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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

STATE CAPITOL
ROOM 4203
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, JANUARY 28, 2009
TIME: 4:05 P.M.

Reported By: Mary Clark Transcribing
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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

THOMAS L. SHEEHY, Chief Deputy Director, Policy, Department of Finance, designated representative for Michael Genest, Director Department of Finance.

SCOTT HARVEY, Chief Deputy Director, Department of General Services, designated representative for Will Bush, Director, Department of General Services.

KATHLEEN MOORE, Director, School Facilities Planning Division, California Department of Education, designated representative for Jack O'Connell, Superintendent of Public Instruction.

SENATOR LONI HANCOCK

SENATOR ALAN LOWENTHAL

SENATOR MARK WYLAND

ASSEMBLY MEMBER JEAN FULLER

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER TOM TORLAKSON

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

ROB COOK, Executive Officer

LORI L. MORGAN, Deputy Executive Officer

KATRINA VALENTINE, Assistant Executive Officer

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

HENRY NANJO, Senior Staff Counsel

P R O C E E D I N G S

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CHAIRPERSON SHEEHY: Call the State Allocation Board to order. We're going to call the roll and establish a quorum. Please call the roll.

MS. RICE: Senator Lowenthal.

SENATOR LOWENTHAL: Yes, I'm here.

MS. RICE: Senator Hancock.

Senator Wyland.

SENATOR WYLAND: Here.

MS. RICE: Assembly Member Fuller.

ASSEMBLY MEMBER FULLER: Here.

MS. RICE: Assembly Member Brownley.

ASSEMBLY MEMBER BROWNLEY: Here.

MS. RICE: Assembly Member Torlakson.

ASSEMBLY MEMBER TORLAKSON: Here.

MS. RICE: Scott Harvey.

MR. HARVEY: Present.

MS. RICE: Kathleen Moore.

MS. MOORE: Here.

MS. RICE: Rosario Girard.

MS. GIRARD: Here.

MS. RICE: Tom Sheehy.

CHAIRPERSON SHEEHY: Present. Okay. Excellent.
We have a quorum established. Mr. Cook, can you please

1 present the **Minutes**, Item No. 2.

2 MR. COOK: Yes. Right. The Minutes from our
3 December 10th meeting and our January 14th meeting are ready
4 for your approval.

5 CHAIRPERSON SHEEHY: Are there any questions or
6 comments from members of the Board on the Minutes?

7 MR. HARVEY: Move approval.

8 CHAIRPERSON SHEEHY: Yes, Ms. Brownley.

9 ASSEMBLY MEMBER BROWNLEY: Yes. Thank you,
10 Mr. Chair. At the last meeting, I had asked -- I think we
11 had some discussion about the proposed regulations covering
12 the -- only the regular new construction/modernization
13 programs or whether they intended to be broader to cover
14 things like career technical education, and the answer was
15 yes, it's broad and includes career technical education and
16 others.

17 But the Minutes don't reflect that and I just felt
18 like maybe something like that and having it being supported
19 again through the Minutes might be important.

20 CHAIRPERSON SHEEHY: Excellent suggestion.
21 Mr. Cook.

22 MR. COOK: Okay. We can make that amendment and
23 bring it back to the next Board for approval.

24 CHAIRPERSON SHEEHY: Would that be satisfactory,
25 Ms. Brownley?

1 ASSEMBLY MEMBER BROWNLEY: Yes.

2 CHAIRPERSON SHEEHY: Excellent. Let's do that.

3 Are there any other questions or comments from members of
4 the Board? Anybody from the general public today want to
5 comment on the Minutes? Seeing no comments, is there a
6 motion to approve the Minutes?

7 MR. HARVEY: So move.

8 MS. MOORE: Second.

9 CHAIRPERSON SHEEHY: All in favor.

10 (Ayes)

11 CHAIRPERSON SHEEHY: Minutes are approved. Thank
12 you. Mr. Cook, do you have a statement for us, Item No. 3.

13 MR. COOK: Yes, I do. We have a few items. One,
14 I'm pleased to announce that the Office of Administrative
15 Law has recently -- on January 21 approved regulations
16 amending the Overcrowding Relief Grant Program. This allows
17 for advanced funding for site acquisition when condemnation
18 proceedings are involved. You may recall that this issue
19 was raised in the spring by Lennox District and those now
20 are available and can be used for this funding round.

21 Also there is a great deal of discussion, maybe
22 not as great definition around the federal stimulus program.
23 We have looked at our regulations against the legislative
24 proposals out there. We're not sure that they match today.
25 We're trying to keep tabs on what may or may not develop in

1 that area and we'll be ready to react accordingly if this
2 organization has a role in those funds.

3 Also for -- information for folks. The Deferred
4 Maintenance Program normally has an allocation in December.
5 This year we were intending to bring it to this Board.
6 Those funds are caught up in the categorical relief
7 discussion that is occurring on the state budget. We felt
8 it prudent that we await that action before allocating the
9 funds.

10 CHAIRPERSON SHEEHY: Excuse me, Mr. Cook. How
11 much money is involved in the deferred maintenance?

12 MR. COOK: \$277 million.

13 CHAIRPERSON SHEEHY: Is that money appropriated in
14 the Budget Act of '08?

15 MR. COOK: It is.

16 CHAIRPERSON SHEEHY: Okay. I'm going to make a
17 recommendation, see if the other Board members agree. I
18 appreciate the Board's cooperation in not acting on those
19 funds sooner and I think that was appropriate. Since none
20 of us -- since we're all hopeful that we get resolution on
21 our budget soon, but none of us has a crystal ball and know,
22 I think we should put that on the agenda for next month in
23 the event that that money is used as part of a solution that
24 we could go ahead and pull that agenda item.

25 But we don't control what's going to happen and

1 that money does need to go out if it's going to be
2 available. So I think we should agendize it if that's
3 agreeable to the committee.

4 MR. COOK: We will do so. And then there has been
5 a suggestion or at least -- due to our difficult time at our
6 last meeting to secure a large meeting room and this time,
7 thank you, Senator Lowenthal, interceded and we were able to
8 get a larger room. But there has been some concern that our
9 scheduling this year will not allow us access to the largest
10 of the meeting rooms and to improve transparency, to
11 accommodate the large number of people that we normally have
12 attend the State Allocation Board meetings, there's a
13 suggestion that we move our meetings to Thursday afternoons
14 at a time when the Legislature isn't using these rooms.

15 CHAIRPERSON SHEEHY: And I for one -- I would
16 support that. I don't know if we have a majority of Board
17 members that would, but these meetings are attended by a lot
18 of folks and I think it's very difficult for us to meet in
19 small rooms and I'm very cognizant of the fact that most
20 legislators pretty much like to get on a plane right after
21 their Thursday floor session and fly home.

22 But if it's possible once a month if we would meet
23 at 1:00 or 1:30, try to keep the meeting short, I think that
24 would greatly facilitate more transparency in our meetings
25 and if we could at least try that, see how it goes, I would

1 be supportive of that. Mr. Harvey.

2 MR. HARVEY: I most certainly would as well and if
3 I could segue into something else which I think touches
4 transparency and maybe addresses the ability for more folk
5 to see what we do on a realtime basis. I would like the
6 Board's reaction to a service that Department of General
7 Services provides, which is the ability to hear events
8 realtime or video them and save them for looking later, but
9 it seems to me -- I encourage people to come if they wish,
10 but if we are really talking about transparency and having
11 more people see what we do on a realtime basis, they could
12 literally stay in their home areas and listen or watch to
13 what we do. We ever have the ability to make it
14 interactive.

15 So I would encourage staff to meet with DGS staff,
16 perhaps bring us a series of options and the costs attached
17 to those options, but this is another way of transparency.
18 It's another way of greenhouse gas reductions, and I think
19 it's something we should seriously consider.

20 CHAIRPERSON SHEEHY: Mr. Harvey, that's an
21 excellent suggestion, but before we consider your
22 suggestion, I think it would be appropriate to hear from the
23 Senators and Assembly Members that are here today on the
24 first matter and then we can get some comment on yours.
25 Senator Lowenthal.

1 SENATOR LOWENTHAL: Well, you know, I can just
2 tell you that it's going to be very difficult. I thought
3 about this to have it after Thursday and while you do state
4 that you're going to try to keep these meetings as short as
5 possible, I don't believe it.

6 So -- no. I believe you're going to try. I don't
7 believe that they're going to be as short as possible
8 because we're legislators and we like to talk. So -- and so
9 does everyone else once they -- and so -- and I know it's
10 only once a month, but it's very difficult for us because we
11 have already scheduled right after those meetings lots of
12 lots of events in our district and so if there's any other
13 option, I would just really like to hear that.

14 You know, we can work on trying to keep this room
15 or whatever we can available and to have larger rooms or
16 larger -- but I'll be honest, there will be a fall off in
17 the membership of legislators.

18 CHAIRPERSON SHEEHY: Okay.

19 ASSEMBLY MEMBER TORLAKSON: Mr. Chair.

20 CHAIRPERSON SHEEHY: Yes. Senator Torlakson.

21 ASSEMBLY MEMBER TORLAKSON: Following Senator
22 Lowenthal's comment, many of us have booked a couple months
23 in advance what we're doing on those Thursday afternoons,
24 but understanding the very important point about the public
25 access, are there other facilities -- has staff looked at

1 other facilities in the vicinity that could possibly be
2 available and I think first choice is what Senator Lowenthal
3 mentioned is to, you know, work diligently to get this room
4 reserved and protected or one of the other large meeting
5 rooms here in the building, but if not, is there something
6 close to campus here that we could make available.

7 MR. COOK: Staff has kind of exhausted the
8 opportunity there. I mean this is -- this hearing --

9 MR. YOUNG: There are four auditoriums within
10 three blocks.

11 MR. COOK: Robert, if you could --

12 CHAIRPERSON SHEEHY: Yes, Mr. Cook. I know
13 there's an auditorium in the Resources building. There's an
14 auditorium in the Social Services building. The Secretary
15 of State has auditorium.

16 MR. COOK: Yes.

17 CHAIRPERSON SHEEHY: DGS -- there are several
18 others. I'm sensing some resistance from the legislators
19 and I want to be very sensitive to that because I
20 understand. I worked for Assembly Members and Senators, so
21 I understand. So I think we move any further on this topic,
22 can we try to exhaust all other options and see if we can
23 find an alternate venue that we might be able to use in the
24 event that we can't get 4202 or 4203. That way we could
25 accommodate everybody that would like to participate and

1 observe and not have to change our schedule.

2 Can we do that and perhaps have a report back at
3 our next meeting.

4 MR. COOK: Absolutely. Now, Mr. Harvey has
5 suggested that we -- that at relatively little to no cost at
6 all, DGS could broadcast audio feed of our hearings and I'm
7 certainly open to that. I wonder how the other Board
8 members here feel about broadcasting the audio of our
9 hearings. That would be via your Internet site, Mr. Harvey?

10 MR. HARVEY: It could be by our Website. It could
11 be by OPSC's Website. It could be by a number of Websites,
12 but I'd love to try to start at least at the audio level.
13 We'll talk in terms of growing it to something more
14 interactive and even video it once we have a better idea of
15 parameters, issues, and costs. But I think it's a good way
16 to start.

17 CHAIRPERSON SHEEHY: Any other Board members have
18 any objections to that? Okay. Well, it looks like you've
19 got agreement of the Board members, Mr. Harvey, so if you
20 could please make those arrangements and report back to
21 Mr. Cook on that, that'd be excellent.

22 MR. HARVEY: It is my pleasure.

23 MR. COOK: Instead of NPR, we'd SAB, so --

24 CHAIRPERSON SHEEHY: Okay. Very good. Then,
25 Mr. Cook, do you want to go ahead and present the **Consent**

1 **Calendar.**

2 MR. COOK: Yes. The Consent Calendar is ready for
3 your approval.

4 CHAIRPERSON SHEEHY: Do we have any -- yes,
5 Senator Lowenthal.

6 SENATOR LOWENTHAL: Yes. There are two issues
7 that I'd like to potentially take off the Consent Calendar,
8 at least discuss taking them off the Consent Calendar. On
9 page 38, the Murrieta Valley Unified and I just really
10 needed to understand why the district was returning the
11 money to the state in more detail and was this school
12 actually constructed and really is this one that needs
13 further discussion and should come back as an action item in
14 February. Trying to understand what took place because we
15 don't really -- from the discussion on the Consent Calendar,
16 really as a body understand what took place there.

17 CHAIRPERSON SHEEHY: Mr. Cook, could you please
18 address Mr. Lowenthal's question.

19 MR. COOK: Right. And, Senator, there was a
20 second item?

21 SENATOR LOWENTHAL: And the second item was I --
22 when going through, I saw there was a correction on page 51
23 on Tulare's Joint Union High School, and I just needed to
24 understand. It said ineligible expenditures that required
25 the district to return \$65,000. I just needed specifically

1 to know what are those ineligible expenditures. Just -- I
2 just -- it just -- it stood out and then I said, well, what
3 does that really mean.

4 I don't have any problem with that if it's
5 explained to me.

6 MR. COOK: On the second item, I will ask staff to
7 see if they have that information readily available.
8 Otherwise we can put it over to the next Board.

9 SENATOR LOWENTHAL: That's fine. I would just
10 like an explanation. It's on the Consent Calendar and
11 it's -- there's no explanation.

12 CHAIRPERSON SHEEHY: Why don't we see if we can
13 get that answered now for Senator Lowenthal and for the rest
14 of the Board. Yes. Ms. Valentine.

15 MS. VALENTINE: I believe Murrieta Valley is here
16 today. They would probably be able to address any questions
17 that you have.

18 CHAIRPERSON SHEEHY: Mr. Cook, I would be happy to
19 have us hear this item today. I wonder, Mr. Lowenthal, this
20 area, Murrieta Valley Unified School District's represented
21 by Senator Hollingsworth and Senator Dutton. Have you
22 talked with them about your concerns?

23 SENATOR LOWENTHAL: No. Just when I was going
24 through, I just saw that -- my concern was it was just left
25 very vague in terms of ineligible expenditure. I just

1 needed an explanation of what's in question. But what does
2 that really mean?

3 CHAIRPERSON SHEEHY: Senator, what is your
4 preference? Since Murrieta's here today, would you like to
5 hear that item separately today?

6 SENATOR LOWENTHAL: Sure. If not, as an item we
7 can --

8 CHAIRPERSON SHEEHY: Is there any objection to
9 that? Okay. Why don't we pull --

10 SENATOR LOWENTHAL: -- maybe the next --

11 CHAIRPERSON SHEEHY: -- Item 38 from the Consent
12 Calendar and we'll hear that separately.

13 SENATOR LOWENTHAL: No. 38 -- oh, Murrieta Valley,
14 you know, why are they returning the money to the state
15 and -- that one I'd prefer to have as an action -- on 38 as
16 an action item at the next time. I really need to
17 understand what took place in the district and what our
18 legal obligations are in addressing these errors and -- so I
19 would prefer to pull that one and the one I thought -- and
20 just hear what the definition on No. 51 of what are the
21 specific ineligible -- that one I feel more comfortable
22 with. I just didn't understand.

23 38 -- the Murrieta Valley, I think we need more
24 discussion on that issue.

25 CHAIRPERSON SHEEHY: Mr. Cook.

1 MR. COOK: I'm fully prepared to discuss Murrieta
2 Valley right now.

3 CHAIRPERSON SHEEHY: And they're here.

4 SENATOR LOWENTHAL: Okay. All right.

5 MR. COOK: And they're here. So --

6 SENATOR LOWENTHAL: Fine.

7 MR. COOK: And if I may, Murrieta Valley Unified
8 School District, as they were preparing for an audit from
9 this program sometime this spring, discovered that they had
10 made an error and I will publicly thank them for their
11 forthrightness in bringing that error forward to my
12 attention and we reviewed the issue, what they -- in essence
13 they had received more funding than they were eligible for
14 on a project.

15 They brought the issue forward to my attention.
16 We reviewed it carefully with legal staff, came to a
17 conclusion. The district to correct the error offered to
18 have this project become a district-funded project and to
19 rescind all the funds -- the school was built. The project
20 was completed. Rescind the funds with interest to the state
21 and simply resolve the matter there.

22 And this -- with the action by the Board today,
23 rescinding this project and receiving the funds back with
24 interest, it's a district-funded project.

25 CHAIRPERSON SHEEHY: That would in effect settle

1 the matter. I just --

2 MS. MOORE: I have a follow-up question.

3 CHAIRPERSON SHEEHY: Okay. Ms. Moore's -- okay.
4 Ms. Moore.

5 MS. MOORE: How is that different than other
6 projects that have been brought before this Board on
7 material inaccuracy where the project -- there was an
8 error -- and we don't ascribe blame. There was an error and
9 they came forward and were rescinded and had to pay interest
10 costs as well?

11 MR. COOK: Those projects -- actually no other
12 project has come forward before this Board where the
13 district has brought the issue forward of their own
14 volition, has offered to rescind the project, has offered to
15 reduce its eligibility accordingly, and to keep the project
16 as a locally-funded project and not return to this Board for
17 further funding for that project.

18 That is an enormous distinction.

19 CHAIRPERSON SHEEHY: Mr. Cook, I want to say
20 something. I think that we're extremely fortunate that --
21 well, first of all, it's unfortunate they made the mistake,
22 but I think we're fortunate that they self-identified it and
23 notified us as soon as this audit uncovered it. I mean the
24 last thing I hope that we do is send any signals out to the
25 school districts is that if they find a mistake they better

1 bury it rather than coming forward and letting us know. I
2 think it's very important.

3 I think Murrieta realized they made a mistake.
4 They've come clean. They want to return all the money with
5 interest and I think they should be commended for that and I
6 just want to make sure that everybody understands this was
7 not something that we found in an audit. This is something
8 that they found and they came forward to us, and they said,
9 you know, we made a mistake. We want to make it right. We
10 wanted to return all the money with interest. In this
11 action, they would in fact rescind it and they will have
12 built that facility essentially with all of their own money
13 and return the state money.

14 And I'm not glad that they made the mistake, but
15 I'm glad that they came forward and I just don't want to
16 send the signal out to folks to hide things. I think if you
17 find mistakes in your program, you should come forward with
18 it.

19 Is there -- yes, Ms. Brownley.

20 ASSEMBLY MEMBER BROWNLEY: Yeah. I just wanted to
21 say that when I was reading through the agenda, I -- in
22 reading through each one of these, it -- this -- I stopped
23 here as well to sort of question it primarily because every
24 single -- every other one says they're returning the money
25 because an error for labor compliance or they give a reason

1 and this one just simply doesn't give any reason for it.

2 And so it was red-flagged to me, but certainly I
3 understand what -- and believe what's being told to me, but
4 it did -- it was a red flag for me because of that.

5 CHAIRPERSON SHEEHY: Ms. Brownley, would you feel
6 more comfortable if we called the Murrieta officials up here
7 so we could ask them some more questions.

8 ASSEMBLY MEMBER BROWNLEY: Sure.

9 SENATOR LOWENTHAL: Um-hmm.

10 CHAIRPERSON SHEEHY: The Murrieta School District
11 is here -- a representative?

12 MR. GONZALEZ: My name is Richard Gonzalez with
13 Richard Gonzalez & Associates. I -- representing Murrieta
14 today. The Superintendent regrets that he's not able to be
15 here today, but he did want to share that he really was
16 appreciative of the work and cooperation we had with the
17 OPSC folks. We weren't prepared to speak or address any of
18 the questions the Board has at this time.

19 The Superintendent can be here next month, if
20 that's the wish of the Board because we thought this was
21 going to be a consent item.

22 CHAIRPERSON SHEEHY: What's the will of the Board?

23 SENATOR LOWENTHAL: I'd like to understand more of
24 what took place, what -- I too do not want to send the wrong
25 signal. I agree with you completely that a district that

1 steps forward -- finds inaccuracies or something that
2 they've done wrong or -- that we should be rewarding that,
3 but on the other hand, we should understand just what took
4 place and what are the legal implications of that and what
5 do we say to other districts who may engage in the same --
6 if we don't know what happened, may engage in the same
7 behaviors.

8 And so I just need to understand exactly what took
9 place for me to feel comfortable.

10 CHAIRPERSON SHEEHY: Mr. Cook.

11 MR. COOK: Well, as part of -- the facts of the
12 matter are as I laid them out. This district had two
13 projects that they brought forward. They were funded some
14 time ago. One of those projects was standard. The other
15 one inadvertently double counted the funds and they got
16 funded twice for one of these projects.

17 They discovered that as they were preparing for an
18 audit by us. Putting things together, they realized their
19 error. They then proactively contacted our office and said
20 we would like to resolve this and again I wish all districts
21 were as forthcoming as this. We would have no material
22 inaccuracies in this program if every district who had a
23 problem took this action.

24 SENATOR LOWENTHAL: But what you're saying is then
25 that this would be considered a material inadequacy -- or

1 inaccuracy if they had not stepped forward?

2 MR. COOK: If they were not taking the actions
3 that are presented before you today, it would be brought
4 forward to you as a material inaccuracy.

5 SENATOR LOWENTHAL: And what are the consequences
6 of that?

7 MR. COOK: That the excess funding that they were
8 given would be returned to the program plus interest. In
9 this case, the district is going the extra mile. They are
10 rescinding the entire project. They're actually giving up
11 more funds than they would be under a material inaccuracy,
12 but they're doing that to preserve their honor.

13 SENATOR LOWENTHAL: Is that all that happens when
14 there's a material inaccuracy, that it's just that they have
15 to return the funds?

16 MR. COOK: There are also, at the Board's
17 discretion, lost of self-certification privileges for up to
18 five years.

19 SENATOR LOWENTHAL: And while I would never want
20 to do that for a district that steps forward, I think that
21 those things need to be discussed by the Board I think.

22 CHAIRPERSON SHEEHY: What is it that you suggest
23 the Board should discuss, Senator Lowenthal? Discuss what
24 to do in the event that a district self-corrects? I'm
25 perfectly willing --

1 SENATOR LOWENTHAL: Well, I would have liked to
2 have known from the district itself exactly how this took --
3 how this happened.

4 CHAIRPERSON SHEEHY: Okay. Fair enough.

5 SENATOR LOWENTHAL: And I agree that they are
6 stepping forward. I don't want to -- but I would have --
7 there was no explanation in this. There really -- how did
8 this happen?

9 CHAIRPERSON SHEEHY: Okay. Well, Rob, I think
10 that, you know, clearly not all of our members are
11 comfortable with this, so this is clearly not a consent item
12 and regretfully Murrieta is not here, although they probably
13 thought it was going to go on a consent.

14 SENATOR LOWENTHAL: Right.

15 CHAIRPERSON SHEEHY: But I think, you know, in
16 deference to the concern that has been expressed, let's go
17 ahead and calendar this item for the next meeting without
18 prejudice.

19 SENATOR LOWENTHAL: Without prejudice.

20 CHAIRPERSON SHEEHY: I think that -- I want to
21 just say again if anybody disagrees, they're welcome to
22 speak up, but I think it's a good thing that they caught the
23 mistake and that they came to us in order to correct it and
24 that their remedy here was a complete rescission of all
25 state funds that were involved. And that is not something

1 we see here very often.

2 SENATOR LOWENTHAL: And I think that's wonderful
3 and that's not the issue and I am not here to penalize them.
4 I just as a Board member really need to understand.

5 CHAIRPERSON SHEEHY: Okay. If there's no
6 objection then from the Board members, we'll go ahead and
7 put this item over until the next meeting and, Rob, if you
8 could let Murrieta know so that they can come to discuss
9 this item.

10 So we've pulled page 38 off. And I'm sorry,
11 was -- did we pull another page too, Rob? Or we're waiting
12 to get some more information?

13 SENATOR LOWENTHAL: Just waiting for that
14 information. Just what is specifically an ineligible
15 expenditure.

16 CHAIRPERSON SHEEHY: Which page was that, Rob?
17 The second one?

18 SENATOR LOWENTHAL: What are those --

19 MR. COOK: I believe it was page 51.

20 MS. MORGAN: 51.

21 SENATOR LOWENTHAL: 51.

22 CHAIRPERSON SHEEHY: Okay. So with the
23 understanding that the issues on page 38 and page 51 have
24 been removed from the Consent Calendar -- Issue No. 38 will
25 be heard next month. 51 will be resolved later today if we

1 get the required information.

2 MS. MORGAN: I have information, should it please
3 the Board.

4 CHAIRPERSON SHEEHY: Ms. Morgan.

5 MS. MORGAN: There was -- the revision that you
6 received was correcting the description that had called
7 it -- had not correctly called it ineligible expenditure.
8 So that's the revision that you received on page 51 on the
9 Rev. 1. And what had happened is this project totaled with
10 the apportionment, with the district contribution, and the
11 interest that it earned while it had the money was
12 approximately \$2.6 million. It was a modernization project
13 back at the time when we paid 80 percent state/20 percent
14 school district.

15 They had justified \$1.6 million in expenditures
16 and had completed the project that was approved by the
17 Board, which left 871,300 and change for them to retain for
18 savings, for other capital facility projects which the
19 district has done.

20 They had reported some expenditures, however, that
21 could not be justified and it was for architect fees that
22 they couldn't provide any proof that the payment had been
23 made, yet they were reported as being an expenditure. And
24 so that is the amount that they could not provide any
25 documentation for and they are in agreement with the audit

1 findings. They have signed off on them and will be
2 retaining the 871,000 but returning the 81,000 to the state.

3 SENATOR LOWENTHAL: This is the 65,000 you're
4 talking about?

5 MS. MORGAN: Oh, 65,000 is the state share. I'm
6 sorry. I was speaking in terms --

7 SENATOR LOWENTHAL: Yeah, I got confused --

8 MS. MORGAN: -- of a hundred percent.

9 SENATOR LOWENTHAL: -- in the numbers.

10 MS. MORGAN: That was my fault. I'm sorry. I was
11 speaking in terms of a hundred percent. It's an 80/20
12 project.

13 SENATOR LOWENTHAL: Oh, so --

14 MS. MORGAN: So 80 percent of that amount was 65--

15 SENATOR LOWENTHAL: -- is the 65,000. So it was
16 for the architectural and it would be 80 percent of those
17 costs or the \$65,000.

18 MS. MORGAN: Yes.

19 SENATOR LOWENTHAL: Thank you. I appreciate that.

20 CHAIRPERSON SHEEHY: Senator Lowenthal, so --

21 SENATOR LOWENTHAL: Then I'm fine with that.

22 Thank you.

23 CHAIRPERSON SHEEHY: Are you okay?

24 SENATOR LOWENTHAL: That's exactly what I wanted
25 to hear.

1 CHAIRPERSON SHEEHY: Any other questions or
2 comments about the Consent Calendar from members of the
3 Board?

4 MS. MOORE: I have --

5 CHAIRPERSON SHEEHY: Yes, Ms. Moore.

6 MS. MOORE: I'll be abstaining from the Elk Grove
7 Unified School District item but voting on the remainder of
8 the Consent Calendar.

9 CHAIRPERSON SHEEHY: Would you please identify for
10 the record which items are Elk Grove Unified School District
11 for Ms. Moore?

12 MS. MOORE: I know which item it is.

13 MS. MORGAN: What we've done in the past is just
14 make note of that --

15 CHAIRPERSON SHEEHY: Why don't you just read into
16 the record. Then there's no question about that, Kathleen.

17 MS. MORGAN: -- on our Minutes.

18 MS. MOORE: It is the modernization on page 26 of
19 the Consent Calendar.

20 CHAIRPERSON SHEEHY: Okay. So with that noted,
21 Ms. Moore abstains from anything having to do with Elk
22 Grove, Item 38's pulled, 51's back in, do we have a motion
23 to approve the Consent Calendar as amended?

24 MR. HARVEY: So move.

25 ASSEMBLY MEMBER FULLER: Second.

1 CHAIRPERSON SHEEHY: All in favor.

2 (Ayes)

3 CHAIRPERSON SHEEHY: Okay. So we have dispensed
4 with the Consent Calendar. Okay. I'm going to go out of
5 order. At the last State Allocation Board meeting, the
6 Board members were interested in having the State
7 Treasurer's office come and present to us to give us an
8 update on our access to the bond market and we --
9 Mr. Rosenstiel has been gracious enough, the Deputy
10 Treasurer, to come talk to us today. Paul, do you want to
11 come on up and give us your report.

12 MR. ROSENSTIEL: Thank you. Paul Rosenstiel,
13 Deputy Treasurer. I'm here with Blake Fowler who's the
14 Assistant Director of our Public Finance Division which
15 manages the sale of bonds.

16 Thank you for inviting me today. I'm happy to be
17 here. I will give you an update on our prospects for
18 getting into the bond market which is one of the ways that
19 we may be able to deal with the freeze that has been put on
20 spending for capital projects. I say one of the ways
21 because we have two issues that have led to the decision
22 that the Pooled Money Investment Board took and one is an
23 inability to issue general obligation bonds and the second
24 one is the ongoing budget deficit.

25 And the resolution to the budget could help as

1 well both in terms of bringing more cash into the state by
2 equalizing revenues and expenditures as well as making it
3 easier for us to issue bonds. It's very difficult to get
4 into the bond market today when we don't have a budget and
5 therefore the story that we're telling to investors is not
6 the best.

7 That being said, we are -- the reason that we have
8 been unable to issue bonds -- and we have not issued state
9 general obligation bonds since June. Normally -- under
10 normal circumstances, we issue four -- we issue five, six,
11 seven times a year. We would have issued twice in the fall,
12 but we were unable to and it's for two reasons.

13 One is the budget and the fact that soon after the
14 budget was enacted, the new information that became -- that
15 the Department of Finance became aware of indicated that the
16 budget deficit was in fact -- had in fact worsened and so
17 the ability to go into the market was compromised by that.

18 In addition the capital markets have just been
19 very, very difficult. Anybody -- even without a problem,
20 the best credit and all -- the U.S. Treasury is having a
21 hard time getting into the market. And so we saw many, many
22 transactions in the municipal bond market that just could
23 not be completed, including one that we did for the -- or
24 tried to do for the Department of Water Resources for
25 \$500 million. Sounds like a lot of money, but when we've

1 got \$7 billion of unreimbursed advances from the Pooled
2 Money Investment Board, 500 million does get us very far and
3 when we tried to do that transaction in November, we could
4 only get 175 million of it completed.

5 We have seen some improvement in the municipal
6 bond market. There are transactions getting done. In fact
7 last month, we were able to complete -- or was it earlier
8 this month -- we were able to complete the transaction that
9 was delayed in November for the Department of Water
10 Resources.

11 There is money that is coming back into the bond
12 market. A few weeks ago, the mutual funds saw the first
13 week since September when the net inflows were greater than
14 the net outflows, which means people are looking to invest
15 in municipal bonds.

16 We have gotten a sense from investors and the
17 underwriting firms that we work with that there is -- would
18 be some demand for the state bonds if we went into the
19 market. And so we are working as expeditiously as we can to
20 get bonds issued.

21 The challenge that we're having is again getting
22 back to the budget deficit circumstance. We normally have
23 less uncertainty about the state's fiscal situation and the
24 budget when we issue bonds. We usually don't issue bonds
25 when we have the budget up in the air to the degree it is

1 right now and unsettled as it is.

2 So we're having to spend a larger than normal
3 amount of effort to make sure that when we get into the
4 market we're providing the market with all of the
5 information that is required by federal securities laws to
6 make sure that we're giving all of the relevant information
7 to investors that they would want to know if they were to
8 buy our bonds.

9 We're working on that. We hope to be in the
10 market as soon as we can. No promises about when that's
11 going to be, but the team of the Department of Finance, the
12 State Controller's office, the AG, and our office is working
13 hard.

14 The one other thing that we're doing is we're
15 trying to find some nontraditional investors, investors who
16 wouldn't normally buy state bonds to buy bonds on a private
17 placement basis for a short period of time to also put some
18 money up and so we're working on that.

19 So we've got several things we're working on and
20 hopefully we would be able to report some good news fairly
21 soon. Be happy to answer any questions.

22 CHAIRPERSON SHEEHY: Thank you, Paul. Questions
23 from the committee. Senator Wyland.

24 SENATOR WYLAND: I'm not sure which of these I
25 should be using. I guess this one works. I'm sorry I

1 missed the very beginning, but I had a question.

2 MR. ROSENSTIEL: Yes.

3 SENATOR WYLAND: Are you saying that if you
4 approach underwriters -- typical underwriters that they
5 simply say we don't want to purchase this debt or they say,
6 well, we'll purchase it, but we'll -- but it's going to be
7 at an interest rate that -- excuse me -- you're reluctant to
8 agree to?

9 MR. ROSENSTIEL: Surprisingly -- it's no longer
10 the case, but surprisingly in December it was the former.
11 It was people saying there were just no buyers out there,
12 that the institutions cannot invest because they do not have
13 the money.

14 The -- when we -- the last time that the state
15 issued bonds other than when we -- well, we did the
16 Department of Water Resources bond issue and on the day that
17 we were selling to the institutions -- we spent -- we
18 usually sell to retail -- individual investors the first day
19 or two and we got some nice orders from them and the day we
20 went to sell to the institutions, they were not interested.
21 They didn't have money to invest.

22 SENATOR WYLAND: And these institutions are
23 typically --

24 MR. ROSENSTIEL: Mutual funds are the primary
25 ones, the bond mutual funds, but insurance companies as

1 well.

2 SENATOR WYLAND: Do you go to well-known
3 brokerages or banks or Bank of America, people like that?

4 MR. ROSENSTIEL: Well, yes. I mean we use
5 underwriting firms in fact when we -- we have a pool of
6 about 75 different underwriting firms and on our large
7 transactions, we'll use all of them.

8 SENATOR WYLAND: Yeah.

9 MR. ROSENSTIEL: We'll let every single one of
10 them access their individual investors and put in orders.
11 So when we did the revenue anticipation notes in October,
12 that was another good example.

13 Last year when we issued revenue anticipation
14 notes, we were able to get about 7- or \$8 billion of orders
15 from institutional investors. This time around, we were
16 selling only \$5 billion, less than last year. We got
17 3.8 billion in orders from individuals, but then the next
18 day when it came time to try to get institutional investors,
19 we got very few. It was about a billion and a half at much
20 higher interest rates than we had to pay last year.

21 So the institutional investors are just not --
22 they're just not investing.

23 SENATOR WYLAND: I guess what I may not -- there
24 may be some element I don't understand. My own experience,
25 having bought some of these, is that you can go to any of

1 the people that most retail people would go, Schwab,
2 Merrill Lynch, Smith Barney --

3 MR. ROSENSTIEL: That's right.

4 SENATOR WYLAND: -- and they sell and trade these
5 every day. In terms of the RANs, they actually ran out when
6 I was trying to get some and what's striking to me would
7 be -- and there may be -- I'm not saying what you're saying
8 is incorrect, but it's just striking to me that the market
9 that is there, if you call them up today, it's not what you
10 might expect with low demand with extremely high interest
11 rates. They're okay because treasuries are so low the
12 spread is bigger, but just a few years ago, we were paying a
13 lot more and so the only point I'd like to make is -- and I
14 hope it's changed now -- that I don't see this in the market
15 and when I talk to the brokers selling it, they tell me,
16 well, they had this much and they'll say, well, I have an
17 inventory of this much and that's what they have. In the
18 next couple of days, it's gone.

19 So I can understand that you might have to pay a
20 lot for it and I can understand the pressure that puts on
21 the general fund because you have to pay those interest
22 rates, but my own experience at least at the retail level is
23 that they would take more if they could get it. So I just
24 want to make --

25 MR. ROSENSTIEL: Well, you're absolutely right and

1 that retail is the only place where there has been demand
2 for bonds.

3 The reason that we ran out with the RANS quite
4 frankly was because the state budget situation, we wanted to
5 issue \$7 billion and we could only get a rating on
6 \$5 billion because of the budget situation. So we did run
7 out. We were limited to 5 billion and we couldn't sell any
8 more.

9 The -- you are absolutely right, there is a lot of
10 retail interest in bonds, but when we're talking about
11 trying to issue 1 billion, 2 billion, 3 billion, that takes
12 a lot of individual retail investors and it also requires
13 very, very careful -- as I talked about earlier, very, very
14 careful disclosure because when we're talking about retail
15 investors, we want to make sure we're telling them the full
16 story so they don't come back and say well, wait, you didn't
17 tell me what was going on with the budget situation.

18 So we're being very, very careful with the retail
19 investor who doesn't do a lot of independent analysis the
20 way some of the institutional investors do.

21 SENATOR WYLAND: What is your criteria for
22 returning to the market?

23 MR. ROSENSTIEL: Our criteria is just that there
24 be a market there. I mean we're going to go into the
25 market. We are going to go in and we are going to do

1 whatever we can in terms of the quantity of bonds we can
2 sell at rates that we don't think are, you know, crazy rates
3 because, yes, we do have a concern about locking in a very
4 high interest rate for 30 years.

5 So we obviously have some standards and there's
6 also legal limits on what the interest rate can be. But
7 when we get ready to go into the market which we hope will
8 be within the next several weeks, we're going to sell as
9 much as we can sell.

10 SENATOR WYLAND: Well -- and I'll just stop with
11 this. My only concern is that we have here -- and I think
12 we'll go over this today. We have projects that are --
13 they're being -- they're in the middle of construction right
14 now.

15 MR. ROSENSTIEL: We fully understand that.

16 SENATOR WYLAND: And school districts are in the
17 position either of having to pay large penalties -- you
18 know, there's stuff in the pipeline which I've forgotten the
19 total number. It's not enormous, but in terms of priorities
20 for the state, I think that's a pretty big number.

21 MR. ROSENSTIEL: We totally agree. We are working
22 very, very hard. It is our highest priority now.

23 CHAIRPERSON SHEEHY: Senator Wyland, I'd like to
24 comment on that. I think regardless of what the Treasurer
25 sees in the market, until California gets its fiscal house

1 in order and gets solutions to all \$41.6 billion, the
2 deficit we have, we're going to be severely handicapped --
3 correct me if I'm wrong, Paul -- we're going to be several
4 handicapped and we have a waiting list of \$22.6 billion of
5 which the school funding is only a subset and we have
6 \$8 billion in PMIA loans outstanding and there's going to be
7 a policy decision and when we get back into the market in
8 dribs and drabs, you know, really technically the first call
9 on that money ought to be to replenish the Pool.

10 So I would just say, now wearing my Finance cap,
11 that we have to immediately get a complete solution to our
12 state's budget situation and fix our fiscal house and get it
13 in order or we are going to be limping along for a very long
14 time. Senator Lowenthal.

15 SENATOR WYLAND: Just real quickly on a -- I
16 appreciate that and your budget hat is on there good and
17 strong and we absolutely have to do that. I'm just
18 wondering though in terms of this relatively small amount
19 and I think within this period of time you're talking about,
20 we're going to have a budget. That's all going to be done.
21 I just hope that, you know, this amount that this Board has
22 to deal with, we can get those funds and I have just one
23 other question I've never understood, and I don't need to
24 have it answered it but at some point.

25 When it was explained that we get money from the

1 Pool and you haven't sold the money to replenish it, I --
2 that's something that's a mystery to me and I'll just leave
3 it there. I'm sorry.

4 MR. ROSENSTIEL: Happy to explain it but --

5 SENATOR WYLAND: You don't need to answer it. I
6 just --

7 CHAIRPERSON SHEEHY: Senator Lowenthal.

8 SENATOR LOWENTHAL: I want to follow up on that,
9 both from the Chair and also from Senator Wyland. Let us
10 just assume -- there are two issues here. There's the
11 budget and then there's the market itself. I really need --
12 let us assume that we fix -- we get a 15-month solution done
13 in the next week or so, that we do solve this \$41 billion
14 budget and so we take that off the table for 15 months. We
15 send a message out to -- how realistic -- if that's off the
16 table, are you saying that we're going to be able to in the
17 next -- let's say in the next six months sell the
18 significant number of bonds that we need to do to both meet
19 the needs here, to meet the needs of water, to meet the
20 needs of transportation projects -- we have lots of things
21 that \$22 billion -- how realistic -- you're the experts --
22 do you think that we're going to sell these bonds once we
23 take our budget off the table? Which we will in the next
24 week.

25 MR. ROSENSTIEL: I cannot predict what the market

1 is going to look like. I can say that, as we've discussed,
2 there's \$8 billion that needs to be reimbursed to the fund
3 for projects that have already been --

4 SENATOR LOWENTHAL: Right.

5 MR. ROSENSTIEL: -- money's already been spent
6 plus we know that, you know, several hundred million dollars
7 a month of additional new spending is going to happen. So
8 for us to kind of catch up by the end of the fiscal year
9 would require, what, 12 billion or so of issuance.

10 SENATOR LOWENTHAL: That's exactly right.

11 MR. ROSENSTIEL: That's a very large number. It's
12 a larger number than we have ever done and the State of
13 California is the largest issuer in the municipal bond
14 market. So it's a very tall order even in good times.

15 I can't tell you whether, you know, we're going to
16 continue to see good times. We've seen an improvement in
17 the market, but it's been temporary. I'll just give you an
18 example.

19 One of the very large issuers in the country is
20 New York City. They issue almost as much as we do and they
21 do not have the budget problems that we do and they would
22 typically be in the market with billion dollar deals and
23 what they have done is they have for months now kept their
24 issue sizes down to \$300 million because the market just
25 cannot absorb much more than that at any point in time.

1 SENATOR LOWENTHAL: I'm just saying that we -- you
2 know, we're -- and it is true. I'm not justifying the fact
3 that we have our own real problems with doing a budget, but
4 I don't want to kid people once we get this budget done that
5 we're out of the woods and that's really what I'm saying
6 because we are going to be out of the woods on that part,
7 but what you're telling us is that we better be -- people
8 better hear just because we get our budget done, that's
9 definitely a necessary condition and I agree it is -- as the
10 Chair says, it is necessary, but it in and of itself is not
11 sufficient and we are still in serious trouble.

12 MR. ROSENSTIEL: Well, I think I can with
13 confidence say if there isn't a budget deal done, there's no
14 way we're going to issue 12 billion in the next --

15 SENATOR LOWENTHAL: Right.

16 MR. ROSENSTIEL: -- four or five months.

17 CHAIRPERSON SHEEHY: Thank you, Senator Lowenthal.
18 I have Mr. Harvey and then Senator Torlakson.

19 MR. HARVEY: I think we all have a burning
20 interest in getting a better fix on how you decide to put
21 what out in what order and what I'm going to ask is do you
22 have any statutory, regulatory, or is it treasurer policy
23 that says assuming we're going to market, we go in the
24 following order? And I have heard you make a case for
25 replenishing that which has gone out already, but given the

1 infrastructure that has been alluded to, highways and water
2 and schools, what guides you as to say which category of
3 bonds goes in what order?

4 MR. ROSENSTIEL: Well, I think the real question
5 is when there's money available, what is the Pooled Money
6 Investment Board going to decide to do with it. In other
7 words, we don't -- what we do is we replenish the fund. We
8 do not issue bonds to spend on projects. We issue bonds to
9 replenish the fund.

10 We do that for reasons that have to do with how we
11 manage the federal tax liability that comes when you issue
12 tax-exempt bonds. And so what will happen is, is that we
13 will issue bonds to replenish the fund.

14 Now, what the Pooled Money Investment Board
15 decides to do with it is up to the Pooled Money Investment
16 Board. The Pooled Money Investment Board could say, great,
17 we're going to hold onto that money because we need to
18 replenish the fund because it's gotten too low or the Board
19 could say, okay, well, now we have more money, we can make
20 more loans because that's not a Treasurer's office decision.

21 MR. HARVEY: Okay. But the Treasurer's office
22 does sit on the board.

23 MR. ROSENSTIEL: Yes, the Treasurer sits on the
24 board.

25 MR. HARVEY: With that as the backdrop, is there

1 any guidance your member would have in saying I would
2 articulate the following for use of these funds?

3 MR. ROSENSTIEL: I don't think a decision has been
4 made on that.

5 MR. HARVEY: Thank you.

6 MR. ROSENSTIEL: I just -- I'm just being honest.
7 It's going to depend on a whole lot of factors: when we get
8 the money, how much we get, whether we have a budget. It's
9 just too -- there's too many --

10 MR. HARVEY: I appreciate --

11 MR. ROSENSTIEL: -- circumstances that I --

12 MR. HARVEY: I appreciate that. I too am trying
13 to make the case that when there is budget and when you are
14 selling bonds, it doesn't solve necessarily --

15 MR. ROSENSTIEL: Yes. It certainly doesn't --

16 MR. HARVEY: -- everyone's expectations.

17 CHAIRPERSON SHEEHY: Senator Torlakson.

18 ASSEMBLY MEMBER TORLAKSON: Thank you,
19 Mr. Chairman. I actually had a line of questions very
20 similar to yours, so you got most of the information out.
21 But it seems like that's a pretty important decision to make
22 and we did discuss it here at the last meeting, certain
23 types of infrastructure projects that are in the stip (ph)
24 and in the queue that could be funded and maybe shovel
25 ready. An HOV lane is different than stopping construction

1 on a needed set of classrooms on one of our campuses that
2 are, you know, very much needed by the kids right away.

3 And so that sense of priorities -- it'd be great
4 to know what the Treasurer's position would be because I
5 think we also discussed last Board meeting that education
6 facilities issues also interface with their operating
7 budget. So to avoid damages or to avoid not having
8 facilities available, they may crowd classrooms or cut
9 somewhere either in their budget in order to move money
10 across.

11 So it seems to me there should be a prioritization
12 of these education facilities that are stuck facing
13 lawsuits, facing horrendous extra costs. And it'd be good
14 to get that sense. I know the Pooled Investment Board is
15 going to weigh that out very carefully.

16 CHAIRPERSON SHEEHY: And, Senator Torlakson, I
17 do -- Rob, correct me if I'm wrong. I do believe we have an
18 item further into the agenda where we're going to take up
19 that very subject so we could talk about the process for
20 this body providing some prioritization on the school
21 projects; is that right, Rob?

22 MR. COOK: That's correct.

23 CHAIRPERSON SHEEHY: Okay. Senator, would it be
24 okay if we defer that --

25 ASSEMBLY MEMBER TORLAKSON: Sure.

1 CHAIRPERSON SHEEHY: -- discussion till we get to
2 that item?

3 ASSEMBLY MEMBER TORLAKSON: Sure. And I did have
4 a couple others related to what you said. What do you
5 consider crazy rates? I mean what -- because the damages to
6 construct the lawsuits have cost to the -- ultimately
7 there's pressure on the general fund to the degree that we
8 have buttoned up project costs, shut down and start over
9 costs, and we have lawsuits, that a cost pressure to the
10 general fund because ultimately -- and my view is that we're
11 mostly responsible for this and to foist those costs on
12 local districts isn't fair, but ultimately it means we'll
13 need more bonds to build the schools that we couldn't build
14 because we had these higher costs that got added into the
15 equation.

16 So what's your definition of crazy?

17 MR. ROSENSTIEL: Well, I don't think we -- I'm not
18 sure we know what the answer to that is. We right now have
19 a billion three of commercial paper outstanding because we
20 finance a lot with commercial paper and most of that we're
21 paying a 9 and a half percent interest rate on now.

22 The legal maximum is 11 percent. We're not happy
23 with the 9 and a half percent at all. We have no choice in
24 that because what we would do is if we could issue some
25 long-term fixed rate bonds, we'd pay down the commercial

1 paper, but we can't because we can't issue long-term fixed
2 rate bonds.

3 The -- you know, the -- we have relied -- working
4 very closely with the Department of Finance and their
5 capital outlay unit. They have gone and they have evaluated
6 every single one of the capital projects that's being
7 affected by this freeze and looked at the impact of the
8 freeze on each project in terms of are there penalty rates,
9 you know, and are there shutdown costs and things like that.

10 And so we're very well aware of the enormous costs
11 that are imposed and I think out -- we are going to, I would
12 expect, err on the side of pay what we have to to raise what
13 we can.

14 ASSEMBLY MEMBER TORLAKSON: With all optimism, it
15 was expressed that we might hopefully soon get a budget.
16 The shape of it isn't all together predictable. How much of
17 the problem could be solved -- I would like to see the full
18 solution, but let's say we had an \$18 billion or if the
19 \$18 billion solution had been online, what would that have
20 done to the interest rates and what would have been done to
21 our access to the market. I'm hoping we get the whole
22 42 billion solved, but what if there's some sticking point
23 and the wheels are coming off and we go back and we get a
24 \$20 billion solution instead of the whole solution and we
25 keep working on the rest of it. How does that affect our

1 ability to go on the market and what part of that 9 percent
2 high rate could be mitigated by getting something online.

3 MR. ROSENSTIEL: Well, I think anything that
4 demonstrates that there's a budget solution is going to help
5 enormously. We have been really quite fortunate so far that
6 we have not suffered a downgrade of the state's general
7 obligation bond rating. We already have the lowest rating
8 of any state in the country, but we have been holding.
9 We've been working very --

10 CHAIRPERSON SHEEHY: Paul, how do you get
11 downgraded if you're at the bottom?

12 MR. ROSENSTIEL: You can go lower. You're just --
13 you're still at the bottom though.

14 CHAIRPERSON SHEEHY: So California's bonds are not
15 junk market status.

16 MR. ROSENSTIEL: We're not junk. No. We're
17 actually far from junk. We have ratings of A plus from
18 Standard & Poor's and from Fitch and A1 from Moody's. We
19 could drop a lot further and still not be junk, but there's
20 no other state that has the same ratings that we have. So
21 we can drop and of course if we drop, that's going to affect
22 the interest rate.

23 I mean we field calls from investors all the time
24 who -- you know, they just can't understand why the state
25 can't solve its budget deficit problem because every other

1 state does and so if there's a demonstration to the market
2 that the state is solving its problems, that's going to help
3 us enormously in holding onto our rating and in attracting
4 investors and affect the interest rate.

5 ASSEMBLY MEMBER TORLAKSON: And finally how much
6 of this 9 and a half to 10 percent kind of interest
7 borrowing cost would you attribute to the fact that we don't
8 have a budget or a partial solution to the budget versus the
9 tight market -- the excess over normal, how much of it is
10 beyond our control, how much of it is in our control or was
11 in our control?

12 MR. ROSENSTIEL: Well, the 9 and a half percent on
13 the commercial paper is a combination of those things, but
14 it's also a combination -- it's also -- one of the other
15 factors is the structure of that because commercial paper is
16 structured with banks that back the bonds and some of the
17 banks that are backing those bonds have themselves gotten
18 into trouble. And so California like municipal issuers all
19 around the country have become unwitting victims of the fact
20 that the banks and the bond insurers have been downgraded
21 and so that's part of it as well.

22 And we are working -- Blake spends whatever time
23 he's not working trying to GO bonds done, he's working to
24 fix the commercial paper problem and we're hoping that
25 that's going to get resolved fairly soon.

1 ASSEMBLY MEMBER TORLAKSON: Okay. Thank you.

2 CHAIRPERSON SHEEHY: Ms. Moore.

3 MS. MOORE: Thank you very much for being here and
4 I apologize if my question is rudimentary, but we have to --
5 all of us are coming up to speed on how we fund here in
6 California with the bond measures.

7 Of the 8 billion that is currently outstanding,
8 I'm assuming you know how much of that is due to school --
9 or our portion of it?

10 MR. ROSENSTIEL: It's a little bit -- a little
11 less than 2 billion.

12 MS. MOORE: 2 billion is schools. So when you go
13 to market and let's say that you went to market -- and we
14 know that's not possible, but just for an example -- the
15 12 billion, do you ascribe that to each of the program
16 areas? For instance, would a portion of that be school
17 bonds? Or is it all comingled?

18 MR. ROSENSTIEL: It's not comingled. We issue
19 according to Bond Act. So when we issue bonds, we'll say
20 that the bonds have been issued pursuant to a specific Act,
21 but as I say, the money is then used to reimburse the Pool
22 and then the Pool has money and can turn around and make new
23 loans for anything it wants.

24 So what we issue the bonds for does not place any
25 limits on what the Pool can then make new loans for.

1 MS. MOORE: So, for instance, when you go out and
2 you may -- if you ascribe 2 billion to schools of this
3 12 billion that you may take -- that you would hope to take
4 to market --

5 MR. ROSENSTIEL: Right.

6 MS. MOORE: We know it would be less -- and you
7 pay back the Pooled Money Investment Fund the 2 billion that
8 the schools owe it --

9 MR. ROSENSTIEL: Right.

10 MS. MOORE: -- then it's up to the Pooled Money
11 Investment Board whether we've zeroed out -- whether we
12 would get any additional funds that would be lent from money
13 coming back. Is that an accurate way to describe it?

14 MR. ROSENSTIEL: Well, I think if we were able to
15 repay the full 12 billion, we wouldn't be having any
16 problem. We would have plenty of money I would assume
17 within the Pool so that we would go back to business as
18 before which is as a project that has been allocated a loan
19 needs the money, they can draw down the money, so it
20 wouldn't be a question at that point.

21 The question is going to be what if there's much
22 less than the 8 billion --

23 MS. MOORE: If we only -- right.

24 MR. ROSENSTIEL: -- and there is still no budget
25 and the state is still facing a cash crisis, what happens

1 then, and that's going to be a decision that would be made
2 by the Board and it would be informed by the analysis that
3 the capital outlay unit of the Department of Finance
4 provides.

5 And I think it's premature to say what decision
6 would be made at this point.

7 MS. MOORE: And then just one final question.
8 You've really helped me understand it -- is what is, in a
9 normal operating procedure, an acceptable debt level of the
10 Pooled Money Investment Board funds?

11 MR. ROSENSTIEL: We -- prior to this crisis, we
12 have never gotten above about \$2 billion.

13 MS. MOORE: 2 billion.

14 MR. ROSENSTIEL: Yeah.

15 MS. MOORE: Thank you.

16 CHAIRPERSON SHEEHY: Ms. Brownley.

17 ASSEMBLY MEMBER BROWNLEY: Yes. I just had one
18 quick question. So all of the -- once you go out and sell
19 bonds, the money -- you sell by the Act, it goes to the
20 Pooled Investment Fund, are there protocols? Like, for
21 example, the Treasurer has protocols for when we run out of
22 money and who gets paid first, et cetera. Are there any
23 protocols by the Pool Investment Board or is it just
24 recommendations and vote of the board?

25 MR. ROSENSTIEL: First of all, let me just say

1 that the decision on who gets paid is the Controller's
2 office not the Treasurer's office.

3 ASSEMBLY MEMBER BROWNLEY: Oh, right. I'm sorry.
4 Apologize.

5 MR. ROSENSTIEL: We don't want to -- like to step
6 on the Controller's responsibilities.

7 ASSEMBLY MEMBER BROWNLEY: I apologize.

8 MR. ROSENSTIEL: But in terms of --

9 CHAIRPERSON SHEEHY: Or hang the blame on your
10 boss.

11 MR. ROSENSTIEL: However you look at it, yes. I
12 am not aware that there is any protocols because we've never
13 had to deal with this. This is a first of its kind
14 situation. We have always been able to get into the market
15 to replenish the fund and that's -- as I say, we've never
16 gotten above about \$2 billion. So it's an unusual situation
17 and we are making up policy as we go along.

18 CHAIRPERSON SHEEHY: Senator Wyland.

19 SENATOR WYLAND: One more question and I think --
20 and I apologize, but this would be worthy of a hearing in
21 and of itself every for every legislator because I think so
22 few of us understand this.

23 Back to the commercial paper. I assume that's
24 very short term?

25 MR. ROSENSTIEL: Yes.

1 SENATOR WYLAND: And -- just to cover very short
2 term and is that -- what's -- and that's only sold to
3 institutions. That -- so that the tax-free element doesn't
4 even enter into that.

5 MR. ROSENSTIEL: No. It is. It's almost entirely
6 bought by tax-free money market funds.

7 SENATOR WYLAND: Okay. And what sorts of levels
8 typically on an average are you selling and do you have
9 outstanding at any point in time typically?

10 MR. ROSENSTIEL: We have had for quite a while now
11 about \$1.3 billion outstanding.

12 SENATOR WYLAND: Okay. I guess the only point I
13 don't quite understand and maybe we need a private meeting
14 to do this, if I want -- I think the demand would be
15 enormous -- you cannot get that. I wish I could buy that.
16 You know, if anyone in this room were able to get that, to
17 get -- here's how far out you have to go with a typical
18 broker who actually does -- is one of your underwriters and
19 they're now advertising on -- I notice this morning on
20 Sacramento TV, you have to go out almost 20 years to get
21 5 and 3/4 percent. That's 20 year maturity.

22 And I don't want to put you on the spot and we've
23 gone over this enough. I'm just saying that there's more I
24 don't understand we need to have a meeting --

25 MR. ROSENSTIEL: We have almost every major Wall

1 Street firm as a dealer on our commercial paper program. We
2 ride them very hard about the interest rate. It is -- as I
3 say, it's almost entirely an institutional market because of
4 the minimum denomination size. It's not an individual
5 investment.

6 And the problem that we have is that money market
7 funds under federal law -- what's called Rule 287 of the
8 Securities and Exchange Act -- or Securities and Exchange
9 Commission Rule 287 requires that the -- that a money market
10 fund must own the preponderance of its investments with
11 certain ratings that because the State of California,
12 getting back to the fact that we have the lowest rating of
13 any state, we are only one of two states that does not have
14 a rating that meets the 287 requirement, we rely on banks.

15 And in the market crisis, the banks have been
16 compromised, and so the problem is that the reason that
17 we're paying 9 and a half percent is the money market funds
18 can't own our bonds.

19 SENATOR WYLAND: I don't -- maybe we can talk
20 further about it.

21 MR. ROSENSTIEL: Happy to talk to you --

22 SENATOR WYLAND: I think that you could sell that
23 all day long. You know, one and a half billion, you could
24 sell it across this country --

25 MR. ROSENSTIEL: Well --

1 SENATOR WYLAND: -- or more at that rate. But
2 we -- let's talk some more.

3 CHAIRPERSON SHEEHY: Thank you, Senator Wyland. I
4 think we have one more question from Senator Torlakson.

5 ASSEMBLY MEMBER TORLAKSON: Thanks. In terms of
6 the Treasurer being a member of the Pooled Investment Board,
7 appreciate your being here and also it would be helpful I
8 think if you would work with our staff to do that analysis,
9 going back to Senator Wyland's comment, of what it would
10 take to finish projects that are underway so that we could
11 have those projects get online and not have those costs --
12 the cost benefit of stopping the projects and buttoning them
13 down and paying for lawsuits versus paying somewhat higher
14 interest rates now and also asking the Treasurer to consider
15 making education a true priority when you're looking at all
16 these other types of projects. When you get done with the
17 safety issues out there, making sure that our schools get
18 these dollars is a priority.

19 MR. ROSENSTIEL: I will pass that on to him.

20 CHAIRPERSON SHEEHY: And I've been holding back
21 because I wanted Mr. Rosenstiel to do 99 percent of the
22 talking here, but Senator Torlakson, on that point, I just
23 want to reassure you, the members of the audience, and the
24 members of this Board that the issues that you're raising
25 about looking at all the projects, looking at the liability

1 issues, the shutdown costs, the startup costs, the
2 litigation costs, health and safety issues, all of those
3 issues, I just want to say that our staff, the Department of
4 Finance staff, its budget line staff, its capital outlay
5 staff, all of its managers, we have been working feverishly
6 on that since December 17th and we're continuing to work on
7 it, refine it, and we're very interested in the policy input
8 that this Board has on the schools and we will come to that
9 item and talk about a process on how we can as a Board
10 provide policy guidance to Finance.

11 But on those issues that you raised and all of the
12 other areas, water, housing, levees, transportation, and so
13 on, I just want to assure there is a tremendous amount of
14 work that is going on that and we are sharing that
15 information with the Treasurer's staff and the Controller's
16 staff and they're public hearings and it's not going to be
17 done in a vacuum, I can assure you.

18 I'm sorry -- and before I recognize Senator
19 Hancock, I was remiss in not recognizing her when she came
20 in. She's a new member of the State Allocation Board and I
21 wasn't able to introduce her at our last meeting, but we're
22 delighted to have the opportunity to serve with her on this
23 Board. Senator Hancock.

24 SENATOR HANCOCK: Thank you. Thank you very much,
25 Mr. Sheehy. I'm delighted to serve on the Board too.

1 School facilities has been a major interest of mine. I've
2 carried legislation in that regard. Very interested in
3 watching us move forward with high performance schools and
4 really meeting the needs of California's children.

5 I just wanted to kind of second in terms of
6 policy. My concern in looking at this which is my first
7 packet for this meeting really is what do we do -- we're
8 talking in terms of the stimulus package as being shovel
9 ready, things that where the shovel's in the ground and that
10 we really need to continue those and I imagine that would be
11 true with any bonds that you're selling, that the work
12 that's in progress, the work would have to stop which will
13 be very expensive to start up again and could lead to
14 litigation and other things, will be given top priority and
15 also of course to recognize the difficulty that we're
16 putting the Treasurer's office in.

17 MR. ROSENSTIEL: We -- as Mr. Sheehy explained,
18 there's been a tremendous amount of work that's been done by
19 the staff at the Department of Finance to inform the -- all
20 of use of the details of project by project. We have 5,700
21 individual projects that have been affected by this freeze.
22 And there are some where the determination was made that the
23 costs to shut down were so great that they have not been
24 shut down. So that -- and yet I think the Director of
25 Finance has said they will all shut down as of February 1st

1 if there's no budget.

2 So we're all working our hardest to get money, to
3 make sure that there is the money to keep projects going,
4 very cognizant of the problems of costs of shutting down,
5 and we're hoping that we're going to be able to issue bonds
6 soon.

7 CHAIRPERSON SHEEHY: Seeing no further questions
8 of the committee, Paul, we want to really thank you for
9 coming and addressing us today and for those of you that
10 don't know, Paul is going to be leaving state service and
11 returning back to the private sector and -- it wasn't meant
12 that way, folks -- but Paul has --

13 MR. ROSENSTIEL: I figure I'd solved all the
14 problems, so it's time to leave.

15 CHAIRPERSON SHEEHY: He's getting out while the
16 getting's good. Paul's been a tremendous asset to the state
17 and to the Treasurer's office and we all very much
18 appreciate your service and we appreciate you coming here to
19 talk with us today and we wish you luck in your new
20 endeavors, Paul.

21 MR. ROSENSTIEL: Thank you very much.

22 CHAIRPERSON SHEEHY: Okay. Mr. Cook -- oh, I'm
23 sorry. Ms. Morgan, we have financial reports.

24 MS. MORGAN: Well, **Status of Funds**, I think we
25 just heard that we're in the frying pan or the pot,

1 whichever of the two you'd like. But we don't have any
2 apportionments this month other than the Emergency Repair
3 Program. With the minor rescissions and closeouts that we
4 have between the propositions, the Board has \$5.3 billion in
5 bond authority available to it.

6 On the second page 64, middle of the page, the
7 Board just approved 11.3 in Emergency Repair Program
8 projects. The status of the fund releases are listed on the
9 next page 65, and unless there's any questions, that
10 concludes the Status of Funds.

11 CHAIRPERSON SHEEHY: Okay. Very good. Any
12 questions or comments from members of the Board? Any --
13 Mr. Harvey.

14 MR. HARVEY: I'd like some guidance from staff or
15 perhaps from the Chair on one item I would like to talk
16 about. It may end up being a future docket item, but if we
17 take a look at page 63, Charter Schools, we have 37 million
18 listed with a holdout for 12.5 to pay for administrative
19 costs. That leaves 24 million.

20 There probably is somewhere in there a public
21 policy discussion about how much do we hold in reserve for
22 these kinds of projects knowing that folk who have the
23 allocation have five years to cure it. Is there not some
24 way of dipping down farther in the list of eligible projects
25 and funding some of those with a portion if not most of this

1 24 million?

2 We talked about the need to get dollars out the
3 door. We've talked about an unfunded list. We've talked
4 about need. We've talked about seismic. To me this Board
5 should make every sincere effort to get every available
6 dollar in any category out. High performance schools
7 indeed.

8 So it may not be the proper time to talk about
9 that and Agenda Item 7 certainly is not, but at some point,
10 I'd like to get some feel for how we can perhaps dip into a
11 portion if not most of that 24 million to touch projects
12 that are eligible, they met the criteria, they're on the
13 list, and they wait and they wait for five or four years.
14 Just a thought.

15 CHAIRPERSON SHEEHY: Mr. Cook, did you want to
16 respond to Mr. Harvey?

17 MR. COOK: Actually Mr. Harvey and I have
18 discussed this item a little bit of late.

19 CHAIRPERSON SHEEHY: Please let us into the circle
20 of trust then.

21 MR. COOK: Yeah. Anyway, Scott -- Mr. Harvey and
22 I have discussed this a little bit. Today we're not really
23 prepared to discuss the relative merits of keeping a buffer
24 for projects that will perfect themselves at some point
25 versus finding a mechanism to release as much of what is

1 remaining and what is called upon, but we're more than happy
2 to -- you know, to give that some consideration and bring
3 forward some suggestions on the near future.

4 CHAIRPERSON SHEEHY: Thank you. Any more
5 additional questions or comments from members of the Board
6 on Item No. 5? Is there any public comment on this one?
7 Seeing none, we'll move to Item No. 6, **Consent Special**
8 items. The first one is Oak Grove Elementary, Santa Clara.
9 Ms. Morgan.

10 MS. MORGAN: Yes. This is a district request for
11 approval to deposit site sale proceeds into the general fund
12 in accordance to the authority granted through the Education
13 Code.

14 The district would be prevented from applying for
15 hardship funding under the Deferred Maintenance Program for
16 five years and also to the degree that it requested
17 financial hardship in the future, the amount of the sale
18 proceeds would need to be offset for that and that totals
19 \$20 million.

20 So with that, we -- the district's request is in
21 compliance with the Education Code and we move the
22 recommendations on page 67, unless there's any questions --
23 pardon me -- recommend.

24 CHAIRPERSON SHEEHY: Questions or comments from
25 members of the Board? Mr. Harvey.

1 MR. HARVEY: I'm sorry I'm so active today, but
2 I -- a very quick question. Can you tell me the public
3 policy reason for saying if you go ahead and sell something
4 and get those proceeds you're going to be excluded from
5 being hardship and thus and so, but it says including
6 seismic mitigation or replacement? Why are we including
7 that as a condition?

8 MS. MORGAN: That falls from the
9 Section 17463.8(b) that says that the State Allocation Board
10 shall reduce the amount of hardship assistance awarded
11 pursuant to Article 8 to a school district that exercises
12 the authority granted in this section that this particular
13 district is coming forth for.

14 Article 8 of that section includes the seismic
15 function and since that is a program of -- referenced is a
16 program outside of new construction and modernization that
17 you can indeed request financial hardship for. That's why
18 we've called that out so it's very clear of what they are
19 required to have the offset from should they come forward in
20 the future.

21 They are not prevented from applying for the
22 actual state share of the grant on either one of the
23 programs, but should they come in and request financial
24 hardship, they would not be able to -- they would not be
25 able to request financial hardship until they had exceeded

1 the \$20 million worth of liability that they had received by
2 selling the site and transferring it to their general fund.

3 MR. HARVEY: I understand. You were citing the
4 justification if not the regulation. But what was the
5 public policy reason to include seismic safety in that
6 exclusion?

7 MS. MORGAN: It's really referencing the financial
8 hardship assistance.

9 MR. NANJO: If I can jump in and assist a little
10 bit. This was the subject -- this was stemming from special
11 legislation and these were the conditions that were
12 contained within that legislation, so --

13 CHAIRPERSON SHEEHY: Thank you, Henry.
14 Ms. Brownley.

15 ASSEMBLY MEMBER BROWNLEY: I just wanted to say
16 that I know that this request -- there's a law that allows
17 it and I'm just going to generally abstain from this because
18 I have been pretty consistent in voting against the sale of
19 school property for one-time general fund uses. So just for
20 that purpose, understanding that there's a law that allows
21 that.

22 CHAIRPERSON SHEEHY: Okay. Very good. Senator
23 Torlakson.

24 ASSEMBLY MEMBER TORLAKSON: Move approval.

25 MS. MOORE: Second.

1 CHAIRPERSON SHEEHY: Okay. We have a motion and a
2 second. Is there any other comment from members of the
3 Board. Staff has recommended approval of this item. Is
4 there any comments from the public? Seeing none, all in
5 favor -- strike that. Strike that. I'm sorry. We need a
6 roll call vote here. Linda, could you please call the roll.

7 MS. RICE: Um-hmm. Senator Lowenthal.

8 SENATOR LOWENTHAL: Aye.

9 MS. RICE: Senator Hancock.

10 SENATOR HANCOCK: Aye.

11 MS. RICE: Senator Wyland.

12 Assembly Member Fuller.

13 ASSEMBLY MEMBER FULLER: Aye.

14 MS. RICE: Assembly Member Brownley.

15 ASSEMBLY MEMBER BROWNLEY: Abstain.

16 MS. RICE: Assembly Member Torlakson.

17 ASSEMBLY MEMBER TORLAKSON: Aye.

18 MS. RICE: Scott Harvey.

19 MR. HARVEY: Aye.

20 MS. RICE: Kathleen Moore.

21 MS. MOORE: Aye.

22 MS. RICE: Rosario Girard.

23 MS. GIRARD: Aye.

24 MS. RICE: Tom Sheehy.

25 CHAIRPERSON SHEEHY: Aye. Okay. That item -- the

1 staff recommendation has been approved. We're going to move
2 on now to Item No. 7 and we're going to have Ms. Morgan
3 introduce this item.

4 MS. MORGAN: If I could please call Mr. Mireles
5 forward, our policy manager.

6 CHAIRPERSON SHEEHY: Mr. Mireles, please.

7 MS. MORGAN: And Ms. Barbara Kampmienert, our
8 supervisor over Charter.

9 MR. MIRELES: Mr. Chair, members of the Board,
10 this next item deals with the Charter School Facility
11 Program. Just a little background. The program was created
12 through Assembly Bill 14 and it allowed charter schools to
13 access state bond funds for the first time. The program
14 allows charter schools to receive a preliminary
15 apportionment. This is sort of a set-aside. Then they have
16 four years with a possible one-year extension to obtain all
17 the necessary plan approvals before they come in for a final
18 apportionment.

19 In 2002, Proposition 47 provided \$100 million.
20 The Board approved six preliminary apportionments, three of
21 which have already converted to a final apportionment. In
22 2004, Proposition 55 provided an additional 300 million.
23 The Board approved 28 preliminary apportionments under this
24 round and most recently under Proposition 1D, \$500 million
25 was made available for charter schools.

1 Staff received over \$2 billion worth of
2 applications in this round and since we received more
3 applications than funding was available, the statute
4 requires us to calculate preference points for each project
5 in order to determine funding.

6 MS. KAMPMIENERT: For all the financially sound
7 applicants, preference points were assigned in four possible
8 categories. The four categories include the level of
9 overcrowding in the school district where the charter school
10 project will be physically located along with the amount of
11 overcrowding that that project proposes to reduce.

12 The second category is for charter schools that
13 propose to locate in low income areas and this category is
14 calculated using the percentage of students eligible for
15 free and reduced price meals. The third category is for
16 those charter schools that are operated by a nonprofit
17 entity and this is defined by having a 501-C3 status or any
18 nonprofit public benefit corporation status.

19 And the fourth category is for those charter
20 schools that propose to use existing school district
21 facilities and this applied primarily to the rehabilitation
22 projects that were new for the Prop. 1D round.

23 There were 40 possible points in each of the
24 categories and both the overcrowded school district category
25 and the low income categories were judged on a sliding

1 scale.

2 The filing period for the applications ran from
3 February 5th, 2007, through June 5th, 2007. The 2006-2007
4 reporting year data was used to calculate the preference
5 points. This was the only data available at the time and
6 using the data available during the filing period is
7 consistent with how the program was administered in the
8 previous two filing periods.

9 To determine the low income preference points,
10 school facility program regulations allow charter schools to
11 choose the highest percentage between three possible
12 options, the first being the charter school's own free and
13 reduced lunch percentage. They can also use the free and
14 reduced lunch percentage of the district in which the
15 project will be physically located or they do have the
16 option to identify another public school anywhere within the
17 charter school general location and use that percentage and
18 the charter school general location encompasses an area
19 which is a three-mile radius surrounding the spot where they
20 plan to build the project.

21 Applicants that were not in operation in the
22 2006-2007 school year still had the choice between the
23 district's average or a public school within the charter
24 school general location.

25 Staff verified that the option selected by the

1 applicants was the most beneficial percentage and through
2 correspondence with the applicants, OPSC confirmed the total
3 number of preference points that would be assigned in each
4 category. We then asked applicants to concur with the
5 preference points determination in writing so that there
6 would be no surprises at the time of funding.

7 The Monsenor Oscar Romero Charter Middle School
8 was not open during the 2006-2007 reporting year, so they
9 identified Gratz (ph) Elementary School as the public school
10 with the highest percentage of free and reduced lunch
11 students. And the Gratz Elementary School 2006-2007
12 percentage was 91 percent and that generated 36 preference
13 points for them in the low income category.

14 The preference points totals were communicated by
15 the OPSC in writing to the charter school and they concurred
16 in a letter dated February 20th, 2008. Once all the
17 applications were finalized and preference points were
18 calculated, the funding matrix was used to distribute the
19 funds as specified both in law and regulation and given the
20 large demand for the bond funds, 50 of the 79 applications
21 were returned unfunded.

22 Monsenor has requested special consideration for
23 their application using the 2007-2008 free and reduced price
24 lunch data which was 100 percent and a 100 percent free and
25 reduced price meal data would result in 40 preference points

1 for this application and when you compare that to the other
2 applicants' '06-'07 data, that would have resulted in the
3 application being funded.

4 However, to use the 2007-2008 data for only one
5 applicant and in only one category would be inequitable. In
6 addition, the Board does not appear to have that flexibility
7 as the criteria for making preliminary apportionments is
8 clearly outlined in the statute.

9 So to accommodate this request fairly, the Board
10 would have to look at all the applicants again using the
11 2007-2008 data for all categories and what this would
12 involve is rescinding the preliminary apportionments already
13 awarded and recalculating the funding matrix which would
14 result in several applications that have already received an
15 apportionment no longer receiving an award of funds. And to
16 rescind the apportionments at this point would have
17 devastating effects on the awardees as the charter schools
18 have already committed a combined total of over \$36 million
19 for these projects that were previously apportioned.

20 MR. MIRELES: The charter school has also whether
21 their application could be funded from the remaining
22 24.9 million as opposed to recalculating the previous round.
23 Again this solution does raise issues of equity and is
24 contrary to statutory requirements.

25 There is a possibility that all of the applicants

1 who were not funded would probably elect to have their
2 uniqueness of their situation elevated to the Board in hopes
3 of receiving funding. In fact staff is aware of a proposal
4 for the use of the remaining funds by the applicant that was
5 just below the cutoff line as their initial request exceeded
6 the remaining balance of funds.

7 We do recognize the need for facilities for those
8 projects that didn't receive an apportionment.
9 Unfortunately due to the limited funding and the competitive
10 program, not all applicants can receive funding. Therefore
11 in all fairness to all applicants and to maintain program
12 integrity, staff is recommending that the Board deny this
13 appeal.

14 CHAIRPERSON SHEEHY: Thank you, Juan. Questions
15 or comments of the Board members? Mr. Harvey.

16 MR. HARVEY: Help me understand why this is before
17 us at all in the sense that you had a solicitation. The
18 solicitation talked in terms of what the judgment criteria
19 was going to be. '06-'07 was the year then that allocation,
20 not '07-'08, or if I'm missing the years, you'll get my
21 point.

22 Why is this here if it is outside the bounds of
23 the solicitation?

24 MR. MIRELES: During the initial bond period, the
25 information that we had available at that time, the '07-'08

1 data became available during the processing of the
2 applications and it was available at the time the Board made
3 the preliminary apportionments.

4 MR. HARVEY: So you're arguing that the protect
5 has standing.

6 MR. MIRELES: At the time we judged all the
7 applicants based on the information that was available as of
8 the filing period because it was what was available at that
9 time and we used the -- or a different amount, we would be
10 chasing sort of a moving target.

11 We typically require the information that's
12 available at the time of submittal because we do recognize
13 that processing takes a while. So that's what we typically
14 required.

15 MR. NANJO: I think to address Mr. Harvey's
16 inquiry more directly, in this particular situation, we have
17 a request by a school district for this Board to change its
18 established procedure on how to operate this calculation or
19 preference calculation if you will.

20 That is not to say that it would be illegal for
21 this Board to make that change, but as Mr. Mireles
22 mentioned, it would require rescission of some school
23 districts that have already been funded and also a resorting
24 of all the applicants in the pool which is probably why
25 staff is recommending against granting this appeal. But

1 because it is not illegal per se for the Board to consider
2 this action, it is in front of this Board.

3 MR. HARVEY: Thank you.

4 CHAIRPERSON SHEEHY: Do we have any
5 representatives from Monsenor Oscar Charter that wants to
6 address the State Allocation Board this afternoon. Thank
7 you, Miss. Please identify yourself for the record.

8 MS. CUBAS: Honorable members, my name is Ana
9 Cubas. I'm the President and Founder of the Monsenor Oscar
10 Romero Charter School. The school opened its doors in
11 September of 2007 with 50 students. Currently our student
12 population is 150.

13 The school is located in a community of Los
14 Angeles which is low income. This community is an entry
15 point to many Central American immigrants in the City of Los
16 Angeles.

17 The school is named in honor of Oscar Romero who
18 was the Archbishop of El Salvador and who was killed during
19 the civil war in El Salvador. Our school focuses on the
20 history, art, and culture of Central America along obviously
21 with California State standard framework. I myself was
22 brought to California as a young child escaping the war.
23 Thanks to our public education system, I graduated from U.C.
24 Berkeley and went on to obtain a master's degree from
25 Princeton University.

1 I'm very proud of our school. Our first year of
2 operation, despite our low income status, we attained an API
3 score of 723 which I believe you would consider high
4 performing.

5 I'm here before you not to change the rules that
6 you have but to ask that you consider our circumstances and
7 as you can see from a letter from our Assembly Member, Kevin
8 de Leon, really our specific request is that you consider
9 opening a subsequent funding cycle or pursue other funding
10 possibilities that would accommodate our revised application
11 for those schools that have actual free and reduce priced
12 lunch data.

13 In 2006-'07, we were not yet open and we had to
14 use the data from a nearby school. Since our location has
15 changed, that data is really irrelevant and that is why we
16 would like to use our actual data which puts our rate at
17 100 percent and would have allowed us to be funded under
18 your current rules.

19 Again I'm not saying changing the rules, defund
20 the other schools. That is not my intent here, but please
21 consider the fact that we would like to use our actual data
22 and not data from another school or from the district
23 because again it's 100 percent, meaning our kids are very
24 low income and they need your help.

25 And also I would like to ask that you look at

1 those schools that you did fund because I would guarantee
2 you that many of them have not yet opened and probably will
3 not open in the next two years following the four-year
4 funding cycle and I guarantee you that perhaps ones that
5 they have opened, their data has changed as well. So there
6 may be opportunity within the round that you've already
7 funded for funds to become available.

8 I know of examples in L.A. where some schools were
9 funded through state bond dollars in the past, but they
10 never opened. And so again I'm here to not ask you to
11 change your rules, but to ask that you consider our unique
12 circumstance given that we're a high performing school,
13 given that we're 100 percent poverty, and from what I
14 understand, there is that funding available of
15 \$24.9 million.

16 I think that my school and other schools would
17 benefit. In Los Angeles, it is very difficult to find a
18 facility. Currently we're in a temporary commercial
19 facility. I'm trying desperately to find something for the
20 kids for next year. Our school will grow to 300 children.
21 I know that they'll continue to perform highly and I think
22 those dollars should not sit here in Sacramento. They
23 should be utilized with the kids, for the kids so that they
24 have a seat and a school that they deserve. Thank you very
25 much.

1 CHAIRPERSON SHEEHY: Thank you, Ms. Cubas, and you
2 did an excellent job presenting your case and my
3 congratulations on the fine job that you're doing with that
4 school. Why don't you stay here for a minute. You may get
5 questions from members of the Board.

6 Rob, how about it. It doesn't like Ms. Cubas is
7 actually disagreeing with the analysis here but rather
8 looking for an opportunity for subsequent funding cycles or
9 to pursue other funding. Is there anything coming down the
10 pipeline that we can offer as something to look forward to
11 in this area?

12 MR. COOK: As Mr. Harvey has mentioned, we have
13 approximately \$24 million that is left in what I'd call a
14 buffer account at the moment and also as we just discussed,
15 we should be looking at options associated with that. Is
16 that a prudent buffer or reserve for future projects
17 converting at a later date needing additional funding or
18 could those funds be allocated out.

19 We do have history in this program that
20 projects -- there is some percentage of the projects don't
21 ultimately convert, but they have up to four years plus a
22 one-year extension in order to do that and so funds start
23 becoming available much later -- later stage, which would
24 then give us an opportunity to do a later funding round, but
25 we're talking probably a minimum of three years from now

1 before we would know that we had enough funds to justify
2 doing another funding round.

3 CHAIRPERSON SHEEHY: I see. Ms. Hancock.

4 SENATOR HANCOCK: Now, my understanding of this is
5 that the request is to simply to be allowed to update the
6 data to reflect reality more so that when there is a new
7 funding round at some future date, probably three years now,
8 the data will be more accurate.

9 That makes a lot of sense, except that then you
10 would have to let everybody else I believe update their data
11 the same way. And could you just -- is that a problem or
12 would that be a policy that we would want to make?

13 MR. COOK: Assuming the -- here's the way I would
14 envision a future funding round would be we would set the
15 criteria and set the ground rules much as we have with our
16 current regulations and public -- and whatever the most
17 up-to-date information data is available at the time of
18 filing would be what we would use then.

19 So if we were to open up a future funding round,
20 if sufficient funds become available in the future, all of
21 that data would be updated for applicants at least to the
22 most that was available at the time of filing.

23 CHAIRPERSON SHEEHY: Ms. Moore.

24 MS. MOORE: Could we ask given the circumstance of
25 this applicant as well as others that we do have

1 recommendations come back before the Board in keeping with
2 what Mr. Harvey is asking for, for the 24 million that's
3 remaining whether we would go to continue to fund down the
4 list of applicants, what your recommendation might be around
5 whether you would -- people would have to update their data
6 or not, and/or whether we would move to a third funding
7 round completely separate from the list that already exists.

8 I think that way we're moving forward on the
9 24 million that exists that is applicable to this program
10 and then have maybe a blueprint for any future funds that
11 might come back into the program.

12 MR. COOK: That's basically the -- made earlier to
13 Mr. Harvey, so --

14 MS. MOORE: Is there a date certain we could --
15 like the next Board meeting or the following Board meeting?

16 MR. COOK: Let's give us a little bit of time.
17 We've been on a pretty tight wheel on these Board meetings
18 of late. We have planning already in place for the next
19 Board meeting, so --

20 CHAIRPERSON SHEEHY: I'm sorry. I apologize for
21 the others -- everybody to follow this, but I'm not sure I
22 know exactly what the request was. I understand it was
23 similar to what Mr. Harvey said, but could you clarify what
24 Ms. Moore was asking?

25 MR. COOK: Certainly.

1 CHAIRPERSON SHEEHY: For my benefit anyways.

2 MR. COOK: Well -- okay. If I can restate it.
3 That we would make a determination of what to do with the
4 remaining 24 million, if we were to allocate now, retain it
5 as a buffer, and perhaps consider a future funding round at
6 some point in time, either using those -- using those funds.

7 MS. MOORE: Yeah. In essence come back with the
8 Board with the options for those funds and your
9 recommendations on that is what I requested.

10 CHAIRPERSON SHEEHY: Oh, so, Rob, how about could
11 you bring that back to us in April? Is that too soon?

12 MR. COOK: No, that's not too soon.

13 CHAIRPERSON SHEEHY: Okay. Is that okay with you,
14 Ms. Moore?

15 MS. MOORE: Yes.

16 CHAIRPERSON SHEEHY: Okay. Why don't you bring
17 that back to us in April. Senator Hancock.

18 SENATOR HANCOCK: That did happen to trigger
19 something for me. There's also on the same page that the
20 charter school unallocated money was laid out -- unallocated
21 money both for high performance schools and career technical
22 education and I don't -- why would we be putting forward
23 another round of funding for one category and not for all of
24 those categories and would everybody be able to update their
25 applications then if they thought it was advantageous? I --

1 it --

2 MS. MOORE: Sure.

3 SENATOR HANCOCK: -- think a little --

4 MS. MOORE: I'm just asking for recommendations
5 from staff and I don't -- I'm not presupposing the outcome.
6 The career -- I can speak directly to the Career Technical
7 Education Program. We do envision a third funding round for
8 that and I'm hoping that will be before the Board. We have
9 a part in that -- the Department of Education -- as well and
10 we've worked with the Office of Public School Construction
11 on the timelines for that. So we do -- that is in play and
12 the third --

13 SENATOR HANCOCK: The high performance schools.

14 MS. MORGAN: Those are permitted to be applied for
15 right now. In fact we encourage folks to pursue that in
16 their regular new construction and modernization projects.

17 CHAIRPERSON SHEEHY: So I think then the nature of
18 this report would be to bring back what we have and what our
19 options might be but without any -- we're not asking staff
20 necessarily to make any sort of recommendation or policy
21 determination but to simply come back and show us what our
22 options are; is that correct?

23 MS. MOORE: Well, I'd certainly like their
24 recommendation as well. I mean the policy --

25 CHAIRPERSON SHEEHY: Okay.

1 MS. MOORE: -- as they normally do in their staff
2 reports, they typically give their best shot and their
3 recommendation.

4 CHAIRPERSON SHEEHY: Okay. Senator Hancock, did
5 you --

6 SENATOR HANCOCK: That's fine. I just -- I mean I
7 know that one of the reasons we're here is to make sure that
8 everybody has a fair shot.

9 CHAIRPERSON SHEEHY: Yes.

10 SENATOR HANCOCK: Which is why I wanted to make
11 sure that if one school could update its data, everybody
12 could or -- or you say this was the cutoff and we keep it,
13 but then also that if we were setting up other rounds of
14 funding for some period in the future that all the
15 categories --

16 CHAIRPERSON SHEEHY: Okay.

17 SENATOR HANCOCK: -- equally.

18 CHAIRPERSON SHEEHY: Thank you. Ms. Cubas,
19 reading the tea leaves, I don't think that you have the
20 support today to have your appeal approved, but we are going
21 to go ahead and take a look at it pursuant to Mr. Harvey and
22 Ms. Moore's request of staff. At this time, I would
23 entertain a motion to approve the staff recommendation on
24 Item No. 7.

25 MS. GIRARD: So move.

1 CHAIRPERSON SHEEHY: We have a motion by Rosario
2 and a second by Ms. Moore. All in favor.

3 (Ayes)

4 CHAIRPERSON SHEEHY: Okay. That -- Item No. 7, we
5 approved the staff recommendation. Ms. Morgan, can you
6 introduce Item No. 8.

7 MS. MORGAN: Yes. That'll be on Tab 8, page 77,
8 and while you turn there, if I may ask Mr. Rick Asbell to
9 join us at the table.

10 CHAIRPERSON SHEEHY: I'm sorry. Our counsel just
11 left the room and I don't -- I'm not comfortable taking up
12 Item No. 8 before Henry comes back, so why don't we move
13 on --

14 MR. COOK: Okay.

15 CHAIRPERSON SHEEHY: -- to -- why don't we move on
16 to Item No. 9 and we'll take up Item No. 8 when Henry's
17 back.

18 MR. COOK: Certainly. And as I introduce -- we --
19 at our January 14th Board meeting, we took up some emergency
20 regulations to provide some relief to school districts. In
21 further review and further development of what we need to
22 look at, we've come up with a couple of other categories
23 that were smaller that need similar relief. But before I
24 present on those items, I would like to indicate that both
25 the changes that are before you for career technical

1 education and joint use, we'd like to defer to -- on each of
2 those, they deal with timelines that really are a result of
3 potential Division of State Architect workload issues and we
4 would like to have some time to work with the Division of
5 State Architect to determine whether there is a need or if
6 anyone would be harmed if we leave the deadlines as they
7 are. So we would like to defer those to a future
8 consideration.

9 CHAIRPERSON SHEEHY: Mr. Cook, I think it'd be
10 appropriate to defer those to our next meeting. I don't
11 think we should delay them any longer and I'd like to just
12 add in here, I -- I'm one of the requesters here because I
13 am reviewing this and in getting advice from my experts in
14 the Department of Finance, there are workload issues here
15 with the Division of State Architect that I really to feel
16 strongly need to be looked at more closely.

17 And so if nobody objects, what we'd like -- what
18 I'd like to see happen is us adopt these regulations today
19 minus Subsection A on page 84 which deals with the career
20 technical education and then -- and I apologize. I'm going
21 backwards -- Subsection A on page 84 dealing with joint use
22 and again the intent here would be to have further review of
23 the workload implications, the Division of State Architect,
24 and then to take this up at our next meeting after we've had
25 a chance to look at those items so that we could have I

1 think a recommendation that'll be really on firm ground with
2 the fiscal review. Sorry, Mr. Cook. Continue, please.

3 MR. COOK: With those items deferred, the concepts
4 before you are very -- almost identical to the concepts that
5 were put before you on January 14th. In both Charter School
6 and in Critically Overcrowded School Programs, we have time
7 limits and time frames that require the performance of the
8 awardee.

9 In this case, because of our inability to release
10 funds, we are in essence creating a category an inactive
11 preliminary charter school apportionment and an inactive
12 preliminary critically overcrowded schools apportionment.

13 In those actions, we basically are unplugging the
14 clock until the point where we can perform our part and
15 release funds to school districts. Any questions?

16 CHAIRPERSON SHEEHY: Questions of the Board.
17 Senator Lowenthal.

18 SENATOR LOWENTHAL: Yeah. I think that that's
19 fine and my only question has to do with I've heard from
20 financial hardship districts that they too would like some
21 flexibility in utilizing savings from other projects to
22 assist them during this bond freeze and what is the status
23 of those regulations and can we deal with that also? Should
24 we put that off until February? Can we do that just with
25 that -- add that on so --

1 CHAIRPERSON SHEEHY: I apologize, Senator
2 Lowenthal. I was distracted for one moment. Which
3 regulations?

4 SENATOR LOWENTHAL: I'm talking about the working
5 on the financial hardship. Where are they in this; are we
6 going to provide those districts with the same kinds of
7 flexibility?

8 MR. COOK: Well, we've had some discussions with
9 folks that are in Financial Hardship Program and they've
10 expressed their concerns about their ability to use savings
11 and so on.

12 SENATOR LOWENTHAL: That's right. And that's what
13 we've heard also.

14 MR. COOK: And I -- it was just brought to my
15 attention -- Mr. Duffy and I, who's prepared to talk, had a
16 very brief conversation this afternoon on that topic and
17 we're more than prepared to engage in those discussions. We
18 do not have any regulations before you today on that topic.

19 SENATOR LOWENTHAL: Right. I just thought we
20 could deal with that possibly at the next meeting to really
21 deal because they have -- and I'd just like to hear, you
22 know, from --

23 CHAIRPERSON SHEEHY: I'm sorry, Mr. Duffy. First
24 we have Senator Torlakson --

25 MR. DUFFY: Okay.

1 CHAIRPERSON SHEEHY: -- and then we'll come to
2 you. Senator Torlakson.

3 ASSEMBLY MEMBER TORLAKSON: Just briefly. I was
4 going to agree with you, Mr. Chairman, and a similar
5 concern. As we get the report back looking at the backup
6 for the workload issues in the State Architect's Department
7 is what are the causes, what are the solutions, what are the
8 costs, and what could be done to streamline so that -- it
9 may cost a little more. Maybe it won't, but since we're
10 delaying a lot of projects because of all the other
11 circumstances we just talked about, is there a way we can
12 speed up projects and help districts through a very time
13 consuming process?

14 CHAIRPERSON SHEEHY: Thank you, Senator Torlakson.
15 Mr. Duffy, please.

16 MR. DUFFY: Mr. Chairman and members of the State
17 Allocation Board, Tom Duffy for C.A.S.H. Senator Lowenthal,
18 this afternoon, I delivered some language to both Mr. Cook
19 and Ms. Valentine on the subject of financial hardship --

20 SENATOR LOWENTHAL: Um-hmm.

21 MR. DUFFY: -- in addressing two what we think are
22 significant issues, again suggesting to unplug the clock as
23 we've suggested before.

24 SENATOR LOWENTHAL: Right.

25 MR. DUFFY: And I can share that language with you

1 and other Board members, but in essence and just quickly,
2 the first has to do with the six-month approval window once
3 a district has been established as being financial hardship
4 and the other has to do with an 18-month return after
5 they've been approved and in essence they would have to come
6 back and under current regulations go through an appeal.

7 We're suggesting that the district simply write a
8 letter to the Executive Officer and because of these
9 circumstances, to be approved without having to go through
10 an appeal, thinking that it saves your time, their time, and
11 the district's time. And it's consistent -- the language is
12 consistent with the other regulations dealing with the
13 unplugging of the clock.

14 So we'd be more than pleased to share with you and
15 I know Mr. Cook and Ms. Valentine and I will dialogue about
16 this probably --

17 SENATOR LOWENTHAL: My issue is -- and maybe just
18 my edification, you can just -- are financial hardship
19 districts required to return any project savings to the
20 state and that they're not able to utilize these savings on
21 other construction projects and how do we deal with that
22 issue?

23 MR. DUFFY: The -- what the current regulations
24 allow is for a district that is financial hardship that does
25 have some savings to utilize that on another project.

1 SENATOR LOWENTHAL: They are.

2 MR. DUFFY: And then when that other project moves
3 forward, that project would have that amount of money that
4 was used in the savings deducted from the second project.

5 SENATOR LOWENTHAL: Okay.

6 MR. DUFFY: And we're suggesting that that remain,
7 that it not be troubled at all. We're also suggesting
8 that -- and I appreciate the communication Mr. Cook sent out
9 on this, but that financial hardship districts be given
10 every latitude possible to be able to do financings and
11 interfund borrowings and all so that they're not -- and they
12 would have to document it and not be troubled -- not trouble
13 the auditors, but to make sure that they were given
14 assistance if necessary in every category -- to encourage
15 them.

16 Because what we believe is that financial hardship
17 districts are indeed the have-nots of the State of
18 California.

19 SENATOR LOWENTHAL: Right. Okay.

20 CHAIRPERSON SHEEHY: So, Rob, what can you bring
21 back to us at our next meeting?

22 MR. COOK: Well, I have not yet reviewed what
23 Mr. Duffy's provided. We had a phone conversation on this.

24 CHAIRPERSON SHEEHY: Okay.

25 MR. COOK: But more than happy to review it.

1 CHAIRPERSON SHEEHY: Okay.

2 MR. COOK: We also have been working on financial
3 hardship issues for some time --

4 CHAIRPERSON SHEEHY: Okay.

5 MR. COOK: -- and have a pretty robust regulatory
6 framework to bring forward.

7 CHAIRPERSON SHEEHY: Well, Mr. Duffy, I -- we will
8 review everything and we would like to continue to engage
9 with you and all other folks that are concerned with this
10 matter to make sure we get something that addresses the
11 needs the best we can given the circumstances.

12 MR. DUFFY: Thank you.

13 CHAIRPERSON SHEEHY: Did you have more comments,
14 Mr. Duffy?

15 MR. DUFFY: Well, I was going to say, we -- what I
16 assured Rob today in that conversation was that -- and we've
17 met a couple times to look at the materials that he has
18 developed -- that we're in support of what is being brought
19 before you and he alerted me that there was a need to pull
20 back on the CTE and the joint use. So we'll --

21 CHAIRPERSON SHEEHY: Oh. On the regulations that
22 are before us now?

23 MR. DUFFY: Yes. So we're in support of what is
24 before you. I understand that there's a concern and you
25 want to see if indeed there will be any furlough action, but

1 districts are very, very concerned. They're very nervous I
2 think as Senator Lowenthal understands about this, so if we
3 can give them assurance as soon as we can, that's the best.

4 CHAIRPERSON SHEEHY: Okay.

5 MR. DUFFY: Thank you.

6 CHAIRPERSON SHEEHY: Excellent. Mr. Harvey and
7 then Mr. Silva, did you want to address the Board too?

8 MR. SILVA: Yes, but not on this -- on the charter
9 school piece.

10 CHAIRPERSON SHEEHY: Okay. Mr. Harvey first. Go
11 ahead, Scott.

12 MR. HARVEY: Well, if I could segue back to your
13 point about the overarching change in the hardship
14 regulations itself, that has been some time before the
15 Implementation Committee. Is there some hope that even if
16 there's not consensus that this can come to this forum for
17 resolution because I think -- while they don't go hand in
18 hand, the whole question of how we define and how we treat
19 hardship, that's a more important question as we go forward.

20 So is there some assurance we can have that those
21 regulations, since we're not funding schools right now, can
22 have some attention and be brought back in a reasonable time
23 even if there's not a resolution at the Implementation
24 Committee?

25 MR. COOK: Well, as I indicated, I'm more than

1 happy to look at the concepts that Mr. Duffy's bringing
2 forward and look how they fit in in the larger changes that
3 we're contemplating and see what we can bring forward to
4 this Board.

5 CHAIRPERSON SHEEHY: Okay. Mr. Silva.

6 MR. SILVA: Ernie Silva on behalf of Gateway
7 Community Charters. I've been working with Juan on the OPSC
8 staff. We're glad to see the temporary stall in the
9 four-year period give -- appreciate if you'd move that
10 through today. Gives the charter school community a level
11 of comfort that we're going to hang on and make this work.
12 Thank you.

13 CHAIRPERSON SHEEHY: I'm sorry. Which piece did
14 you want to see moved through today?

15 MR. SILVA: The charter --

16 CHAIRPERSON SHEEHY: Oh, the charter school piece.

17 MR. SILVA: Yeah.

18 CHAIRPERSON SHEEHY: Okay. I'm sorry, Mr. Silva.

19 MR. SILVA: Thank you.

20 CHAIRPERSON SHEEHY: Ms. Moore.

21 MS. MOORE: I still have the issue of having all
22 of the regulations that we are adopting around this fiscal
23 crisis have a sunseting date with the exception of subject
24 to the availability of financing provided by the Pooled
25 Money Investment bond funded projects. And I may be in a

1 minority in terms of having that concern, that that is the
2 only item that will remain in perpetuity in our regulations
3 and I would like to see it sunset as well. And if indeed it
4 is necessary once we clear this financial crisis to continue
5 to be in the regulations, we can deal with it at the sunset
6 period.

7 CHAIRPERSON SHEEHY: You know, I mean we had this
8 discussion at the last meeting and, you know, we can
9 certainly revisit these regs at any time, Ms. Moore. We're
10 not trying to change the process. Rob, did you want to
11 comment?

12 MR. COOK: Just simply that the changes that we're
13 making and, you know, putting in the language subject to
14 availability of funds, clearly -- you know, a couple months
15 ago, very few people knew what the Pooled Money Investment
16 account was. Very few knew what the Pooled Money Investment
17 Board did.

18 But the changes that we're making in these
19 regulations help us keep in compliance with our program. We
20 fully expect not to be back in the bond market the way -- as
21 you heard, the way we've been used to. And if we are not
22 able to get full funding and we have limited amount of
23 funds, we may be making apportionments or approvals at this
24 Board that we cannot -- you know, that we may not be able to
25 fulfill in the time frames that our regulations currently

1 demand that we do.

2 But by putting in the language subject to the
3 availability of funds at least helps us stay in compliance
4 inside our own program.

5 CHAIRPERSON SHEEHY: And our staff, Ms. Moore,
6 Department of Finance and our Education Unit, felt pretty
7 strongly that this language was necessary. So I'm not
8 inclined to remove it, but I'm sensitive to your concern.
9 So I'm perfectly willing to have more discussions about this
10 as we move forward, but I've been advised by my program
11 experts it's important to have this language in here and we
12 have already adopted it with the other regulations, so I
13 would hope we could support that today.

14 MS. MOORE: Why don't we do this. Why don't I
15 note for our Board representative, if she will -- when the
16 other regulations are sunseting -- and I know we'll
17 probably consider whether we need to continue and not have
18 them sunset, if at that time that this item is also brought
19 forward for review and consideration.

20 CHAIRPERSON SHEEHY: Ms. Valentine, could you make
21 sure that we do that?

22 MS. VALENTINE: Yes.

23 CHAIRPERSON SHEEHY: So Ms. Valentine's going to
24 make sure that this item stays on the back burner on a low
25 simmer and that when the time comes and these regulations

1 sunset that we reopen the discussion about the Pooled Money
2 Investment Board.

3 MS. MOORE: Thank you.

4 CHAIRPERSON SHEEHY: Okay. All right. Very good.
5 So with that said, do we have a motion to adopt the
6 regulations as amended?

7 MR. HARVEY: So move.

8 MS. MOORE: Second.

9 CHAIRPERSON SHEEHY: All in favor.

10 (Ayes)

11 CHAIRPERSON SHEEHY: Okay. So Item No. 9 is
12 approved. Mr. Nanjo, we skipped over Item 8 because I
13 thought since it dealt with a school district that we are
14 currently in litigation with, it would be appropriate to
15 hear from you before we got into any discussion in terms of
16 any boundaries we need to be cognizant of.

17 MR. NANJO: Thank you very much, Mr. Chair. My
18 apologies for having to be called away for a minute there.

19 I can provide this amount of background for the
20 Board. As the Board members know, this matter is in active
21 litigation. San Bernardino Unified School District has
22 filed a lawsuit on this particular issue specifically a writ
23 of mandate on this particular issue.

24 One of the reasons why you are hearing this today
25 is because one of the defenses in our lawsuit -- or one of

1 the necessary steps for the lawsuit to proceed forward is
2 that San Bernardino Unified School District did not exhaust
3 their administrative remedies, specifically they did not
4 come to this Board to find out if they can get other relief
5 or anything other than appeal the decision of the staff on
6 returning their ORG application.

7 So with that said, it is appropriate for this
8 matter to come before this Board. It is appropriate for the
9 Board members to ask any questions they deem necessary and
10 to fully discuss this information. Yes.

11 SENATOR LOWENTHAL: Is it also -- if members of
12 this Board feel that it's appropriate to, as you pointed
13 out, that they were required to -- or the courts to -- to
14 come before this Board and seek remedies. Is it appropriate
15 for us to provide those remedies if the Board so chooses?

16 MR. NANJO: Yes. That is correct. I would
17 caution you on doing -- you know, staying within the bounds
18 of the law, but that has not been a problem.

19 SENATOR LOWENTHAL: I'm sure you'll tell us.

20 MR. NANJO: That has not been a problem with this
21 Board, so, Senator, that should be fine.

22 CHAIRPERSON SHEEHY: And I want to have staff
23 present this item. Also I was trying to work out -- staff
24 has recommended deny the request here and I was trying to
25 get to an approval and I had some suggestions on sort of --

1 what I consider a compromise. It's not something I've
2 worked out with San Bernardino. As far as I know, they'll
3 disagree and say they want it just the way they submitted
4 it, but I want to be fair and if there's a way to resolve
5 this matter and resolve the litigation and not spend all
6 night here debating it, I'd like staff to go ahead and
7 present this and then if it's okay with the members of the
8 Board, I'd like to present a proposed compromise here and we
9 can certainly take testimony from San Bernardino.

10 SENATOR LOWENTHAL: Okay. And then San Bernardino
11 will present their response and then we'll talk. So we
12 should hold off until we hear all that.

13 CHAIRPERSON SHEEHY: Okay.

14 SENATOR LOWENTHAL: Okay.

15 CHAIRPERSON SHEEHY: All right. Very good. Rob,
16 you want to go ahead.

17 MR. COOK: Well, I'll have Rick Asbell --

18 CHAIRPERSON SHEEHY: Okay. Rick.

19 MR. COOK: -- of our staff present.

20 CHAIRPERSON SHEEHY: Rick's going to go ahead and
21 present the appeal.

22 MR. COOK: That's correct.

23 CHAIRPERSON SHEEHY: All right. Thank you.

24 MR. ASBELL: Good evening, Mr. Chair and Board
25 members. The purpose of this report is to present the

1 district's request process an Overcrowding Relief Grant,
2 otherwise known as ORG, funding application for a project
3 that previously received new construction site and design
4 funds under the School Facility Program.

5 In October 2007, the district submitted a new
6 construction application for site and design funds for
7 Middle College High School. The application was approved by
8 the SAB in April of 2008.

9 At that time, staff advised the SAB and the
10 district that it would unlikely be able for the district to
11 have sufficient eligibility to complete the project due to
12 declining enrollment.

13 The district received the funds shortly thereafter
14 for the site and design of the project. In July of 2008,
15 the district submitted an ORG application for the same
16 project. By doing this, the district is seeking to combine
17 two mutually exclusive funding sources, new construction and
18 ORG, for the same project.

19 The result would be double funding for design
20 costs since the per pupil grant under both programs has
21 design costs embedded in them.

22 As authorized by the voters, new construction and
23 ORG have two distinct purposes. New construction is to add
24 new capacity to house unhoused children while ORG is to
25 replace existing portable classrooms with permanent

1 classrooms and it specifically prohibits adding new
2 capacity. Granting the district's request would violate the
3 voter authorized purposes of these programs.

4 Staff presented the district with three options to
5 retain program integrity. Each option would ensure that
6 there would be no duplication of funding. The options were:
7 to rescind the new construction design apportionment and
8 submit a new ORG application; reduce the new construction
9 site and design apportionment to costs incurred and submit a
10 new ORG application; and finally continue to pursue the
11 project under new construction program. There would be no
12 ORG application.

13 Because the district chose none of the options
14 above, the OPSC returned their ORG application.
15 Subsequently, the district submitted an appeal.

16 The district provided a legal opinion stating
17 there was no law that expressly prohibits a district from
18 applying and receiving new construction and ORG funding for
19 the same project. The SAB's legal counsel disagrees and has
20 opined that the laws and regulations must be interpreted to
21 be consistent with the SFP and ORG programs.

22 Additionally, it is unnecessary to specify that
23 approving funding under two distinct and exclusively funded
24 sources for the same scope of work is prohibited as
25 duplication is not allowed.

1 For these reasons, staff is recommending a denial
2 of the appeal. However, just as Mr. Sheehy alluded to, I
3 believe there might be some other alternatives.

4 CHAIRPERSON SHEEHY: Thank you very much. Yes,
5 Senator Lowenthal.

6 SENATOR LOWENTHAL: I just need some clarification
7 on this. You said you presented to San Bernardino a number
8 of recommendations, you know, not to do both, you know,
9 from -- to do both ORG and the School Facility Program, that
10 really they were for different purposes.

11 So with that -- and you said, well, why don't you
12 apply for the ORG, just go right through. You know, that
13 was one of your -- is it not true that -- this is a
14 financial hardship district; is that not true? And that
15 they are not able under the ORG to seek early kinds of
16 design and preliminary kinds of monies for site and for
17 design, that they were excluded from that because they are a
18 financial hardship district and this Board was supposed to
19 do with that issue last year about that flaw in the program
20 and never has come back to the -- it's never returned. Is
21 that true?

22 MR. COOK: The issue that came before this Board
23 was raised by a school district that was trying to
24 acquire -- needed to acquire a site under condemnation and
25 the Overcrowding Relief Grant Program did not accommodate

1 that at that time.

2 Those regulations to accommodate that change were
3 in fact put forward by this Board and became effective
4 January 21 of this year. So that -- to accommodate that one
5 issue -- that issue has been addressed by this Board.

6 SENATOR LOWENTHAL: But the issue of can a
7 financial hardship district participate by receiving early
8 kinds of preliminary apportionment to do site and design
9 which they had -- is still -- they are not able to do that;
10 is that not true? Or can they?

11 MR. COOK: The preliminary --

12 SENATOR LOWENTHAL: Can a school district applying
13 for ORG going that route, can they receive a preliminary
14 apportionment to do site and design work if they're a
15 financial hardship district?

16 MR. COOK: Well, the program prior to the
17 regulations that went into effect would allow for
18 preliminary site and design funding for somebody who had
19 escrow agreements and so on. We had just opened it up and
20 now it's much more comprehensive and --

21 SENATOR LOWENTHAL: I'm not getting an answer.

22 MR. COOK: Sorry. Yes. The short answer is --

23 SENATOR LOWENTHAL: They could have applied for
24 it --

25 MR. COOK: -- yes, they could apply for --

1 SENATOR LOWENTHAL: -- at that time when -- and
2 received -- as a financial hardship district, they could
3 have received a preliminary apportionment. So when you
4 presented that as an option, they could have done that and
5 received a preliminary apportionment. That's all I need to
6 understand.

7 MR. COOK: Um-hmm.

8 SENATOR LOWENTHAL: And you're saying yes.

9 MR. NANJO: That is correct.

10 MS. MOORE: Let me just follow up because that
11 confuses me.

12 CHAIRPERSON SHEEHY: I'm sorry, Ms. Moore. I had
13 Mr. Torlakson next.

14 MS. MOORE: Sure.

15 CHAIRPERSON SHEEHY: Senator Torlakson.

16 ASSEMBLY MEMBER TORLAKSON: You just stated your
17 opinion -- it seems like we have dueling legal opinions. You
18 stated yours. The staff report on page 2 and 3 cites the
19 authority. So you've stated that you think this blended
20 funding approach doesn't meet with regulations, but I'm
21 wondering if you could point out which of these points and
22 authority you think most, you know, substantiates your case.

23 We're hearing that there are other opinions and
24 again there may be a good compromise that the Chairman is
25 working at that may take care of some of the overlap and

1 some of the issues. At least that may be one of the areas
2 we're going, but it's unfortunate to get in litigation over
3 something like this and I'm reading these authorities and I
4 don't quite see it as clear-cut and wondered if staff could
5 elaborate on what are the points and authority you think
6 deny or prohibit that kind of blended funding.

7 MR. COOK: The points and authority -- and perhaps
8 they're not -- actually goes back to the bond covenants and
9 the voter approved purposes for those streams of funds. The
10 School Facility Program, new construction is for creating
11 new facilities for unhoused children and the Overcrowding
12 Relief Grant is specifically prohibited from providing
13 additional capacity but is meant to replace portable
14 classrooms with new construction. Those are two very
15 different purposes, not unlike modernization and new
16 construction or modernization and -- we have multiple
17 streams of funding all with specific purposes.

18 CHAIRPERSON SHEEHY: Okay. So we have Ms. Moore
19 then Mr. Harvey and we'll wait till I get to my peace
20 accord.

21 MS. MOORE: I just was -- I thought the question
22 that was asked by the Senator is at the time that the
23 district applied were they capable -- for the Overcrowding
24 Relief Grant, were they capable of receiving a preliminary
25 apportionment for site and plan. Was that the question?

1 SENATOR LOWENTHAL: That was exactly the question.

2 MS. MOORE: And I thought the answer was yes. And
3 I didn't believe we -- I thought the answer is no, they are
4 not capable and that's why we had the discussion at the May
5 Board about that particular wrinkle that seems to preclude
6 hardship districts from accessing -- from having
7 apportionments along the way.

8 MR. COOK: The wrinkle that we just resolved, in
9 fact resolved with regulations, was -- I'll call it an
10 oversight -- the original regulatory scheme for overcrowding
11 relief and that had to do with a district that needed to
12 enter into condemnation proceedings. That was the thing
13 that we didn't allow for.

14 We already had provisions that would allow if they
15 had a willing seller and could enter in escrow agreements,
16 but condemnation proceedings was the problem that we just
17 resolved.

18 MS. MOORE: So in the Overcrowded Relief Grant
19 Program, we allow for preliminary apportionments?

20 MR. COOK: I have a correction from staff. That
21 is the -- we have corrected -- the whole problem existed at
22 the time when this district originally applied for its ORG
23 application in July. The entire problem existed. We have
24 corrected that problem and now if the district were to file
25 its application today, that problem is corrected.

1 MS. MOORE: So at the time that they did file, it
2 was not available to them to get a preliminary
3 apportionment.

4 MR. COOK: That's correct.

5 MS. MOORE: Thank you.

6 CHAIRPERSON SHEEHY: Mr. Harvey.

7 MR. HARVEY: I'm trying to understand the
8 authority that voters impose when they vote on bonds. You
9 referenced the bond covenants. To me that may be an
10 overarching issue.

11 Can you cite language for me which says when the
12 voters voted for new construction, they were saying no
13 comingling and when they voted for overcrowding, it was no
14 comingling because that is the ultimate authority. If the
15 voters approve something and then we have regulations to
16 dispense those dollars, the ultimate language -- the
17 ultimate basis for what we do is in the bonds.

18 So I'm trying to get a good understanding of these
19 bond covenants you allude to.

20 MR. COOK: Well, I don't think the language that
21 says specifically no comingling exists. It's just that the
22 funds are authorized for a specific purpose. In this case,
23 the district is asking the Board to provide funding in parts
24 for an entire -- well, in parts on this project site and
25 design from one funding stream, construction from another

1 funding stream for the same scope of work, and there is some
2 duplicative funding in that stream.

3 CHAIRPERSON SHEEHY: And I'd like to -- if I may,
4 Mr. Harvey. From Finance's perspective, we don't have a big
5 problem per se with the comingling, but what we do have a
6 problem with and what I cannot support is giving districts
7 two dollars for one dollar's worth of work.

8 So in other words, the comingling is not so much
9 of a problem for me or the Department of Finance, but we
10 don't want to give them a certain portion of money from one
11 funding stream that covers X and a certain amount of funding
12 from another funding stream that also covers part of X
13 because then there's a part of X that has gotten double the
14 money it needs.

15 And so we would be -- Finance is -- as the Finance
16 representative, we would be prepared to support approving
17 this appeal if we could direct staff to identify the overlap
18 of that funding and offset it, that we give them the
19 authority to do that because I think part of their problem
20 is they don't have that authority.

21 But our approval then would be contingent upon the
22 district reapplying, give staff the ability to identify the
23 duplication and make an adjustment. If some sort of
24 additional regulation was necessary in order to do this, to
25 come back to us at the next meeting with that regulation to

1 us and then if San Bernardino wants to, when they reapply,
2 reapply also as a hardship district, that they can do that
3 also.

4 And in my opinion, that gives them three-quarters
5 of a loaf and I think that that's better than no loaf and I
6 think it's better than litigating this thing. Now I realize
7 I'm just one member of the Board, but I would be prepared to
8 support that. And if I didn't get that right, Rob, please
9 feel free to speak up.

10 MR. NANJO: If I can interject here real quickly.
11 I apologize because I was speaking about the situation after
12 the regulatory change, so I misunderstood the question. So
13 I apologize for that.

14 With regards to the present situation and to
15 answer Mr. Harvey's question, specifically what my legal
16 opinion was based on is the fact that fundamentally you
17 can't have a building classroom structure which does both
18 create new classrooms -- or new space for unhoused pupils at
19 the same time only because the regulations and the statutory
20 language is very clear for ORG -- only creates housing for
21 pupils that are in portables and relieves overcrowding.

22 So there's two fundamentally different concepts
23 and the problem is it's -- more than anything else, there is
24 a practical impossibility for a seat -- a room to do both.
25 You could have a situation where half a project may be under

1 one, half a project may be under another, but you can't have
2 a situation where a classroom or a facility only allows
3 overcrowding relief by replacing a portable and at the same
4 time houses unhoused pupils by creating new space. Those
5 are two different situations.

6 CHAIRPERSON SHEEHY: Mr. Harvey.

7 MR. HARVEY: I wholeheartedly agree with what you
8 just said, but I certainly endorse what Mr. Sheehy has said.
9 That is I too have no problem with the concept of
10 comingling. What bothered me when I was going down my line
11 of questioning was that very same point of double dipping if
12 you will or double counting.

13 So I am willing to support the compromise, unless
14 I'm told it's not legal because to me I have no problem with
15 the policy issue of comingling, but I don't want to have
16 money counted more than once for the same thing.

17 MR. NANJO: This is the first time I've heard of
18 the -- well, at the -- just before this meeting was the
19 first time I've heard about this potential alternate
20 proposal. I have not had a chance to analyze it. Just off
21 the top of my head, I believe it would require at least a
22 regulatory change, so that's going to be necessary.

23 The only other caveat I would give is as your
24 legal counsel, I've been pretty good about contacting our --
25 or being in communication with our Deputy Attorney General

1 who's handling our litigation for us and have been
2 consulting with her to make sure that she doesn't have any
3 issues with the moves.

4 I would recommend that if we are considering an
5 alternate proposal that we at least get, for lack of a
6 better term, communicate with the Deputy Attorney General
7 and get their buy-in on that, make sure that there isn't an
8 issue from the litigation standpoint because I am not in the
9 trenches on that issue.

10 CHAIRPERSON SHEEHY: Well, I have Senator
11 Torlakson next, but before we go there, Henry, so if a
12 majority of the Board members today were willing to adopt a
13 structure similar to what I had suggested, is there some
14 action that we could take today to do that that still gives
15 us an opportunity to somehow check in with counsel. I
16 mean -- and as far as needing an additional regulation, part
17 of the motion would be to direct staff to come back to the
18 Board with such a regulation for our review and approval.

19 MR. NANJO: Yeah. I would think that since a
20 regulatory change is necessary, this isn't going to take
21 effect right away obviously. So if the Board wants to make
22 that --

23 CHAIRPERSON SHEEHY: Contingent upon adoption of
24 the regulation?

25 MR. NANJO: Contingent upon adoption of the

1 regulation, I would ask the Board to direct me to contact
2 the Deputy Attorney General and get their input. Assuming
3 they don't have any problems, we could go forward. If
4 there's an issue that's raised by the Deputy Attorney
5 General, what I'd recommend is that I advise staff and that
6 we have either a closed session or put it on the agenda for
7 next time.

8 CHAIRPERSON SHEEHY: Okay. Well, I think we have
9 a possible structure of a motion here -- an agreement, but
10 we haven't had a chance yet to hear from the public.
11 Senator Torlakson, you were next, and then we'll see if we
12 want to take some public testimony.

13 ASSEMBLY MEMBER TORLAKSON: Thank you. I agree
14 with -- I'm of the same mind of not worrying about the
15 comingling. Students mingle from class to class, change
16 periods. They use different desks and different rooms and
17 there are students needing a good new facility.

18 The question I would have -- and I like the
19 outline of your compromise. We shouldn't be paying twice
20 for something that costs that X factor that you spoke of,
21 but what is the timing of the district in terms of is going
22 back and reapplying reasonable or is that something that
23 sets off their targets for meeting the needs of the students
24 that are needing that new school and the housing?

25 So we'll hear from the district, but I think that

1 might be the only part of your compromise that I would want
2 to examine carefully. Is there a way to go about it that
3 allows them to modify their application or somehow work with
4 it along the very lines that you spoke of, identifying where
5 the overlap allocation is and stripping it out as not being
6 part of what they would ultimately get.

7 CHAIRPERSON SHEEHY: Rob.

8 MR. COOK: Yes. I can speak to that. The next
9 round of Overcrowding Relief Grant funding closes this
10 Friday. So an application that comes in by close of
11 business Friday is perfectly ready to accept. The prior
12 round of -- and this is done in competitive rounds -- was
13 done in December. So that ship has sailed as far as being
14 able to apply for that round, but the other one is wide
15 open.

16 I would assume that the district has an
17 Overcrowding Relief Grant project application that's ready
18 to go or could be ready to go.

19 CHAIRPERSON SHEEHY: Yes, Ms. Morgan.

20 MS. MORGAN: Point of clarification. Then to
21 accommodate what the Board is contemplating, then we would
22 need to factor in some sort of grandfathering provision for
23 this third cycle so that the regulations once become
24 effective would be applicable to the application that the
25 district would file by Friday so that it could be considered

1 in the third funding cycle.

2 CHAIRPERSON SHEEHY: I'm sure there's -- having
3 worked in this building long enough, I'm sure there's a way
4 to draft it.

5 MS. MORGAN: Yes. Yes, sir. I just wanted to
6 clarify that for the district.

7 CHAIRPERSON SHEEHY: We have attorneys that are
8 very smart and I'm sure they can figure that out.
9 Additional comments from members of the Board? How about we
10 hear from the public? Is San Bernardino here? Would they
11 like to come address the Board, please -- or their
12 representatives.

13 MR. PEUKERT: Mr. Chairman and Board members,
14 thank you very much for hearing us tonight. My name is John
15 Peukert. I'm the Assistant Superintendent of Facilities for
16 San Bernardino Unified School District.

17 I want to give you a brief history of us. We are
18 an urban school district. We do have over 54,000 students
19 and have over 90 percent free and reduced lunches. So I
20 think that gives you an example of the economic challenges
21 there.

22 We have currently 500 portables in our district.
23 We still have over 26 year-round schools and we do have a
24 series of state hardship projects that have moved forward
25 from last year's approval. However, we currently are

1 outside of state hardship.

2 Most of our projects from state hardship are
3 frozen right now because of the condition of the state's
4 finances. However, one of these projects has moved forward
5 and that is the Middle College High School.

6 The Middle College High School, we did receive
7 under state hardship apportionment for land and design. We
8 have processed those property acquisitions and we also have
9 design for this school. And as a side note, it is being
10 designed as a high performance school or a green school.

11 To complete this property -- this project, we
12 needed to apply for the ORG grant. Since we already have
13 part of the project, we needed to complete it. In July we
14 went ahead and applied for this and this would allow us to
15 move forward and complete this project and that's why we're
16 here tonight is to appeal the direction this is going.

17 The ORG grant was meant to reduce portables which
18 we have 500 of in our district and to build permanent
19 buildings and to get portables off our parking lots and
20 fields and to serve the disadvantaged students of our
21 district.

22 Again we do have the properties and we do have the
23 design completed. To complete this project, this was -- we
24 applied for ORG grant to remove 17 portables and to build a
25 permanent structure.

1 I do have to make a comment there is no double
2 dipping involved in this. I'm sorry that that keeps coming
3 up in the relationship with the state. But we do feel that
4 we can move these two applications forward. We feel it is
5 as simple as an accounting function to deduct from one grant
6 what has been received from another one.

7 CHAIRPERSON SHEEHY: Excuse me, Mr. Peukert.

8 MR. PEUKERT: Yes.

9 CHAIRPERSON SHEEHY: It's that deduction that is
10 exactly what I'm talking about.

11 MR. PEUKERT: Okay.

12 CHAIRPERSON SHEEHY: So I take umbrage. The
13 people working in my department I'm sure are just as smart
14 as your people and I don't want you taking shots at them.
15 It's that -- you just said that very thing. It's an
16 accounting issue.

17 MR. PEUKERT: Right.

18 CHAIRPERSON SHEEHY: And maybe we're using
19 different terminology, but it's the same issue and part of
20 the problem we have here is that OPSC does not have the
21 authority under current regulations and law to make that
22 adjustment. So they're following the law.

23 I'm trying to find a compromise to get you your
24 money and stop this litigation. We don't want to argue
25 about double dipping. We just want to do the right thing.

1 MR. PEUKERT: And so does San Bernardino Unified.
2 That's why we're here.

3 I do have to raise a concern that this is a
4 competitive grant with limited amount of funds. I know that
5 there are large districts that are going to submit by the
6 end of this week and we would have no assurance of being
7 funded for this if we resubmit.

8 We are outside of hardship and currently if we
9 reapplied, we would not qualify.

10 CHAIRPERSON SHEEHY: Excuse me.

11 MR. PEUKERT: Yes.

12 CHAIRPERSON SHEEHY: Mr. Peukert, I'm going to
13 interrupt you again. What I am suggesting is to approve --
14 approve you. Approve you. Not -- approve you. And that
15 approval would be conditional on you reapplying. So if you
16 reapply and met our conditions, you're approved. So your
17 concern about the competitive thing is not -- I mean I'm
18 offering you -- I shouldn't say that.

19 I'm offering this Board a framework to try to
20 resolve your issue in a way that we think is equitable and
21 gets you the money, gets us out of this litigation, okay,
22 and so you don't have to worry about reapplying and then not
23 getting it.

24 MR. TAO: If I may. I'm Terry Tao, legal counsel
25 for the district. There are a couple of things that I think

1 are necessary to clarify. The hardship application of this
2 school district actually expired on October 23rd, 2008. This
3 project actually falls under that hardship application and
4 the litigation is actually for the purposes of ensuring that
5 the rules are followed simply.

6 The ORG rules as they are written do provide for
7 property acquisition. The SFP rules as they are written do
8 provide for property acquisition and the two have the same
9 eligibility -- I'm sorry -- the same grant type
10 requirements.

11 The issue is an advanced fund release associated
12 with the acquisition of the property and design. The
13 district has been locked out of the program specifically
14 because they're a hardship district, and I can explain that
15 more. I just felt that it was necessary to bring that up.

16 CHAIRPERSON SHEEHY: Thank you, Mr. Tao. I'm
17 sorry, Mr. Peukert. Please continue.

18 MR. PEUKERT: Well, at this point I -- you know,
19 basically we do seek resolution in this. That's why we're
20 here for the appeal, but at this time, if there's no
21 specific questions for me, I would like to have Terry -- I
22 would like to have Wilma Carter please come up and say a few
23 words if she could.

24 CHAIRPERSON SHEEHY: Oh, certainly. By all means.
25 Welcome, Assemblywoman.

1 ASSEMBLY MEMBER CARTER: Oh, thank you. Thank
2 you. Good evening, Mr. Chair and Board members. Thank you
3 for allowing me to speak on behalf of San Bernardino Unified
4 School District which is a district in my assembly district.

5 We've been here before with the school district.
6 I just learned of this issue yesterday and I guess I'm
7 concerned because I just heard you talk about a solution for
8 this issue and I understand from San Bernardino School
9 District that they applied July 2008 and they have been
10 going through the process since that time.

11 I guess my question is with all the attorneys and
12 staff and people, members of the Allocation Board, I'm not
13 sure why this couldn't have been worked out, you know, in
14 the whole months and we come down to, you know, a few days
15 before they would need to reapply and would not be
16 guaranteed funding, you know, would have to get back in the
17 end of the line when they could have been helped with all of
18 the resources we have here at the state.

19 And I guess that's my real concern and I was
20 encouraged by the effort right before the meeting to meet
21 with them to work that out. And so I guess I'm not clear.
22 Did that meeting -- did the results of that meeting -- is it
23 what you just stated earlier in your statement?

24 CHAIRPERSON SHEEHY: I apologize, Ms. Carter.
25 I'm -- I don't believe I participated in the meeting you're

1 referring to --

2 ASSEMBLY MEMBER CARTER: Uh-huh.

3 CHAIRPERSON SHEEHY: -- so I wouldn't -- it
4 wouldn't be appropriate for me to comment on that.

5 Ms. Valentine -- Katrina, did you -- were you in that
6 meeting?

7 MS. VALENTINE: Yes. Yes, I was in the meeting.

8 CHAIRPERSON SHEEHY: Did you want to respond to
9 Assemblywoman Carter?

10 MS. VALENTINE: And basically what the Chair has
11 proposed is what was talked about.

12 ASSEMBLY MEMBER CARTER: That was what --

13 MS. VALENTINE: Yes.

14 ASSEMBLY MEMBER CARTER: And so you do feel that
15 this would be the most beneficial solution for the district,
16 putting them at the back of the line again? You think that
17 would be --

18 MS. VALENTINE: I believe that there's enough
19 funding available with the amount of applications that we
20 will get that even if they were at the end of the line that
21 they would receive funding. I don't think that it
22 disadvantages them.

23 CHAIRPERSON SHEEHY: I'm sorry. Ms. Carter, I
24 want to just say one more time for the record, we're not
25 suggesting putting anybody at the back of the line. We're

1 suggesting approving --

2 ASSEMBLY MEMBER CARTER: Well, I understand that.

3 CHAIRPERSON SHEEHY: -- approving this appeal
4 contingent upon certain things. I think -- and I know the
5 district hasn't said yet. I think the biggest rub here is
6 that -- part of that is is we want them to reapply for
7 financial hardship and I think they're going to tell us that
8 they may not qualify anymore, therefore that's going to be a
9 problem.

10 Other than that, I can't imagine why they would
11 not want to go along with this because on every other aspect
12 of this, they win. That's why I said I thought it was a
13 three-quarters of a loaf, but that may not be good enough.
14 I'm just not prepared to support their appeal such as it is
15 today and I was trying to find a solution that would help
16 the district, give them more than what they have today, and
17 perhaps get us out of this litigation so that we don't have
18 to pay all the attorneys a bunch of money.

19 MR. TAO: Mr. Sheehy, if I may. I do think it's
20 important to be very specific here. This project, had it
21 gone through the regulatory scheme, would have qualified for
22 hardship funding and would have qualified for ORG funds.

23 Our litigation -- simply a writ of mandate which
24 says, Court, please have OPSC apply the rules exactly as
25 they're written and follow through so that an application

1 will be processed exactly as is, meaning ORG funds plus
2 hardship funds and --

3 CHAIRPERSON SHEEHY: I'm sorry, Mr. Tao. Before
4 you go further with your legal analysis, you made a major
5 mistake. You filed your lawsuit before you exhausted your
6 administrative remedies. That's a big problem for you. You
7 know it. I know it and every attorney in this room knows
8 it.

9 So we're trying to offer your client a win-win
10 situation. You certainly don't have to accept it, but I'm
11 not comfortable with the recommendation OPSC made which was
12 to simply deny and send this thing back to court. I'm
13 trying to propose something that we could get enough support
14 for to pass today and get us out of this litigation.

15 You're the ones that jumped the gun. I don't know
16 if it was your advice. You jumped the gun and sued the
17 state before you exhausted your administrative remedies and
18 that was a big mistake.

19 MR. TAO: Understood. I am not going to argue
20 with you on the point.

21 ASSEMBLY MEMBER CARTER: Excuse me.

22 CHAIRPERSON SHEEHY: I'm sorry. Senator
23 Lowenthal.

24 SENATOR LOWENTHAL: In trying to understand just
25 what -- if in fact the appeal now is approved and there will

1 be funding, let's just say, and the -- in what way would
2 this impact the district and I need to understand this in
3 terms very specifically when we talk about three-quarters of
4 a loaf or a full loaf, I didn't hear three -- you know, I
5 didn't truly understand what that really means.

6 I need to know specifically if we approve this
7 today, if we ask you to make -- you know, to reapply, how
8 would that impact you and what do you see as the real issue.

9 MR. TAO: It would result in the district losing
10 its hardship funding which means --

11 SENATOR LOWENTHAL: You mean the preliminary
12 apportionment that you received?

13 MR. TAO: No. On the construction grant, they
14 would lose 50 percent of the total construction costs.

15 SENATOR LOWENTHAL: Because you're not --

16 MR. TAO: We would be outside hardship on the
17 ORG --

18 SENATOR LOWENTHAL: On the application this
19 Friday, even though you believe that when you first applied
20 for it, you met the criteria.

21 MR. TAO: That's correct.

22 SENATOR LOWENTHAL: So the issue really is that
23 when this process started, when you applied for it, you met
24 the criteria and today you believe that you might not meet
25 the criteria, so you would lose 50 percent of the funding,

1 which is approximately how much money?

2 MR. TAO: I believe it's \$6 million.

3 SENATOR LOWENTHAL: So you would lose \$6 million
4 because your application could not be considered at the time
5 of when you first applied but it would be considered now.

6 MR. TAO: That's correct.

7 SENATOR LOWENTHAL: Is there any way we can --
8 that could be --

9 CHAIRPERSON SHEEHY: Well, let's address that
10 issue. I have Ms. Brownley and then Ms. Hancock. Is it
11 okay to let staff address this issue first about the timing?
12 Mr. Morgan or Mr. Cook, do you want to address Senator
13 Lowenthal's question.

14 MS. MORGAN: Yes. I'll be happy to. At the time
15 that we provided the three options for the district, that
16 was all that we had available to us within the existing
17 framework of the regulations and the statute.

18 What we're proposing here today will, as we've
19 mentioned, require regulatory change so that we can have a
20 mechanism to do the offset of the per pupil grants so there
21 will not result in a double funding. And I also --

22 SENATOR LOWENTHAL: Would they lose that
23 \$6 million?

24 MS. MORGAN: They would have to reapply for their
25 financial hardship status should they refile for their

1 application before Friday. I do know that they meet the --
2 there's a two-step process. There's -- they would qualify
3 for financial hardship status. I believe what the district
4 is concerned about is the amount of district contribution
5 that would be recognized that they'd have to contribute.

6 And I would also like to clarify in case it helps
7 that we've only received one application to date. The final
8 filing is Friday and we have \$900 million available for this
9 program.

10 ASSEMBLY MEMBER CARTER: I'm sorry. I didn't hear
11 the answer to his question.

12 CHAIRPERSON SHEEHY: I think the answer --

13 ASSEMBLY MEMBER CARTER: He had a direct
14 question --

15 CHAIRPERSON SHEEHY: -- is is that if they qualify
16 for financial hardship, then they qualify and if they don't,
17 they don't. So if they currently qualify for financial
18 hardship then, yes, they would lose money in the process.
19 That's correct. Isn't that right? That's right. Rob?

20 MR. COOK: Well, yeah. And based on the statutory
21 requirements, this district has sufficient bonding and
22 indebtedness that they would qualify.

23 SENATOR LOWENTHAL: They would qualify.

24 MR. COOK: They would qualify for financial
25 hardship.

1 CHAIRPERSON SHEEHY: Mr. Tao -- let's hear from --
2 ASSEMBLY MEMBER CARTER: But the question is would
3 they get it.

4 CHAIRPERSON SHEEHY: Let's -- yeah. Let's cut to
5 the chase. I think the members of the Board would like to
6 know whether or not -- you know, one way or another, are
7 they going to lose this financial hardship status and money
8 under the --

9 ASSEMBLY MEMBER CARTER: And money.

10 CHAIRPERSON SHEEHY: -- under the structure that
11 I'd propose, would they lose that? I've been under the
12 impression that they might, so can we get --

13 SENATOR LOWENTHAL: Could we get an answer --

14 CHAIRPERSON SHEEHY: I think the members here
15 would like to know that.

16 MR. COOK: They would have to reapply for
17 financial hardship. By everything I know, they would
18 qualify for that. The one determination that would need to
19 be made is whether the district is able to contribute to its
20 project or not and that is -- the figure, the number the
21 district would know that much better than I would. We
22 haven't reviewed their financials.

23 ASSEMBLY MEMBER CARTER: What is the possibility
24 of them actually receiving any funds? I know they would
25 qualify, but what is the actual possibility?

1 CHAIRPERSON SHEEHY: Well, if we -- Ms. Carter, if
2 we were to approve the appeal, they'd get the money as long
3 as they -- it would be conditional upon them reapplying.
4 They'd get the money.

5 ASSEMBLY MEMBER CARTER: And what about funding
6 for other projects if they have to reapply for hardship?

7 CHAIRPERSON SHEEHY: I'm sorry. I don't --

8 MR. COOK: Funding for other projects?

9 ASSEMBLY MEMBER CARTER: No. I mean would they
10 qualify for the additional funding that they need under the
11 hardship program?

12 MR. NANJO: Once they apply for financial
13 hardship, if they qualify, they will be financial hardship.
14 So that applies to all projects.

15 ASSEMBLY MEMBER CARTER: If they qualify. If they
16 qualify.

17 MR. NANJO: Well, based on what staff believes is
18 the case -- we don't have the financial hardship application
19 of the school district in hand. Believing -- based on what
20 they believe is the case, the school district would almost
21 certainly qualify for financial hardship.

22 SENATOR LOWENTHAL: Why is the school district
23 saying that they wouldn't qualify?

24 MR. NANJO: What the -- the amount in controversy,
25 Senator, to answer that question directly and for

1 Assemblywoman here is that under the Financial Hardship
2 Program, the state picks up the 50 percent tab as the Board
3 members know because they're financial hardship, but insofar
4 as the school district has funds available that they can
5 contribute to their projects, we ask them to contribute
6 those amounts available up to 50 percent --

7 CHAIRPERSON SHEEHY: As an offset.

8 MR. NANJO: -- as an offset.

9 CHAIRPERSON SHEEHY: They don't want to pay the
10 offset. That's really what it comes down to. They don't
11 want to pay the offset.

12 MR. NANJO: Once that money -- exactly. Once that
13 money is gone, then everything is paid for because they're
14 still a financial hardship, but they have to put in that
15 offset.

16 The situation that San Bernardino is in is -- at
17 least what I understand is if we go back in time to July
18 when they first made their application that that money
19 wasn't on the books yet, is my understanding, so that that
20 wasn't available, but we are where we are.

21 CHAIRPERSON SHEEHY: Thank you, Henry. I have
22 Ms. Brownley and then I have Senator Hancock.

23 ASSEMBLY MEMBER BROWNLEY: Well, I think -- you
24 know, I was going to ask the question that's been already
25 asked in the room and I think just, you know, the essence of

1 the thing is, you know, I think in terms of the Chair's
2 solution, he is making a statement that if the district
3 applies they're going to be approved, but the question is
4 will the approval also include the extension of the
5 district's hardship eligibility.

6 And I think the answer -- what I'm hearing is if
7 they apply and if they qualify and which it sounds
8 conditional to me and wondering if there was a way in which
9 we could walk out of this room with a level of certainty
10 that both would apply.

11 CHAIRPERSON SHEEHY: Well, I just want to state
12 for the record I'm not suggesting that we do some
13 grandfathering or anything on the financial hardship.
14 Either they qualify or they don't. And we have reason to
15 believe that they do. The district knows their finances
16 better than us, but my -- so to be perfectly clear with
17 members, you may disagree with me --

18 ASSEMBLY MEMBER BROWNLEY: Yeah, and that's what
19 I'm looking for.

20 CHAIRPERSON SHEEHY: -- my proposal is not to say
21 to extend the clock by some amount -- a number of more
22 months or whatever it is on their previous financial
23 hardship application. That's not my proposal.

24 I couldn't go along with their request as it
25 stands today. I know we're in litigation. I was hoping

1 maybe this would be something that, like I said, would give
2 them three-quarters of a loaf, maybe four-fifths, I don't
3 know, but I'm not suggesting nor would I support
4 grandfathering in because if we do it for them, then it
5 opens the door for a list of districts this long and I'm not
6 prepared to go there. Okay? I'm just not prepared to go
7 there. Maybe other members are.

8 I have -- I'm sorry. Ms. Brownley, does that
9 help --

10 ASSEMBLY MEMBER BROWNLEY: Yes.

11 CHAIRPERSON SHEEHY: -- clarify? I have Senator
12 Hancock and then Senator Torlakson.

13 SENATOR HANCOCK: A quick question to see if I'm
14 understanding what's happening. Is what happened that
15 San Bernardino approved a bond, so now it has money to
16 contribute that it didn't have before and so they're being
17 penalized for voting a bond because now they can't spend the
18 bond money for something else or as you might say, they now
19 have some money to contribute and they ought to contribute
20 it?

21 MR. TAO: Senator Hancock, I apologize. The bond
22 actually was considered at the time when the district
23 applied for the hardship application that was approved in
24 April and expired in October.

25 So the bond funds actually were considered. There

1 are some -- there are a lot of reasons why a district may
2 not reapply for hardship. That was a very long discussion
3 that I'd be happy to address with you, but I think it's
4 beyond the scope of what it is that we're here for.

5 The district applied for ORG (indiscernible-away
6 from microphone). They're looking for replacement of 17
7 portables with permanent structures. We have a package that
8 we presented and I'd be happy to walk through it so that we
9 can get some clarity rather than trying to address shots in
10 the dark about what is or what is not with regards to
11 financial hardship, what the ORG program is, whether --

12 CHAIRPERSON SHEEHY: I'm sorry. Mr. Tao.

13 SENATOR HANCOCK: Well, I do think people have
14 been trying to be helpful up here and I'm just trying to
15 clarify and it is my first meeting and I don't need you to
16 go over the whole packet again, but if there was a way -- if
17 the issue is planning money in both grants and getting --
18 that being inappropriate, my question I guess would be to
19 the Chair. You worked out your compromise which seems like
20 it would get us where we want the children to be.

21 CHAIRPERSON SHEEHY: Right. Well --

22 SENATOR HANCOCK: Is there a way to subtract money
23 or whatever --

24 CHAIRPERSON SHEEHY: Well, in fairness, I don't
25 want to suggest it was a compromise with San Bernardino.

1 That wouldn't be fair. It was a compromise between denying
2 this request outright which is what OPSC was recommending
3 and I wasn't comfortable with that.

4 And so it was compromise between that position and
5 simply approving their request which I wasn't comfortable
6 with either for a whole variety of reasons because it would
7 set a precedent and we're going to have a list longer than
8 the state budget if districts are going to come in asking to
9 get grandfathered in on these things.

10 So I was trying to come up with a compromise
11 between those two extremes, recognizing the fact that we're
12 in litigation. And I understand if the district doesn't
13 like it. You know, they would like a hundred percent of the
14 loaf and I understand I guess if I was in their shoes that's
15 where I would be and I'm trying to find some way to give
16 them something that's supportable.

17 I'm not sure you have the support to get your
18 appeal approved here and if you're insistent on having us
19 vote on that tonight the way it is, we could have that
20 motion and do it and see. Maybe you would get it. I don't
21 know. I won't support it, but I'm also not going to support
22 the staff recommendation because I think there's a better
23 way.

24 I have Senator Torlakson.

25 ASSEMBLY MEMBER TORLAKSON: Thank you. This

1 discussion's been helpful and I want to go back to Assembly
2 Member Brownley's point.

3 There's the issue of their application and did
4 they play by the rules at the time they made their
5 application and then there's the issue of making them
6 reapply and what I'm understanding is they reapply, they
7 feel they're in jeopardy of losing about \$6 million of the
8 hardship money that under the current application, they have
9 assurance if the appeal were granted of having the hardship
10 match and therefore they'd have 6 million to do other things
11 for kids that are needed in the district. You might want to
12 address that.

13 So when our good Chair --

14 SENATOR LOWENTHAL: Could you respond?

15 ASSEMBLY MEMBER TORLAKSON: What I would say is I
16 would agree with you that doing the grandfathering sort of
17 sets a new precedent and has a lot of problems. However, I
18 think we could still do a part of what you want. I may
19 differ with you in terms of the extent of it, but you don't
20 get into the grandfathering issue if you grant the appeal,
21 let them proceed with their current application, but you'd
22 require that the -- they agree to and we somehow have the
23 legal force of having any duplicative reimbursement stripped
24 out and only one time pay. That issue you brought up at the
25 very beginning.

1 So if there are design costs that you got paid
2 twice for, then they must identify those -- our staff must
3 identify those and they must reimburse or not take those
4 dollars.

5 But I can see their point that they feel they
6 qualify and for whatever reason, they may not technically
7 qualify for hardship now. So they feel under the current
8 rules that they should get that 6 million. I would support
9 a compromise that granted the appeal and -- but forced the
10 district to strip out those duplicative costs.

11 CHAIRPERSON SHEEHY: Thank you, Senator Torlakson.
12 One thing that I think would be helpful for the Board
13 members is if we could hear directly from San Bernardino
14 District as to whether or not they believe they would
15 qualify if they were to apply today, hypothetically, for
16 financial hardship, and under that scenario, what money
17 would be left on the table so to speak because it's --

18 MR. TAO: They still wouldn't qualify.

19 CHAIRPERSON SHEEHY: I'm --

20 MR. PEUKERT: That is correct. We've done a
21 financial evaluation and we would not qualify for state
22 hardship today.

23 MR. TAO: We wouldn't qualify under the ORG
24 either --

25 MR. PEUKERT: Yeah.

1 MR. TAO: -- or hardship. Let me read a passage.
2 If you turn to Tab 16 of the document that we provided and
3 turn to page 13 of the --

4 ASSEMBLY MEMBER BROWNLEY: Page 16 or 13?

5 MR. TAO: Tab 16.

6 ASSEMBLY MEMBER BROWNLEY: Oh, Tab 16.

7 MR. TAO: And then turn to page 13. That is the
8 transcript from the hearing before the State Allocation
9 Board, Wednesday, May 28. This is a direct quote from
10 Ms. Morgan.

11 CHAIRPERSON SHEEHY: Which page are you on, Terry?

12 MR. TAO: Page 13.

13 CHAIRPERSON SHEEHY: Wait a second for everybody
14 to catch up. Page 13?

15 MR. TAO: Page 13, line 18. If I could I'll just
16 read this very quickly. This is Ms. Morgan. For the
17 Overcrowded Relief Grant Program, it was quite a discussion
18 when it was implemented whether or not we would advanced
19 apportionments for site or design. It was decided that it
20 should not since this was a funding-cycle program and that
21 only projects that were ready to go forward with their
22 projects be apportioned so that other districts that were
23 construction ready could go forward. Next page.

24 And unfortunately it would mean that an advanced
25 site apportionment could not be provided for a financial

1 hardship district, although the entire construction
2 apportionment, if they qualified for financial hardship,
3 could be in that manner.

4 The (indiscernible-away from mic) as the
5 regulation sits today is whether the district was hardship
6 or not, they would not qualify for the advanced site
7 apportionment or under ORG.

8 CHAIRPERSON SHEEHY: Okay. Thank you, Mr. Tao.
9 Ms. Morgan, did you want to respond at all since this was
10 you on the transcript?

11 MS. MORGAN: Yes. What's being suggested here is
12 that they can retain their advance site and design. What I
13 said on this particular day was not having that issue put
14 forth. So what's being proposed today is that they keep
15 those site and design funds and that they come forward and
16 have a mechanism devised that they could just get the
17 construction.

18 CHAIRPERSON SHEEHY: Okay. We've been on this for
19 quite a while. Under other circumstances, I'd be happy to
20 say, well, let's put this over and have more meetings and
21 discussions, but we have some deadlines coming up here and
22 also I think because the district filed a lawsuit before
23 their administrative options had been exhausted, I think we
24 need to at least after the fact do our part since they have
25 finally applied for administrative relief. I think we

1 should have some sort of vote to see if we can reach an
2 accord.

3 I'm not sure where the votes are lining up here.
4 I'm not prepared to support approving your appeal for the
5 reasons that I've already indicated. I think that there is
6 some double counting of the money. I'm not comfortable with
7 that. I'm not prepared to do grandfathering in on your
8 hardship status because I think that opens the door to a lot
9 of other people.

10 So regretfully and -- let me just finish and then
11 I'll let you respond, Mr. Tao. Regretfully and
12 respectfully, I'm just not in a position to support your
13 appeal today. Other's can speak for themselves.

14 I would like to able to support something that is
15 a middle ground, but I think we do need to take a vote on
16 something and see if we can, you know, get six votes on
17 something here. Mr. Tao.

18 MR. TAO: Mr. Sheehy, I hate to interrupt. I do
19 have to insist that we make our record for the purposes of
20 the litigation.

21 I do have to say that there is no double dipping,
22 that there is no overlap.

23 CHAIRPERSON SHEEHY: Okay. You've said that,
24 Terry. So note.

25 MR. TAO: And I have the information here in front

1 of us. Understand that our position is simply a straight
2 application of the regulations would result in a speedy
3 funding under ORG and receive hardship funding.

4 CHAIRPERSON SHEEHY: Okay. All right. Very good.
5 So we're not litigating this tonight, Mr. Tao, and this is
6 not a courtroom.

7 MR. TAO: Mr. Sheehy, I do have to make my record
8 and if you are going to insist on going forward, I will not
9 have made the record.

10 CHAIRPERSON SHEEHY: Please go ahead, make your
11 record. I hope it's 45 and not a 78.

12 MR. TAO: I will go as quickly as I can. The
13 issue associated with what has happened with respect for
14 hardship districts is the hardship districts have been
15 denied access to advanced site apportionment. It's that
16 simple.

17 And there is a constitutional issue associated
18 with the denial that has occurred. In the document, I just
19 read the passage with regard to what it is -- the current
20 state of OPSC is with regard to hardship districts. They do
21 not qualify for advanced site apportionments. Therefore
22 they are locked out of the program.

23 We've included in your materials Tab 13 which is
24 Ed Code Section 14000 and that --

25 CHAIRPERSON SHEEHY: Terry, I don't need you to

1 start reading Education Code Sections into the record. Is
2 that really necessary?

3 Henry, is that necessary for their litigation?

4 MR. NANJO: One of the things --

5 CHAIRPERSON SHEEHY: I want to be respectful of
6 the members' time here.

7 MR. NANJO: Yes. One of the things we can do that
8 I can suggest to the Board is we may want to just attach
9 Mr. Tao's records because the arguments he's making, unless
10 I'm mistaken, are in his cover letter which is part of the
11 materials. We can just attach that and recognize for the
12 record that that is the argument that San Bernardino's
13 putting forward.

14 CHAIRPERSON SHEEHY: Is that agreeable for you,
15 Mr. Tao?

16 MR. TAO: If you're -- Mr. Sheehy, the information
17 that has been provided with regard to OPSC's statements we
18 believe are not representative of the status of the law.
19 For example --

20 CHAIRPERSON SHEEHY: Terry. Terry.

21 MR. TAO: -- under Tab 8 --

22 CHAIRPERSON SHEEHY: Mr. Tao -- Mr. Tao --

23 Mr. Tao. I'm just asking you a question. Just please --

24 MR. TAO: What --

25 CHAIRPERSON SHEEHY: Just please answer the

1 question. Is it possible to do what Mr. Nanjo suggested so
2 that you don't have all ten members here stuck until
3 11:00 o'clock at night going over this issue?

4 MR. TAO: With all due respect, Mr. Sheehy, the
5 issue is that there have been representations made and I
6 don't think that we have made our statement. I think we've
7 been -- we believe that it's important in order to address
8 the issues that have been leveled at us, specifically that
9 there's double dipping and that the two programs are
10 mutually exclusive.

11 For example, Education Code Section 17079 under
12 Tab 8 it specifically says that the regulations need to be
13 written in order to address new school site apportionments.
14 So that means that you should be able to move money between two
15 funds, yet there are no regulations that address that.

16 So what it would mean in order to have statutory
17 structure that said you could have this money moved between
18 the two funds yet no regulations to address that and that's
19 what's being thrown at --

20 CHAIRPERSON SHEEHY: I apologize, Mr. Tao. Did
21 you get everything into the record that you wanted to?

22 MR. TAO: I did not.

23 CHAIRPERSON SHEEHY: Okay. Well, so can -- for
24 the additional information that you want, can we attach it
25 the way Mr. Nanjo suggested. I'm asking you that because

1 you stopped talking. I assume you took a pause to get a
2 reaction.

3 MR. TAO: I would prefer to move on, but my --

4 CHAIRPERSON SHEEHY: I'm sorry. Henry, can you
5 say again what his option is. Maybe he -- maybe we didn't
6 hear it the first time. I'd like to hear it again.

7 MR. NANJO: What I would recommend is that we
8 attach the materials that Mr. Tao is reading from and
9 referring to as part of the record and acknowledge the fact
10 that that is San Bernardino's argument.

11 If Mr. Tao has some statements to make that are
12 not contained in the materials, that's fine. I think the
13 Board is -- at their option can listen to that, but it seems
14 to me it's a little bit repetitive for him to return to the
15 arguments that are already stated and part of the record.

16 CHAIRPERSON SHEEHY: Okay. Mr. Tao, do you have
17 any other statements to make that are not in your document
18 because I'm going to ask the Board to attach your document
19 to the record, as Mr. Nanjo suggested. If the Board
20 disagrees with me, they can disagree. If they agree and
21 you've made your statements, then we're done with your
22 testimony.

23 MR. TAO: One thing I do want to mention is OPSC
24 has insisted on these three options. The three options are
25 the return of funds, close out for costs incurred, and use

1 of the SFP. Those three options each of which involve the
2 taking out of hardship funds associated with the district.
3 For example, one of the items is use of closeout for costs
4 incurred.

5 Under Education Code Section 17076.10, that
6 language specifically says that if there's no substantial
7 progress by the district then the OPSC staff can close them
8 out for costs incurred because of the fact that they
9 basically fell down on the job. That's not the case and
10 that's one of the remedies that OPSC staff wanted to use
11 against the district.

12 Now, I think if we're still on the -- the one
13 thing I do want to know --

14 CHAIRPERSON SHEEHY: Hold on. Have you read your
15 statements into the record? I think I'm being very patient
16 with you, Terry. We'd like to take the rest of your
17 documents and attach them to the record as Mr. Nanjo
18 suggested. Was there any other statement that you felt
19 compelled you had to make?

20 I've got members here who have planes to catch and
21 we have two other very important items that are going to
22 take a lot of time, stuff that we were very concerned about
23 at the last meeting and we've been on this one now for an
24 hour.

25 MR. TAO: I will just state for the record that

1 the transcript was very clear as to what it was that was
2 requested. I'll be --

3 CHAIRPERSON SHEEHY: That's the transcript we're
4 going to put into the record?

5 MR. TAO: The transcript basically said that those
6 requests, in order to clear up the hardship status and being
7 able to apply for such funds, and it -- request was from
8 Ms. Sheehan that the school district -- school districts
9 that are hardship be considered for that purpose in
10 regulatory -- regulations be done to address that.

11 I will state that the regulations that have been
12 adopted are only for condemnation and have nothing to do
13 with this particular situation. Therefore reapplication
14 would not result in hardship funding for this district.

15 CHAIRPERSON SHEEHY: Thank you, Terry. Now did
16 you get your statements in -- I want you to answer me
17 affirmatively or negatively. Did you get your statements
18 into the record and are you agreeable to attaching the rest
19 of your documents to the file as Mr. Nanjo had suggested?

20 MR. TAO: I am agreement.

21 CHAIRPERSON SHEEHY: Thank you. Thank you very
22 much, Mr. Tao. Senator Torlakson, do you have anything else
23 to add because I think we're prepared to have a motion here?

24 ASSEMBLY MEMBER TORLAKSON: Thank you, Mr. Chair.
25 And I was going to offer a motion if it's appropriate at

1 this time.

2 CHAIRPERSON SHEEHY: Certainly.

3 ASSEMBLY MEMBER TORLAKSON: Trying to read from
4 testimony and from our dialogue, I think there may be some
5 consensus here that the comingling isn't the overriding
6 issue that we're concerned about as a Board. We can find
7 out as we vote.

8 The issue seems to boil down whether we want a new
9 application and have a motion to require them to go through
10 and apply and likely jeopardize the 6 million that they
11 would otherwise get under the current application that's in
12 front of us on appeal.

13 And so looking at that current application and the
14 rules of the game at the time they applied, I would take a
15 part of what you have offered, Mr. Chairman. I appreciate
16 the work you've done to try to find a ground to keep the
17 project moving and give the district some level of
18 assurance, but to move it in this fashion that we would
19 grant the appeal that's in front of us so the current
20 application can move ahead but that our staff work with the
21 district staff to identify any of those factors that you
22 described as paying twice for X. If there are design costs
23 or any other costs the district is getting from the
24 comingled funding sources and they're getting paid twice for
25 it in some fashion, if there's overlap in some fashion, that

1 they would not granted the ability to get those funds as
2 part of a conditional granting of the appeal.

3 So they could move ahead with the assurance that
4 they have the sources of funds that they believe they were
5 entitled to and which they apparently were eligible to
6 receive under the original applications in front of us.

7 So I'd make that as a motion.

8 CHAIRPERSON SHEEHY: So -- okay. Thank you,
9 Senator Torlakson. So that motion includes grandfathering
10 in their financial hardship status which had -- from their
11 prior application.

12 ASSEMBLY MEMBER TORLAKSON: I wouldn't call it
13 grandfathering because I think it is in the application
14 currently and they were eligible --

15 CHAIRPERSON SHEEHY: Well, extending their
16 financial hardship -- am I getting this right, Rob? Senator
17 Torlakson's motion, he wants to make sure that their
18 financial hardship status be extended from what it was.
19 That's where you're -- that's really what he's trying to
20 say, isn't it?

21 MR. COOK: Basically, that is --

22 MR. NANJO: From a --

23 MR. COOK: -- under our regulations, 180-day
24 period that expired in October.

25 CHAIRPERSON SHEEHY: Okay. So --

1 MR. NANJO: Unfortunately from a legal
2 perspective, that would be considered a grandfathering.

3 CHAIRPERSON SHEEHY: Yeah. So let me restate --
4 Senator Torlakson, let me try to restate your motion, see if
5 I've got it right.

6 That your motion would be to approve
7 San Bernardino's appeal subject to or conditioned upon them
8 reapplying and that we would -- I know you may not agree
9 with the term, but I think counsel said it was generally
10 accurate -- that we would grandfather in their financial
11 hardship status and that we would also direct OPSC to
12 identify any accounting issues, I believe is the word you
13 used, that need to be adjusted. I'd use the word double
14 dipping. And that -- did I miss anything? Isn't that
15 pretty much it?

16 ASSEMBLY MEMBER TORLAKSON: That's pretty much it
17 except I would disagree with the -- my motion did not
18 include them reapplying. It included having the current
19 application stand but requiring that they agree ultimately
20 and we grant this appeal conditional on their paying back
21 any of that double payment for X. So that way it doesn't
22 set a grandfather precedent. It says that the application
23 that was submitted I guess back in July was valid.

24 CHAIRPERSON SHEEHY: Is that possible, Rob?

25 MR. COOK: That application was returned to the

1 district. It's no longer in our possession.

2 CHAIRPERSON SHEEHY: That application is not in
3 our possession, Senator. They have to reapply. So I'd
4 like -- if it's okay, I'd like to --

5 ASSEMBLY MEMBER TORLAKSON: Could we hear from the
6 district, if we could, on that point? I'm confused --

7 CHAIRPERSON SHEEHY: Well, you can, but we --
8 that's fine. We don't have their application in our
9 possession. We returned it to them.

10 MR. TAO: In the record, I'll just state the
11 application was submitted on July 31st. It was accepted and
12 it sat with correspondence going back and forth within the
13 documents that you've received all the way until the
14 application was returned about a month after the hardship
15 expired. I believe it was returned on November 14th.

16 So the hardship expired October 23rd. All my
17 understanding would be is that the July 31st application
18 which was properly filed would be the application that we'd
19 request.

20 CHAIRPERSON SHEEHY: Thank you, Mr. Tao.

21 ASSEMBLY MEMBER TORLAKSON: And is there a way to
22 reinstate that by a motion of this Board? It seems like
23 there must be a way to do that and that would be my motion.

24 MR. NANJO: I would -- from a legal standpoint, I
25 would caution you on reinstating an application that's been

1 returned because we could -- the Board could find a lot of
2 situation where you're going to be asked to reinstate
3 applications under a variety of circumstances.

4 CHAIRPERSON SHEEHY: Senator Torlakson, I must say
5 that if we do that, we're going to have long lists in future
6 agendas of people of resubmitting agendas that have been
7 returned for perfectly valid and proper reasons. I would
8 implore you to reconsider your motion on that matter, sir.

9 Mr. Harvey.

10 MR. HARVEY: In the interim, I would like to offer
11 a substitute motion because I am concerned with the nature
12 of some of the policy questions and precedent-setting nature
13 of Mr. Torlakson's motion.

14 My substitute motion would be to deny the appeal.

15 CHAIRPERSON SHEEHY: Okay. We have -- all right.
16 We have two motions on the floor. We have a motion by
17 Senator Torlakson which is to -- I think if I've got it
18 right, Senator, is to --

19 SENATOR LOWENTHAL: Does that motion need a
20 second?

21 CHAIRPERSON SHEEHY: The motion -- the substitute
22 motion?

23 SENATOR LOWENTHAL: By Senator -- first by Senator
24 Torlakson and then the second motion needs a second.

25 CHAIRPERSON SHEEHY: Thank you, Senator Lowenthal,

1 you're right.

2 SENATOR LOWENTHAL: I would like to second Senator
3 Torlakson's motion. Now there's a motion -- a substitute
4 motion and that has not been seconded.

5 CHAIRPERSON SHEEHY: And I will second the
6 substitute motion.

7 SENATOR LOWENTHAL: Thank you.

8 CHAIRPERSON SHEEHY: So first let's have a vote on
9 the substitute motion. The substitute motion is to approve
10 the staff recommendation which would deny appeal. Ms. Rice,
11 could you please call the roll.

12 MS. RICE: Senator Lowenthal.

13 SENATOR LOWENTHAL: And this is to --

14 CHAIRPERSON SHEEHY: Deny the appeal.

15 SENATOR LOWENTHAL: To approve the staff
16 recommendation; right?

17 CHAIRPERSON SHEEHY: Correct.

18 SENATOR LOWENTHAL: No.

19 MS. RICE: Senator Hancock.

20 SENATOR HANCOCK: No.

21 MS. RICE: Senator Wyland.

22 Assembly Member Fuller -- is absent.

23 Assembly Member Brownley.

24 ASSEMBLY MEMBER BROWNLEY: No.

25 MS. RICE: Assembly Member Torlakson.

1 ASSEMBLY MEMBER TORLAKSON: No.

2 MS. RICE: Scott Harvey.

3 MR. HARVEY: Aye.

4 MS. RICE: Kathleen Moore.

5 MS. MOORE: No.

6 MS. RICE: Rose Girard.

7 MS. GIRARD: Aye.

8 MS. RICE: Tom Sheehy.

9 CHAIRPERSON SHEEHY: Aye. Okay. That motion
10 fails. Now on the main motion which is Senator Torlakson's,
11 I really feel we need to clarify once again what it is,
12 Senator, so could you give it one more shot, please.

13 ASSEMBLY MEMBER TORLAKSON: The goal is to have us
14 take an action that would recognize their appeal and not
15 jeopardize the eligibility they had for hardship when they
16 applied and when the application was originally accepted. I
17 think that gets to the goal.

18 CHAIRPERSON SHEEHY: And, Senator, does that
19 motion require then to -- is it an approval contingent upon
20 them applying again or is that not part of it?

21 ASSEMBLY MEMBER TORLAKSON: I'm not versed enough
22 in the technical side to know what that means for the
23 district or for us in terms of --

24 CHAIRPERSON SHEEHY: Well, because the
25 application's not in our possession -- we don't have an

1 application in hand. So -- but we'll vote on whatever your
2 motion is, Senator Torlakson. I just want to make sure I'm
3 clear.

4 I would advise against your motion, but I'm
5 perfectly -- you know, we'll take the vote.

6 ASSEMBLY MEMBER TORLAKSON: I think the motion
7 gets to an intent and it also gets to getting -- stripping
8 out the -- any duplicative payments and -- or direct staff
9 to work out the technicalities of how to implement such an
10 intent of the Board.

11 CHAIRPERSON SHEEHY: Ms. Brownley.

12 ASSEMBLY MEMBER BROWNLEY: I'm just wondering at
13 this juncture if it is feasible for us to postpone this
14 decision so that we all -- I mean we're, you know, battling
15 this thing out. We need some legal guidance on this because
16 even making the motion, it is being questioned whether we
17 can make it that way or not and so I'm wondering if we are
18 able to postpone this so that we can get the right counsel.

19 I think we are in -- there's a preponderance of us
20 who are in agreement in terms of where we want to get to.
21 It becomes the semantics and how we're going to state it so
22 that it is legal or not legal and I'm certainly not a
23 lawyer, but I know where I want to get to.

24 And so I don't know what options we have at this
25 particular point in time.

1 MR. NANJO: If I can clarify, the difficulty that
2 we have here is the fact that the next round of ORG
3 applications has to be in by the 30th, so --

4 ASSEMBLY MEMBER TORLAKSON: What if we tabled it
5 while we go to the next item and have the legal minds talk a
6 bit and see if they can come up with some wording that gets
7 to the intent of the motion?

8 CHAIRPERSON SHEEHY: Okay.

9 MR. NANJO: Well --

10 CHAIRPERSON SHEEHY: I'm okay with that, but I
11 just want to make a statement. I'm not prepared to support
12 any motion that will somehow say that the application that
13 we returned to them is somehow alive again. I'm prepared to
14 support their appeal if they reapply under the conditions
15 that were stated earlier.

16 So I for one am not going to support anything
17 other than them reapplying by the deadline and I'm also not
18 going to support doing some sort of grandfathering on this
19 financial hardship.

20 With those parameters, I'm willing to go along
21 with the three-quarters of a loaf as I described, but I just
22 want to be really clear that. I don't know where the other
23 members are, but that's where I'm at and I do think we need
24 to move on. So if you want to table this motion for the
25 time being, we could take care of the rest of our business

1 and come back to this because we really do have a couple of
2 other meaty items to discuss.

3 Did anybody -- any other Board members want to
4 weigh in at this point? So, Mr. Torlakson, are you
5 withdrawing your motion for now? Mr. Harvey's motion
6 failed.

7 ASSEMBLY MEMBER TORLAKSON: And I'd like to meek
8 my motion pending but tabled and see -- because my motion
9 got to approving an intent and maybe with the help of a
10 break we could craft some more specific language that
11 wouldn't raise the same legal concerns that you're raising.

12 CHAIRPERSON SHEEHY: Okay. That's fine. So we're
13 going to go ahead then and leave -- we're going to place
14 that on-call, Senator.

15 ASSEMBLY MEMBER TORLAKSON: Whichever way that
16 works to bring it back.

17 CHAIRPERSON SHEEHY: Well, place that on-call so
18 we can return to that. Thank you very much. Let's move on
19 to **Item No. 11** which is -- Mr. Cook, do you want to go ahead
20 and set this one up. I think this gets to what Senator
21 Torlakson was talking about in part at the beginning of this
22 hearing.

23 MR. COOK: Absolutely. Over the last several
24 weeks, certainly since December 17th, we have been actively
25 attempting to compile information on the \$2.4 billion in

1 allocations -- apportionments that this Board and body has
2 made that we now are in a position where we cannot release
3 funds.

4 Staff has been working diligently to obtain that
5 information and has provided that information to -- various
6 aspects of this information to the Pooled Money Investment
7 Board, to the Department of Finance, and now presenting it
8 before this body.

9 What I will -- and even as we've been doing this,
10 there's 250 districts, 866 projects, 2.4 billion in funds,
11 and what we have before you is self-reported data, some of
12 which is quite good, very accurate, and very reliable and in
13 some cases we've received no response whatsoever and as a
14 consequence -- the information is only as good as reporting
15 on this.

16 I would turn you to the page immediately the
17 one-page summary. It's a legal-size page to fold out, but
18 this is a -- stamp page 87. This is a summary as best we
19 can of the information that we have. Behind it is project
20 by project by project detail of the responses we have to
21 date.

22 So I will go over the summary information for you.

23 CHAIRPERSON SHEEHY: Please give us the summary of
24 this report, Rob.

25 MR. COOK: Okay. Summary is we've apportioned as

1 indicated nearly 2.4 billion, 866 projects, broken out as
2 you seen them on stamp page 87. We've identified which
3 projects are financial hardship, which projects have
4 contracts in place, which projects are under construction to
5 the extent that they've been identified, projects that have
6 identified whether they can proceed with or without state
7 funding, and those projects that are planning to cancel
8 contracts.

9 We also have been able to compile as best we can
10 project shutdown costs and estimated damages that may be
11 incurred out there. Again this information is as complete
12 as we've obtained, but it is self-reported and incomplete at
13 this time.

14 I'm prepared to answer any questions on this.

15 CHAIRPERSON SHEEHY: Questions of the committee on
16 the report? Ms. Moore.

17 MS. MOORE: I don't have a question. I just have
18 a couple of comments. First I very much appreciate this
19 information because I think we've all been -- had a lot of
20 angst around trying to secure.

21 As one Board member, I am most concerned with
22 those projects that are under construction at this time.
23 And you've identified that there are 248 of that category of
24 the self-reported and I understand your concern that we're
25 not full -- the information is potentially incomplete, but

1 in my mind, those are the projects that are most at risk at
2 the moment in this whole scenario.

3 All projects are problematic and I have great
4 empathy for all districts in this situation. My request
5 would be that when the Pooled Money Investment Board meets
6 again that we have our representative -- that's you, Rob
7 Cook, or Katrina Valentine -- represent before that board
8 the situation that our school districts are in particularly
9 those are under contract as other agencies have done before
10 the Pooled Money Investment Board.

11 They'll make their decisions as a board, but I
12 want us to be represented there and telling them the dire
13 situation that our projects are in and then -- and giving
14 them the information of shutdown costs and estimated damages
15 just like everybody else is up here giving the Pooled Money
16 Investment Board that information. That would be my
17 request.

18 CHAIRPERSON SHEEHY: Thank you, Ms. Moore. And I
19 think that your request will dovetail quite nicely into the
20 next item which is going to be a discussion on how this body
21 can provide policy input on how we're going to go about
22 funding the projects that are in the pipeline. Because I
23 think that the staff at the Department of Finance is very
24 interested in what this Board has to say and will, you know,
25 within reason be perfectly willing to implement this Board's

1 will on that matter.

2 So I think there's a strong desire by the Director
3 of Finance to take into account what the State Allocation
4 Board's policy would be on that and so we can have that
5 discussion.

6 Are there any other questions or comments by
7 members of the Board on the report. Mr. Duffy, did you want
8 to come address the Board?

9 MR. DUFFY: I did, Mr. Chairman. Thank you.
10 Again Mr. Chairman, members, Tom Duffy for C.A.S.H. Our
11 suggestion on this is -- this is good work that has been
12 done to find out where districts are. We've done a survey
13 ourselves and I shared that with you verbally. I'll share
14 it with you physically.

15 Our recommendation is that you ask the
16 Implementation Committee to agendize this very item so you
17 can hear from districts themselves and that can be reported
18 to you. You were talking earlier about potentially saving
19 some time as was Mr. Harvey.

20 One of the things that the Implementation
21 Committee has done --

22 CHAIRPERSON SHEEHY: To agendize what item?

23 MR. DUFFY: To agendize the discussion of what
24 you -- I'm ahead of you unfortunately. To agendize the
25 discussion of how do we prioritize what goes on when funding

1 becomes available.

2 CHAIRPERSON SHEEHY: I'm not agreeable to that.
3 Sorry. That's a discussion that needs to take -- that's a
4 policy discussion, Mr. Duffy, and I think that's a policy
5 discussion that needs to take place at this Board. The
6 Implementation Committee is not a policy body. The State
7 Allocation Board is the policy body.

8 MR. DUFFY: What the Implementation Committee is,
9 Mr. Chairman, is a body that has for about 25 years informed
10 this Board by giving the Board information.

11 CHAIRPERSON SHEEHY: Well, I appreciate that, but
12 I think this is a policy issue. When we get down to limited
13 funds and how they're going to be allocated, as the money
14 dribbles out, that's a policy issue that I really think
15 needs to be discussed and decided by this Board.

16 MR. DUFFY: I don't disagree that it'd be decided
17 by the Board.

18 CHAIRPERSON SHEEHY: Okay.

19 MR. DUFFY: I'm simply talking about getting input
20 from the very people that are being hurt by this. And I
21 guess I don't quite understand the response because it
22 informs the policymakers by giving them information.

23 CHAIRPERSON SHEEHY: Well, I just want to make
24 sure that policy decisions are getting made by boards that
25 have the legal authority to do it. And I'm not sure the

1 Implementation Committee has that legal authority to make
2 policy decisions. This body does.

3 MR. DUFFY: It makes recommendations or at least
4 in the past, it did.

5 CHAIRPERSON SHEEHY: Fine. People can make
6 recommendations, but I think any decisions on how we go
7 about deciding how the money should go out and what the
8 priority is, I think that's a decision that should be made
9 by the Allocation Board.

10 MR. DUFFY: And I'm not disagreeing with that.

11 CHAIRPERSON SHEEHY: Okay. Good.

12 MR. DUFFY: What I'm suggesting though is that
13 body has for years, Mr. Chairman, heard from districts,
14 heard from professionals, interacted with state agents, and
15 basically shaped recommendations that would come to this
16 body, and this body would then make a determination. But it
17 was based upon something other than hearing from your staff
18 and that's the point.

19 CHAIRPERSON SHEEHY: Well, we're -- Tom, Tom, calm
20 down. We've got a public process here. We can hear from
21 everybody. I mean it's not just about hearing from OPSC
22 staff or the Department of Finance staff. We can hear from
23 anybody on this. I'm just saying I think it's important --
24 that this is a major policy issue. The Board members here
25 have expressed a tremendous amount of interest in it and I

1 just think --

2 MR. DUFFY: Yes.

3 CHAIRPERSON SHEEHY: -- that this is an issue that
4 needs to be discussed and debated and worked out by this
5 Board.

6 MR. DUFFY: I am not in disagreement.

7 CHAIRPERSON SHEEHY: Okay.

8 MR. DUFFY: I -- let me just say it this way.
9 Instead of having 50 people come to this podium and talk to
10 you, that happens at the Imp. Committee or at least it used
11 to happen and it was a very good body that really gleaned
12 what was going on in California. I did my doctoral
13 dissertation on that very entity and whether or not -- we
14 asked the members of the Legislature and members of this
15 body at that time do you think this is an effective means of
16 informing this process and the answer was overwhelming. It
17 was yes.

18 So that's all I'm suggesting. It's just to help
19 you with that information.

20 CHAIRPERSON SHEEHY: Okay. Appreciate that. What
21 else, Tom?

22 MR. DUFFY: Well, there's a lot more I could talk
23 to you about, but you have -- I do want to talk about some
24 things that aren't on the agenda, but I don't think this
25 is --

1 CHAIRPERSON SHEEHY: Well, listen, if there's
2 more on this -- we're going to get to -- this next item,
3 we're going to get right to your -- right to the policy
4 issues, so if -- you're welcome to -- I want you to make
5 sure that you get all of your issues on the record. Like
6 Terry. I don't people to walk away and say I didn't get a
7 chance, Tom.

8 MR. DUFFY: The items that aren't on the agenda, I
9 think you probably want me to wait until at the very end and
10 I'll be brief with those.

11 CHAIRPERSON SHEEHY: Okay.

12 MR. DUFFY: All right?

13 CHAIRPERSON SHEEHY: All right.

14 MR. DUFFY: Thank you.

15 CHAIRPERSON SHEEHY: Thanks, Tom. Yeah,
16 Ms. Moore.

17 MS. MOORE: Just in a comment, I agree with my
18 fellow Board member that policy decisions need to be made at
19 the Board level. I differ in that I believe the
20 Implementation Committee has served an excellent function to
21 the Board and that indeed this very issue may be one that
22 could lend itself to the Implementation Committee in this
23 way.

24 We're going to ask staff to tell us how do we
25 prioritize projects once we have to begin the program and

1 that's not the agendized item that we're going to hear next.
2 I think that it would be beneficial to have that
3 Implementation Committee hear from all the school districts,
4 have their recommendation, have staff's recommendation, and
5 if there is any difference between them, spell that out very
6 clearly, and I think it would be beneficial because I do
7 think that that Implementation Committee cuts down the
8 amount of testimony that may occur because people feel
9 they've already been heard and their item is represented as
10 it comes to the Board.

11 CHAIRPERSON SHEEHY: Thank you, Ms. Moore. Okay.
12 Is there additional public comment on Item No. 11 which is
13 the report? Now we're going to -- seeing no additional --
14 I'm sorry, sir. Please. Oh, I'm sorry. Are you the
15 gentleman with the Sage Institute? There's a gentleman here
16 on Tab No. 11 that had to leave, but, Henry, he asked that
17 this letter from the Sage Institute be attached to the
18 record.

19 MR. NANJO: Okay. That's fine. I don't have a
20 copy of it.

21 CHAIRPERSON SHEEHY: All right. Well, let me give
22 you a copy and then Mr. -- and then if there is not any --
23 sir, did you have additional comments on Item No. 11? Could
24 you please come forward, identify yourself.

25 MR. HUDSON: Thank you, Mr. Sheehy, members of the

1 Board. I'm Ron Hudson, Deputy Superintendent, Kings Canyon
2 Unified School District. We have 10,000 students in a
3 school district south of Fresno in Fresno and Tulare County.

4 We would respectfully request that you exempt
5 school districts from the December 17, 2008, disbursement
6 freeze and release funds to school districts that did submit
7 the SAB5005 fund release request along with the signed
8 contracts and notices to proceed and commenced construction
9 prior to December the 17th of 2008.

10 Kings Canyon Unified falls into this category and
11 has four projects that we are under construction right now
12 and we will not be able to meet our contractual obligations
13 without the release of these funds. Thank you.

14 CHAIRPERSON SHEEHY: Thank you very much. Are
15 there other members of the public? Yes, sir.

16 MR. FOSTER: Just one very brief comment about the
17 report behind the summary and that is in the last column and
18 it asks you -- the question was can a project proceed
19 without the state funds, and if you go --

20 CHAIRPERSON SHEEHY: Sir -- sir.

21 MR. FOSTER: I'm sorry.

22 CHAIRPERSON SHEEHY: I apologize. Could you
23 identify yourself for the record, please.

24 MR. FOSTER: I'm Stephen Foster from Chawanakee
25 Unified School District in Madera County.

1 CHAIRPERSON SHEEHY: Thank you, sir.

2 MR. FOSTER: And we are on the list on page 8 I
3 believe and the question was asked us when we sent the
4 survey in will you proceed and we said yes because the
5 litigation costs for stopping is more than proceeding.

6 The report says can you and as a financial
7 hardship district, we can't, but we must, just in comparing
8 the costs. I wanted to give you that clarifying note and I
9 called our project manager and said did I say we will or can
10 and he said, well, you said you could, but the verbiage was
11 changed when the report was put out.

12 And so I just wanted to clarify that for you.

13 CHAIRPERSON SHEEHY: Okay. And I have an
14 announcement -- thank you, sir. Did you get a chance to
15 finish your testimony?

16 MR. FOSTER: You know, I could read -- no, I'm
17 through.

18 CHAIRPERSON SHEEHY: Please don't. Did you get a
19 chance to make your main points, sir?

20 MR. FOSTER: Yes.

21 CHAIRPERSON SHEEHY: Thank you. I have an
22 announcement to make I think the members here need to know.
23 It's pursuant to something we talked about earlier. I just
24 received a note from the Senate Sergeant Tony Baird who has
25 asked us about our intended adjournment and he is telling us

1 that he believes that we are creating a Brown Act problem --
2 Open Meetings Act problem because this building is now
3 closed. And he wants -- he'd like the Chairman of the
4 Board, which I guess is -- which is me, to contact him in
5 the morning to discuss how we can start our meetings sooner.

6

7 Now I know starting this meeting sooner on
8 Wednesdays is going to butt right into committee schedules
9 with the Legislature which is one of the reasons why I had
10 suggested the Thursday issue. So we may hopefully find
11 another location like we asked. Rob, maybe you can follow
12 up on that, but if we can't find another location, we may
13 have a problem holding these meetings here and going this
14 late because the Sergeant at Arms makes a good point which
15 is once this building is locked down, then it's no longer a
16 public meeting.

17 So I just wanted everybody to be aware of that and
18 we're going to have to see how we can deal with that issue
19 going forward. Okay. So is there any more comment on Item
20 No. 11? Okay. Seeing none, we're going to move to **Item**
21 **No. 12.** Rob.

22 MR. COOK: And this is an item that we've been
23 asked to agendaize at our last meeting regarding unfunded
24 approvals and you will note that it is noted as the report
25 which is not an action item, but it is for open -- possibly

1 open for discussion.

2 In recent times, as recently as 2006 and prior,
3 2002, this Board made unfunded approvals when it ran -- to
4 school district projects. It did those under a couple
5 notable conditions.

6 This Board had exhausted its bond authority. The
7 state's fiscal house was in relatively good order, and the
8 bond markets were open and inviting and bond negotiations
9 were underway and the prospect of new funds was -- looked
10 promising.

11 None of those conditions exists today and as we
12 put this before you, we certainly regulatory framework that
13 would accommodate making unfunded approvals, but we today
14 have an unprecedented situation where we've made
15 \$2.4 billion worth of allocations or apportionments to
16 districts and we cannot -- we are not in the position to
17 fund.

18 That is a unique situation for this Board and we
19 don't make any specific recommendations in this report --
20 accept it and note that you will make a -- I expect a robust
21 discussion on the topic. We have as we had Mr. Rosenstiel
22 presented to us not a very rosy outlook. Most of the
23 discussions I've had on this topic have not been -- well,
24 none of them have been optimistic about our prospects, and
25 so with that, I leave it to the Board to discuss the issue.

1 CHAIRPERSON SHEEHY: I want to clarify something,
2 particularly for Mr. Duffy who was talking about getting
3 input from the Implementation Committee. I mean the
4 suggestion was to have them do some prioritization and
5 suggest that it's something for this Board to consider. I
6 don't have a problem with that. I just want to make sure
7 that whatever we do from a policy standpoint is the work of
8 this Board and not the work of a committee that doesn't have
9 any legal standing because as far as I know, the
10 Implementation Committee doesn't exist in statute or
11 regulation and I'm fine, Mr. Duffy, for having them make
12 some recommendations here, but I don't want us to act ultra
13 vires outside of the law. I want to make sure that any
14 policy decisions on this are made by the Board.

15 So I don't have a problem with your suggestion,
16 Mr. Duffy. I just didn't -- you know, I felt like you were
17 saying --

18 MR. DUFFY: Mr. Chairman, this is the first time
19 we've disagreed. That's historic.

20 CHAIRPERSON SHEEHY: I didn't mean to burst your
21 bubble, Tom. I still like you.

22 MR. DUFFY: Okay. Thank you. But that's
23 essentially it, and so I appreciate your comments.

24 CHAIRPERSON SHEEHY: Okay. All right.

25 MR. DUFFY: And the -- on the item that is the

1 unfunded approvals, we have recommended that to you. It's
2 been done before. We think it's consistent. We don't think
3 that that places any particular burden on the Board. It
4 hasn't been a problem in the past, but it has helped us do a
5 couple of things. One is give a sense of what the need is
6 in California and we're hopefully going to be talking about
7 a bond measure with the Legislature soon and so establishing
8 need is important.

9 The other thing is having done this at the local
10 level, it assures local Boards of Education that the state
11 indeed is serious about trying to, when it can, fund
12 projects.

13 MS. MOORE: If I may.

14 CHAIRPERSON SHEEHY: Okay. I'm sorry. Ms. Moore.

15 MS. MOORE: If I may. This is on as an
16 information item. I as one Board member representing the
17 Superintendent do support unfunded approvals. I think that
18 it's important that we continue the work of the Office of
19 Public School Construction in a very methodological manner
20 and that we come forward to the Board so that we don't have
21 an onslaught of work and approvals at a future date when we
22 get out of the financial crisis that we're in.

23 I'd like to make sure that it has every caveat in
24 the world, that it is not a guarantee of funding, and that
25 districts are well -- that they know that and that this item

1 is brought back to the next Board meeting as an actionable
2 item.

3 CHAIRPERSON SHEEHY: Okay. There has been some
4 concern expressed to me about the Brown Act, but I am
5 advised by Mr. Nanjo that Mr. Baird is still at the door.
6 So in fact if somebody wants to get into this building and
7 come to this meeting, they can. With that said, we're going
8 to have to wrap up pretty quick, folks, so is it -- I'm
9 sorry. Senator.

10 SENATOR LOWENTHAL: No, no. We're trying to
11 figure that out too.

12 CHAIRPERSON SHEEHY: Yeah. Well, Tony Baird has
13 said that he's standing at the door, so if somebody wants to
14 come in -- he's trying to make it so that we can finish our
15 business tonight.

16 SENATOR HANCOCK: I believe there's a motion.
17 Isn't there --

18 CHAIRPERSON SHEEHY: I apologize. Were you making
19 a motion?

20 MS. MOORE: Well, I'll make a motion that this be
21 brought back as an actionable item with the recommendations
22 from the staff and -- so that we can take action on the
23 unfunded apportionments or not at the next Board meeting.

24 SENATOR HANCOCK: I would second that and I would
25 assume that there might be time for the Implementation

1 Committee to meet so that all the stakeholders could weigh
2 in, but we would hear comment from the public at the next
3 meeting as well.

4 CHAIRPERSON SHEEHY: Ms. Oropeza, did you want to
5 weigh in at all on this or do you want to just go ahead
6 and --

7 MS. OROPEZA: (Shaking head negatively)

8 CHAIRPERSON SHEEHY: Okay. So I just want to
9 clarify, we'll be happy -- when I say we, you know, the --
10 as one of the members of PMIB, we'll be happy to receive the
11 input from the State Allocation Board on prioritization of
12 the \$ 2.4 billion in projects that are out there because
13 there's a number of different issues here.

14 You've got 2.4 billion in apportionments and
15 people haven't come in for fund releases. Folks, we may be
16 talking about fund releases for the next two years.

17 So the first thing -- let me just -- I want to
18 clarify something. The first thing this body needs to do is
19 to come up with prioritization on how the fund releases are
20 going to work for the first 2.4 billion. And I would say
21 that we do that before we do anything else. As soon as we
22 get that out of the way, then we can start making decisions
23 about -- beyond that because we may not get that 2.4 billion
24 in fund releases -- it may -- we may be talking about 2010
25 before that happens or 2011 depending on how -- so I think

1 we really need to be focused and do that first.

2 As soon as we get that behind us, then we know how
3 we can fund projects as money becomes available. Then we
4 can start working on the unfunded projects with the
5 \$5 billion in bond money that's on the books and come up
6 with the prioritization with that. And once we get that
7 done, I'm sure, Mr. Duffy, you may want to talk -- and
8 others may want to talk about another unfunded list for
9 projects that haven't even been authorized by the voters --
10 for bonds that haven't been authorized by the voters.

11 But I really think from a public policy
12 perspective the most urgent thing for this Board to do is to
13 come up with recommendations on how to deal with the
14 unfunded 2.4 in apportionments that we have and then from
15 that, go to the 5 billion, and then once we get that
16 tackled, we could have a policy discussion about going
17 further.

18 That would be my recommendation. Ms. Moore, if
19 you're agreeable to that, I don't know that we need a vote,
20 but if you'd like a vote, we can certainly have a vote.

21 MS. MOORE: Well, let me just clarify. I know the
22 time is late, but I'm a little confused. We have two
23 information items before us today, the financial crisis
24 impact and we have the other -- the school facility unfunded
25 approvals, neither of which are actionable.

1 And we also have the issue of representation
2 before the Pooled Money Investment Board and what we want
3 our staff to be representing before that board, which is a
4 third, I think. I don't really believe it's imbedded -- or
5 it may be imbedded in these two items.

6 I think those three issues are important and if we
7 can take them in their order that you suggested, that is
8 great, but I think they all carry the same weight. I'd like
9 to see them at the next -- I feel they carry the same
10 weight. I know that you do not -- but that we see them at
11 the next Board meeting, whether we take action on them or
12 not.

13 And my final piece is when does the Pooled Money
14 Investment Board meet again and I don't want to miss the
15 opportunity to place our projects before them in the same
16 kind -- critical nature that other agencies are placing them
17 before them.

18 CHAIRPERSON SHEEHY: Well, our -- the pathway to
19 get this Board -- this body's preferences on funding issues
20 is going to be to come up with a recommendation on
21 prioritizing the \$2.4 billion in unfunded apportionments
22 that we've made.

23 If we don't do that, we've got nothing to
24 recommend. If we don't do that, then the Department of
25 Finance staff will continue to use its best judgment and

1 we'll wait until we get something.

2 But the first action that the Pooled Money
3 Investment Board is going to make on this program when
4 there's money available again is going to be start funding
5 the two and a half billion dollars in apportionments that
6 this body's already made that are waiting out there for fund
7 releases.

8 So I'm in agreement with you, Ms. Moore. It's all
9 equally important, but from a timing standpoint -- strictly
10 timing, the most critical thing is, is that this body decide
11 since we know we're not going to be able to get all --
12 release all the money at once, it's going to come in dribs
13 and drabs. Mr. Duffy and others are going to make
14 recommendations, well, this type of district should get
15 their money first because they meet these type of conditions
16 and you're going to have recommendations that this type of
17 district should, and so on and so forth.

18 We really need to do that first so that when we
19 are in a position to release funds, we know who's getting it
20 first. Having tackled that -- and I'm not saying it has to
21 be linear. We can do them simultaneously, but we've really
22 got to get the first thing done.

23 MS. MOORE: I agree and I guess the critical
24 question continues to be -- for instance, the Pooled Money
25 Investment Board met last Friday. We did not represent

1 projects before that board at that time other than the
2 hardship recommendations that had gone I think with the
3 onslaught of all projects that went before.

4 Other agencies represented their projects before
5 that board. I think that it's critical that we weigh in on
6 that. So my question would be when is the next Pooled Money
7 Investment Board meeting because they apportioned
8 500 million at that meeting and two of our projects got
9 funded.

10 I think that we want to emphasize that we are in a
11 critical problem just like everybody is, that we want to be
12 at the table as well.

13 CHAIRPERSON SHEEHY: Okay.

14 MS. MOORE: So when you're -- I guess that's the
15 big question.

16 CHAIRPERSON SHEEHY: No, that's good.

17 MS. MOORE: When's the meeting.

18 CHAIRPERSON SHEEHY: No, that's good. Mr. Cook,
19 you can follow up with our staff tomorrow or you can follow
20 up directly with the Treasurer. Can you please confirm -- I
21 don't -- Ms. Moore, if I knew off the top of my head, I'd be
22 happy to tell you.

23 MS. MOORE: Okay.

24 CHAIRPERSON SHEEHY: But, Rob, could you please
25 find out definitively when the next date is and send a

1 notice out to all the members of this Board and post it on
2 the OPSC Website so that other interested parties may know.
3 For those of you in the public who care to know, you can
4 also go to the Pooled Money Investment Board Website at the
5 State Treasurer's Website and there should be information
6 there as well. But let's make it available on the OPSC
7 Website which you all may be more familiar with.

8 And I'm in agreement with you that we should have
9 a voice. Absolutely.

10 MS. MOORE: So given that --

11 CHAIRPERSON SHEEHY: Yes.

12 MS. MOORE: -- if indeed the PMIB meets again
13 before we meet on our monthly basis, I think that -- I would
14 suggest that we meet again on non-monthly basis to consider
15 that very issue.

16 CHAIRPERSON SHEEHY: Well, that's fine, but I do
17 want to say for the record that the Director of Finance,
18 Mike Genest, has been very public in his statements that if
19 we don't have a budget solving \$41 billion in place by
20 February 1st, there'll be no more exemptions to the freeze on
21 the Pooled Money Investment Board. So if we don't get a
22 budget by February 1st, it'll be a moot point because that
23 board is not going to release any more funds because the
24 state is in complete total financial chaos. And, you know,
25 there's just not going to be any more fund releases.

1 But if we do get it, then we're back in business
2 and we need to get this done. So I'm perfectly willing,
3 Ms. Moore, upon the request of any member of this Board to
4 ask OPSC to notice immediately so we can meet within ten
5 days. I'll bend over backwards to do whatever I can do to
6 be helpful on this.

7 But I'm a little reluctant to have -- schedule a
8 Board meeting on some sort of contingency because I want to
9 be respectful of everybody's schedule and we don't know
10 what's going to happen with the budget, but if we don't get
11 a budget, they're not going to release any more funds. I
12 mean unless Mike Genest starts publicly saying something
13 otherwise, I have to take him at his word. After all, he is
14 my boss.

15 So, Henry, do we need -- I'm happy to have a vote.
16 Do we need a motion or could we simply direct staff to do a
17 couple things: to come back to us with recommendations and
18 get input from the Implementation Committee -- is that
19 right? That's what you --

20 MS. MOORE: That was part of it, yes.

21 CHAIRPERSON SHEEHY: That was part of it. What
22 else, Ms. Moore.

23 MS. MOORE: Okay. There's three items. There is
24 our recommendations of projects -- policy discussion on what
25 our prioritization of projects that we will give before the

1 Pooled Money Investment Fund, the 2.4 billion as we've
2 talked about it, with the input of the Implementation
3 Committee, and again and our staff and if there's
4 differences, clearly spell those out.

5 I think the Board has always made the policy
6 decisions. Implementation Committee has never made a policy
7 decision. The Board has always had to do that.

8 Secondly, that after that in conjunction, I think
9 we need to talk about an actionable item on unfunded
10 approvals, again with staff's recommendation around that
11 issue.

12 We have many projects that would have come before
13 this Board in December and January that have not come before
14 this Board, rightfully so, with the caution that we have --
15 I think we need to have a course of action so that districts
16 know what the lay of the land is around that. And then
17 finally -- that --

18 CHAIRPERSON SHEEHY: Those are really the main two
19 chunks.

20 MS. MOORE: Those are it.

21 CHAIRPERSON SHEEHY: Okay. So a report back from
22 staff with -- I'm requesting a report back to the next
23 meeting -- a report on behalf of the entire Board, a report
24 back from staff on how to prioritize release of funds on the
25 \$2.4 billion in apportionments that this body has already

1 made when those fund releases become available with the
2 understanding that that could be a very long time -- and
3 also come back with recommendation with input from the
4 Implementation -- I mean they've got so much on their plate,
5 I'm a little reluctant to do the second one, but I will do
6 it because I want to be agreeable here. This is so
7 important.

8 It's so important, the 2.4 billion, I'd rather
9 have everybody focus on that first because this other piece
10 which is how we're going to deal with the other 5 billion,
11 I'm afraid -- I mean I'm sorry to burst anybody's bubble,
12 but folks, that may be a couple years off at the rate we're
13 going.

14 So why one solve what's before us right now. I'm
15 not saying we don't do it for a couple years --

16 MS. MOORE: Well, actually --

17 CHAIRPERSON SHEEHY: -- but I'm trying to be
18 cognizant of the workload that is on their plate.

19 MS. MOORE: -- isn't -- I'm very conscious of that
20 as well and I think that the staff, you know, has been
21 very -- trying hard to keep up with that. But we're now
22 going into month three that districts haven't -- don't know
23 how it's going to be for -- you know, for future projects.

24 They weren't funded in December. They're not
25 funded in January. We're entering month three on that

1 issue, and I think that we owe it to districts to at least
2 give a map of how it looks for them for the future.

3 CHAIRPERSON SHEEHY: Okay.

4 MS. MOORE: And I would -- and oh, this report
5 could be the map except it needs to be actionable.

6 MS. MOORE: Okay. All right. Very good. Rob,
7 what -- given Ms. -- given the concerns expressed by
8 Ms. Moore, what is doable and what can you bring back to
9 this body at the next meeting?

10 MR. COOK: The 250 districts that are in the
11 unfunded -- basically we apportioned and unfunded as I
12 mentioned to other Board members this week during briefings,
13 this is an issue that I expect 250 opinions on. So we are
14 scheduling an Implementation Committee for the 19th of
15 February. That will be a good forum for this discussion and
16 we can engage -- that will allow us to at least vet
17 everything.

18 I think we're wandering into a very complicated
19 area. I don't -- that we come forward with a silver bullet
20 on that topic? I want to set expectations. I expect we'll
21 vet everything. We will bring forward a solid report, but
22 that we've solved it, I don't expect.

23 CHAIRPERSON SHEEHY: And one thing I want to -- I
24 want us to do everything that we can, but one thing I don't
25 want to do is kill OPSC staff because I don't think a month

1 from now we're going to be releasing any money to anybody.
2 And so if you can get it all done in a month, that's great.
3 I'm all for it. But let's not have people work overtime and
4 weekends just so they have paper they can give us a month
5 from now and we're months off from ever being able to do a
6 fund release. That doesn't -- you know, that's just going
7 to kill the staff and there's nothing for us to act on.

8 So I mean I want to get it all done too,
9 Ms. Moore, and so I want to direct them to do it and I just
10 want to make sure that it's doable and that, you know -- is
11 waiting till the 19th -- can we do the meeting any sooner or
12 is that the soonest we can do it for the Implementation
13 Committee to talk about this, or is that your best advice?

14 MR. COOK: That's the best date that we've been
15 able to identify for that meeting.

16 CHAIRPERSON SHEEHY: All right. Let's see how
17 this works. Can you go ahead and have that meeting and I
18 would like to set as a first priority the 2.4 and I think
19 you're right, we'll have 250 different opinions. And I'd
20 also like to try to tackle the 5 billion beyond that, but
21 the longer it takes us to get to agreement on the 2.4, the
22 5 billion doesn't do us any good.

23 MS. MOORE: Is that -- that is secondary, I agree
24 wholeheartedly.

25 CHAIRPERSON SHEEHY: Okay. All right. Unless

1 there's any disagreement then, Rob, we would like you to
2 come back to the best of your ability with the input from
3 the Implementation Committee and as many people as possible
4 with some recommendations on how to prioritize fund releases
5 when we get to the point we can do that for the \$2.4 billion
6 in apportionments that are on the book, and if you're able
7 to get resolution on that and you have extra time on your
8 hands, we would like you to immediately shift gears and
9 start working on the \$5 billion of authority on the books
10 that hasn't been apportioned. Is that fair?

11 MS. MOORE: Well, I guess I'm a little confused.
12 I'm just asking how we proceed forward with projects that
13 would come before us anyway. You know, that we -- that
14 every month we apportion projects. Those projects are still
15 going through the process and our question is how do we deal
16 with them at the Board level once they're ready. So I don't
17 know if there's 5 billion of them, but there's projects,
18 so --

19 CHAIRPERSON SHEEHY: Yes, Ms. Brownley.

20 ASSEMBLY MEMBER BROWNLEY: I think that the point
21 that trying to develop some kind of road map for school
22 districts is important and I also think that this isn't --
23 you know, from a perspective -- it's not time urgent from
24 the perspective of having something because I think it's
25 going to be a while for districts, but if they know what

1 we're going to do.

2 So I'm thinking that we go along with all the
3 directions that have been made --

4 CHAIRPERSON SHEEHY: Okay.

5 ASSEMBLY MEMBER BROWNLEY: -- but on the other
6 hand, we -- I mean we could allocate an hour and a half of
7 discussion at our next meeting on this which means we're not
8 going to complete it, but we will start -- at least start
9 the conversation and continue with it until we get it right.

10 CHAIRPERSON SHEEHY: Okay.

11 ASSEMBLY MEMBER BROWNLEY: I don't think that we
12 have to have, you know, one meeting with the information and
13 come to some conclusion.

14 CHAIRPERSON SHEEHY: All right. A work in
15 progress.

16 ASSEMBLY MEMBER BROWNLEY: At school board
17 meetings, we used to have what we called discussion items --

18 CHAIRPERSON SHEEHY: Okay.

19 ASSEMBLY MEMBER BROWNLEY: -- and we discussed it
20 and then we took action on it later. But I think we can do
21 it sort of in segments.

22 CHAIRPERSON SHEEHY: Well, set it up -- Rob, set
23 it up as an action item and we don't have to take item if
24 we're not ready. We can discuss --

25 ASSEMBLY MEMBER BROWNLEY: Right. That's right.

1 CHAIRPERSON SHEEHY: -- but set it up as an action
2 item in case we're ready to act. So is that okay? So we
3 know what we're doing. We're all in agreement on that.
4 Tom, did you have something more?

5 MR. DUFFY: I do. And in a way I'm going to ask
6 to add to the plate a little bit, but also maybe take some
7 things off the plate to a degree.

8 This body typically at this meeting approves the
9 CCI, the Construction Cost Index.

10 CHAIRPERSON SHEEHY: Oh.

11 MR. DUFFY: School districts rely upon that
12 because --

13 CHAIRPERSON SHEEHY: Okay. Please let's not go
14 there now.

15 MR. DUFFY: No. This is important, Mr. Chairman.

16 CHAIRPERSON SHEEHY: Okay. All right.

17 MR. DUFFY: School districts rely upon this --
18 you're going to groan at the next comment I'm making -- when
19 they establish developer fees on a yearly cycle because
20 that's a requirement, that the Allocation Board takes
21 action. We have that and utilized at the school district
22 level.

23 CHAIRPERSON SHEEHY: Okay.

24 MR. DUFFY: And as you know, there's a level one
25 fee that goes up and then there's a level two fee and the

1 level two fee can go up every --

2 CHAIRPERSON SHEEHY: Right.

3 MR. DUFFY: -- year because of the CCI. So we
4 think that that's very important to be brought to you for
5 action and we would urge you to do that.

6 Now, there's another piece. I put this -- all
7 these in a letter that was sent to you about a month ago.

8 CHAIRPERSON SHEEHY: That's particularly important
9 when we're actually making apportionments; right?

10 MR. DUFFY: But school districts at the local
11 level --

12 CHAIRPERSON SHEEHY: No, but I mean that's
13 particularly --

14 MR. DUFFY: Yes. Yes. Yes.

15 CHAIRPERSON SHEEHY: -- important when we're
16 making apportionments.

17 MR. DUFFY: When you're making apportionments,
18 yes.

19 CHAIRPERSON SHEEHY: Okay. I just wanted to make
20 sure.

21 MR. DUFFY: But at the school district level,
22 districts rely upon this and we've been asked.

23 CHAIRPERSON SHEEHY: Okay.

24 MR. DUFFY: Districts have been saying when are
25 they going to do this. The other thing is that -- and I

1 mentioned these all in a letter to you that is -- maybe a
2 month ago and you responded to that and thank you for that.

3 There's a general site allowance that expired
4 basically. We'd like to come back. I don't think any work
5 needs to be done if it's just brought back to you as an
6 action item to be put in place.

7 CHAIRPERSON SHEEHY: Okay. What else, Tom?

8 MR. DUFFY: And the next --

9 CHAIRPERSON SHEEHY: AB127?

10 MR. DUFFY: Pardon me?

11 CHAIRPERSON SHEEHY: The AB127 adjustment.

12 MR. DUFFY: AB127 but that's where I was saying I
13 don't see how that's going to --

14 CHAIRPERSON SHEEHY: Tom, I want to make a
15 recommendation, see if you're agreeable to it.

16 MR. DUFFY: Are we going to negotiate here --

17 CHAIRPERSON SHEEHY: I'd like to recommend -- no.
18 I don't want to negotiate right here. This is a policy
19 decision for the Board, but I want to recommend that we put
20 together some sort of chart or spreadsheet that lays out all
21 of these adjustments so we don't take them all as a one off,
22 so all the members of the Board can see the whole picture.

23 And the sooner we do that, the better. I'm going
24 to ask Mr. Cook to follow up with you after this meeting.
25 Let's get something on the next month's agenda to discuss

1 this or act on and we'll see, but I think we need to take it
2 all together and not a bunch of one offs.

3 MR. DUFFY: But can we do --

4 CHAIRPERSON SHEEHY: I think it's easier for the
5 members of this Board -- we have a lot of new members -- so
6 they can see what all of these adjustments are.

7 MR. DUFFY: But could we look at the CCI? That
8 information should be available.

9 CHAIRPERSON SHEEHY: Right. And I've asked Rob to
10 see what updated information there is on the CCI. Our
11 economy's changing rapidly. I have anecdotal information
12 the construction bids are dropping dramatically. So I want
13 to make sure that we're doing the right CCI adjustment. So
14 I've asked Mr. Cook to get back to me on that.

15 But, yeah, I want to include everything on it:
16 the CCI, the AB127. If you want to discuss the site
17 allowance, there are other adjustments that are involved.
18 We want to look at all that. I think you're right. School
19 districts need to have a road map and that's part of the
20 road map.

21 MR. DUFFY: And we're -- we just have a lot of
22 work out here for us and thank you.

23 CHAIRPERSON SHEEHY: But I do think --

24 MR. DUFFY: Thank you for your response.

25 CHAIRPERSON SHEEHY: -- the highest priority for

1 our staff were some of the other things and this is there
2 too. It's important, but -- so I thank you for that. And
3 so, Rob, will you please follow up with Mr. Duffy and other
4 interested parties, and, Ms. Oropeza, can you please work
5 with OPSC on putting together some sort of display or chart
6 or a spreadsheet that lays out what all of these adjustments
7 are so that all the members of the State Allocation Board
8 could see what they are because there's a number of them and
9 it's confusing if you take them all one at a time because
10 you don't know -- well, you got this adjustment for that or
11 this adjustment -- I think it'd be helpful for the members
12 to see the whole picture.

13 So could we do that, Ms. Oropeza? She's shaking
14 her head yes.

15 MR. DUFFY: Okay. A couple of other items. I'd
16 asked you about the seismic policy back in December -- said
17 why don't we push it over till February. If the current
18 regulations are just brought back for discussion --
19 Ms. Brownley's comment -- for discussion with the Board so
20 we can have some input into that, I'd appreciate that very
21 much.

22 CHAIRPERSON SHEEHY: Okay.

23 MR. DUFFY: Ms. Hancock was asking about the high
24 performance policy. We had a meeting to discuss some of
25 that today. I'm not asking for it for next month, but it's

1 one of those things that I think we're going to have to
2 revisit.

3 And one last thing and this really is trying to be
4 a friend to the Board, a friend to the staff, a friend to
5 school districts. We listened to the San Bernardino item
6 that took place for a long time.

7 CHAIRPERSON SHEEHY: We're not done with that. We
8 still got to get back to that, Tom.

9 MR. DUFFY: I know you're not. This is just a
10 thought. We have something that's called a material
11 inaccuracy where districts have to give back money and to
12 pay basically interest. We have sometimes issues such as
13 the glitch that Rob mentioned where districts are maybe left
14 without a decision and they fall out of that six months for
15 hardship and that's apparently what happened here. And so
16 it was an issue that was brought to you.

17 I think that if there is some early warning with
18 some conflict, if there -- a district and staff don't agree,
19 then some kind of mechanism to have this Board hear it, it
20 may save you a whole lot of time, then a lot of angst, and
21 school districts, angst. And I don't have a proposal for
22 you, but having listened to that, it just -- it seemed that
23 there was a disagreement that happened some time ago and the
24 district fell out of a position to be funded.

25 And all of you haven't come to a conclusion

1 because it's difficult and involves a lot of money. So I'd
2 be happy to work with you on that. And thank you for your
3 kindness today.

4 CHAIRPERSON SHEEHY: Tom, thank you, and please if
5 you have a proposal that you would like to work with us on
6 to avoid that in the future, we'd be very interested. I
7 know I would. I'm sure the OPSC staff would and I'd have to
8 believe the other members on this Board would appreciate
9 that. So absolutely.

10 MR. DUFFY: All right.

11 CHAIRPERSON SHEEHY: Okay?

12 MR. DUFFY: Thank you very much.

13 CHAIRPERSON SHEEHY: Is there any other public
14 comment on this item? If there's not, I'd like to return
15 back to -- is it **Item 8**.

16 MR. NANJO: Yes. San Bernardino.

17 CHAIRPERSON SHEEHY: With the concurrence of the
18 Board, we'd like to come back to Item 8. Yes.

19 MR. NANJO: Mr. Chair, I've had some discussions
20 with the school district. There are some ideas floating
21 around and also with Assemblypersons Torlakson and --

22 CHAIRPERSON SHEEHY: Yes.

23 MR. NANJO: -- and Assembly Member Brownley. What
24 I would recommend at this juncture is we take a ten-minute
25 break. The Board members can use the facilities. That will

1 give the staff and the school district an opportunity to
2 huddle together and see if we can come up with some motions
3 that we can bring -- motion or motions.

4 CHAIRPERSON SHEEHY: It is -- my clock has -- that
5 clock's an hour -- that's old time.

6 MR. NANJO: Yeah.

7 CHAIRPERSON SHEEHY: It's ten minutes till
8 8:00 o'clock. We're going to reconvene at 8:00. If we
9 don't have six votes to do something, then what happens?

10 MR. NANJO: Then we can't take an action.

11 CHAIRPERSON SHEEHY: Does their appeal fail
12 because there's not six votes?

13 MR. NANJO: It just cycles over to the next month
14 to be on.

15 CHAIRPERSON SHEEHY: Okay. But let's give it a
16 good faith -- is it agreeable to --

17 MR. NANJO: I would --

18 CHAIRPERSON SHEEHY: -- wait ten more minutes and
19 then -- okay.

20 MR. NANJO: Yeah. I would recommend -- I'd ask
21 the Board members' indulgence because one of the things that
22 is time clock is the ORG deadline, so thank you.

23 CHAIRPERSON SHEEHY: Okay. So the State
24 Allocation Board will be in recess for -- did you say ten
25 minutes, Henry?

1 MR. NANJO: Yes.

2 CHAIRPERSON SHEEHY: We'll be in recess for ten
3 minutes.

4 (Off record)

5 CHAIRPERSON SHEEHY: Mr. Nanjo, do you have
6 anything to report to the Board now that we're back in
7 session?

8 MR. NANJO: Yes. Mr. Sheehy, we were handed a
9 proposed motion which apparently the school district is
10 agreeable to. I think staff has some concerns with it. I
11 don't know if one or more of the Board members wants to make
12 the motion or -- it seems to me under technically Robert's
13 Rules we should have a motion and then have a second and
14 then have discussion on it.

15 CHAIRPERSON SHEEHY: Well, Henry, before that, I
16 mean I think it would be appropriate for counsel to explain
17 what the proposed motion is and if one of the members is
18 agreeable to it, then they can go ahead and make that
19 motion.

20 MR. NANJO: Yeah. Let me --

21 CHAIRPERSON SHEEHY: I think that would be --
22 that'd be agreeable.

23 SENATOR LOWENTHAL: I'd like to know what the
24 motion is.

25 CHAIRPERSON SHEEHY: What's that?

1 SENATOR LOWENTHAL: It'd be nice --

2 MS. HANCOCK: Obviously we can't make a motion
3 unless the motion is read and explained. I would hope that
4 we could have it read and explained.

5 ASSEMBLY MEMBER TORLAKSON: I would --

6 CHAIRPERSON SHEEHY: Senator Hancock, welcome to
7 the State Allocation Board.

8 MR. NANJO: Again, Senator, this was not my motion
9 so I wasn't sure if somebody else wanted the honor of
10 reading it, but let me make my attempt at it.

11 The motion that was proposed was, quote, the Board
12 finds that the district's Overcrowding Relief Grant, parent,
13 ORG, application -- closed paren, application submitted to
14 OPSC in July 2008 is valid. Further the staff shall utilize
15 the calculation described in Regulation 1859.81.1(e),
16 bracket, the deduction of the amount received for a project
17 designed in the preliminary apportionment from the
18 construction grant, closed bracket, to determine the amount
19 of the ORG grant.

20 CHAIRPERSON SHEEHY: Henry, can you please explain
21 in layman's term what that means for the benefit of me and
22 my colleagues who I'm sure would also appreciate that.

23 MR. NANJO: Not a problem. As I understand it,
24 what the school district is asking us to do is even though
25 the ORG application was returned, to make a finding that the

1 application is still valid, without having to require the
2 application to be resubmitted.

3 Further what the second part of the motion does is
4 it directs staff to utilize a calculation that is described
5 in the regulation that was cited, which is SFP program site
6 and design apportionment, for lack of a better term,
7 calculation to determine the amount that needs to be taken
8 out for double funding. Now --

9 SENATOR LOWENTHAL: Move the motion.

10 ASSEMBLY MEMBER TORLAKSON: And that's the motion
11 that I had put in general form and the other information I
12 wanted to share is Leg. Counsel did review this earlier
13 today, Jeff Doan (ph), and indicated the Board within its --
14 our discretionary ability to make this motion and find that
15 the application was valid.

16 And I think, Senator Lowenthal, during the break,
17 we talked about the fact that if the appeal had been done
18 before the application was sent back, the Board would have
19 really agreed with the district and not with our staff on
20 the point of comingling. But since the application was sent
21 back, this motion basically puts it into valid status and
22 we're saying that that application was valid.

23 CHAIRPERSON SHEEHY: Okay. So Senator --

24 SENATOR HANCOCK: And so I will second the motion
25 so that we can discuss the motion.

1 CHAIRPERSON SHEEHY: Okay. So we have a motion
2 and a second. Rob and OPSC staff, could you please comment.

3 MR. COOK: As far as the approach on removing
4 double funding, that is potentially workable. At least,
5 without running numbers and limited information at the
6 moment, that's plausible.

7 Backdating the application has its problems.

8 CHAIRPERSON SHEEHY: Can you please elaborate on
9 what the problems are with backdating the application. I
10 don't want to hear a bunch of legal arguments. I want to
11 know --

12 MR. COOK: Right.

13 CHAIRPERSON SHEEHY: -- I want to know -- I mean
14 it's great that counsel -- in my opinion anyway, that
15 counsel's weighed in and said they think that we can do this
16 acting in our authority. I want to know in terms of
17 administration of the program --

18 MR. COOK: Um-hmm.

19 CHAIRPERSON SHEEHY: -- and what the programmatic
20 implications are in the context of your answer.

21 CHAIRPERSON SHEEHY: The programmatic -- there are
22 applications that are rejected for a variety of valid
23 reasons on a routine basis and administratively all the
24 time.

25 Going back and reinstating this particular

1 application opens the Board up to a multitude of appeals on
2 those returned applications.

3 ASSEMBLY MEMBER TORLAKSON: And, Mr. Chairman, I
4 would disagree with the interpretation in the sense that if
5 it's been rejected and sent back and isn't in the hands of
6 our Board and our agency, then how is the district going to
7 get the merits of its disagreement heard. And so basically
8 this is the appeal process by which we have a chance as a
9 Board to determine if we agree with the staff's reason for
10 rejecting the application to begin with.

11 This motion that's in front of us says that we
12 felt the application was valid that was submitted in July
13 and it's not going to open the floodgate because any
14 district would have to -- a floodgate of other similar types
15 of appeals because districts would really have to have a
16 very clear argument that would find consensus of this Board
17 to agree with the district and override our staff.

18 I think that's a pretty rare occasion where we're
19 going to override the staff.

20 MR. NANJO: I've been with -- your Board counsel
21 for some time now and I can state this. The concern that
22 this would raise to me from a practical standpoint is
23 anytime an application is returned, it would behoove the
24 school district to bring an appeal, so I would anticipate
25 that your number of appears may go up quite substantially

1 with that.

2 MS. MOORE: That's a practical application not a
3 legal application.

4 MR. NANJO: That is correct.

5 MS. MOORE: And I think that the Board -- we do
6 serve two functions on this Board. We are -- we are an
7 appeals board and if we're in the legal -- if we're within
8 legal counsel of being able to reinstate an application,
9 that's the only way a school district has an ability to
10 appeal this -- to this Board.

11 We're also a policymaking board.

12 MR. NANJO: That's correct.

13 MS. MOORE: So in the function of the appealing
14 board, the motion is made in that manner.

15 CHAIRPERSON SHEEHY: I appreciate that, Ms. Moore,
16 but, you know, some of these -- and I don't even know that
17 much about the whole process with all the applications and
18 everything, but I know enough to know this. There are some
19 things that are black and white.

20 If an application has a 90-day deadline and that's
21 in statute and they send it in on the 120th day --

22 MS. MOORE: Right.

23 CHAIRPERSON SHEEHY: -- it gets returned. Under
24 this scenario, all they had to do was come back and get
25 their legislators and enough people to come in and lobby us

1 and say, well, we disagree and then get us to overturn it.
2 And that's what I'm concerned about. That's what I'm
3 concerned about. I mean that's the concern that I have.

4 I mean, you know --

5 MS. MOORE: Is that the circumstance of this
6 project?

7 CHAIRPERSON SHEEHY: I made that up, so I'm sure
8 that's not --

9 SENATOR LOWENTHAL: I'd like -- I'd just like to
10 call the question. I think that we've had a full discussion
11 on this issue.

12 CHAIRPERSON SHEEHY: Okay.

13 SENATOR LOWENTHAL: I don't really think --

14 CHAIRPERSON SHEEHY: All right.

15 SENATOR LOWENTHAL: -- moving it any further is
16 really going to change anyone's mind.

17 CHAIRPERSON SHEEHY: Thank you. Senator Lowenthal
18 has called the question. We have a motion and we have a
19 second on the floor. Ms. Rice, could you please call the
20 roll.

21 MS. RICE: Senator Lowenthal.

22 SENATOR LOWENTHAL: And it's the motion as
23 presented by -- that I just made -- aye.

24 MR. NANJO: One comment that I need to make as
25 your legal counsel on the legal issue. We do have active

1 litigation. I would still say -- I would still recommend
2 that this motion be contingent on discussing it with the
3 Deputy Attorney General who's handling our litigation under
4 the circumstances.

5 SENATOR LOWENTHAL: I still vote aye on the motion
6 as --

7 CHAIRPERSON SHEEHY: Mr. Torlakson, would you be
8 willing to amend your motion to include making a --

9 ASSEMBLY MEMBER TORLAKSON: It's Senator
10 Lowenthal's motion at this point.

11 CHAIRPERSON SHEEHY: I'm sorry. Senator
12 Lowenthal, would you be willing to --

13 SENATOR LOWENTHAL: No.

14 CHAIRPERSON SHEEHY: Okay. No. He said no. He
15 disagrees.

16 MR. NANJO: That's fine.

17 CHAIRPERSON SHEEHY: Okay. Ms. Rice, could you
18 please call the roll on Senator Lowenthal's motion.

19 MS. RICE: Senator Lowenthal.

20 SENATOR LOWENTHAL: Aye.

21 MS. RICE: Senator Hancock.

22 SENATOR HANCOCK: Aye.

23 MS. RICE: Senator Wyland.

24 Assembly Member Fuller.

25 Assembly Member Brownley.

1 ASSEMBLY MEMBER BROWNLEY: Aye.

2 MS. RICE: Assembly Member Torlakson.

3 ASSEMBLY MEMBER TORLAKSON: Aye.

4 MS. RICE: Scott Harvey.

5 MR. HARVEY: No.

6 MS. RICE: Kathleen Moore.

7 MS. MOORE: Aye.

8 MS. RICE: Rosario Girard is absent.

9 Tom Sheehy.

10 CHAIRPERSON SHEEHY: No.

11 MS. RICE: Five to two.

12 CHAIRPERSON SHEEHY: Okay. So that motion fails.

13 Henry, is there any further action we can take on this

14 matter tonight?

15 ASSEMBLY MEMBER TORLAKSON: It would be on the

16 agenda next month I assume. The appeal can be put over till

17 next month.

18 CHAIRPERSON SHEEHY: Yeah. No, yeah. The motion

19 failed, so we don't have any final action, and yeah. We'll

20 take it up next month. Sure.

21 ASSEMBLY MEMBER TORLAKSON: So we'll agenda it for

22 next month.

23 CHAIRPERSON SHEEHY: Okay.

24 MR. NANJO: Yes. That's fine.

25 CHAIRPERSON SHEEHY: Is there any further action

1 to come -- is there anybody else -- any further action come
2 before the --

3 MS. MOORE: Can I just make one final comment --

4 CHAIRPERSON SHEEHY: Ms. Moore.

5 MS. MOORE: -- and I know it's very, very late and
6 I'm going to be very brief, but there is another issue that
7 is before school districts and particularly those that are
8 in this case and I would like staff to investigate it with
9 all the other things that they're bringing forward. It's
10 the 2.4 billion. It's those projects.

11 There are projects incurring costs that we have
12 never accepted as costs. That may be litigation. That may
13 be shutdown costs. It may be winterization, whatever they
14 had to do to comply with what the state said there was no
15 funds.

16 I would like consideration of what the
17 recommendations are around these issues and what the Board
18 should be doing about those issues.

19 CHAIRPERSON SHEEHY: Rob.

20 MR. COOK: Just so you know, we have tried to
21 compile that information. That has been part of the request
22 coming from the Pooled Money Investment Board. That has
23 been part of the request coming from the Department of
24 Finance and we have been actively attempting to capture that
25 information.

REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
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COUNTY OF SACRAMENTO)

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