seismic has not been as successful may be that it is a  
19 separate pot of funding, that if you just were able to come  
20 in under something just called "Facility Hardship," which I  
21 think was kind of the old system, that you would - and if  
22 there was a priority for the State Allocation Board, that we  
23 might be solving both problems at the same time. I do not  
24 know, I am just - we might - I am saying "might," I am just  
25 kind of guessing a little.

1           MR. DUFFY: The program, at least the thinking of  
2 the program, has morphed a bit. I mentioned Newport Mesa.  
3 Newport Mesa was rejected, as I recall, because the DSA  
4 concurrence letter used the term "seismic event" in it, and  
5 the thinking at the time was, "Well, this is not a seismic  
6 program, so we will reject that." And we got through that,  
7 it took time, we got through that. Doing what you just  
8 suggested would identify that, for whatever reason, the  
9 building appears to be unsafe, there is a third-party that  
10 the District has brought in, so they can demonstrate the  
11 expertise of that third-party to the State, and the State  
12 concurs. So that makes sense.

13           CHAIR BRYANT: Yeah, because I would not want, I  
14 mean, I would not want my nieces and nephews to attend a  
15 school that was full of mold anymore that I would want them  
16 to attend a school that was in imminent threat of collapsing  
17 in an earthquake. I think both of those, as an aunt, you  
18 know, because I am not a parent, but I would be concerned  
19 about both of those scenarios. So, sometimes I am wondering  
20 why they got separated out.

21           MS. MOORE: Can I just, though, ask a clarifying  
22 question of this discussion? Because the first bullet point  
23 in our history indicates that Facility Hardship also  
24 includes seismic mitigation, so are we talking about both  
25 today? Because seismic falls under Facility Hardship? Or

1 are we not?

2 MR. MIRELES: Yes, we are.

3 MS. MOORE: So, what Mr. Dufy is saying about the  
4 seismic issue, we are discussing today, as well? Is that  
5 correct? So, if we say we want to put all - just  
6 hypothetical and we have not made any decisions - but we  
7 want to put all Facility Hardships to the top of the list,  
8 that would be inclusive of seismic -

9 MR. MIRELES: That is correct.

10 MS. MOORE: -- because we said that the conceptual  
11 are included in that, it would also be inclusive of seismic.

12 MR. MIRELES: Yes, and just to give a little  
13 background, prior to Proposition 1D, the program did not  
14 allow projects that were in danger of a potential collapse  
15 in the event of an earthquake, because it was not imminent,  
16 and that was basically the deciding factor. It was a  
17 potential in the event of - and that is why, in the past,  
18 they were not qualified under the Facility Hardship. The  
19 health and safety issue had to be there, and it had to be  
20 imminent. When Proposition 1D came along, it changed the  
21 rules and allowed certain buildings, depending on the  
22 building type, and depending on the your ground shake  
23 intensity factor, now you can qualify as a Facility  
24 Hardship. But, prior to Proposition 1D, buildings that,  
25 again, had the potential in the event of an earthquake did

1 not qualify, and then that is when 1D came along and changed  
2 the rules to allow the most vulnerable category to buildings  
3 to qualify.

4 MS. MOORE: I thought Facility Hardship was  
5 inclusive of seismic projects in the past.

6 MR. MIRELES: It had to be demonstrated that there  
7 was an imminent health and safety - there was a clear  
8 threat, not "if" there was an earthquake.

9 CHAIR BRYANT: That was excluded in statute? Or  
10 that was excluded in regulation? Or it just was an  
11 interpretation at OPSC?

12 MR. MIRELES: I believe it was in regulation, but  
13 I will have to clarify it. I am not sure.

14 CHAIR BRYANT: You cannot see with the uhs in the  
15 back of your head are not working very well, but I think  
16 Bruce wanted to - he is just about ready to crawl out of his  
17 seat because he is dying to say something on this topic.

18 MR. HANCOCK: Thank you, I have already taken a  
19 lot of flack about it. I kind of forgot there was this  
20 meeting this morning.

21 CHAIR BRYANT: This is how the rest - I think it  
22 is appropriate for a subcommittee hearing, and during  
23 recess, the Legislature -

24 MR. HANCOCK: Thank you, thank you. Bruce  
25 Hancock, Hancock, Gonos & Park. Thank you for the

1 opportunity to comment. Juan and I should really be able to  
2 sit down and talk about this, you know, because our  
3 recollections are just slightly different, but I understand  
4 what he is saying. If I could for just a second, I think  
5 that when we use the term "seismic," we get ourselves in  
6 trouble a little bit because today we actually have a  
7 seismic mitigation program that has a specific funding  
8 source, has specific criteria for a certain kind of  
9 building, only certain types of concrete buildings, wood  
10 frame buildings were not qualified, etc. Over the years,  
11 however, in the Facility Hardship Program, Juan's  
12 description is absolutely right on, the issue has been  
13 imminent health and safety hazard. It is also very true  
14 that, generally speaking, projects that are thought to be a  
15 safety hazard because of seismic issues have been extremely  
16 difficult to bring through the Facility Hardship Program  
17 because, quite frankly, the DSA is reluctant to make a  
18 statement that there is an imminent health and safety  
19 hazard, and it is not my area of expertise, but my general  
20 layperson's understanding is that the science is such that  
21 things are on a continuum, and it is very difficult to say  
22 where you cross a certain line on that continuum. However,  
23 there have been projects that have been approved under the  
24 Facility Hardship Program over the years; I am sorry, I am  
25 not prepared to tell you - it might have been under the

1 Lease Purchase Program, but the issue was, in those cases  
2 that I remember, and others may have other recollections,  
3 were issues such as the location of faults - known faults.  
4 I recall a small school that we actually abandoned the site,  
5 it was not a very large school, so it was not a lot to  
6 abandon, because there were faults that were crossing under  
7 the corner - if my recollection is right - the gymnasium or  
8 the multipurpose room, and it turned out that trying to  
9 relocate on the site was impossible because the site was  
10 very small and the faults ran all over. I am aware of  
11 another project that I think is in Darlene's hands now, I  
12 think, that has a similar situation and my firm is working  
13 with a District in Southern California that has closed down  
14 an entire school because they have discovered there are  
15 faults under the building, and it is our intention to bring  
16 that forward eventually. Of course, in all those cases, we  
17 will have to get DSA concurrence that there is an imminent  
18 safety hazard, and I do not know that we will be able to do  
19 that, even with the faults there, the laws are somewhat  
20 challenging.

21           But, at any rate, I just wanted to make those  
22 comments and, not to contradict Juan, but just to point out  
23 that the issue has always been a bit foggy. But there have  
24 been some that were done under what you might consider  
25 seismic issues, but not the seismic program, rather,

1 locations in proximity to faults. I can recollect one,  
2 there were probably others, but - thank you.

3 CHAIR BRYANT: Mr. Harvey.

4 MR. HARVEY: If I can as a follow-up, I have a  
5 couple of observations and, tragically, I think our  
6 discussion on the seismic now is an example of one of those  
7 unintended consequences of good public policy, and that was,  
8 we had the set aside in 1D because of a report called AB  
9 300, which began to identify and quantify the magnitude of  
10 seismically unstable schools. And there was a thought, well  
11 intended, that said, if that is really the case and we are  
12 putting kids at risk, we need to carve out something in this  
13 bond. And through the negotiations, it was \$200 million.  
14 And through the negotiations, these standards were set up.  
15 And we are bucking up against, I think, the Scarlet S, and  
16 for me, it is now how do we treat this going forward and I  
17 would hope that there would be very serious conversations on  
18 any next bond issue that says, "Do not do that." Do not do  
19 that again because look how difficult it is to get the  
20 dollars out, even though you have a well intended public  
21 policy behind it. I think, going back to where we were,  
22 that is, Facility Hardship being much more encompassing, is  
23 the way to go, and I would also say to staff, and I have  
24 said this, I think, in the past, one of the ways I think we  
25 can be helpful is to help Districts combine those seismic

1 dollars when it makes sense in Modernization, so that it  
2 does not stand out as the Scarlet S, but it is complement to  
3 what they are doing on Modernization. And, again, you are  
4 spreading the dollars and allowing others to do more things  
5 with those two plots. And, finally, I will have as an  
6 action request that we convene a session with DSA and talk  
7 about what is this definition of "imminent safety hazard,"  
8 because if DSA is having trouble moving projects that really  
9 fall into that category by the common sense test, we should  
10 talk about what those standards are, because then it makes  
11 it easier not to have set asides in the future, because you  
12 have a better definition, a more comprehensive definition,  
13 of what a safety hazard is, and it allows you to address it  
14 for seismic reasons, or for structural reasons, or for mold  
15 reasons, or for toxic reasons. But I think that is where we  
16 should be in the future.

17 CHAIR BRYANT: And maybe I got us a little bit off  
18 track, and maybe what we should focus on, I mean, so for  
19 purposes of today, would it be all right to just say that we  
20 know that projects that come in, in the seismic program, are  
21 also Facility Hardships? And any change we decide to make  
22 in how we set a priority will sweep up seismic, and then we  
23 should, as Mr. Harvey suggests, have a separate conversation  
24 with DSA. And I also think that, if we had a conversation  
25 like that, in this kind of a setting, or at the full Board,

1 I know definitely Senator Hancock has a really large  
2 interest in this issue area and would want to participate in  
3 that, so maybe that - so we know for purposes of this,  
4 seismic is included if we make a change in priorities, and  
5 the separate conversation about the Scarlet S and the  
6 seismic program, in general, should happen in another forum.

7 MS. MOORE: Good.

8 CHAIR BRYANT: Is that good with everyone? Anyone  
9 think I am wrong? Good. Okay, so any more comments from  
10 the public? I kind of cut you off, Tom. And, Lyle, did you  
11 want to talk a little?

12 MR. SMOOT: Good morning, Lyle Smoot, Los Angeles  
13 Unified School District. I think I want to ask you a  
14 question instead of necessarily making a statement. When I  
15 hear you say the Seismic Program is a Facility Hardship  
16 Project, I think that causes me little quivers because they  
17 are separate concepts, if you will. And at least in my  
18 mind, the differences, and by the way, excuse me for saying  
19 so, but I agree with Mr. Harvey that the problem -

20 MR. HARVEY: Do not apologize for that! That was  
21 probably the first time -

22 MR. SMOOT: I should not apologize to the Chair, I  
23 should apologize to the public! That I think the problem  
24 that a set aside has created an issue, and I will not go  
25 into all the details of why I believe that, I just say that

1 I think a set aside of money in a minor difference in how  
2 the programs work has created the problem of the money will  
3 not go out, or has not gone out, or you know, and I think  
4 those are issues that are better resolved by a simple -  
5 again, it is not a simple program - but a program within the  
6 scope of Facilities Program that operates much as it has,  
7 okay? And I just want to make sure that that statement does  
8 not create a situation where Districts that now qualify  
9 under the seismic program rules can flop over into the  
10 Facility Hardship Program.

11 CHAIR BRYANT: I did not mean to say that, but I  
12 am right that, if Project A has come in under Facility  
13 Hardship, and Project B has come in under the Seismic  
14 Program, that those would both be deserving of a priority in  
15 funding if we decide to go down that route. Like, for  
16 example, on your monthly list, if you had a Facility  
17 Hardship and seismic program project, they would both go to  
18 the top of the list. Is that correct?

19 MR. SMOOT: Well, it is up to the Seismic Program  
20 project. You cannot get on that list unless you are a  
21 seismic project, so -

22 MR. HARVEY: Right, we are doing that, but we are  
23 saying they are both public health and safety imminent  
24 issues, and they need to stand together. We are defining  
25 what a imminent public hazard is to include seismic, as well

1 as mold, as well as environmental, as well as structural.

2 MS. MOORE: What I am hearing from the regulation,  
3 I am assuming the statement is based on regulation because,  
4 in our agenda item, it says "Facility Hardship also includes  
5 Seismic Mitigation Projects." So, by definition, they are  
6 also - they are both, actually, they qualify by being  
7 seismic, but they fall within the general framework of  
8 Facility Hardship is what I am hearing. Do you differ from  
9 that, Lyle?

10 MR. HARVEY: My question is really a simpler one  
11 and I think there are semantics going on here that maybe I  
12 am confusing. I am just asking the question, if you are a  
13 seismic project, you are going to be at the top of the list  
14 anyway once you get approved, so I do not know if that is an  
15 issue, it does not matter, my question is, if you ran out of  
16 seismic money, would you flop over to the Facility Hardship  
17 Program under SFP? That is the simple question.

18 MS. KAPLAN: I can actually clarify this. SFP  
19 regulations under Facility Hardship, 185982, specifically  
20 when it is setting out of what is a Facility Hardship, it  
21 talks about the factors, but it also says "including  
22 structural deficiencies required by DSA to repair, seismic  
23 mitigation of the most vulnerable category 2 buildings as  
24 verified with DSA." So seismic mitigation is mentioned in  
25 the SFP regulations that falls under Facility Hardship.

1 What all of us are talking about is, the problem is that it  
2 is not just seismic mitigation that is considered Facility  
3 Hardship, it now has its own program and its own money, and  
4 there is a process that has to go through. And we are all  
5 on the same line, that if there was a seismic that qualified  
6 and went through, it would be at the top of the list along  
7 with any other Facility Hardship that qualified.

8 MS. MOORE: How I am understanding Mr. Smoot's  
9 question, however, is we have - what - a \$200 million  
10 program, whatever has been drawn down so far has been drawn  
11 down, we draw down \$200 million, the \$250<sup>th</sup> million comes in,  
12 do they get funded through the regular system because they  
13 are a Facility Hardship, because there is maybe existing  
14 funding in that? And do we know the answer to that  
15 question?

16 MR. MIRELES: That is a good question and,  
17 frankly, at least I have not thought about it. I do not  
18 know the answer, I would have to take a look at the language  
19 and statute and the bond to see if a project that comes in  
20 after we run the \$200 million can they qualify without the  
21 cash being available. I would have to look.

22 MR. HANCOCK: I think it begs the question, well,  
23 how important that meeting is with DSA, because I would say  
24 they would have the right under the regulations to apply for  
25 Facility Hardship status, and if DSA agreed that their

1 building was seismically unstable, because mitigation is one  
2 of those factors, they could dip into those dollars. I  
3 would say, by definition, they can, but they have got to  
4 make these - they have got to pass these hoops. So, what  
5 DSA is doing with that definition of imminent safety hazard  
6 becomes very important because, if we are listening to  
7 history, they were not comfortable making that finding very  
8 often. So I would say that they could if they passed the  
9 test.

10 MR. HARVEY: This is really important because, you  
11 know, we have heard numbers on the seismic program and the  
12 staggering billions of dollars potential, and obviously that  
13 is part of the whole discussion. The difference in the two  
14 programs is that - and I am going to go a little bit further  
15 than what Bruce said - in those cases I agree with what he  
16 said, by the way, there are seismic issues that have been  
17 addressed through this program, but typically you have to  
18 show that there is a potential for an earthquake of a  
19 particular size, that is going to knock your building down.  
20 Under the seismic program, you do not have to prove that,  
21 you just have to be in a zone, and the zone creates that  
22 potential without the specific study of a real potential for  
23 an earthquake that will knock that building down, and that  
24 is why I am asking these questions. I am not sure we have a  
25 position one way or the other, I am just asking the

1 question, you know, so we can consider it.

2 CHAIR BRYANT: I think you have raised a really  
3 really good point and I do not think - if Juan does not have  
4 an answer, I probably do not have an answer either, I think  
5 that begs for a further conversation on the entire program,  
6 and I do not think anything we decide or recommend to the  
7 full Board today will impact that, unless we were to  
8 recommend a regulation along those lines, and we are not  
9 going to -

10 MR. HARVEY: I anticipated that. I just want to  
11 make sure that the issue got on the table. That is the only  
12 reason I came up today. Thank you.

13 CHAIR BRYANT: It is a really important question,  
14 I think. Okay, other comments?

15 MR. DUFFY: Two things that I have.

16 CHAIR BRYANT: I know, we did not finish with you,  
17 I am sorry.

18 MR. DUFFY: Just two things, one on the structural  
19 side, the definition of a Facility Hardship, as I understand  
20 it, as I have worked this program, is that the building does  
21 not conform to the plans that were approved by DSA under the  
22 standards that applied at the time of the approval. So, the  
23 building does not have to meet today's standards, it has to  
24 meet the standards in place at the time that it was  
25 approved. And I think it is important for you to know. So,

1 although the building, as it is rebuilt and repaired, or  
2 replaced, would meet standards of today, but the standards  
3 applied for when the building was originally approved, that  
4 is important. Secondly, you were talking about conceptual  
5 approval and final approval, the way I understand the  
6 program to be structured and have worked the program, the  
7 conceptual approval is proving the point that we have a  
8 problem, we have the DSA Concurrence Letter, we have need of  
9 OPSC's assistance and funding through the Allocation Board,  
10 that is granted in terms of we agree with you, now go and,  
11 because of the approval with the cost estimate, go to DSA  
12 and go through DSA, and come back to us with the final  
13 plans. It is at that time that I believe that a priority  
14 should be given if you are looking at funding, in terms of  
15 funding. I do not think the conceptual stage is the  
16 appropriate place to do that because you are not funding it  
17 at the conceptual stage. What you are doing is you are  
18 agreeing, 1) that it meets the test, and 2) what the  
19 estimated costs are.

20 MS. MOORE: So are you saying, Mr. Duffy, that the  
21 cash position is okay, that conceptals not have a  
22 reservation and the risk factor, then, for them is they take  
23 all that action and then come forward and we are out of  
24 money?

25 MR. DUFFY: Well, yes, that is precisely what I am

1 saying, but let's back up and -

2 MS. MOORE: Because at the time of the conceptual,  
3 we have a not to exceed dollar amount.

4 MR. DUFFY: And at the time of the conceptual, the  
5 District has 24 months in which to come in with fully  
6 approved CDE DSA approved plans. So that 24-month period is  
7 really up to the District and its design professionals. And  
8 would I want money to be there for everybody? Yes. But  
9 over a period of 24 months, if the District is pushing the  
10 envelope, maybe they are back in -- if they can get through  
11 DSA in six or eight months, maybe they are back in. But we  
12 are in a period where everybody is not being funded because,  
13 as you were pointing out, it was a different world back when  
14 the PMIA and PMIB were in place. But, if I were the  
15 District and I had a problem, I would be in your office and  
16 everywhere else to get the approval as soon as I could.

17 MS. MOORE: Well, I think I find myself being more  
18 liberal than CASH probably, then, because my concern is  
19 this, that we conceptually approve - we give a dollar  
20 amount, it is a not to exceed dollar amount, so they have to  
21 really come back in and prove to the State Allocation Board  
22 if there is an increase in cost, and I understand Districts  
23 are fairly reluctant to do that, they try to work within  
24 that, and then they are at risk. So, then, I as a District  
25 take all those actions, I remove students from buildings, I

1 cordon off places, I seek interim housing, I spend a lot of  
2 money, and lo and behold, I come before the Board anywhere  
3 from six months to 18 months, and I am out of the money, and  
4 I could be out of the money forever if we do not have  
5 another bond measure. That is a huge risk.

6 MR. DUFFY: And I identify with that, you sound  
7 very much like me in arguing for those things under the  
8 Seismic Program. If, indeed, the program allowed for  
9 interim housing, I think that is a different matter. If we  
10 are talking about providing funding to the District to  
11 address all aspects of the Facility Hardship for the Seismic  
12 Program because of either the structural review costs, the  
13 interim housing costs, then I would answer it differently  
14 there because the District certainly has - Districts do not  
15 want to impugn their own buildings unless they have to  
16 because you cannot use them.

17 MS. MOORE: But that happens at conceptual.

18 MR. DUFFY: I know that.

19 MS. MOORE: And so, how - is it the Scarlet S?

20 CHAIR BRYANT: Well, now it will just be a Scarlet  
21 F.

22 MS. MOORE: The Scarlet F - and you are out of the  
23 building and you are incurring interim housing costs,  
24 perhaps.

25 MR. DUFFY: Then, Ms. Moore, why do we not have an

1 interim housing cost built within the program?

2 CHAIR BRYANT: Well, that is a different question.

3 MS. MOORE: I would support interim housing, so I  
4 for one am one of those. So we can talk further about that.  
5 I am just curious, well, you have stated the positions, so I  
6 accept that.

7 MR. DUFFY: But the interim housing element really  
8 identifies a place for the children to be, the students to  
9 be, and therefore, if you held funds only at the final  
10 approval, the students are adequately housed, and I think  
11 that we have a different construct there. That is where  
12 that element, I think, is coming in.

13 MS. MOORE: Well, here is how I see it. They are  
14 adequately housed on the District dollar, with the prayer  
15 that, in 24 months, they get off the District dollar and are  
16 provided a permanent place - not the District dollar, but  
17 get off the interim housing and are provided a permanent  
18 place, a permanent safe and educationally appropriate place  
19 after those 24 months. So, the risk to them is that interim  
20 housing costs go on and on and on because they never got the  
21 final funding to really replace that building, or replace  
22 that school. And in some instances, we may be talking about  
23 the replacement of a school, so -

24 MR. DUFFY: And relocation of an entire campus.

25 MS. MOORE: And relocation. So, that is

1 interesting. I understand because we are in extraordinary  
2 times, and we have done a lot of actions, I think, on the  
3 Board level, to ensure that the funding goes out, and is not  
4 held up for a time period; but, in the construct of a health  
5 and safety hazard, I tend to fall on the other side of the  
6 scale and say, you know, I think we ought to have the  
7 reservation there so that, when they complete that project,  
8 they come forward.

9 MR. DUFFY: Okay, and recognize - and you are  
10 lobbying me very hard and you are saying many things that I  
11 have said, especially about the seismic program, but there  
12 is the 24-month period that they have to come back in for  
13 final, and then they have another 18 months to get to  
14 contract, just like under the regular program. So, we are  
15 talking about a long time. And, again, I represent school  
16 Districts and defend them, and some Districts will move  
17 quickly, some Districts will take time.

18 MS. MOORE: Thank you, I had not considered that,  
19 thank you. I see what you are saying.

20 MR. DUFFY: But I love the idea of looking at an  
21 interim housing element here because that solves the issue  
22 that we have just been discussing.

23 MS. MOORE: I like the interim housing piece, but  
24 that is a small piece in terms of the larger concept here,  
25 for me, and that is do we reserve funds for health and

1 safety over time. But, what you have indicated, and that I  
2 am just now seeing more clearly, is that it could be 24  
3 months for the perfection, so to speak, of the project, and  
4 then up to 18 months for the construction of it. So, that  
5 is information that will certainly weigh as we make this  
6 decision. Thank you.

7 MR. DUFFY: You are a good lobbyist, Ms. Moore.

8 MS. MOORE: My next profession.

9 MR. HARVEY: A very big red letter day, not only  
10 have Mr. Smoot and I agreed, I may be coming close to  
11 agreeing with Mr. Duffy!

12 MR. DUFFY: That is right.

13 MS. MOORE: Lots of miracles going on here today.

14 MR. KIRCHENSTEIN: Good morning, Joe Kirchenstein.  
15 I am a little confused and maybe will try to add some  
16 insight into this issue. We have represented a number of  
17 school Districts directly, you have had circumstances that  
18 you have been describing, and I think there is a piece that  
19 we are leaving out. First of all, I think Ms. Kaplan  
20 correctly pointed us to the statute, which is pretty clear  
21 on what these categories mean and what they are all about,  
22 and we have not discussed the fact that Districts go out,  
23 secure the services of an expert, a structural engineer, or  
24 a risk assessment expert, that says that building is going  
25 to come down under certain conditions, or you need to vacate

1 a play field because it is directly located adjacent to a  
2 high pressure gas line. And CDE reviews that, OPSC staff  
3 reviews it, and the District gets some kind of a conceptual,  
4 or has an interpretation, and they vacate those premises for  
5 health and safety reasons. It is not my interpretation, it  
6 is not Mr. Duffy's interpretation, it is not any of our  
7 interpretation, it is someone that has got a license to say  
8 something is going to happen under certain conditions. And  
9 there is a disconnect between that interpretation and the  
10 District who follows the rule, and then getting the funding  
11 to correct that. We represented Inglewood, and if  
12 Inglewood's La Tierra project had not been backdated, the  
13 State Allocation Board would have probably had an entire  
14 neighborhood come down to the hearing because they had been  
15 in relocatibles for almost three years, waiting for the  
16 entire project to get through different interpretations of  
17 civil engineers at DSA. And that is another issue. Yeah,  
18 there were other issues, it was a whole process. And then  
19 DSA gets the letter from the civil engineer and says, "Well,  
20 the civil engineer did not go - or the structural engineer -  
21 did not go far enough." And that is an interesting moment  
22 in time. And the structural engineer says, "Well, I can't  
23 tell you for sure that that's going to happen." And so we  
24 do not quite have the technical people at DSA reviewing the  
25 analysis of the risk assessment expert, or the structural

1 engineer with the same set of protocols, and that can become  
2 an issue. And sometimes you will get a structural engineer  
3 who says, "You know, I am not going to go that far. I can't  
4 put my license at risk to say this building will fall down,  
5 but I can give you the criteria." So, some of that needs to  
6 be looked at, too. But the bottom line is the health and  
7 safety to students. And in Inglewood, they were put in a  
8 situation where, as some of you know, they are one or two  
9 acres, and asphalt, and the rest of the school was taken  
10 away from them. And fortunately, that is under construction  
11 now, and everybody became a winner. And later on I will  
12 testify on the priority piece when that gets more  
13 discussion, but I think we need to look at it from -

14 CHAIR BRYANT: You can go ahead. I mean, you can  
15 go ahead now if you want.

16 MR. KIRCHENSTEIN: Okay. From the position of the  
17 experts. So, again, on that issue, I think the  
18 prioritization of Facility Hardship is essential, in  
19 general. We have one particular - we have a few - but one  
20 in particular, the Mesa School District, and you have  
21 received, I think, letters on it, and Mesa is in a very  
22 exacerbating situation, they are shovel-ready, they are  
23 ready to go, there were some delays because they were  
24 switched from one category to another, some other delays in  
25 the system, and they do not have a set aside. And they only

1 have enough funding to do a portion of the relocation of a  
2 play field, the kids have been off the play field for two  
3 years now, but they cannot put in the mast fall\* [58:12]  
4 that CDE required, they cannot put in the other criteria  
5 that CDE required, without that matching fund, yet they have  
6 their own mast, but it would only take them so far. If they  
7 start that contract and then have to start up again, that is  
8 an additional cost, so when the District plays by all the  
9 rules and they get to the finish line, that pot of money  
10 should be there for a Facility Hardship. It is very  
11 different than any other type of approval because it is  
12 health, safety and welfare for students and teachers. So, I  
13 strongly recommend that we do come up with a priority that  
14 you are discussing and I think the implication of the  
15 statute and the prior rules and Regs imply that, so we  
16 really appreciate this hearing and the opportunity to speak  
17 on this matter. And that, I really mean. This is a long  
18 overdue discussion to try to connect those two dots, so I  
19 know all the Districts we represent do appreciate your work  
20 today, and that is very sincere. Thank you.

21 CHAIR BRYANT: I think this is a question, one  
22 that Kathleen already asked, but it was - once you get a  
23 conceptual approval, how many of the conceptual approvals  
24 drop out before they get to final approval?

25 MR. MIRELES: I actually do not know. What I do

1 know is the Board does grant, or has granted extensions,  
2 along with the 12-months. So -

3 CHAIR BRYANT: So when you get conceptual  
4 approval, you have 12 months to come back, and is that were  
5 the 24 months come in because you get extensions a lot for  
6 it? What are -

7 MR. MIRELES: If it is a replacement, then it is  
8 an up to 24 months, if it is a replacement. And it is a  
9 replacement on the site. So rehabilitations, which is like  
10 Modernization, those are 12 months. If it is replacement,  
11 building a new school and you need a new site, then you get  
12 up to 24 months.

13 MS. MOORE: What is the 18 months, then? I wrote  
14 down 18 to 24 -

15 MR. MIRELES: I am sorry, 18 months, that is what  
16 I meant for the typical rehabilitation projects.

17 MS. MOORE: Is it 18 to 24?

18 MR. MIRELES: Yeah, sorry, it is 18 months.

19 MS. MOORE: That is the timeframe?

20 MR. MIRELES: Yes. But it is - and I do not have  
21 all the numbers, but from what I have seen, it is rare that  
22 they drop out, the conceptual.

23 CHAIR BRYANT: Does everybody agree with that,  
24 that it is rare that a conceptual drops out? Okay. I do not  
25 know, because - all right, so anyone else have anything to

1 add to the discussion? Silence is deafening.

2 MR. HARVEY: It is our turn, I guess.

3 MS. MOORE: Cynthia, if I may, to just go to the  
4 heart of the matter, is it staff's research that we have the  
5 authority to prioritize Hardship Projects?

6 MR. MIRELES: Yes. It could be clarified in the  
7 regulation, but we think that there is some lack of clarity  
8 in the regulations right now, so specificity would help if  
9 we clarified or added -

10 MS. MOORE: And with the backing of the budget  
11 letter, that is our -

12 MR. MIRELES: In addition to the - yes.

13 MS. KAPLAN: Just as a bit of clarity, as statute,  
14 Regs, and with the budget letter, it would not be considered  
15 legally, in my opinion, a stretch for the Board to interpret  
16 specifically because it is laid out in the budget priority  
17 letter that health and safety are a priority, and then, when  
18 you look at our Regs, that says, you know, this is a health  
19 risk to the kids, and imminent, that the Board would not be  
20 doing something outside of their scope of authority if they  
21 made these projects a priority.

22 CHAIR BRYANT: Did you want to say something?

23 MR. HARVEY: I am interested in following  
24 Kathleen's lead. I am wrestling with whether we put them on  
25 the top of the list forever more, or whether we continue to

1 do what we have done, which is every month we put them on.  
2 To me, there is no question that they deserve to be in some  
3 priority. Imminent health and safety does not need to be  
4 defined. We are talking about life. And as such, we have  
5 got to protect not only teachers and students, but families,  
6 and as a result, I think we have to have some priority for  
7 Facility Hardship. I am just wrestling with how bold we  
8 become. I was looking to Ms. Moore because this is  
9 something she has given a great -

10 MS. MOORE: Well, the boldness, to me, is beyond  
11 the top of the list, or at all. I think I would recommend  
12 that Facility Hardship, indeed, have priority, and have it  
13 priority above all else. I think the more nuance of the  
14 question is, do we include conceptual? Because, in the  
15 testimony today, and in the staff presentation, to me, the  
16 Facility Hardship is a health and safety issue, and it is  
17 imminent, and it is a rigorous standard, and it has third-  
18 party verification. I do not want us to set up a system  
19 that says, "Oh, try this way, you are going to get funded  
20 first." I think we have a rigorous system and it is there  
21 only for those that are in, indeed, deep trouble, or that  
22 their students and staff have a health and safety risk. So  
23 I am prepared to move it to the top.

24 MR. HARVEY: So am I. I think we are all on that.

25 MS. MOORE: And so, our real wrestle is a couple

1 of things. I think it is the details of who moves to the  
2 top, and staff, I think, has done a good job of giving us  
3 background about where everybody is. And, personally, I am  
4 a little more - I am prepared also to be retroactive, that  
5 we do not set up a situation where everybody forward from  
6 today, or when the recommendation is made to the Board, and  
7 it depends upon a Board decision, that we are saying, "From  
8 here forward, they go," and we have left this group that is  
9 not here forward, that has already had an apportionment, and  
10 maybe you can help us with that issue, but that they are a  
11 part of that group, that we do not leave them hanging to  
12 whatever "here forward" means, all these folks that are  
13 already on the list. So however you can help with that,  
14 too, I think is part of our discussion.

15 CHAIR BRYANT: I got confused by what you just  
16 said.

17 MS. MOORE: We have projects that right now are on  
18 the list, waiting apportionment, that had, so to speak, full  
19 and final, correct? If we take an action at a State  
20 Allocation Board Meeting and say, "From now on, Facility  
21 Hardships go to the top of the list," what happens to those  
22 folks that are already on the list?

23 CHAIR BRYANT: So, in other words, if you are  
24 Facility Hardship, and you have not gotten an apportionment  
25 yet, you would -

1 MS. MOORE: What I am saying is -

2 CHAIR BRYANT: So, are we going to reorder the  
3 list that exists today?

4 MS. MOORE: Exactly.

5 CHAIR BRYANT: Right. So, I guess, when I was  
6 thinking about making Facility Hardship a priority, I  
7 assumed we would reorder the balance of the list.

8 MS. MOORE: And are we able to do that?

9 MR. MIRELES: Yes, and we are going to be making  
10 apportionments August 4<sup>th</sup>, so the list is going to be tumbled  
11 based on the priorities and funding, so we are going to be  
12 able to make apportionments and the list is going to change.  
13 And what I wanted to clarify is, after those apportionments,  
14 then re-tumble the list to put all of the Facility Hardships  
15 at the top? Is that what you are proposing, Ms. Moore?

16 MS. MOORE: I was proposing, well, again, we are a  
17 subcommittee, so it is what we recommend to the Board, and  
18 it is the full Board decision, so let's take it to that  
19 step. Yes, I would want to be inclusive of all those that  
20 have gone heretofore, and then, future on, obviously, it is  
21 a well known fact, but I do not want to leave anybody  
22 behind.

23 CHAIR BRYANT: So the list, I mean, this is just  
24 conceptual, so our list right now has the date that you made  
25 your application, and then it goes in the order of the date

1 that you are put on the unfunded list by State Allocation  
2 Board, and then the next order of determination is the date  
3 your application came in to OPSC?

4 MR. MIRELES: That is correct.

5 CHAIR BRYANT: So for Facility Hardships, the  
6 first thing would be you are a Facility Hardship, the second  
7 thing would be the date you are on the unfunded list by  
8 State Allocation Board, and the third of that sorting factor  
9 would be your date your application was made. I think,  
10 right? I mean, that would be conceptually how the list  
11 would be ordered, and so the question is, can we re-tumble  
12 the list as it exists?

13 MR. MIRELES: Yes.

14 CHAIR BRYANT: And we do not know, I think I would  
15 ask you - you were going to look - do we know yet in the  
16 priorities and funding the existing Facility Hardships that  
17 are on the unfunded list, how many of them are going to get  
18 funded, what is left?

19 MS. MOORE: Of the \$19 million that are in our  
20 agenda -

21 MS. KAPLAN: Not all of them will receive funding  
22 out of the priorities and funding. It is about three, an  
23 estimate at this point, we are still finalizing the numbers  
24 for the August 4<sup>th</sup> Board.

25 MS. MOORE: Three that will or will not?

1 MS. KAPLAN: Three that will. And that leaves  
2 about 10 or so that have made requests.

3 CHAIR BRYANT: So everything is going to be  
4 apportioned and we are going to have no cash in our program  
5 for the moment, but we do have, by reordering this, we are  
6 probably going to be starting to see rescissions coming in,  
7 and then for our next bond sale, assuming we have a budget  
8 and we have another bond sale, and then they would be at the  
9 top of the list.

10 MR. MIRELES: Yeah, and we can certainly work with  
11 the list to reflect that.

12 CHAIR BRYANT: Okay.

13 MS. MOORE: Are we in agreement on that?

14 MR. HARVEY: Absolutely.

15 MS. MOORE: Okay. So I think - so, isn't it then  
16 the conceptual vs. - do we include the conceptals as a  
17 reservation of funding?

18 CHAIR BRYANT: That is a different thing because  
19 what that really - did you want to speak on this point?  
20 Because I am happy to have you interrupt us for a minute.

21 MS. MOORE: Yes, educate us.

22 MR. DICKSON: Thank you, Madam Chair, Joe Dickson  
23 from Santa Ana Unified School District. My question is the  
24 integrity of the list, the \$408 million. Santa Ana is  
25 between 370 and 427, so anything that changes right now, is

1 a direct effect of Santa Ana Unified.

2 MS. MOORE: I heard that the change will occur  
3 after that.

4 MR. DICKSON: The integrity of the list remains.

5 CHAIR BRYANT: I think, just my opinion, and it  
6 sounds like both these guys agree, the priorities and  
7 funding of \$408 million, you know, we cannot impact that.

8 MR. DICKSON: We are not moving. We are not going  
9 to reorder that -

10 CHAIR BRYANT: I do not think any of us recommend  
11 that.

12 MR. DICKSON: I just wanted it to be clear.

13 CHAIR BRYANT: Right. In order to get the results  
14 we wanted to get, and in order to accomplish those things  
15 that - the goals that we set for that, I do not think we can  
16 mess with that. The integrity of that process has to stay,  
17 and we are talking about, as soon as the priorities and  
18 funding round is over, re-tumbling the list at that point.

19 MS. MOORE: And, in fact, I think we, as the  
20 subcommittee, made that conscious decision when we decided  
21 not to take on this issue during those deliberations, and  
22 now we are taking on that issue, so I would strongly support  
23 that the integrity of that program remains - not integrity,  
24 but that remains intact. We are talking about what happens  
25 next.

1 CHAIR BRYANT: Right.

2 MR. DICKSON: Well, thank you. And going forward,  
3 Santa Ana Unified would support Facility Hardship being at  
4 the top of the list.

5 MS. MOORE: What do you think about conceptual?  
6 You work in the trench.

7 MR. DICKSON: You could tell, huh? You know, I  
8 think conceptual should go to the top of the list, as well,  
9 because it has already passed all the muster, if you will,  
10 to get there, and it just comes down to maybe some  
11 clarifying points. But I think that should be a priority if  
12 it is health and safety.

13 MS. MOORE: Do you have any health and safety  
14 projects, Santa Ana?

15 MR. DICKSON: We have emergency repair projects,  
16 but we have a local bond, so we are able to take care of  
17 that. So, thank you.

18 CHAIR BRYANT: And I think the question on  
19 conceptual is not so much about - they would not, I think -  
20 correct me if I am wrong - I do not think they would be  
21 eligible, per se, for the unfunded list, but what we would  
22 do is, as we have the conceptual approvals, we would never  
23 put more - it is the question of how much bond authority we  
24 have left in the program, and we would have to somehow or  
25 another - because we already know that we do not want our

1 unfunded list to exceed what our bonding authority currently  
2 is. And because, when we get to that point, we are  
3 switching, if we make that decision, if the Board makes the  
4 decision, we would be switching to the old type of unfunded  
5 approval list, which has cost so much heartburn for all of  
6 us. And so we would want to make sure that, in our existing  
7 program, that we had enough authority left to fund the  
8 conceptual approvals. So it would be yet a different type  
9 of tracking mechanism.

10 MS. MOORE: If we made that decision.

11 CHAIR BRYANT: If we made that decision, if the  
12 Board made that decision. That is how I would picture it  
13 working, that we would have kind of a reservation of  
14 authority that would be there, so that the unfunded - so  
15 that we would not exceed the existing authority that we had,  
16 would be how I would picture it working.

17 MS. KAPLAN: If I may, just to give you a frame of  
18 reference of what it is like from a District perspective  
19 with Facility Hardship, currently we are at Natomas Unified  
20 dealing with this, I think each circumstance is unique, but  
21 what the District generally - each District wants to deal  
22 with this, handle this as quickly as possible;  
23 unfortunately, when you go in, and we have structural  
24 deficiencies in certain areas of one of our schools, when we  
25 found it, it led to the closing of the school, we have

1 already re-put the students elsewhere, and we would like to  
2 get this done as quickly as possible. There is just so many  
3 steps. If you would see via the checklist of making sure  
4 that we have department concurrence, and then what happens  
5 happens, you know, with them coming in and getting the  
6 conceptual, if it takes a while to get the Department  
7 concurrence, or to come in to OPSC, and does OPSC agree with  
8 DSA?

9 MS. MOORE: However, isn't it my understanding  
10 that the concurrence has occurred at conceptual, or am I  
11 misunderstanding -

12 MS. KAPLAN: Yes, and that is what I am saying -  
13 at conceptual, so you are starting and you want to go, but  
14 conceptual, getting to conceptual, may take a while, but we  
15 already internally had an engineer come out, already look at  
16 the structural safety. We knew as a District we had to take  
17 the kids out of there, they could not be in there, but that  
18 was even before we had conceptual. You know, then there is  
19 the timeline of getting conceptual, which -

20 CHAIR BRYANT: Are you suggesting that we do some  
21 kind of a reservation of authority for someone who was  
22 thinking about going for conceptual?

23 MS. KAPLAN: No, I am not going there. What I am  
24 just trying to do is give you a perspective of a District,  
25 that certain things may happen -

1 MS. MOORE: There is a lot of action that happens  
2 before the conceptual is what you are saying.

3 MS. KAPLAN: Exactly. And I know the timeline  
4 sounds like a while, but I think maybe 18 or 24 months, and  
5 then they have another 18 months. Some Districts may be  
6 able to go through it really quickly if everything is  
7 streamlined, but some may actually need the 18 to 24 months,  
8 and it is not the District delaying things, but because  
9 there are so many steps and independent players that you  
10 have to get on this, that it may actually take that long to  
11 get there. But I know, for a District's perspective, our  
12 plan is to try and get this done in two years, which is  
13 moving pretty quickly, and it just takes having everybody in  
14 order.

15 CHAIR BRYANT: And I think, too, that if the Board  
16 were to make this policy statement and take an action like  
17 this, that included in that, whether it is by inference, or  
18 whether we make it specific in whatever action we take, we  
19 would be stating a State Allocation Board policy that these  
20 health and safety projects are our greatest priority, which  
21 the next step for that would be that OPSC and DGS would work  
22 to make sure that those applications - that those school  
23 districts get the highest level of technical assistance, the  
24 highest level of quickly moving through the process, which  
25 might reduce the timeframe down, leaving less time lingering

1 out there. I mean, I think that would be, to me, what this  
2 kind of motion would imply.

3 MS. MOORE: And if I may, in terms of the  
4 conceptual, that is not an apportionment, correct? It is  
5 not a placement on the unfunded list to date?

6 MR. MIRELES: No.

7 MS. MOORE: So, you know, Mr. Duffy is rightful in  
8 pointing out to us that it has no standing, so to speak,  
9 other than we have said, "We bless your conceptual." You  
10 know, "Go forth and do your project, and come back and hope  
11 there is funding when you are done." So, we would actually  
12 also have to somehow create that mechanism for, if we  
13 proceed as what we are talking about, for that conceptual  
14 reservation, so to speak; you know, we have determined that  
15 this problem is a \$2 million problem, you know, we are never  
16 going to place onto the unfunded list that \$2 million that  
17 takes place with that - if we make this recommendation. And  
18 we would have to set up some kind of system around that.

19 MR. MIRELES: It would be sort of a reservation of  
20 funds for these types of projects at the preliminary stage.

21 MS. MOORE: Right. Now, critically over-crowded  
22 schools, we did a reservation of fund, correct? So when  
23 those projects came in, of course, this was under a very  
24 different circumstance when the bond measure began and that  
25 was that the PIMB was fully functioning and we as a state

1 were in very different budget situation, but those folks had  
2 five years - five plus one, right, to -

3 MR. MIRELES: Four plus one.

4 MS. MOORE: -- four plus one to perfect their  
5 projects. So, it has not been an unheard of standard and we  
6 also said that was critically overcrowded schools, yet it  
7 was in a different era of our -

8 MR. MIRELES: Yeah. The other component, too, is  
9 that, just like COS Charter also has that, but both of those  
10 have specific statute authority to get that reservation and  
11 then the up to the five years to come in with the actual  
12 funding application.

13 MS. MOORE: Well, we know right now from the  
14 material that you presented that the universe of existing  
15 and on-the-workload is - let's round up - a \$60 million  
16 universe, potentially. Correct?

17 MR. MIRELES: In the current workload, yes.

18 MS. MOORE: And then it is whatever happens in the  
19 future and I do not know what is behind that, and we have  
20 around \$2 billion left in our - how much is left in new  
21 construction in Modernization?

22 MR. MIRELES: I am sorry, in the unfunded list?  
23 Or bonding authority?

24 MS. MOORE: Authority.

25 MR. MIRELES: Sorry -

1 MS. KAPLAN: For new construction we have, I think  
2 it is down to about \$165 million, approximately, but we have  
3 \$1.5 billion for Modernization, and that is absent any  
4 legislative transfer from other programs into new  
5 construction.

6 MS. MOORE: Did these get funded out of - what  
7 pot?

8 MR. MIRELES: Regular, depending on the type of  
9 project, if it is a rehabilitation, it is under the  
10 Modernization pot, if it is a replacement, it comes under  
11 the new construction.

12 MS. MOORE: Okay, so both pots.

13 MR. MIRELES: Yes. And if it is a seismic, from  
14 the seismic pot.

15 MR. HARVEY: Well, if I might jump in, I am  
16 persuaded by Mr. Duffy's arguments. I think, given this  
17 time, because of the 1824 and 18, because of no standing,  
18 and because we have not addressed the policy issue of  
19 temporary housing, I would want to put conceptual off until  
20 those are addressed.

21 MS. MOORE: I guess, it is difficult. With my  
22 District hat, however, I would say if you start going down  
23 that path and have the risk factor at the end of it,  
24 particularly this day and age, I think it is a huge risk to  
25 a school district. They have to do it anyway. Most of

1 these circumstances are they must take action and they do,  
2 you know, doing the right thing, but they also might at the  
3 end of the day - I mean, we are about to declare another  
4 thousand Districts, in problematic days in terms of their  
5 budgets. I just hate to put that additional piece onto  
6 them.

7 CHAIR BRYANT: We are in an awkward time. If this  
8 were three years ago, where there was plenty of bonding  
9 authority out there, part of it is, and I think I am trying  
10 to sit here and think about what is the right thing to do,  
11 forgetting about what bonding authority is actually on the  
12 table. To me, it - I do not want to say it is irrelevant  
13 because it is not irrelevant, but it also should not be -  
14 that should not be what decides it for us, I mean, at least  
15 for me. I am thinking what is the right thing to do, and I  
16 think when I think about conceptuials, I think about my  
17 Scarlet S now, or just a general Scarlet F, if you know you  
18 have got - if you are declaring publicly as a School Board  
19 member that I have got a toxic mold problem in my multi-  
20 purpose room that your kids are having lunch in every day,  
21 and I make that declaration by coming and starting to get it  
22 - I have got toxics doing it, and then there are just no  
23 bond funds left. Now, maybe that puts pressure on for some  
24 different political argument that is out there, but I think  
25 that if you come and the State Allocation Board says, yeah,

1 conceptually we agree with you, there has got to be a little  
2 bit of a bargain in there, "And we are going to help you fix  
3 that because we have conceptually approved you." And I  
4 think it is a question that - maybe I do not have my total  
5 opinion about it sitting here this minute, but I think when  
6 the Board has its discussion, that is a very critical  
7 question they have to answer for themselves. If you make a  
8 conceptual approval that you have a Facility Hardship, are  
9 you also committing - are you making kind of an obligation  
10 that you will hold a little bit of authority for you to get  
11 the money when you are ready? I do not have a perfect  
12 answer. I think maybe I do not know, sitting here right  
13 this minute. Lyle, do you know?

14 MR. SMOOT: Thank you. Lyle Smoot, Los Angeles  
15 Unified again. And I do not have a proposal to answer your  
16 question, what I do have is a situation where I think this  
17 walks back into that line of interim housing because, the  
18 day you go to your local board and say, "This is a hardship,  
19 health and safety hardship situation," that is the day you  
20 have to move the kids out of that facility - whatever it is,  
21 whatever the reason, that is the day you move them out, and  
22 there are a whole bunch of reasons I will not go into, but  
23 that is the day you move them out. From that point on, you  
24 have an interim housing problem. And I think the issue,  
25 really, that if you can address that, if you can address the

1 interim housing issue and say, "Hey, we'll help you until  
2 you get to the point of being ready for the money, and when  
3 you are ready for the money," one idea is, "...when you are  
4 ready for your apportionment, you will go to the top of the  
5 list. In the mean time, we'll help you with your interim  
6 housing needs." I think a lot of those issues are addressed  
7 - may not resolved adequately, but they are addressed  
8 because the kids are no longer in harm at that point, now  
9 you have social issues and community issues, and a lot of  
10 those things, but the health and safety is addressed at that  
11 point, but the money is not.

12 MR. HARVEY: We actually agree again.

13 MS. MOORE: That is a good point, but, however, in  
14 that instance, the State is on the line also for the interim  
15 housing perhaps ad infinitum - I mean, forever, if we do not  
16 have another bond measure, and we have committed to interim  
17 housing for a project, which in my mind, you know, you are  
18 speaking to the choir, I think interim housing should be a  
19 part of these projects. I think the Board has taken no  
20 decision on that, maybe we will take another look at it, but  
21 the Board has had that consideration at one point and they  
22 made a decision on that. However, if we are on the line for  
23 interim housing forever, I would much rather have made a  
24 reservation and, two years hence, I have a next permanent  
25 building, or whatever - I fixed the problem vs. for 20

1 years, they are out in portables somewhere. I would much  
2 rather - and I think it is a better state investment and a  
3 better District investment to move them along and build that  
4 project, vs. interim house them for a long period of time.

5 MR. SMOOT: In prior years when you had interim  
6 housing allowances under the Lease-Purchase Program, there  
7 were limitations on how long you would pay for that, and  
8 maybe - just saying - that might work in this case, where  
9 you said, "Okay, we will give you an interim housing  
10 allowance. In anticipation, you are going to get through  
11 the process and be ready for an apportionment in a rapid  
12 period of time, and if you cannot accomplish that, then the  
13 state is not responsible for that." And I understand that,  
14 you know, the passage of a bond measure, or the ability to  
15 sell a bond measure gets involved in that conversation,  
16 obviously as a school district representative, you know, we  
17 would like to see an open door. But, at the same time, I  
18 understand your statement. I think if you just said, "Okay,  
19 we will help you with your interim housing, that will get  
20 you through the time period until you are ready for  
21 apportionment, but by the way, we are not going to do that  
22 forever," you know, kind of issue might address it.

23 MS. MOORE: So, if I may, Cynthia, it certainly  
24 sounds that our subcommittee is prepared for a  
25 recommendation, giving Facility Hardship the highest

1 priority, both those that exist now and into the future for  
2 this program, I hear that. And the remaining issue that,  
3 perhaps we, you know, tee up for the entire Board to discuss  
4 -- are we inclusive of conceptual - and I am prepared to  
5 talk about that and I hope that Districts are prepared to  
6 talk about that, I think it is risk factor, and then perhaps  
7 others that feel differently, you know, bring it forward and  
8 lets have the discussion.

9 CHAIR BRYANT: It certainly is an issue of first  
10 impression in my tenure on the Board, so it is probably  
11 worthy of having a focused discussion at the Board on it.  
12 Mr. Duffy?

13 MR. DUFFY: You are both very persuasive. I was  
14 just sitting in the back of the room thinking, okay, what  
15 does this now do to the rest of the program. And so I have  
16 a suggestion for you. As you asked a few minutes ago, how  
17 much money is left in new construction, it is dwindling, we  
18 believe you are going to be out of Authority after the  
19 August - second August Board meeting. You do have authority  
20 under the seismic program for probably about, what, \$80-85  
21 million. If you do what you are suggesting, why don't you  
22 take to the Allocation Board -- so here is the proposal --  
23 that you do a carve-out from the Seismic Program because  
24 there is a good deal of authority there, and take the \$24  
25 million in unfunded approvals that are before you, and say

1 that you are making a provisional apportionment, but call it  
2 an "apportionment" so the money is set aside, so that, in  
3 the future when there is a bond sale, then you could provide  
4 those funds at the time that the District comes in with its  
5 final approval. And what does that do? One, it uses some  
6 Authority, but it does not take the Authority, say, from new  
7 construction, and you have got a breakdown of new Rehab, as  
8 well as - so I guess the new construction is about \$7.2-7.3,  
9 but that is one way to address it. In this hearing, you  
10 have come closer and closer, looking at seismic and Facility  
11 Hardship as really being, as you stated, Madam Chair, maybe  
12 it is the same program, but we do not have a carve-out, so  
13 maybe this heads you in that direction.

14 CHAIR BRYANT: So you are suggesting, then, that  
15 we would take toxic mold facility hardship projects and pay  
16 for them out of the Seismic Program?

17 MR. DUFFY: The Seismic Program -

18 CHAIR BRYANT: I know we have authority to move --

19 MR. HARVEY: Yes. I want to be specific that the  
20 bond covenants on that set aside were not specific for the  
21 definition of seismic, but the shake zone and the building  
22 type, I am not certain - that is a wonderful suggestion, but  
23 I would want to make certain that we have the legal  
24 authority to make that shift because I am not certain we do.

25 MR. DUFFY: But what I recall, Mr. Harvey, is that

1 the Board took specific action to take from the Bond funds  
2 under new construction, the entire amount that you had  
3 authority to take, which was the \$199.5 million. And so the  
4 Board did not have to take the entire amount, you could have  
5 left - yeah, it was up two.

6 CHAIR BRYANT: Bruce is agreeing with you, so...

7 MR. DUFFY: Okay.

8 CHAIR BRYANT: You cannot see him. But the \$199  
9 is still a subset of New Construction.

10 MR. DUFFY: It is, so if the Board had the  
11 authority to take it, the Board certainly has the authority  
12 to move some back. The rehabilitation part, you have plenty  
13 of Modernization. But, I wanted to encourage the  
14 continuation of the discussion because I think it is an  
15 important part of it, but, really, if we want to focus on  
16 giving Districts the tools to address Facility Hardship and  
17 seismic issues, you have to look at interim housing, it just  
18 does not work without it.

19 MR. HARVEY: Well, we have two things to look at,  
20 then. I think we look at that at some point in time and we  
21 have the discussion with DSA on this issue of what is an  
22 imminent public safety threat.

23 MR. DUFFY: It has been our belief that, because  
24 of the dwindling New Construction allowances, that the Board  
25 would be encouraged by one or more parties - not us,

1 certainly, at this time - to take the seismic money back  
2 into the New Construction program, to be able to continue  
3 having authority under New Construction. I do not know if  
4 anyone has approached you about that, but we have  
5 anticipated that. And, as Ms. Kaplan noted, the discussions  
6 that we have heard in the past about moving funds from  
7 Modernization to new, which is something we are troubled  
8 with, I think we need a new solution for what we do with New  
9 Construction and, of course, we are discussing AB 220 and  
10 the possibilities of a bond for 2010. Thank you.

11 CHAIR BRYANT: Okay, so I think we have consensus  
12 on our guidance. Does everyone understand kind of what we  
13 are thinking?

14 MR. MIRELES: Just to clarify, put them up to the  
15 top of the list, the entire list, Facility Hardships, all  
16 inclusive of what a facility hardship is, and to bring  
17 before the Board the discussion of the conceptual, but not  
18 necessarily a recommendation from the Subcommittee on that  
19 issue.

20 MR. DUFFY: And setting some time with DSA.

21 MR. MIRELES: And setting up another -

22 MS. KAPLAN: And just for everybody who is  
23 listening online, are we having this discussion at the  
24 August 4<sup>th</sup> Board meeting?

25 CHAIR BRYANT: I think we are intending to. I

1 think that is why we ended up having this Subcommittee  
2 hearing, because we realized we did not have -

3 MR. MIRELES: The schedule for the August meeting.

4 CHAIR BRYANT: We did not know how to do the item  
5 without some additional input, so...

6 MS. KAPLAN: And then we will have this discussion  
7 after the 408, and the 408 is not part of any of this. Just  
8 summarizing in case somebody came in at the last minute and  
9 did not see this. And then, just for the Subcommittee to  
10 know, we have had extensive conversations with DSA about  
11 imminent threat at the Implementation Committee, and how to  
12 define that, so would welcome maybe a smaller stakeholder  
13 group because I believe this discussion has kind of been  
14 exhausted.

15 MS. MOORE: I am wondering, were you recommending,  
16 Madam Chair, on the DSA issue being in a Subcommittee like  
17 this, bringing that forward?

18 CHAIR BRYANT: Well, it was kind of crossing my  
19 mind that it might be a worthwhile thing to do, but, again,  
20 I think there are other Board members, although it depends  
21 on their time commitment if they would want to do it, but  
22 like I said, I know particularly Senator Hancock really is  
23 interested in the seismic issue and making the connection,  
24 so I think we could discuss it at the Board meeting whether  
25 they want us to continue doing it, or if someone else, you

1 know, wants to.

2 MR. HARVEY: Or have stakeholders and staff pass  
3 it out and bring some alternatives to the Board.

4 CHAIR BRYANT: Although it sounds like a little is  
5 done with it, they are over it.

6 MS. KAPLAN: There was no agreement and no real  
7 resolution and direction on that. DSA pretty much indicated  
8 they have no tool or way to define Imminent Threat.

9 MR. HARVEY: That is imminent threat for seismic,  
10 we are talking about the imminent threat that is in the  
11 Facility Hardship side of things. It is perhaps a similar,  
12 but -

13 MS. KAPLAN: But it is kind of one and the same  
14 because seismic is set out under Facility Hardship and  
15 detailed and does mention the most vulnerable category 2,  
16 which then takes it to the program where you have defined  
17 imminent threat.

18 MS. MOORE: I thought it was more inclusive and it  
19 actually goes to the question that Mr. Smoot raised earlier,  
20 is, you know, how does it then roll on and on?

21 MR. HARVEY: Exactly -- it is water, I mean, the  
22 language is imminent threat of public health and safety.  
23 Madam Hancock was interested in imminent threat of collapse,  
24 a very different term, so I think we need to probe on that,  
25 but, again, my understanding is the terminology in the

1 regulation for Facility Hardship is imminent threat of  
2 public health and safety, or something along that line.  
3 Collapse is not -

4 MS. KAPLAN: Health and safety of pupils at risk.  
5 It does not mention -

6 MR. HARVEY: People at risk, there you go.

7 MS. MOORE: So then, is it our recommendation as a  
8 Subcommittee that, as part of this recommendation that moves  
9 forward on this issue, that we have identified another  
10 larger issue, sub-issue of this, and how does the Board want  
11 to handle that?

12 CHAIR BRYANT: Exactly. That is exactly what I  
13 was going to say, so we can put that in there, and then get  
14 their input, whether they want it to go - larger question -  
15 whether they want it to go in, or whether they want to use  
16 this Subcommittee, or create another Subcommittee, I think,  
17 are kind of the choices. Anything else? Well, thank you.  
18 Thanks again, everybody, for doing this. This was helpful.  
19 I appreciate it.

20 [Concluded at 11:10 a.m.]

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23 [Adjourned at 11:10 a.m.]

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