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CALIFORNIA STATE ALLOCATION BOARD  
PUBLIC MEETING

STATE CAPITOL  
ROOM 4202  
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, FEBRUARY 25, 2009  
TIME: 4:11 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: Okay. Let's see if we have a quorum. Can we go ahead and call the roll and establish a quorum. We'll get started.

MS. RICE: Senator Lowenthal.

SENATOR LOWENTHAL: Yes. I'm here.

MS. RICE: Senator Hancock.

Senator Wyland.

Assembly Member Fuller.

ASSEMBLY MEMBER FULLER: Present.

MS. RICE: Assembly Member Brownley.

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. And, Madam Secretary, do we have a quorum?

MS. RICE: Yes.

CHAIRPERSON SHEEHY: Great. Some folks may be

1 here for some items. We have had a request by one of the  
2 Board members that in order to get through what is a very  
3 long agenda, we'd like to put some items over. And as long  
4 as none of the Board members here today are objecting, I'm  
5 delighted to go along with that suggestion. These would be  
6 items number -- Tab No. 9, 10, 13, 19, 21, 23, 24, and 25.

7 Let me run that by you folks one more time. We  
8 have a request to put over items 9, 10, 13, 19, 21, 23, 24,  
9 and 25. If -- Senator Lowenthal, if one of the Board  
10 members that's not here now shows up and would like to hear  
11 one of those, would you be agreeable to use --

12 SENATOR LOWENTHAL: Absolutely.

13 CHAIRPERSON SHEEHY: -- hearing them? Okay. So  
14 assuming that we don't have that happen, then we're going to  
15 hear those items next time.

16 Mr. Cook, I think the first item are going to our  
17 **Minutes.**

18 MR. COOK: That's correct. The Minutes for  
19 January 14<sup>th</sup> and January 28<sup>th</sup> are before you for your  
20 approval.

21 CHAIRPERSON SHEEHY: I'm sorry, Rob. What did you  
22 say about the Minutes?

23 MR. COOK: I said that the Minutes for January 14<sup>th</sup>  
24 and January 28<sup>th</sup> are before you and ready for your approval.

25 CHAIRPERSON SHEEHY: Are there any questions or

1 comments by members of the Board on the Minutes? And is  
2 there any public comment on this? Seeing none, is there a  
3 motion to approve the Minutes?

4 MS. MOORE: So move.

5 ASSEMBLY MEMBER FULLER: Second.

6 CHAIRPERSON SHEEHY: We have a motion and a  
7 second. All in favor.

8 (Ayes)

9 CHAIRPERSON SHEEHY: Next item, Mr. Cook, is that  
10 our Consent Agenda?

11 MR. COOK: Actually it's the -- my **Executive**  
12 **Officer's Statement** and then we'll get to Consent Agenda.

13 CHAIRPERSON SHEEHY: Oh, I thought we were just  
14 putting your statement on the Consent Agenda. Some people  
15 here might appreciate that, but let's go ahead. Rob, go  
16 ahead.

17 MR. COOK: Thank you. Thanks, Tom. I appreciate  
18 that. First of all, I would like to start by saying this  
19 has been a short month with short days including our first  
20 furloughs.

21 We prefer to get these Board books out to members  
22 full and complete one week in advance of the Board. That's  
23 our practice. That's what we try to strive for. I must  
24 apologize to the Board. We have had so many items on this  
25 Board and working late to bring them forward to you and some

1 items -- one item in particular, Deferred Maintenance, will  
2 be brought to you even as we are here tonight.

3 I apologize for that, but we -- there's a lot of  
4 staff that have put in a lot of hours to try to get this  
5 product before you and we would much prefer to have this to  
6 you well in advance of these meetings.

7 That said, I'll get into the rest of my statement.  
8 The Pooled Money Investment Board met last week. Treasurer  
9 Lockyer was -- well, a little bit gloomy about the state's  
10 prospects for selling bonds in the near future and the  
11 ability of the state to backfill the Pooled Money Investment  
12 account.

13 I represented the Board at that meeting. I thank  
14 the Treasurer's Office as well as the Department of Finance  
15 for trying to get a handle on the depth of the problem.  
16 We've been providing information on school districts as  
17 we've gone along here and that we would take steps -- the  
18 State Allocation Board would take steps to prioritize  
19 funding to school districts when we finally have resources  
20 available.

21 We also -- the recent state budget action -- I  
22 know many of you have been absorbed in that -- has some  
23 impact on the programs.

24 The Emergency Repair Program retained its  
25 appropriation of \$101 million through this Budget Act and I

1 want to give folks an update on that. Currently there's  
2 approximately \$50 million sitting in the account that we  
3 withdraw these funds from and to date we've not been able to  
4 draw them because of insufficient funds.

5           The Department of Education has put forward recent  
6 action to try to effect a transfer. I found out earlier  
7 today from the Department of Finance that transfer is  
8 unlikely to be successful until all of the funds that belong  
9 in the Pooled Money Investment -- pardon me --  
10 Proposition 98 reversion account are swept into that account  
11 and can meet all of the obligations that have been set  
12 against that account.

13           So we'll give it a try, but it may fall short.

14           The Deferred Maintenance Program also had a  
15 reduction in its -- the expenditure for this year. We put  
16 together our calculations for this Board based on what was  
17 in the Budget Act. That Budget Act number has since  
18 changed. That is an item that we will be bringing forward  
19 to you tonight even as we -- you know, even as we meet.

20           We've been recalculating those numbers and -- so  
21 that we can -- we don't have to put it off for a month and  
22 we can distribute these funds to districts.

23           Also we are looking at transferring -- and this  
24 may come up. It looks like one of the items that the  
25 Senator has asked to be put over, the transfer of Prop. 47,

1 Critically Overcrowded Schools funds over to New  
2 Construction. That comes with a labor compliance issue that  
3 has to be -- districts need to be on notice about and it  
4 could impact their projects, but we will be happy to notify  
5 districts that that isn't going to be taken up tonight. We  
6 have some additional time.

7 Also in the budget, the labor compliance component  
8 was added for projects and a chargeback to districts for  
9 their projects to the -- I believe the Department of  
10 Industrial Relations to conduct labor compliance programs on  
11 their behalf.

12 And then -- so and that concludes --

13 CHAIRPERSON SHEEHY: I'm sorry, Rob. Could you  
14 just speak a little bit louder. I don't know about others.  
15 I was having a little bit of a hard time hearing you.

16 MR. COOK: Okay. The recent budget action puts in  
17 place labor compliance programs for districts and would have  
18 them charged a percentage of their project fees to fund  
19 those programs. And that concludes my report.

20 CHAIRPERSON SHEEHY: Do we have any questions?  
21 Yes, Mr. Harvey.

22 MR. HARVEY: Defer to the Senator.

23 CHAIRPERSON SHEEHY: Senator Wyland.

24 SENATOR WYLAND: Oh, no. Go ahead. Go ahead.

25 MR. HARVEY: Can I get back, Rob, to your point on

1 Emergency Repair Program funding update --

2 MR. COOK: Um-hmm.

3 MR. HARVEY: -- and the efforts which I think are  
4 very appropriate to get something other than the whole --  
5 are you saying that under current practice, regulation,  
6 statute, it's all or nothing?

7 MR. COOK: The information I have from Department  
8 of Finance is Proposition 98 reversion account, where our  
9 funds come from, have several obligations against things and  
10 until funds -- sufficient funds are in that account to  
11 satisfy all the demands against it, the funds won't transfer  
12 out. And currently, the -- our demand is 101 million.  
13 There's currently about \$50 million in that account.

14 There are I think three or four other programs  
15 that have funding that's supposed to come from that account.  
16 Until all the funds are in there and they can all be  
17 satisfied, we cannot effect a transfer.

18 MR. HARVEY: That has a negative impact on keeping  
19 things moving, doesn't it? I mean is there something  
20 perhaps you can report back to us on that would say what it  
21 might take to change that practice, that regulation, so that  
22 if there is 50 million available, you would put it out to  
23 the priorities that those dollars would normally attract.

24 MR. COOK: I'm happy to look into it. I think it  
25 comes from the principle that you don't take one -- you

1 know, one program that's funded from that pool ahead of  
2 others, but I'm happy to look into it.

3 MR. HARVEY: Thank you.

4 SENATOR WYLAND: Just in general, my -- one of my  
5 top priorities right now is getting as much money out to  
6 schools -- and I think most of us share that -- as quickly  
7 as possible. And in that vein, I'm concerned about the  
8 Treasurer's decisions as to which bonds to sell at how much  
9 and when. And you may recall each time they've been here,  
10 I've raised the issue of marketability, which they raise as  
11 the obstacle. Because I have not seen it, I've asked in the  
12 marketplace and had not -- had seen lots of demand.

13 I asked them to come to talk to me, which they  
14 did, and they indicated at that time that the problem was  
15 the disclosures, that since we didn't have a budget, they  
16 felt that they couldn't do proper disclosures they needed to  
17 sell bonds.

18 And if I understood them correctly, they said  
19 within 30, 45 days after a budget, they would begin  
20 preparation to sell bonds. I -- personally I'd like them  
21 to -- and I know some of our members have sent letters  
22 requesting that they speed this up. Perhaps we should do  
23 that as a body. I'm happy to make a motion to do so and  
24 perhaps some of us ought to meet even before the next  
25 meeting with the Treasurer's Office to do everything we can

1 to make sure that we get money flowing to these schools.

2 So that's my concern.

3 ASSEMBLY MEMBER TORLAKSON: I would second that if  
4 that's appropriate as a motion at this time based on the  
5 report. It's not an agendized item, but what does staff  
6 recommend?

7 MR. NANJO: Because it's not agendized, I don't  
8 think a motion would be appropriate at this time, but you  
9 can direct staff to put that on as an agenda item for next  
10 month.

11 SENATOR WYLAND: I'm sorry -- and I'm sorry to  
12 interrupt. I think this is too important. I don't think we  
13 should wait until it's an agenda item next month.

14 CHAIRPERSON SHEEHY: May I make a suggestion.

15 SENATOR WYLAND: And there must be a way to do  
16 this if we do it informally with those --

17 MR. NANJO: Alternatively you can direct staff to  
18 pen a letter on behalf of the Board. So that's the option  
19 you could do.

20 SENATOR WYLAND: I think we can do that and then  
21 those of us can sign on. I mean this is one of the reasons  
22 we are here. We have schools that want to build. The money  
23 has gone through the process and I think if we do not act  
24 assertively, it's -- there are lots of competing uses out  
25 there. There's construction projects and I think the more

1 we can weigh in, the more we can have an opportunity to get  
2 the money flowing to schools.

3 CHAIRPERSON SHEEHY: Senator Wyland and Senator  
4 Torlakson and members of the Board, if it's agreeable to  
5 you, I would like to direct Mr. Cook and the OPSC staff to  
6 draft a letter with appropriate signature blocks of the  
7 members that we could send to the Treasurer, the  
8 Controller -- and I'm elaborating a little bit here -- and  
9 the Director of Finance encouraging them or urging them to  
10 release funds as soon as possible, to sell bonds as soon as  
11 possible.

12 Since the Director of Finance is my direct boss,  
13 I'm going to respectfully request that you not put my name  
14 on the signature block because I don't want to get in  
15 trouble telling my boss what to do, but I think it would be  
16 appropriate for everyone else. Is that agreeable,  
17 Ms. Valentine?

18 SENATOR WYLAND: Thank you. Thank you very much.  
19 Yeah.

20 CHAIRPERSON SHEEHY: Is that -- Ms. Valentine?

21 MS. VALENTINE: Could they amend Item No. 18 and  
22 do a motion under Item No. 18 which is the unfunded  
23 approvals?

24 CHAIRPERSON SHEEHY: Henry?

25 MR. NANJO: Yeah. Item No. 18, if I'm reading it

1 correctly, is a Schools Facility Program Unfunded Approvals.  
2 That's not listed in such a way that this -- a formal motion  
3 would be appropriate under that item. So I'd still  
4 recommend going with the route suggested by the Chair which  
5 is an appropriate action by this Board.

6 CHAIRPERSON SHEEHY: Thank you, Henry. Okay,  
7 Katrina. So with seeing no objection, Mr. Cook, can we --  
8 we'd like to get that letter out by the end of the week.

9 MR. COOK: Certainly.

10 CHAIRPERSON SHEEHY: Okay. And please have it  
11 circulated to all the Board members' offices for signature.  
12 Thank you. Any more discussion on the Executive Officer's  
13 report? Seeing none, Rob, do you want to talk about the  
14 **Consent Agenda?**

15 MR. COOK: Yes. With that we're prepared to take  
16 up the Consent Agenda.

17 CHAIRPERSON SHEEHY: Do we have any questions or  
18 comments today or does any member have any item on the  
19 Consent Agenda that they would like to have a full --

20 MS. MOORE: I only want to indicate that I'll  
21 abstain from the Elk Grove Unified School District agenda  
22 item and be voting on all the others.

23 MR. COOK: With that, we're ready for a motion.

24 CHAIRPERSON SHEEHY: Is there a motion?

25 MR. HARVEY: I would so move.

1 MS. GIRARD: Second.

2 CHAIRPERSON SHEEHY: We have a motion by  
3 Mr. Harvey and a second by Ms. Girard. All in favor.

4 (Ayes)

5 MS. MORGAN: Very briefly, the next item on Tab 5  
6 starting on page 58 is **Status of Funds**. The only activity  
7 there is capturing a few minor dollars through closeouts or  
8 rescissions. That leaves a total \$5.3 billion available for  
9 the Board.

10 There is a minor adjustment reflected on the next  
11 page on the next page for the Emergency Repair Program. The  
12 rest of the Emergency Repair Program approvals will be taken  
13 up later in the agenda. And the status of fund releases,  
14 which as you know we cannot proceed on, but the current  
15 totals are there on page 60. And with that, that's the  
16 Status of Funds unless there's any questions.

17 CHAIRPERSON SHEEHY: Questions or comments?  
18 Seeing none -- that's not an action item, correct,  
19 Ms. Morgan?

20 MS. MORGAN: It is not.

21 CHAIRPERSON SHEEHY: Okay. So can we move on to  
22 Tab No. 6 now.

23 MS. MORGAN: Tab 6 and 7 actually are **Consent**  
24 **Specials** and --

25 CHAIRPERSON SHEEHY: Oh, they're part of the

1 Consent.

2 MS. MORGAN: -- if it pleases --

3 CHAIRPERSON SHEEHY: Okay. So are we at Special  
4 Appeals?

5 MS. MORGAN: No. We are on Tabs 6 and 7. They  
6 are **Consent Specials** for Alpaugh for facility hardships and  
7 they're ready for the Board's approval.

8 MR. HARVEY: Move approval.

9 ASSEMBLY MEMBER FULLER: Second.

10 MS. MORGAN: Thank you.

11 CHAIRPERSON SHEEHY: Is this for both Items No. 6  
12 and 7?

13 MS. MORGAN: Yes, it is.

14 CHAIRPERSON SHEEHY: Okay. Great. So we have a  
15 motion and a second. All in favor.

16 (Ayes)

17 MS. MORGAN: Thank you.

18 MR. COOK: Item No. 8, we will need to address  
19 later. This is the item I mentioned -- it's Deferred  
20 Maintenance funding. Those numbers are being recalculated  
21 even as we speak and they will be brought to the Board.

22 CHAIRPERSON SHEEHY: So we're going to revisit  
23 them later this evening.

24 MR. COOK: That's correct.

25 CHAIRPERSON SHEEHY: Were there any members of the

1 Board that weren't here, Rob, when you were explaining that  
2 that we need to quickly -- I know that Mr. Wyland came in  
3 and Ms. Brownley might have come in after you explained it.

4 MR. COOK: Just briefly. The recent budget action  
5 changed the dollar figures for Deferred Maintenance in the  
6 current year and we had prepared an item based on field  
7 numbers and -- well, we need to -- we're trying to turn  
8 those around so the districts don't have to wait another  
9 month, but we will be taking those up tonight.

10 ASSEMBLY MEMBER BROWNLEY: Thank you.

11 CHAIRPERSON SHEEHY: Okay. We've had a request to  
12 put Item No. 9 over because of the large agenda, so we're  
13 going to move -- and Item No. 10, so we'll move to Item  
14 No. 11.

15 Oh, I'm sorry. Mr. Walrath.

16 MR. WALRATH: Thank you. Dave Walrath  
17 representing Small School Districts Association. First I  
18 want to thank Rob and his staff for a very, very rapid  
19 turnaround on trying to adjust for the Deferred Maintenance,  
20 get it out this month and to make a request of the Board  
21 that you agendized next year's budget amount as adjusted  
22 by -- for the July Board.

23 There's -- we believe there's no reason to wait  
24 until December. If we have an item, there's enough time to  
25 make those calculations between now and July for the next

1 allocation of Deferred Maintenance and we would request that  
2 you consider having that as an agenda item in July.

3 CHAIRPERSON SHEEHY: Mr. Cook, do you want to  
4 comment on Mr. Walrath's recommendation to agendize those  
5 items for July rather than December.

6 MR. COOK: Given that some of those -- well, we  
7 normally do the funding in December when all of the budget  
8 settled out and all the numbers are there. My understanding  
9 is while we do have a budget, there are probably a number of  
10 items that are going to be dealt with this spring and may  
11 revise and so on, and so there may be some adjustments in  
12 the current dollar figure that's in there -- in the budget  
13 today.

14 And with that, as soon as that is settled up and  
15 we know what that number is, we'll be happy to bring that  
16 before the Board.

17 CHAIRPERSON SHEEHY: So, Mr. Walrath, it sounds  
18 like that we'd be happy to implement that recommendation  
19 pending any action by the Assembly or Senate Budget  
20 Committee.

21 MR. WALRATH: Thank you.

22 CHAIRPERSON SHEEHY: Any other discussion on this  
23 item, members? Okay. Where are we now? Item No. 11.

24 MR. COOK: Katrina.

25 MS. VALENTINE: The next item is on Tab 11 and

1 this is the **School Facility Program Fund Release** item. This  
2 item addresses the \$2.4 billion in apportioned projects that  
3 don't have the ability to have funds released. As you will  
4 recall, the Board requested that staff bring this item to  
5 the Implementation Committee meeting for discussion, have a  
6 discussion on prioritizing these projects once funding does  
7 start to trickle in.

8           We did have a discussion at the February 19<sup>th</sup>  
9 Implementation Committee meeting. I believe it was a really  
10 good discussion. We had a lot of feedback from school  
11 districts and various stakeholders at that meeting.

12           I believe that most of the committee members -- I  
13 believe there was a consensus on how these projects should  
14 be prioritized and if you look at the bottom stamped  
15 page 171, it talks about those priorities. And basically  
16 the four that the committee came up with was the projects  
17 that had a 5005 submitted prior to December 17<sup>th</sup>, 2008,  
18 projects that are under construction current, projects that  
19 have a risk of immediate work stoppage, and those projects  
20 that have a risk of insolvency.

21           Now, after the Implementation Committee meeting,  
22 we debriefed back at the Office of Public School  
23 Construction. There are some logistics I believe that need  
24 to be worked out on these priorities. What I would suggest  
25 is that these priorities go back to the Implementation

1 Committee meeting to work out some of those logistics; for  
2 example, one of the issues is an immediate work stoppage,  
3 how would you define that.

4           So just to have input from the Implementation  
5 Committee and the stakeholders on how we would actually set  
6 these parameters up. The risk of insolvency was another  
7 issue that was brought up at the Implementation Committee  
8 meeting, how would you define that. What we don't want is  
9 to have to have these districts go through a complete  
10 financial review to determine if they have a risk of  
11 insolvency.

12           So those are some of the issues that I believe  
13 would need to be worked out and we value the input from the  
14 Implementation Committee meeting. What I am envisioning is  
15 that this would go back to the March 12<sup>th</sup> Implementation  
16 Committee meeting and then be brought back to the Board at  
17 the March meeting.

18           MR. NANJO: Mr. Chair, I just wanted to mention,  
19 upon reviewing some of the statutes, I'm a little concerned  
20 that we may -- it may require statutory changes to adjust  
21 the priorities. The program is set up in such a way  
22 statutorially and regulatorially whereby it's in the order  
23 that applications are received. That's the expectation upon  
24 the school districts that are in the program now and are in  
25 the middle of projects.

1           So very clearly at a minimum, we would need  
2 regulatory changes. There may need to be statutory changes  
3 to protect the Board in making those priority changes --

4           CHAIRPERSON SHEEHY: Well, Henry, I'll tell you  
5 what. You know, we've been in a crisis situation. We  
6 haven't been able to make apportionments and we haven't  
7 released funds in over three months and I think it would be  
8 a darned shame to delay fund release any longer.

9           What exactly would we be in violation of? I mean  
10 when we have money to release, we need to release it and I  
11 think at the last meeting, I commented that, you know,  
12 Finance is the one of the three members on the PMIB, very  
13 much welcomed the State Allocation Board's recommendations  
14 on this issue, and we're more than willing to implement it.

15           And this is the first time I've heard of a  
16 statutory issue and frankly I don't -- and I don't think the  
17 members of this Board want to see any further delay once  
18 funds are made available. So I'd like you to elaborate on  
19 that a little bit more, please.

20           MR. NANJO: Sure. The elaboration is  
21 statutorially the scheme set up for the School Facilities  
22 Program is that the Board after making apportionments funds  
23 in order of the receipt of the application those  
24 applications that have been apportioned.

25           Insofar as you're contemplating changing the

1 priorities and putting some other people in front of those  
2 who may be next in line, there could be potentially an  
3 action based on the fact that that's not the statutory  
4 scheme. You're kind of changing the rules of the game in  
5 the middle of the program.

6 I do understand that there is an emergency  
7 situation going on. I understand about the funding. What  
8 I'm advising is you may want to take a look at making some  
9 maybe emergency statutory changes to protect the Board. At  
10 a very minimum, it's inconsistent with your regulatory  
11 scheme and you're going to need to do some emergency  
12 regulations to address that.

13 CHAIRPERSON SHEEHY: Henry, what is the regulatory  
14 scheme that it's inconsistent with?

15 MR. NANJO: Essentially the example I would give  
16 you is if a school was next in line to be funded but because  
17 of the change in priorities, other schools jump in front of  
18 them and they don't get funded, that could potentially be  
19 something that would result in an action that -- your change  
20 of priorities essentially is in violation of your statutory  
21 scheme and the expectations of the schools when they applied  
22 under that program.

23 CHAIRPERSON SHEEHY: Well, Henry, if that's a  
24 regulatory issue, couldn't this body adopt a set of  
25 regulations to address it?

1 MR. NANJO: That is correct.

2 CHAIRPERSON SHEEHY: Well, then if we do that,  
3 does that address the issue you're raising?

4 MR. NANJO: I think there's some concern that it  
5 may be -- that there's an argument that it's in violation of  
6 the statutory scheme, but at a very minimum, I would  
7 recommend regulatory changes.

8 CHAIRPERSON SHEEHY: Okay. Mr. Duffy.

9 MR. DUFFY: This is one of those rare occasions  
10 where I'm going to agree with Henry. And I'll give you  
11 quickly the historical background. Mr. Chairman and  
12 members, Tom Duffy for C.A.S.H.

13 There was a priority ranking system that was put  
14 in place with SB50 in 1998 and it had to do with  
15 overcrowding. Schools that had dense populations of  
16 students, when funding began to dwindle, this Board had the  
17 authority and did adopt a priority ranking system that was  
18 in statute.

19 We specifically changed that with AB16 and it was  
20 done -- there was a lawsuit, the Godinez lawsuit, over this  
21 whole matter. And so if the statute today basically says  
22 for bonds that were approved prior to 2002 that this system,  
23 the priority ranking system, would work but not after.

24 So I believe that the statute really is clear that  
25 it's supposed to be date order, first come, first served.

1 And what we suggest that you look at is really the date the  
2 districts have submitted their 5005s because as I told the  
3 Pooled Money Investment Board I think a week ago, the  
4 statute basically says that if a district relies upon an  
5 apportionment and signs a contract, you shall fund that  
6 project. The word shall is in the statute.

7 So it -- what I said to the State Treasurer and  
8 the others is that basically the state's in violation of the  
9 law because you're not funding school district.

10 But the issue of priority I think is very delicate  
11 one. Our recommendation to you is to basically keep the  
12 program in place as it is. I think it would be very wise  
13 though because insolvency in school districts creates so  
14 much havoc, requesting a special apportionment from the  
15 Legislature and all, that it would be good if there were  
16 some funding in place where districts that looked like they  
17 were going to become insolvent as a result of the  
18 construction contract be able to have some relief where they  
19 could come to you and -- I don't know how this would be set  
20 up, Mr. Sheehy, but working with the Department of Finance  
21 and having some carve-out that is really there as a -- to  
22 protect districts from having to go insolvent.

23 Anyway, thank you.

24 CHAIRPERSON SHEEHY: Oh, Mr. Duffy, thank you.

25 Were you finished?

1 MR. DUFFY: I am.

2 CHAIRPERSON SHEEHY: Well, I'm not sure what the  
3 Board members want to do, but, you know, we're tall very  
4 concerned about how soon we're going to be able to start  
5 getting these funds out and Finance is -- Finance -- and I'm  
6 sure it's true of the Controller and the Treasurer too.  
7 We're committed to working with this body on how to allocate  
8 funds if they're going to be limited.

9 And I know we have two and a half billion dollars  
10 in apportionments that this body's made for which fund  
11 releases have not come in yet, and I think it's still an  
12 unknown issue how long it'll take for all those funds to be  
13 made available. Hopefully it'll all be done this spring,  
14 but there's a good chance it won't be.

15 So we -- we're very much open to the best way to  
16 approach this. If it's true that it requires statutory  
17 change, then, you know, we would be prepared to help support  
18 that.

19 So I'm looking for some direction from the  
20 committee on how to proceed. Ms. Brownley.

21 ASSEMBLY MEMBER BROWNLEY: Well, I would think  
22 that we can still go back to the Implementation Committee  
23 and have them do their work and then -- and bring that back  
24 to us and weigh. If indeed the recommendations may require  
25 us to make some statutory changes, then we can make that

1 discussion or adjust it for whatever.

2 But it seems as though we can continue on and  
3 proceed with this. We don't have to delay it now because of  
4 potential statutory changes that we might have to make.

5 CHAIRPERSON SHEEHY: Mr. Lowenthal.

6 SENATOR LOWENTHAL: Yeah. I concur, but what I'd  
7 like to do -- I think the other side of the coin, what I'd  
8 also like to do is to let the PMIB know that the State  
9 Allocation Board wants to take a strong advocacy role in  
10 general in funding of these -- of all projects and I think  
11 we should be drafting a letter to the state -- to the PMIB  
12 from this body advocating the funding of school facility  
13 projects and -- when the funds become available.

14 Let them hear directly that we feel very, very  
15 strongly about when funds are available and that we be seen  
16 as an advocate and pushing for these and it should be either  
17 signed by the members or yourself and we should send it as  
18 soon as possible just to hear that regardless of how we work  
19 this part of the equation out in terms of the prioritization  
20 which we should -- but that they hear that it's really  
21 important from the State Allocation Board that they begin to  
22 fund these projects.

23 This is a highest priority and that we need to  
24 have our voice before the PMIB.

25 CHAIRPERSON SHEEHY: Ms. Fuller.

1           ASSEMBLY MEMBER FULLER: I totally concur with  
2 that. I think the first thing is to ensure that all of our  
3 schools are funded as quickly as possible, but I'd like to  
4 hear from the field because our representative has basically  
5 told us just now that she had desires that we should have  
6 the Implementation Committee look at this and that's who we  
7 serve. The people on the Implementation Committee are the  
8 schools and if they had some concerns among themselves about  
9 the change in the formula, then I would like to hear what  
10 those -- that testimony is before we go any further if  
11 that's possible.

12           CHAIRPERSON SHEEHY: Certainly, Ms. Fuller. I'm  
13 sorry. The individual that you want to hear from, is that  
14 individual -- okay. Mr. Walrath and we'll hear -- I'm  
15 sorry. And others. Thank you. Dave.

16           MR. WALRATH: Dave Walrath representing Small  
17 School Districts Association. Because so many of our  
18 members are hardship districts -- facility hardship  
19 districts who do not have access to revenue, we do  
20 appreciate the concept of trying to set a priority for those  
21 particular types of districts.

22           We also recognize Mr. Duffy's comment and Henry's  
23 comment regarding the statutory structure of the law of  
24 first come, first served.

25           Want to offer to you a potential alternative which

1 is for this Board to ask the public -- PMIB, Pooled Money  
2 Investment Board, to see if they can guarantee certain  
3 amounts of money by a date certain, 6 months out, 9 months  
4 out, 12 months out, for the Treasurer, the Director, and the  
5 Controller to commit that they will be able to sell bonds  
6 and replenish and have those funds available.

7           What that does is allow potentially for you to  
8 make apportionments with a commitment that within 6 months  
9 or 9 months or 12 months, that project will be funded. With  
10 that commitment of a time certain within 12 months, a  
11 district can go out on the private market and borrow on a  
12 grant anticipation note.

13           It allows them to continue a project forward and  
14 I'm not sure if it does damage to the first come, first  
15 served concept. So I ask you to consider this as a  
16 potential alternative in your communications with the Pooled  
17 Money Investment Board to see if they can take those types  
18 of actions which will allow you to at least on some of these  
19 districts allow them to go out into the private financial  
20 markets. Thank you.

21           CHAIRPERSON SHEEHY: Mr. Wyland.

22           SENATOR WYLAND: I think what we're talking about  
23 here -- and I understand Mr. Walrath's point, and I think  
24 what all of us are saying is we want whether it's through  
25 the PMIB, the office of Finance, we want to do whatever we

1 can -- the Controller to get the money flowing and I think  
2 we concur in that.

3           So -- and that's going to be a matter of  
4 priorities and the determined ability to sell these bonds  
5 and I hope to work -- I know some of us independently  
6 because we're here all the time, maybe we can join together  
7 and visit some of these folks to make sure it's as high on  
8 the list as it can be because we all know there's big  
9 construction projects that are going to compete.

10           So if we can do that and elevate that as much as  
11 possible, then we can address hardship districts and all  
12 these others things, you know, once we can get some money  
13 flowing.

14           CHAIRPERSON SHEEHY: Yes. Please identify  
15 yourself for the record.

16           MR. HANCOCK: Yes, sir. Thank you, Mr. Chairman.  
17 My name is Bruce Hancock. I'm with Hancock, Gonos & Park.  
18 We're a consulting firm working in public school  
19 construction finance.

20           May I suggest, ladies and gentlemen of the Board,  
21 that there is some confusion. This item is about a fund  
22 release prioritization. There is no priority order in law  
23 or regulation about fund releases. There is no first come,  
24 first served in law or regulation about fund releases.

25           This item that is before you is about fund

1 releases not apportionments. The Implementation Committee,  
2 when it discussed that -- and I know members of the  
3 Implementation Committee will talk to you in a moment, but  
4 they were very clear on that. They were talking about  
5 projects that have received an apportionment but have not  
6 yet received a fund release and how, when funds become  
7 available, should those funds be given to projects that have  
8 already been apportioned by this Board.

9           It's not a question of whether somebody should be  
10 apportioned out of order. These are projects that have  
11 already been apportioned and the issue is who gets the money  
12 first.

13           Yes, normally it would be in date order. You  
14 submit a fund release request. OPSC processes that usually  
15 within about two weeks, and the funds are released. But  
16 there is nothing in statute that I'm aware of or in  
17 regulation that I'm aware of that governs this process.

18           The statute and regulations govern apportionments  
19 and that is -- with all respect, members of the Board, that  
20 is not what this item is. So there is no need to talk about  
21 legislative change, about regulatory change. This Board in  
22 my opinion can simply direct staff to make fund releases in  
23 a certain order and the committee, with the help of the  
24 staff, has put forward some orders that seem to make sense.

25           In other words, a district that got an

1 apportionment, signed contracts, and is now in trouble and  
2 can't pay probably ought to be at the top of the list to  
3 receive the money. Not receive an apportionment. It  
4 already has that -- to receive the funds.

5           So later -- unless it's one of the items that's  
6 been put off, you may well discuss the issue of  
7 apportionments and whether they should be funded, unfunded,  
8 or not at all. But in this particular case, I respectfully  
9 submit that you're talking about fund releases and there is  
10 nothing that governs those except this Board to the best of  
11 my knowledge. Thank you.

12           CHAIRPERSON SHEEHY: Thank you, Mr. Hancock. It's  
13 nice to have you back at the State Allocation Board meeting.  
14 Can we -- I'm sorry. Can we just hear from our counsel  
15 first in response to Mr. Hancock's comments. Henry, can  
16 you --

17           MR. NANJO: Yeah.

18           CHAIRPERSON SHEEHY: -- comment on what  
19 Mr. Hancock said.

20           MR. NANJO: With all due respect, I respectfully  
21 disagree with that. The general scheme is that as projects  
22 are apportioned, they are also funded as soon as possible.

23           Again I still think the same problems exist. I  
24 understand what Mr. Hancock is saying. There is not a  
25 specific statutory prohibition from doing that, but if you

1 look at the way the program is made, it's very clear that  
2 the schools that are apportioned first are funded as soon  
3 thereafter in the same order. So --

4 CHAIRPERSON SHEEHY: Okay. I still think that  
5 what Ms. Brownley says makes a lot of sense which is that  
6 this process can move forward and we can let the attorneys  
7 duke it out and if we need a statutory change, I'm sure we  
8 could find a member of this body or somebody that would be  
9 willing to amend the bill to put something in. But --

10 MR. NANJO: I have no objection to the  
11 Implementation Committee working on priorities because  
12 even -- regardless of whether you need a statutory change or  
13 not, you're going to need that priority so that you can put  
14 it in a statute if you choose to go that way.

15 CHAIRPERSON SHEEHY: Ms. Brownley.

16 ASSEMBLY MEMBER BROWNLEY: Yes. I mean I would  
17 think that the list of projects that we're talking about in  
18 terms of a first recommendation which seems like a pretty  
19 solid recommendation out of the Implementation Committee is  
20 already sequenced. Would it not already be sequenced in  
21 terms of first priority? So it would -- I mean we would  
22 only run into trouble if we -- you know, which it would be  
23 trouble that we would like which means -- would mean that we  
24 would get more than what is the dollar amount, \$1.4 billion  
25 or something like that and then we would have some decisions

1 to make .

2 But right now it seems as though that first tier  
3 already is already sequenced and it would -- no matter what  
4 amount we get first, second, third, fourth, fifth, sixth  
5 and -- but if we got more than that, then we would have to  
6 make some decisions.

7 CHAIRPERSON SHEEHY: Please.

8 MR. SAVIDGE: Bill Savidge, West Contra Costa  
9 Unified School District and I serve on the Implementation  
10 Committee representing C.A.S.H. And I really want to thank  
11 the Katrina Valentine for leading the discussion and I think  
12 that the staff's write-up -- as you know, Ms. Brownley  
13 does -- really characterizes the discussions in an order  
14 that we talked about.

15 I think the way the discussion went for fund  
16 releases was the committee members felt strongly that we  
17 should not abandon the tradition of date order and the way  
18 that things are normally funded, but we recognize that we're  
19 in a really extremely unusual here where we may have  
20 districts who have started a project and it's halted, where  
21 there is termination of contracts and people are unemployed  
22 and work is stopped.

23 And we thought that there would be some  
24 justification for recognizing that these are unusual  
25 conditions and that if we're trying to get money on the

1 street and get the economy going, we can't sit back and let  
2 those just wait in line if there may not be enough funds  
3 really there.

4           And so I would welcome -- we'd welcome the chance  
5 to discuss this further and work with you to find a way to  
6 do it, but I certainly respect the staff's write-up also  
7 which recognizes the difficulty in putting this together and  
8 making it work and implementing it.

9           So I appreciate your efforts. Thank you.

10           CHAIRPERSON SHEEHY: Mr. Savidge, don't you have  
11 another announcement to make?

12           MR. SAVIDGE: Mr. Sheehy, yes, sir. I'm also the  
13 new Chair of the Coalition for Adequate School Housing.

14           CHAIRPERSON SHEEHY: Mr. Savidge was elected the  
15 new Chair of C.A.S.H. today. Thank you very much. Senator  
16 Torlakson.

17           ASSEMBLY MEMBER TORLAKSON: Just following  
18 Ms. Brownley's lead on that. Staff could come back. If  
19 there pros and cons on whether to do regs, they could draft  
20 and place them on the agenda for our consideration and get  
21 full input from the Implementation Committee.

22           CHAIRPERSON SHEEHY: Right. There's been so much  
23 discussion on this, I've lost track a little bit. I think  
24 we -- Henry, are we in agreement that we do need some  
25 regulatory -- some regulations adopted and it appears to be

1 an open question as to whether or not statutes are  
2 necessary; is that --

3 MR. NANJO: I think that's generally the consensus  
4 of the Board and I think there was a comment that the  
5 attorneys can kind of work out whether or not statutory  
6 changes are absolutely necessary.

7 CHAIRPERSON SHEEHY: We'll take more testimony on  
8 this item, but as long as all the Board members are in  
9 agreement, I want to direct OPSC to work with the  
10 Implementation Committee to draft those regulations so we  
11 have them here at the next meeting. And I also want to  
12 direct the attorneys to put their boxing gloves on and punch  
13 it out with the Governor that we need statutory changes, and  
14 if we do, please provide us with draft language and if we  
15 don't, let's set that issue aside and move forward. Yes,  
16 sir.

17 MR. GARZA: Good evening. My name's Mark Garza.  
18 I'm with King's Canyon Unified. I'm one of those districts  
19 that is in the bind. We signed contracts before the freeze  
20 and we are in construction. We are in jeopardy of stopping  
21 the projects because we can't cover the gap.

22 I know all of you have received emails and/or  
23 letters and I just want to thank you because I know we are  
24 in a difficult situation, but we do want to encourage you to  
25 support the priority list if possible. I mean we are in a

1 situation where we are not going to be able to complete  
2 those projects should we not receive the state's match.

3 I want to thank Rob Cook for assisting us  
4 throughout, you know, this difficult process and also the  
5 State Allocation Board. We do need some help. Again it is  
6 our -- our goal is to see that priority list come out.

7 We did do all of our contract signing and notices  
8 to proceed and the 5005s were done before December 17<sup>th</sup>. So  
9 again we encourage the priority list. Thank you very much  
10 and good evening.

11 CHAIRPERSON SHEEHY: Thank you.

12 DR. FOSTER: I'm Stephen Foster from Chawanakee  
13 Unified. I think you received several letters from us.  
14 We're in the same situation and I think one of our concerns  
15 is that when you put it off another month, it only gives us  
16 five days or ten days from the legal action that's been  
17 threatened against our district. And we would encourage you  
18 to move forward with those priorities because we're under  
19 contract. Work stoppage has slowed down and we have been  
20 threatened with litigation that would exceed maybe  
21 20 million over the cost of our projects.

22 So as one of those hardship districts who are  
23 stretched, to push that off another month really affects us  
24 and our ability to do what we need to do in our local  
25 community.

1           CHAIRPERSON SHEEHY: Mr. Foster, I want to thank  
2 you for coming up to Sacramento yet again today and you have  
3 been one of the most persistent advocates for your school  
4 district and I must say I really admire your persistence and  
5 I know there are other districts that are in your shoes.  
6 I'm sorry you're in the situation you're in, and we need to  
7 move as quickly as we can, but not everything is under our  
8 control. We are still subject to the vagaries of the  
9 capital markets. There are still problems there and we are  
10 working as closely as we can with Treasurer Lockyer to, you  
11 know, try to take bonds to market.

12           There is -- Mr. Wyland, there is some work that  
13 does have to be done before that can be done. We have to  
14 have cash flows agreed upon by the Controller, the  
15 Treasurer, and Finance based upon the budget that the  
16 Legislature passed last week and we're just -- talked with  
17 Mike Genest this morning. I've been out of the office for a  
18 few days and we're extremely pleased with the work that the  
19 Legislature did in sending that package of bills to the  
20 Governor. We know that there was lots of difficult choices  
21 in there, but, you know, until we get all that work done and  
22 we can actually get to the market and sell bonds, you know,  
23 there's not too much anybody can do.

24           So we want to move forward with our  
25 recommendations as quickly as we can.

1 DR. FOSTER: We understand that and we just  
2 appreciate your support as a body and individually. Thank  
3 you.

4 CHAIRPERSON SHEEHY: Mr. Harvey.

5 MR. HARVEY: One thing I would ask counsel to  
6 consider, I am quite taken with the distinction that's been  
7 articulated that a release is different than an  
8 apportionment and if you can be convinced that that  
9 difference does exist, maybe we don't need the regulations  
10 as well not needing the statute.

11 MR. NANJO: I'll take another look at that. I  
12 think regulatory changes are most definitely needed because  
13 the regulatory scheme is very clear on how fund releases  
14 occur.

15 The statute is a little less clear on that. There  
16 are a couple provisions that are troublesome, but I can take  
17 a look at it with an eye of seeing if we could clear up that  
18 ambiguity just through the regulations. And as you know,  
19 regulations can be processed fairly quickly on an emergency  
20 basis, so I don't think that's going to be an impediment if  
21 we are able to come with a priority scheme.

22 MR. HARVEY: Fair enough. Thank you.

23 CHAIRPERSON SHEEHY: Henry, of course we want you  
24 to do your job and I suspect I would have the support of all  
25 the Board members in saying that as you look at this, we

1 would like you to take as wide of a view as possible and not  
2 a narrow view.

3 MR. NANJO: And I will do that.

4 CHAIRPERSON SHEEHY: Is there any more comment on  
5 this item? Mr. Wyland. Mr. Wyland, then Ms. Moore, then  
6 Mr. Lowenthal.

7 SENATOR WYLAND: I would just underscore your  
8 point, Mr. Sheehy and I think something else to look at is  
9 to do what we can do most quickly because the reality is  
10 something may exist in law, but for it to be a problem, you  
11 have to have a plaintiff that's going to sue you and I -- in  
12 some of these instances, there would not be such a plaintiff  
13 and we might be able to start -- or potentially we could  
14 head something off by starting with the quickest thing and  
15 then adding the statute.

16 And the other comment I'd like to make about the  
17 other district in general, that is -- and all these  
18 districts that may be subject to lawsuits, it may be beyond  
19 the purview of this Board, but my experience previously in  
20 the private sector is really there needs to be some way to  
21 get them hooked up with the right attorneys who can often  
22 head such things off, and I won't go into the ways they  
23 could do that. But there are ways and we certainly don't  
24 want these school districts to be -- I think -- what was it,  
25 \$20 million -- and some of these projects will be more

1 ascending with the transportation projects.

2           So that may be a subject for another time, but  
3 maybe we can figure out some way to help them not have to  
4 pay that.

5           CHAIRPERSON SHEEHY: That's an excellent  
6 suggestion. Thank you, Senator Wyland. Ms. Moore.

7           MS. MOORE: Yes. I think we worked on the issue  
8 of how we're going to go back to the Implementation  
9 Committee and come back on prioritization, but I would like  
10 to return I think to the issue at hand that Senator  
11 Lowenthal put forward, and I don't know if you want to put  
12 forward that in a motion, but I think that we had general  
13 consensus on the Board that we would like to write a letter  
14 and you can make that motion. I think that's important that  
15 we don't forget that piece of it.

16           CHAIRPERSON SHEEHY: Mr. Lowenthal, I don't know  
17 if that's where you were coming back, but on Ms. Moore's  
18 point, is that something we can incorporate into the letter  
19 that we already asked Mr. Cook --

20           SENATOR LOWENTHAL: To the Treasurer? I don't --  
21 I would like it to go directly to the Board itself. Maybe  
22 it could be incorporated into -- to the Treasurer, but I  
23 think we have to seen -- we are as Senator Wyland pointed  
24 out in great competition with all these other projects. Our  
25 voice has to go forth real clearly that the State Allocation

1 Board demands -- or maybe demands is too strong, but  
2 strongly advocates when funds become available that school  
3 facility projects be seen as the highest -- you know, not  
4 prioritize them, but be seen of such an importance that they  
5 fund these projects because right now our voice is not being  
6 heard.

7 CHAIRPERSON SHEEHY: And therefore I think --

8 SENATOR LOWENTHAL: And I'd like to make that as a  
9 motion that we --

10 ASSEMBLY MEMBER TORLAKSON: Second.

11 SENATOR LOWENTHAL: -- we send that letter.

12 CHAIRPERSON SHEEHY: Ms. Brownley.

13 ASSEMBLY MEMBER BROWNLEY: I agree on the letter  
14 for advocacy and then there's another letter in terms of  
15 these other --

16 SENATOR LOWENTHAL: Right.

17 ASSEMBLY MEMBER BROWNLEY: -- the other requests.

18 I just wanted to speak to the other requests -- not the  
19 advocacy letter, but the other requests. If we could at  
20 least incorporate what Mr. Walrath was asking if possible if  
21 we could get an amount of money and a date by which we could  
22 get it that that would be helpful information for us.

23 CHAIRPERSON SHEEHY: So at the -- in the spirit of  
24 trying to consolidate, we have -- first of all, we have a  
25 motion and a second on the floor which we'll vote on. But

1 in the spirit of trying to -- Henry, we'll get to you in a  
2 second.

3 In the spirit of trying to consolidate, we want to  
4 urge the Pooled Money Investment Board in the strongest  
5 possible terms --

6 SENATOR LOWENTHAL: Right.

7 CHAIRPERSON SHEEHY: -- to release funds for the  
8 school facilities program and this is particularly in light  
9 of the fact that we're competing with other infrastructure  
10 projects.

11 We'd like to incorporate in Mr. Walrath's  
12 suggestion that we be -- that -- to respectfully request if  
13 they can make some sort of -- I guess for lack of a better  
14 word -- guarantee that funds would be made available at a  
15 time certain, and what was the -- we already directed staff  
16 to draft a letter. What was that first item, Rob?

17 MR. COOK: Oh, it was -- yeah. I mean expediting  
18 selling bonds and being able to provide resources to the  
19 infrastructure --

20 ASSEMBLY MEMBER BROWNLEY: So one was going to go  
21 to the Board and one was going to go to the Treasurer.

22 CHAIRPERSON SHEEHY: Well, since the Treasurer  
23 sits on the Board, how about we combine all -- if it's  
24 agreeable, we combine all of that into one letter that we  
25 address to the Board and the Board would be the Treasurer,

1 the Controller, the Director of Finance. Is that --

2 SENATOR LOWENTHAL: That's fine. I just want our  
3 message to go forward.

4 MS. MOORE: And signed by all the members of this  
5 Board.

6 CHAIRPERSON SHEEHY: Yeah. Yeah. Now, Senator  
7 Lowenthal, you do have a motion on the floor. I think we  
8 directed staff to draft a letter. Is it acceptable just to  
9 go ahead and have staff do that? I'm afraid Mr. Nanjo's  
10 going to raise a concern about this not being on the agenda,  
11 right, Henry?

12 MR. NANJO: Yeah. Actually since you combined it,  
13 you don't need to do a motion at this time. You could just  
14 add that to your direction to staff and that works.

15 CHAIRPERSON SHEEHY: Is that agreeable? Okay.  
16 So, Rob, do you have that?

17 MR. COOK: Yep. We'll sharpen our pencil.

18 CHAIRPERSON SHEEHY: Can we have a letter out to  
19 all the Board members and their staff by Friday?

20 MR. COOK: Yes.

21 CHAIRPERSON SHEEHY: And then we can receive input  
22 if any of the Board members want to, you know, make  
23 suggestions on --

24 SENATOR HANCOCK: Mr. Sheehy.

25 CHAIRPERSON SHEEHY: Yes, Ms. Hancock.

1           SENATOR HANCOCK: This is just a Robert's Rules of  
2 Order question. Having come from local government and we're  
3 not -- when there's a motion on the floor, you would vote on  
4 it in directing staff, otherwise there isn't a public record  
5 of it, right?

6           CHAIRPERSON SHEEHY: I'm not the expert on --  
7 Ms. Hancock, you may be right. Henry, could you address  
8 that, please. I'm not an expert on parliamentary --

9           MR. NANJO: Yeah. You don't need to do it by  
10 formal motion. You can direct staff because they are staff  
11 to this Board to take actions. Because it's not on the  
12 agenda, I don't feel it's appropriate to have a formal  
13 motion on it because if it's -- when you do a formal motion  
14 or you talk about an issue that's a formal motion, under  
15 Bagley Keene, it really should be agendized and opportunity  
16 for public comment to be fully vetted in that regard.

17           SENATOR HANCOCK: And you don't think that the  
18 agenda items, school facility program fund releases, is in  
19 the fact the subject matter, that we discussed the subject  
20 matter; therefore a motion to send a letter is in order. It  
21 would seem like it to me. And it just seems like there's a  
22 lack of clarity if there is a motion and a second and we  
23 don't take a vote.

24           MR. NANJO: Well, the problem is -- I'm looking at  
25 your -- Senator Hancock, the problem is I'm looking at the

1 agenda that has been part of the public notice and the  
2 agenda says school facility program fund releases to discuss  
3 potential priorities for fund releases.

4 I'm not sure that the -- you're actually not just  
5 asking for priority in fund releases. You're asking for the  
6 State Treasurer and the PMIB to take certain actions and to  
7 make certain assurances with regards to fixed availability  
8 of funds. So I'm concerned that that doesn't capture that  
9 agenda item, if you will. It's not captured in that agenda  
10 item.

11 MR. COOK: If I can step in on behalf of staff.  
12 We're really clear on the direction of the Board. We're  
13 more than happy to get this thing cranked out and back to  
14 you by Friday.

15 CHAIRPERSON SHEEHY: Pleasure of the Board.

16 SENATOR HANCOCK: I think we need clarity and I  
17 think we should actually ask Leg. Counsel to comment on  
18 this. We don't have to hold it up now. We're going to get a  
19 letter. We're all going to sign it. I think it's clear  
20 what the letter's going to say, but just to -- I think this  
21 is a very narrow interpretation and I'm afraid it's going to  
22 come back on other issues and we're not going to be able to  
23 make motions unless there is such a lot of paper covering  
24 every possible ramification of the topic that it will be  
25 clear that we can make a motion. So --

1           CHAIRPERSON SHEEHY: Senator Hancock, I don't want  
2 to do anything here in this Board that would make it more  
3 difficult for us to make motions since our world's  
4 complicated enough as it is and sometimes we have to get  
5 very creative. So Senator Lowenthal had a motion on the  
6 floor. There was a second by --

7           SENATOR LOWENTHAL: Senator Torlakson.

8           CHAIRPERSON SHEEHY: -- Mr. Torlakson. Why don't  
9 we go ahead and have a vote and then if we need to have  
10 counsel take a look at this down the road, we can. But I --  
11 the important thing is to get this done and I don't -- and  
12 you're right, I don't want to set a precedent that makes it  
13 more hard to do our work.

14           So we have a second and a motion on the letter  
15 that we've described to you, Mr. Cook. All in favor. So we  
16 have a second and a motion on the letter that we've  
17 described to you, Mr. Cook. All in favor.

18           (Ayes)

19           CHAIRPERSON SHEEHY: Okay. Is there any more  
20 discussion on this item? I think we are scheduled to move  
21 to Item No. 12.

22           ASSEMBLY MEMBER TORLAKSON: Mr. Chairman, if I  
23 could make an observation that Assembly Member Joan Buchanan  
24 is here on Item 16, whether she can give her testimony  
25 now --

1 CHAIRPERSON SHEEHY: Oh, if there's an Assembly --

2 ASSEMBLY MEMBER TORLAKSON: -- or whether that  
3 item could come up.

4 CHAIRPERSON SHEEHY: Sure. Absolutely. Assembly  
5 Member.

6 ASSEMBLY MEMBER TORLAKSON: Assembly Member Joan  
7 Buchanan.

8 CHAIRPERSON SHEEHY: I apologize, Assembly Member.  
9 I had a note given to me which I overlooked. I would have  
10 recognized you sooner. Please.

11 ASSEMBLY MEMBER BUCHANAN: That's okay. It's  
12 reminiscent of my years on the school board when we were  
13 trying to decide if we needed actions or directions, so --  
14 do you want me to go ahead and speak or are going to  
15 introduce the item first?

16 CHAIRPERSON SHEEHY: Excuse me. For the members  
17 of the audience, this is for Item No. 16, **Lammersville**  
18 **Elementary, San Joaquin.**

19 ASSEMBLY MEMBER BROWNLEY: And are we moving this  
20 whole item ahead or are we having --

21 CHAIRPERSON SHEEHY: What's the pleasure of the  
22 Board?

23 SENATOR HANCOCK: I would move that we take this  
24 item out of order since the Assembly Member is here.

25 CHAIRPERSON SHEEHY: Okay. Is that agreeable to

1 the Board members? All right. We're going to take up Item  
2 No. 16.

3 ASSEMBLY MEMBER BUCHANAN: Thank you. Good  
4 afternoon, Mr. Chairman and members of the State Allocation  
5 Board. It's a pleasure to be here today and I want to thank  
6 you for allowing me the opportunity to speak on behalf of  
7 Lammersville Elementary School District appeal.

8 I am here to respectfully ask that you uphold the  
9 appeal and that you provide funding for the Bethany School  
10 project. I would like to begin by setting some context  
11 about the school district and its size.

12 At the time the district received state approvals  
13 for construction of the Bethany School, the district had  
14 less than 800 students and only two district level  
15 personnel, a principal/superintendent and a facilities  
16 planner. The district had no assistant superintendent of  
17 business or chief business official.

18 We must recognize the district completed all  
19 elements of the project necessary for state funding,  
20 including costly and timely CDE and DTSC which I point out  
21 are not required for schools that are funded solely with  
22 local funds.

23 The district also responded to a letter from OPSC  
24 and returned a questionnaire notifying OPSC that it would be  
25 submitting the 5004 form and asking for assistance from

1 OPSC.

2           It was discovered in December 2007, three months  
3 after Bethany opened, and it was reported to the local  
4 school board that January that the 5004 form had not been  
5 submitted.

6           The Lammersville Elementary School District had  
7 borrowed funds from the district's next construction  
8 project, Altamont Elementary, in order to finish  
9 construction of Bethany Elementary. These funds were used  
10 with the anticipation of receiving reimbursement from the  
11 state. Construction of Altamont Elementary is currently on  
12 hold.

13           The extenuating circumstances in this case are  
14 real and are not the result of Lammersville Elementary  
15 School District having disregard for the process. At the  
16 time of the Bethany construction, the facilities planner  
17 became critically ill with cancer and was undergoing  
18 high-dose chemotherapy. Despite this, she continued to  
19 work.

20           The superintendent checked with her continually  
21 and was assured the project was on track and that all  
22 deadlines had been met. Unfortunately, he was unaware of  
23 how severely the treatments were affecting her work.

24           The Legislative Counsel has opined that the State  
25 Allocation Board is an appeals board and has the ability to

1 use the Doctrine of Substantial Compliance when reviewing  
2 this case. The Legislative Counsel states that the SAB may,  
3 and I quote, exercise its quasi-judicial powers to determine  
4 compliance with regulatory requirements.

5 In closing, I'd like to say that this is a perfect  
6 example of a well-planned public-private partnership and a  
7 community that was designed and marketed around high quality  
8 neighborhood schools.

9 The construction of Bethany Elementary also is a  
10 great example of the intent of SB50 which all of you know,  
11 it was designed around a partnership where basically  
12 one-third of the funding would come from developers,  
13 one-third from the local school district or community, and  
14 one-third from the state.

15 I've spoken with the BIA officials and they  
16 support this appeal. It's also important to know that  
17 Mountain House, the local community in which Bethany  
18 Elementary School is located, has experienced devastating  
19 losses because of the housing market. 90 percent of the  
20 homes are underwater with mortgages exceeding the market  
21 value of the homes.

22 Last week we passed a foreclosure bill to  
23 stimulate home sales and help local communities. The heart  
24 of the Mountain House community is its schools, and the best  
25 way we can help Mountain House and the families and the

1 children who live there is to approve this appeal.

2           The district has approved student eligibility for  
3 this project and approval of this appeal will allow it to  
4 move forward with the construction of Altamont and alleviate  
5 the overcrowding it's currently experiencing. We don't need  
6 to down Mountain House. We need to give it a life  
7 preserver.

8           Thank you again for allowing me this opportunity  
9 and I would be very happy to answer any questions that you  
10 may have. I also believe the superintendent of Lammersville  
11 would like to say a few words.

12           CHAIRPERSON SHEEHY: Thank you, Assembly Member  
13 Buchanan. We appreciate your testimony this evening.  
14 Please come forward, Mr. Superintendent.

15           MR. HANSEN: Good evening. My name's Dale Hansen.  
16 I'm Superintendent of Lammersville School District -- the  
17 new Superintendent of Lammersville School District. I'm not  
18 going to repeat the testimony brought forth by Assembly  
19 Member Buchanan, but I would like to say if the Board grants  
20 this appeal, I'd like to work with staff to determine the  
21 amount of state apportionment based on the 2006 per pupil  
22 grant amounts and the eligibility based on the tentative  
23 tract maps of 2006.

24           I think she did a wonderful job -- thank you --  
25 explaining the situation and I'm available if you have any

1 questions.

2 CHAIRPERSON SHEEHY: Ms. Girard.

3 MS. GIRARD: Yes. I understand you said you're  
4 the new superintendent?

5 MR. HANSEN: I was hired July.

6 MS. GIRARD: Okay. What happened with the  
7 transition? Why did we receive a new superintendent? Was  
8 the something wrong the way the first one was doing it or  
9 can you kind of explain? Was that part of the reason why  
10 this --

11 MR. HANSEN: No. The prior -- I'm sorry. The  
12 prior superintendent retired.

13 MS. GIRARD: Okay. So that wasn't due to bad  
14 management or anything like that --

15 MR. HANSEN: It was retirement.

16 MS. GIRARD: -- that caused this.

17 MR. HANSEN: No.

18 CHAIRPERSON SHEEHY: Mr. Harvey.

19 MR. HARVEY: I have a follow-up question as it  
20 relates to timing. Our staff report indicates that the  
21 requisite paperwork was due in August of '07. That deadline  
22 was missed and that's the point at which staff is arguing  
23 that since students occupied the campus, we can't go back  
24 and create this funding source.

25 You did not file the necessary paperwork until

1 June of '08. So not only did you miss it the first time,  
2 there was as ten-month delay. Can you give me a better  
3 understanding for why you waited so long once you knew that  
4 you'd missed a deadline ten months later to apply.

5 MR. HANSEN: Yes. Yeah, that's a good question.  
6 Thank you. It was discovered in December by the  
7 superintendent. We actually believed that the facility  
8 planner believed she submitted that paperwork and then in  
9 January, it was brought to the attention of the board and  
10 direction was given to find a process that we could appeal  
11 it and after January, the -- we waited for the Legislative  
12 Counsel's decision which we received in June 16<sup>th</sup> and  
13 immediately applied -- forwarded this appeal.

14 MR. HARVEY: Can you give me a quick rundown on  
15 what the Leg. Counsel opinion is saying because I think I  
16 heard the Assembly Member also reference substantial  
17 compliance and I'm not sure I understand how that legal  
18 doctrine would apply here.

19 Our staff is arguing that tragically a deadline  
20 was missed and very sorry under the circumstances for why  
21 that deadline was missed, but they're finding that very  
22 hard, rigid fact that if you missed the deadline, the  
23 regulations say we can't give you the money.

24 Leg. Counsel argues that there is something called  
25 substantial compliance we might be able to find here. There

1 are some footnotes I'd like to talk about that give us pause  
2 about how we define a technical deficiency, but can you give  
3 me an idea of what this Leg. Counsel opinion says and why  
4 you think substantial compliance is something we can do.

5 MR. HANSEN: I believe from the district's  
6 perspective that every effort was made to seek state  
7 funding, every -- we jumped through every hoop. You would  
8 not go to CDE if you were going to fund this project on your  
9 own and I think it's tragic, but every step of the way,  
10 communications with OPSC, et cetera, were -- every step of  
11 the way was complied with with the exception of a form that  
12 quite honestly would take about 15 minutes to produce and  
13 send in.

14 And so my belief is that the district made every  
15 effort possible to comply with the rules.

16 MR. HARVEY: If I may, Mr. Chair, Mr. Counsel,  
17 have you had a chance to see the Leg. Counsel opinion about  
18 substantial compliance?

19 MR. NANJO: Yes, I have.

20 MR. HARVEY: I hear a very convincing argument for  
21 all the things you do but for this last little bit of paper.

22 CHAIRPERSON SHEEHY: Okay. So, Mr. Harvey, you're  
23 asking for Henry to comment on the Leg. Counsel opinion?

24 MR. HARVEY: Yes.

25 CHAIRPERSON SHEEHY: Okay. Henry, go ahead.

1           MR. NANJO: Through the Chair, do we want to  
2 have -- we've kind of taken this out of order. We haven't  
3 had staff actually introduce and discuss their report.  
4 Should we do that before I address that because we're kind  
5 of further down the road on this? I'm prepared to address  
6 Mr. Harvey's question.

7           CHAIRPERSON SHEEHY: Well, Mr. Nanjo, do you think  
8 it would be helpful to put your comments in perspective if  
9 staff were able to present -- by the way, Rob and Lori, I  
10 apologize. I wasn't -- I think we just got started. It  
11 wasn't an intentional -- to do that. We just sort of ended  
12 up that way.

13           Are you saying, Henry, it would be better to hear  
14 from staff first before you talk about the Leg. Counsel  
15 opinion?

16           MR. NANJO: Yes. I think it would be helpful to  
17 kind of tee up the facts and staff's perspective and then I  
18 can add in my legal analysis as well.

19           CHAIRPERSON SHEEHY: Okay. Well, since Assembly  
20 Member Buchanan was waiting her for us and since she's still  
21 here and since the Superintendent's here, I think it would  
22 be most fair to let them finish first and then -- if it's  
23 okay, then we go ahead have the staff present, and there may  
24 be some questions from the Board, then we can hear from you.  
25 How's that.

1 MR. NANJO: That's great. Thank you.

2 ASSEMBLY MEMBER BUCHANAN: We're happy to stay  
3 while you present --

4 CHAIRPERSON SHEEHY: Okay.

5 ASSEMBLY MEMBER BUCHANAN: -- and answer any  
6 questions following that.

7 CHAIRPERSON SHEEHY: Terrific, Ms. Buchanan.

8 ASSEMBLY MEMBER BROWNLEY: Mr. Chair.

9 CHAIRPERSON SHEEHY: Yes, ma'am.

10 ASSEMBLY MEMBER BROWNLEY: I think that they  
11 should also, after the staff has made their report, if they  
12 have any follow-up comments after that, they should have the  
13 ability to do so.

14 CHAIRPERSON SHEEHY: Absolutely. Absolutely. Are  
15 there other questions or comments from the Board members  
16 right now for the Superintendent or for Assembly Member  
17 Buchanan? Okay. Seeing none, Rob and Lori, why don't you  
18 go ahead and present the item so Henry can then opine on the  
19 Leg. Counsel opinion.

20 MR. COOK: I would comment that the Assemblywoman  
21 has done a great job of describing the project and for the  
22 most part, the process involved here, so I won't spend a lot  
23 of time on it.

24 The district did go through the Department of  
25 Education. They went through the Division of State

1 Architect, but there are three pieces to this program and  
2 any one of them is essential. None of the can occur -- no  
3 project can be funded without going through each of the  
4 steps and in this case, the district failed to file an  
5 application for funding prior to taking occupancy.

6           And according to guidance we have from the  
7 Attorney General on this matter, occupancy is a bright line.  
8 It changes fundamentally the nature of the facility and its  
9 access to state new construction funding. Once it's  
10 occupied, it is no longer considered a new structure or  
11 eligible for new construction.

12           And that's -- it's a regrettable circumstance.  
13 This is a -- you know, this district built a facility for  
14 its students. It did two-thirds of what it needed to do.  
15 It just fell short of a third and based on our guidance from  
16 the Attorney General, this is a serious matter, and the --  
17 funding this item would be in -- the best guidance that we  
18 have, would be an illegal appropriation.

19           CHAIRPERSON SHEEHY: Is that -- I'm sorry.

20 Mr. Cook, does that conclude your remarks at this time?

21           MR. COOK: Yes. Yeah, that concludes my remarks.

22           CHAIRPERSON SHEEHY: Okay. Henry.

23           MR. NANJO: Yes. Mr. Torlakson, did you want  
24 to --

25           ASSEMBLY MEMBER TORLAKSON: Just a question of

1 staff if I can.

2 CHAIRPERSON SHEEHY: Please, Mr. Torlakson.

3 ASSEMBLY MEMBER TORLAKSON: In the other two steps  
4 that were taken, was the scope and need for the program well  
5 established in terms of the construction of Bethany? Was a  
6 general budget approved and the verification of the need,  
7 the student population done except for this final step  
8 hadn't it received approvals?

9 MR. COOK: The two steps that I was discussing  
10 were a school district has to go through the Department of  
11 Education, the Facilities Division, to obtain site approval  
12 and to be judged for educational adequacy.

13 It also then has to have plans approved --  
14 architectural plans approved by the Division of State  
15 Architect. Both of those approvals are required before a  
16 district can come into our door and receive funding.

17 The district did those two steps but failed to  
18 bring in a funding application and as you heard, until June  
19 of 2008, well after this facility was occupied.

20 ASSEMBLY MEMBER TORLAKSON: Is there anything in  
21 the review that you've done that says that the construction  
22 was not done properly or was over what it should have been?  
23 It's on target and they were otherwise eligible for  
24 receiving the funds except for this very important step that  
25 was missed under very unusual circumstances.

1           MR. COOK: Um-hmm. There's nothing -- I mean  
2 there's nothing unusual about the CDE approval. There's  
3 nothing -- you know, out of compliance with the DSA  
4 approval.

5           ASSEMBLY MEMBER TORLAKSON: So --

6           MR. COOK: Missed the --

7           ASSEMBLY MEMBER TORLAKSON: They missed the  
8 deadline. And so if your recommendation goes forward, they  
9 would be short I think around \$4 million which is a big  
10 amount of money to a small district. If on the other hand  
11 they were granted the appeal, would anybody else be harmed?  
12 In other words --

13          MR. COOK: I would let Henry speak to this, but it  
14 may be a liability for our Board members.

15          ASSEMBLY MEMBER TORLAKSON: But as far as other  
16 schools in the queue and so forth, are there other schools  
17 that would be adversely affected or other projects, other  
18 districts to --

19          MR. COOK: Other than I mean -- it's an allocation  
20 of funding and, you know, against our current bond  
21 authority. They would be taking funds that could presumably  
22 be used by someone else.

23                 But it is laid out -- based on the best guidance  
24 that we have, this is a dangerous place to go.

25          ASSEMBLY MEMBER TORLAKSON: One other question,

1 understanding how important it is and the issue of this is  
2 setting significant precedent, what kind of communication  
3 occurred between our staff -- your staff and district --  
4 because they didn't get their paperwork in, were we unaware  
5 at all that they missed a deadline? Was there any attempt  
6 to try to inform them that they had missed this very  
7 important step and figure out corrective action they could  
8 have taken?

9 MS. MORGAN: If I may, the staff did in response  
10 to the surveys reply from the district, did outreach with  
11 the -- did complete the outreach to the district and we  
12 would not have a date proper known to us of when the  
13 occupancy -- when they were planning on doing occupancy, so  
14 it wasn't like you could set a tickler and making sure that  
15 they had the application submitted by that particular date.

16 But I will add that we were in constant contact  
17 with them and did a lot of outreach in making sure that they  
18 understood the program and offered our assistance as well as  
19 the cover letter that forwarded the blank survey to the  
20 district cautioned them that there was an important funding  
21 application time -- filing timeline that they had to meet in  
22 order to protect their reimbursability of this project.

23 CHAIRPERSON SHEEHY: I have Senator Lowenthal and  
24 then Assembly Member Fuller.

25 SENATOR LOWENTHAL: Yeah, I'd like to follow up on

1 that issue about what help. Obviously this facility's  
2 planner was quite ill at the time and trying to work. I  
3 know that the Department of General Services sent out some  
4 information requesting that they get their things done on  
5 time. I know that the facilities planner in responding to  
6 the questionnaire for districts that would be applying  
7 actually circled the one requesting state help in filing it.

8           Can you document what state help was actually  
9 provided subsequent? Did they get -- was there any written  
10 documentation about what they needed to do or what she  
11 needed to do because it's at this point where things broke  
12 down with her. This is at that very time that we're talking  
13 about that she was quite sick, asked for help. We'd just  
14 like to know what specific help besides the term outreach  
15 was given to her at that point when she specifically  
16 requested it.

17           MS. MORGAN: I don't know that I can answer your  
18 question directly right now, Senator, but if I may ask  
19 Ms. Valentine. I know you personally spoke to the then  
20 project manager, now is one of our supervisors. If you  
21 could add to that.

22           MS. VALENTINE: I did speak with the project  
23 manager at the time who Lori indicated is now supervisor.  
24 He did indicate that he did have numerous conversations with  
25 the district representative at the time regarding the

1 funding application; in addition, had attended County Office  
2 of Education meetings where the district representative was  
3 at and reminded the district representative to submit the  
4 funding application. And that's what I was told.

5 CHAIRPERSON SHEEHY: Ms. Fuller.

6 ASSEMBLY MEMBER FULLER: My heart goes out to this  
7 school district, but I need to say that it really concerns  
8 me because the significance of filing the application is  
9 very simple and that is that it preserves date order.  
10 Without the application, you have no evidence of date order.

11 We just spent the whole last bit arguing over  
12 whether we were going to change priority from the date order  
13 that is established or not and we were very concerned about  
14 doing that. So I'm torn because in this situation to allow  
15 an exemption of some type would then actually give priority  
16 for funds that we don't even know if we have for those  
17 school districts who have all done the right thing and are  
18 all suffering from probable contract breakage to this school  
19 district.

20 On the other hand, I think it's unconscionable for  
21 all of us to allow the school district to flounder without  
22 some remedy. And so, you know, I'm just wondering is there  
23 some remedy where we could handle this at say something like  
24 they go to the end of the line of all the other people who  
25 already have an established date order and we do some

1 whatever it is, regulation changes or whatever to say that  
2 there is some penalty for having not preserved your place in  
3 line. So it's not just allowing them to go forward, but  
4 giving them some remedy that this whole thing of yes or no,  
5 they get it or they don't, I don't think any of us feel good  
6 about that.

7 CHAIRPERSON SHEEHY: Right. And as I've heard  
8 from the testimony, their plans did go through the  
9 California Department of Education and they did go through  
10 the State Architect, so it's clear they -- I mean nobody  
11 would have done that had they not intended to come in for  
12 the funds. That seems pretty clear.

13 So is there some other action that could get us to  
14 where the members would like to go consistent with what  
15 Ms. Fuller just said or are you folks just telling us this  
16 is a strictly black and white situation?

17 MS. MORGAN: If I may add one piece of information  
18 before perhaps Mr. Cook addresses your specific question.  
19 There's currently nearly \$1 billion worth of funding  
20 applications accepted already in our house for new  
21 construction only. There's 234 regular new construction and  
22 an additional 40 million for facility hardships, so just to  
23 keep in context, when you make mention of the end of the  
24 line what that exactly means.

25 ASSEMBLY MEMBER FULLER: I understand.

1           CHAIRPERSON SHEEHY: Senator Hancock.

2           SENATOR HANCOCK: Yeah. As we're looking at this,  
3 I can't help getting back to my experience in local  
4 government again where really we're being asked to function  
5 I think as a kind of zoning adjustments board where you look  
6 at appeals of various kinds and have to make findings.

7           Now, when I look at the prior to occupancy, that  
8 the application has to be completely in in every aspect  
9 prior to occupancy, you can see the interest of the state in  
10 doing that. We wouldn't want districts that had completed  
11 construction, had students in there for a year or so or  
12 whatever, then a bond gets passed and they come back for  
13 construction.

14           But this is manifestly not a case like that. They  
15 were going through the process and unfortunately because of  
16 the illness of the facilities manager and I guess her  
17 confusion in that she told the administrators that she had  
18 submitted it when in fact she had not submitted it and so  
19 that it took them a while to actually ascertain that that  
20 hadn't happened that that is where the issue of -- the Leg.  
21 Counsel's issue of substantial compliance, that a  
22 legislative body tries to, like a court, have some way of  
23 weighing actually the motivation, what was going on, and  
24 adjusting so that there's an outcome that doesn't hurt  
25 people in an arbitrary or unnecessary way.

1           I understood from talking with staff on this that  
2 they were basing their sense of this on an Attorney General  
3 opinion in another case, a Davis Unified School District  
4 case, but that as we looked at that, it seemed as though  
5 Davis had been ineligible from the beginning so that that  
6 was actually quite a different sort of issue.

7           Again I don't know if anyone from the district or  
8 Assemblywoman Buchanan wanted to comment on that, but if  
9 that's the case, I would hope that we could make findings  
10 that the application was substantially complete and that we  
11 could accept the appeal.

12           CHAIRPERSON SHEEHY: Senator Wyland and Assembly  
13 Member Brownley. And then -- I'm sorry -- then Ms. Girard.  
14 I apologize, Rose.

15           SENATOR WYLAND: I agree with Senator Hancock on  
16 this and I understand exactly Assemblywoman Fuller what  
17 you're saying. It is an issue that is difficult in that  
18 regard, but I think in the context of the projects that have  
19 already begun -- not just approved of, begun and the amount  
20 of money we're talking about as Senator Hancock said,  
21 the -- clearly the inadvertence of this -- I just think it's  
22 simple equity, which I think is the intent of substantial  
23 compliance, to me dictates that we help these folks out and  
24 finish the funding that they need.

25           The children are already in the schools and as you

1 said, Mr. Sheehy, obviously they went right through OPSC.  
2 They just got there. They simply somehow stopped, so  
3 that's -- I agree. That's what I think we ought to do.

4 CHAIRPERSON SHEEHY: Okay. Thank you, Senator  
5 Wyland. So we have Assemblywoman Brownley, Ms. Girard, then  
6 we'd like to hear from Henry.

7 ASSEMBLY MEMBER BROWNLEY: Well, depending on the  
8 Board's decision, I think if we approve the district's  
9 request on this, I too also agree with the last two comments  
10 that were made.

11 I -- my understanding of the facts was this  
12 particular school district had two previous projects of  
13 which this woman who was healthy went through the process  
14 and completed the process and was very knowledgeable about  
15 the process and performed well for the school district.

16 And then on the third project had all the heavy  
17 lifting on this project and then became ill. And I  
18 certainly understand the -- when someone becomes ill and  
19 they're under this chemo issue to think that they had done  
20 or filled out that form because they had done that's  
21 previously when they were healthy and just couldn't quite  
22 remember whether they did on this particular case.

23 So to me this seems like it is not a precedent  
24 decision, in my eyes. It is -- I think about when we buy an  
25 airline ticket, if you miss your plane, you pay for the

1 ticket. It's just too bad. But if you have a relative who  
2 is very ill or there's a death in the family, the airlines  
3 makes a special compensation for that, under these unusual  
4 set of circumstances around health or death and I think this  
5 applies in this case and that's the way I see it and  
6 therefore I believe that we should approve the district's  
7 request.

8 CHAIRPERSON SHEEHY: Now, Ms. Brownley, only the  
9 IRS and the FTB would do that. Ms. Girard.

10 MS. GIRARD: Actually, Assembly Member Brownley, I  
11 agree with you. You took the words right out of my mouth.  
12 I felt exactly the same way. We're not here to -- if it was  
13 totally absence of the paperwork previously that we had  
14 seen, it looked like this -- that it had been jumbled and  
15 didn't apply properly.

16 This particular one really did stand out to me as  
17 well, one document that missed the guideline, and then there  
18 was a reason behind it. It wasn't like it was just put  
19 aside.

20 The other thing I was a little -- in the  
21 conversations with staff -- and I know that staff really  
22 works -- very difficult with -- I mean you really do work  
23 very hard with all of them, but I was a little concerned  
24 that you did see all the documents that were coming in. You  
25 saw that they were a district that needed some help and when

1 you saw that the deadline was approaching, to not have made  
2 maybe a phone call to say is there something wrong, why  
3 aren't we getting our documents. And maybe you did, but I'm  
4 just saying that, you know, they did follow through  
5 everything and they are a district that was short on staff  
6 so did need a little bit of help, but I tend to agree with  
7 Assembly Member Bradley --

8 ASSEMBLY MEMBER BROWNLEY: Brownley.

9 MS. GIRARD: -- that I would say move forward and  
10 grant this as well.

11 ASSEMBLY MEMBER TORLAKSON: Is that a motion?

12 CHAIRPERSON SHEEHY: Thank you.

13 SENATOR LOWENTHAL: Can we make that as a motion?

14 MS. GIRARD: Yeah, I make that as a motion.

15 CHAIRPERSON SHEEHY: Okay. So Ms. Girard, I  
16 assume -- if I may, I'm going to assume that Ms. Girard has  
17 made a motion to approve the appeal. So we have a motion  
18 and --

19 ASSEMBLY MEMBER BROWNLEY: And I'll second it.

20 CHAIRPERSON SHEEHY: -- we have a second. And  
21 before we have a roll call vote, Henry, we never did hear  
22 from you, so we'd like to hear from you now.

23 MR. NANJO: Okay. I really do not enjoy being the  
24 bearer of bad news, but unfortunately I do have a  
25 responsibility to advise you of the legal situation.

1           First of all, let me explain a little further what  
2 Mr. Cook was speaking about about the limitation and the  
3 limitation is -- I understand the comments that were said.  
4 I understand this is a very equity-laden situation, but the  
5 problem and the difference from the airline situation or  
6 other permit situations is it is not just the decision of  
7 this Board alone.

8           This Board has responsibilities in that the bond  
9 funds that were given to the program were approved by the  
10 voters under certain circumstances. The issue that was  
11 raised by the Attorney General's office is that this  
12 program, the school facilities program, is for new  
13 construction. It's for construction to house unhoused  
14 pupils or to create classrooms for unhoused pupils.

15           The problem is once a school facility is occupied,  
16 you're no longer funding -- or placing unhoused pupils.  
17 What you're doing is you're reimbursing a school for their  
18 expenses in providing this school that's already been  
19 constructed.

20           That was the issue that was raised by the Attorney  
21 General in the prior case and that -- for lack of a better  
22 term, that problem exists in this particular situation as  
23 well. That is a concern and the Board needs to realize that  
24 potentially doing an action which results in a school being  
25 funded after it's occupied could potentially be in violation

1 of the bond covenants and be an improper use of those bond  
2 funds.

3 Now that's that issue. Going to the substantial  
4 compliance issue, I understand what the Board members are  
5 saying, but to a certain extent, you've got to be real  
6 careful about applying the Substantial Compliance Doctrine.

7 The Substantial Compliance Doctrine legally is  
8 very narrowly applied. It is applied in situations where  
9 there has been actual compliance in respect to the substance  
10 essential to every reasonable objective of the statute as  
11 distinguished from a mere technical imperfection of form.

12 The situations where the Substantial Compliance  
13 Doctrine has been used is in situations where -- well, for  
14 example, there are three cases that were cited by the Leg.  
15 Counsel in their opinion. Two of the cases the Court found  
16 there was not substantial compliance. The only case that  
17 there was found substantial compliance was in Camp vs. Board  
18 of Supervisors where Mendocino County had a general plan and  
19 even though they didn't technically file the general plan  
20 appropriately, all the elements required under the statute  
21 of the general plan were present.

22 One of the things that I would draw the Board's  
23 attention to, which I was a little distressed was kind of  
24 hidden in the footnote, is in the Leg. Counsel's opinion on  
25 the last page in the footnote, the Leg. Counsel specifically

1 says we express no opinion as to whether failure to timely  
2 submit any particular form may be classified as a mere  
3 technical imperfection of form. In making this  
4 determination, the Board would consider every reasonable  
5 objective of the requirement for timely submission of the  
6 form and would determine whether compliance by the applicant  
7 in substance met those objectives. Okay.

8           And again it refers to People vs. Greene. That  
9 was a case in which the prosecutor failed to file a form.  
10 It was over seizure and disposition of assets of someone  
11 that was convicted of a white collar crime and in that case,  
12 the Court did not find substantial compliance either but  
13 really said for substantial compliance, you have to make  
14 sure every element's been met. Essentially where  
15 substantial compliance is used is when there's merely an  
16 imperfection in the form but all the information is there.

17           In finding substantial compliance, this -- if you  
18 are applying that doctrine, this Board would need to find  
19 that all requisite elements of filing that form were met by  
20 the Lammersville School -- Elementary District -- excuse  
21 me -- and that the failure to submit the SFP funding  
22 application is a mere technical imperfection of form.

23           And what I'm concerned with is without that form,  
24 you do not have a date that you can use for approval. That  
25 seems to be key information that would kind of knock it out

1 of the box of just a mere imperfection of form.

2 CHAIRPERSON SHEEHY: Okay. We have Ms. Brownley  
3 and Mr. Torlakson, but before we go there, I got most of  
4 what you said, Henry, but my question is, is there a way for  
5 Ms. Girard to rephrase her motion that would incorporate the  
6 key information that you just said would be necessary?

7 You were talking about that the Board would have  
8 to find certain things and it seems to me that the Board --  
9 if a majority of the Board members find certain things  
10 then -- and I apologize for my inartful description of this,  
11 but I'm not attorney. But I guess my question is, Henry --  
12 and I'm sure everybody appreciates and I certainly  
13 appreciate your testimony, but is there a way for Ms. Girard  
14 to reframe her motion that would incorporate those findings  
15 so as to make the motion stronger, more forceful, more  
16 legally complete motion.

17 MR. NANJO: I would have to talk to staff as to  
18 whether or not we could establish this -- to meet the  
19 requirements of substantial compliance, this Board would  
20 have to make findings that essentially every -- all the  
21 information that was necessary in that -- the funding  
22 application was in the hands of the State Allocation Board  
23 or OPSC and that the mere -- because of the extenuating  
24 circumstances, the lack of filing did not result in any loss  
25 of information or -- and the statutory scheme -- or

1 statutory requirements were adequately met.

2 CHAIRPERSON SHEEHY: So the Board would have to  
3 have a motion that they found that they were -- what's the  
4 term -- substantial compliance.

5 MR. NANJO: Correct.

6 CHAIRPERSON SHEEHY: That's the short way of  
7 saying it, right?

8 MR. NANJO: Yes. Yes.

9 CHAIRPERSON SHEEHY: Okay. Ms. Brownley.

10 ASSEMBLY MEMBER BROWNLEY: Well, I mean I think --  
11 again I'm not a lawyer either, but hopefully the law's based  
12 on some commonsense and I -- you know, it just seems to me  
13 that in this particular case -- let's remember, this school  
14 district was a school district led by one superintendent and  
15 one person who did facilities and a lot of other things.

16 So we're talking about, you know, there are not a  
17 lot of checks and balances in this process because there's  
18 not a big department going over this. So this district  
19 completed everything that they needed to do and the one  
20 woman who was responsible who had filled this last form two  
21 times prior and who said thought she had submitted the  
22 form -- so to me that's substantially whatever his words  
23 are -- substantially compliant.

24 The reason it did not happen was because she was  
25 very ill. There is nothing that you have referenced in this

1 case that has to do with any case where someone under these  
2 conditions were really ill and so I don't believe that all  
3 the cases that have been suggested here apply and I do think  
4 that part of our role and responsibility here is to hear  
5 appeals, just like Ms. Hancock had said earlier. That's  
6 part -- to hear the case, to hear the detail, to understand  
7 the nuance, and maybe we're establishing a new precedent  
8 here and there would be other cases that would meet this  
9 condition, but I doubt it because it is very rare for a  
10 school district to be, you know, really a one-person shop  
11 and that's what it was.

12           And so I just -- I have to say that I don't agree  
13 with the arguments, albeit I am not a lawyer, but I still --  
14 and would certainly appreciate advice in terms of how to  
15 term -- how to state this motion certainly, but I still am  
16 of the strong belief that we should accept the district's  
17 request.

18           CHAIRPERSON SHEEHY: Thank you, Assemblywoman  
19 Brownley. Senator Torlakson.

20           ASSEMBLY MEMBER TORLAKSON: My comments are going  
21 to be very similar and just to point out again that I think  
22 the voters knew the framework or at least would trust our  
23 judgment and we're here to make these kinds of judgments,  
24 and so I'm speaking in favor of the motion too and it also  
25 seems that there is a key issue, but the district thought

1 they complied and went ahead and occupied, but what would  
2 they have done with the students if they didn't occupy and  
3 so they had a dilemma. They were sort of forced to occupy  
4 and it's still a brand new school designed and meant for it  
5 and otherwise they would have gotten the money had they  
6 somehow held the students somewhere and had classes in homes  
7 or a church or something, but -- so I'm thinking they're  
8 eligible. If it hadn't been for them to be occupied, they  
9 thought they'd complied and so they went ahead and occupied.

10 I would suggest as the motion could formulate in a  
11 way that gives direction to staff to put together the most  
12 legally defensible and commonsense defensible system  
13 possible that will not set precedent and to have that be --  
14 you know, the direction of the Board to have our attorneys  
15 work that out and figure out the best way to do it so our  
16 action and our intent are met and defensible.

17 CHAIRPERSON SHEEHY: Thank you, Senator Torlakson.  
18 I have Senator Lowenthal, then Senator Wyland.

19 SENATOR LOWENTHAL: Yeah. I just believe that  
20 this very discussion which has focused on substantial  
21 compliance really puts into the record if this Board affirms  
22 this, that we really have dealt with the issue of  
23 substantial compliance and that this discussion itself as  
24 part of the public record has been around whether in fact  
25 this school district did have substantial compliance. I

1 think if we accept their appeal, we agree to that concept  
2 and that's really what we're doing and I think that the  
3 motion should reflect that, that it was really part of this  
4 discussion and we believe that it's a valid argument and  
5 that that therefore we have found -- made those findings as  
6 a Board and that we move forward and I would just like us to  
7 move forward now.

8 ASSEMBLY MEMBER BROWNLEY: But, you know, I would  
9 agree. Substantial compliance, the way we have articulated,  
10 not necessarily substantial compliance from previous cases.

11 SENATOR LOWENTHAL: That's right. No. I -- this  
12 discussion. Right.

13 ASSEMBLY MEMBER BROWNLEY: Right.

14 SENATOR LOWENTHAL: That this Board --

15 CHAIRPERSON SHEEHY: Senator Wyland.

16 SENATOR WYLAND: As a mechanism, I think to  
17 reflect what the Board would like to do, I think we can say  
18 that we appreciate and respect our counsel's very subtle  
19 distinctions regarding the meaning of substantial compliance  
20 based on case law and I think that's what we heard and if I  
21 were a plaintiff in court, I would make the arguments that  
22 our counsel has made, but I really doubt this is going to  
23 end up that way. We need our counsel to I think make those  
24 points to us so we know what we are doing. I would hope we  
25 could then rephrase the motion as making a determination

1 that this situation meets substantial compliance within the  
2 statute and I think that's -- and then how we write it up,  
3 we can write it up saying that we do that and then maybe we  
4 can vote and do what we want to do.

5 CHAIRPERSON SHEEHY: Okay. Thank you. Henry, one  
6 moment. Thank you, Senator Wyland.

7 Ms. Girard, would you be willing to incorporate  
8 into your motion what Senator Wyland just said, which is  
9 that -- incorporating into it that this body finds  
10 substantial compliance?

11 MS. GIRARD: Sure.

12 CHAIRPERSON SHEEHY: I'm sorry, say that again.

13 MS. GIRARD: Sure.

14 CHAIRPERSON SHEEHY: Sure? Okay. And,  
15 Ms. Brownley, you're still willing to second that motion?

16 ASSEMBLY MEMBER BROWNLEY: Yes, I am.

17 CHAIRPERSON SHEEHY: Okay. So we have a revised  
18 motion on the floor. Henry?

19 MR. NANJO: Thank you, Mr. Chair. While I don't  
20 believe the requisite elements of substantial compliance is  
21 there, I would recommend that -- I would have recommended  
22 exactly what you did, which is to incorporate all the  
23 discussion and the testimony and for this Board to make a  
24 determination that they feel that the requisite requirements  
25 of substantial compliance have been met based upon all the

1 evidence that's been presented, the facts of this specific  
2 case, and limited to this specific case.

3 CHAIRPERSON SHEEHY: Okay. So let the record show  
4 that Ms. Girard's motion and Ms. Brownley's second  
5 incorporates all the comments that Mr. Nanjo just made.  
6 Ms. Morgan, this better be good.

7 MS. MORGAN: Very quick. I need clarification on  
8 whether it's with a received date of today in respect of the  
9 \$1 billion worth of new construction applications that are  
10 already in-house.

11 CHAIRPERSON SHEEHY: I haven't the vaguest idea  
12 what you asked me.

13 MS. MORGAN: At the back of the line -- the  
14 application if you're going to have it acknowledged, that it  
15 would be processed --

16 CHAIRPERSON SHEEHY: What's the will of the Board  
17 here? Back of the line or --

18 ASSEMBLY MEMBER BROWNLEY: Lori, it seems to me,  
19 if there needs to be a date, I don't -- I mean I would  
20 prefer that we didn't, but if we did, you know, there was a  
21 time when she filled out a form that said she was going to  
22 be doing this and wanted help, you know, so --

23 CHAIRPERSON SHEEHY: Okay.

24 MR. NANJO: Friendly recommendation. To avoid one  
25 of your other problems, I would recommend that that date be

1 prior to occupancy.

2 CHAIRPERSON SHEEHY: Okay. So let -- so the  
3 date -- I'm sorry. Just so I understand because -- I  
4 apologize to the audience and the Board. I'm a little lost.  
5 The date we're trying to focus on now is what? The date  
6 of --

7 MS. GIRARD: Prior to occupancy.

8 MR. NANJO: It's the -- what Ms. Morgan is asking  
9 about is what date -- since an application wasn't filed  
10 until much later, what date does the Board want to use as  
11 the date of the application filing?

12 CHAIRPERSON SHEEHY: Well, it was clearly the  
13 intent of the school district based upon all of the records  
14 and testimony to file for this before they occupied, so  
15 let's pick a date before they were occupied. That's what  
16 would meet all the legal requirements, correct?

17 ASSEMBLY MEMBER BUCHANAN: August 26<sup>th</sup>.

18 CHAIRPERSON SHEEHY: Is that the date, Assembly  
19 Member Buchanan, that would be appropriate? Okay. So  
20 without any objection, we'll incorporate into this -- that  
21 date would be August 26<sup>th</sup>, Ms. Morgan. Does that address  
22 your issue?

23 MS. MORGAN: Yes, it does. Thank you.

24 CHAIRPERSON SHEEHY: Okay. Great. Thank you so  
25 much. So we have a motion --

1 ASSEMBLY MEMBER FULLER: I have one more thing.

2 CHAIRPERSON SHEEHY: Oh, yes, Ms. Fuller.

3 ASSEMBLY MEMBER FULLER: Sorry, but I want this  
4 for the record. It is true, I don't care which the  
5 superintendent or -- that you built -- the same  
6 superintendent built two schools prior and they were done  
7 perfectly. Everything was turned in; is that true?

8 MR. HANSEN: One school, Wickland, was built prior  
9 and everything was turned in.

10 ASSEMBLY MEMBER FULLER: So if we go back and say  
11 what is the precedent that you weren't trying to have any  
12 ill intent, you could go back and say that under normal  
13 circumstance, before she got sick, she'd done all those  
14 things and I think that will help us make the determination  
15 that this is a unique and exempt case. Thank you.

16 CHAIRPERSON SHEEHY: Okay. With all that said,  
17 may we please have a roll call vote on this item.

18 MS. JONES: Senator Lowenthal.

19 SENATOR LOWENTHAL: This is to uphold the appeal,  
20 right?

21 CHAIRPERSON SHEEHY: To approve the appeal.

22 SENATOR LOWENTHAL: Right. Aye.

23 MS. JONES: Senator Hancock.

24 SENATOR HANCOCK: Aye.

25 MS. JONES: Senator Wyland.

1 SENATOR WYLAND: Aye.

2 MS. JONES: Assembly Member Fuller?

3 ASSEMBLY MEMBER FULLER: Aye.

4 MS. JONES: Assembly Member Browning.

5 ASSEMBLY MEMBER BROWNLEY: Aye.

6 MS. JONES: Assembly Member Torlakson.

7 ASSEMBLY MEMBER TORLAKSON: Aye.

8 MS. JONES: Scott Harvey.

9 MR. HARVEY: Aye.

10 MS. JONES: Kathleen Moore.

11 MS. MOORE: Aye.

12 MS. JONES: Rose Girard.

13 MS. GIRARD: Aye.

14 MS. JONES: Tom Sheehy.

15 CHAIRPERSON SHEEHY: I'm going to abstain.

16 MS. JONES: Motion passes nine to one.

17 CHAIRPERSON SHEEHY: Okay. So that appeal's --

18 SENATOR LOWENTHAL: Nine to zero.

19 ASSEMBLY MEMBER BROWNLEY: Nine to one.

20 CHAIRPERSON SHEEHY: No. I didn't vote. I

21 abstained.

22 MR. HARVEY: No. Zero. He abstained.

23 SENATOR LOWENTHAL: He abstained.

24 MR. HARVEY: Nine-zero.

25 CHAIRPERSON SHEEHY: Okay. So that appeal has

1 been approved. Now we had gone out of order and I'm a  
2 little confused, Rob. Can you tell me what the next item  
3 is?

4 MR. COOK: Actually I want to take you a little  
5 earlier in the agenda to Item 8. Lisa, if you can  
6 distribute the item to the members. Our staff has been able  
7 to do the **calculations for the deferred maintenance** and that  
8 item is now being distributed to you. My compliments Rick  
9 Sheffield and his team for turning this around on a dime and  
10 it'll will be a great opportunity for us to actually  
11 distribute funds when we were otherwise constrained.

12 MS. MOORE: If I may, Chair. So this report now  
13 is in compliance with the Budget Act as approved and is --  
14 stands ready for our apportionment of deferred maintenance  
15 funds, correct?

16 MR. COOK: That's correct.

17 MS. MOORE: I would so move.

18 ASSEMBLY MEMBER TORLAKSON: Second.

19 CHAIRPERSON SHEEHY: We have a motion by Ms. Moore  
20 and a second by Senator Torlakson. Are there any -- is  
21 there any comments on this item before we take a vote?

22 MR. COOK: One item.

23 CHAIRPERSON SHEEHY: Mr. Cook.

24 MS. MORGAN: We need --

25 CHAIRPERSON SHEEHY: Ms. Morgan.

1 MS. MORGAN: -- to call to the Board's attention  
2 that there are five funding shells that will no longer be  
3 funded for extreme hardship. So the attachment that you  
4 have is correct, but from the funding shells, we'll need to  
5 eliminate pages 104, 119, 146, 120, and 153. With the  
6 lesser amount of money, we no longer are able to fund those  
7 projects.

8 CHAIRPERSON SHEEHY: I'm sorry, Ms. Morgan. I'm  
9 not following you and I'll bet you if I'm not following you,  
10 there's got to be at least one other person here that's not  
11 following you. Could you start over and clarify for the  
12 record the comments that you're making. They sounded kind  
13 of important.

14 MS. MORGAN: Yes, sir. Thank you. The report  
15 that was distributed is the correct numbers and the  
16 attachment listing the project is correct. Starting in the  
17 agenda of the former item following the attachment were  
18 individual funding items that correspond with the extreme  
19 hardship projects.

20 Because we are revising the attachment that was  
21 just dispersed to you, we have five funding shells that will  
22 have to be removed from the agenda because now there's no  
23 longer enough money to approve them.

24 CHAIRPERSON SHEEHY: You're saying there's five  
25 projects to drop off the list?

1 MS. MORGAN: Yes, sir.

2 MR. COOK: That's correct.

3 CHAIRPERSON SHEEHY: I didn't know what a funding  
4 shell was. That was terminology --

5 MS. MORGAN: I apologize.

6 CHAIRPERSON SHEEHY: -- that sounded sort of like  
7 bureaucrat speak to me. So that means that there's five  
8 items that are going to drop off. Is that strictly  
9 technical or is there going to be somebody that's going to  
10 have a problem with that? I want to make --

11 MR. COOK: It's -- no. That's strictly technical.  
12 The world is on notice now and the item that is before in  
13 your hands is true and correct --

14 CHAIRPERSON SHEEHY: Okay.

15 MR. COOK: -- and you can proceed.

16 CHAIRPERSON SHEEHY: Because I just wanted to make  
17 sure we don't have any Board members voting for something  
18 that they might have had some questions or concerns with.  
19 Ms. Moore.

20 MS. MOORE: If I may. Could you just name those  
21 projects that are critical hardship projects that because of  
22 the proration, I'm assuming, now are not -- we are not able  
23 to go that far down the list, is what you're saying.

24 MS. MORGAN: Absolutely.

25 MS. MOORE: So there are projects and there may be

1 people here today that think they may get a critical  
2 hardship deferred maintenance approved but because of the  
3 new funding round, will not; is that correct?

4 MS. MORGAN: Yes.

5 MS. MOORE: I think we should read those projects  
6 into the record so it -- just so that it is known.

7 MS. MORGAN: Yes. Page 104 is Pierce Joint  
8 Unified School District.

9 CHAIRPERSON SHEEHY: Okay. Page 104, where do I  
10 find page 104 in this attachment?

11 MR. COOK: Behind Tab 8 in your books.

12 CHAIRPERSON SHEEHY: Which is the first page,  
13 Ms. Morgan?

14 ASSEMBLY MEMBER BROWNLEY: Starting with Pierce  
15 Joint Unified?

16 MS. MORGAN: Yes. Page 104, Pierce Joint Unified.  
17 The next one is one page 119 which is Anderson Valley  
18 Unified School District.

19 CHAIRPERSON SHEEHY: Hold on. Hold on so we  
20 got -- we have Pierce Valley and then we have --

21 MS. MORGAN: Anderson Valley on page --

22 CHAIRPERSON SHEEHY: 119, Anderson Valley, okay.

23 MS. MORGAN: On page 146 is Pleasant View  
24 Elementary School District.

25 CHAIRPERSON SHEEHY: Okay. Hold on. Page 146 is

1 Pleasant View, okay.

2 MS. MORGAN: And on page 120 is Fort Bragg Unified  
3 School District.

4 CHAIRPERSON SHEEHY: Page 120. Hold on. You got  
5 us going backwards now, Lori.

6 MS. MORGAN: Oh, I'm sorry.

7 CHAIRPERSON SHEEHY: Page 120 is Fort Bragg.

8 MS. MORGAN: And on page 153 is Wheatland  
9 Elementary School District.

10 CHAIRPERSON SHEEHY: Page 153. And these are  
11 projects that drop off because of the revised funding?

12 MS. MORGAN: Yes, sir.

13 CHAIRPERSON SHEEHY: And this is strictly a  
14 technical calculation. There's not some policy overlay  
15 here?

16 MS. MORGAN: Correct.

17 MR. COOK: That's correct.

18 MS. MOORE: And one last question on that. Do  
19 they -- I don't know that critical hardship program that  
20 well. Do they stand in line for future monies and would  
21 there be any possibility of future monies this year or is  
22 that another deferred maintenance round year?

23 MS. MORGAN: It would be for next round of  
24 deferred maintenance funding.

25 MS. MOORE: So the two -- for the next Budget Act

1 of deferred maintenance that we may take up in July.

2 MS. MORGAN: Yes. And we will retain those on  
3 file.

4 MS. MOORE: And we retain those and they can stay  
5 in line and be prioritized for that at that time.

6 MS. MORGAN: yes.

7 MS. MOORE: Thank you.

8 MR. HARVEY: Clarification. When you say  
9 priority, they would be the first five on the list?

10 MS. MORGAN: Yes because they're in date order.  
11 Wait. Let me clarify.

12 MS. MOORE: Aren't there types?

13 MS. MORGAN: I -- there are others that are not  
14 funded, so I would presume since they had been in the cut  
15 that they would be the first five, but with that  
16 clarification, we would need to verify.

17 MR. HARVEY: Are you okay with that? I was  
18 willing to put them on the top five if at all possible  
19 because here they were within a nanosecond of being funded.

20 MS. MOORE: Yeah. That seems to -- how about that  
21 be our intent unless there is some regulation that we're  
22 in --

23 MS. MORGAN: Staff clarifies that that is indeed  
24 true. They'll be the first five.

25 MS. MOORE: Okay. And so they stand noticed of

1 that and hopefully we will reach them for critical hardship  
2 because that is a critical category in the future.

3 MS. MORGAN: Yes. Thank you.

4 CHAIRPERSON SHEEHY: Ms. Moore, I've got some new  
5 information I want to stress test with the staff. Is part  
6 of this item a 10 percent set-aside?

7 MR. COOK: That's correct.

8 CHAIRPERSON SHEEHY: And that's a set-aside that  
9 has customarily been done.

10 MR. COOK: That is correct.

11 CHAIRPERSON SHEEHY: How much money is in that  
12 set-aside? I don't need an accounting answer.

13 MR. COOK: It is -- yeah. \$23.9 million.

14 CHAIRPERSON SHEEHY: Okay. Now, just  
15 hypothetically if that set-aside weren't necessary, would  
16 that be enough money to fund those projects that just  
17 dropped off? More or less or would it fund of them? All of  
18 them?

19 MS. MORGAN: I'm sorry. Could you repeat the  
20 question?

21 CHAIRPERSON SHEEHY: If the 10 percent set-aside  
22 were jettisoned, would that \$23 million be enough money to  
23 fund the projects that just dropped off?

24 MS. MORGAN: The 23 million is the 10 percent  
25 set-aside which by statute we cannot set aside more than

1 10 percent for extreme --

2 CHAIRPERSON SHEEHY: That's not my question. My  
3 question is would the 10 -- would the \$23 million that's in  
4 the 10 percent set-aside, would that be sufficient funding  
5 if it weren't set aside to fund these projects that are  
6 dropping off. Because my understanding is these projects  
7 that drop off are out of it for five years and I want to  
8 make sure this body has all the information and can make the  
9 best decision.

10 In fact I'm going to ask our Department of Finance  
11 Program Budget Manager, Jeannie Oropeza, to come up.  
12 Ms. Oropeza, would it be possible for you to comment on this  
13 item? I want to make sure that we're not disadvantaging any  
14 of the school districts.

15 MS. OROPEZA: Right. Jeannie Oropeza, Department  
16 of Finance. Yeah, with the most recent budget agreements,  
17 the funding for deferred maintenance along with 42 other  
18 categoricals will be changed for the next five years and  
19 basically the base year is going to be '08-'09 and so if you  
20 receive funding for this program in '08-'09, you will  
21 continue to receive that funding for the next four years.

22 And so my concern is that by taking these  
23 districts out of the mix, there may not be funding for them  
24 for the next four years and so before you take an action,  
25 you need to look at whether or not -- because the nature of

1 the laws and the requirements have all changed. It's part  
2 of the flexibility pot. So the districts that receive the  
3 money, while it's reimbursing them for higher projects,  
4 don't have to spend that money for deferred maintenance  
5 going forward. They won't even have to make their match.

6 So I just caution you that, you know, how you  
7 distribute this is going to lock in who gets the money for  
8 the next four years and so I'm just concerned about that.

9 CHAIRPERSON SHEEHY: I have Ms. Moore and then  
10 Mr. Harvey, and, Jeannie, please stay tuned.

11 MS. MOORE: Ms. Oropeza, is that true of the  
12 critical hardship projects as well? Not just the regular  
13 deferred maintenance, but is that true for critical hardship  
14 as well?

15 MS. OROPEZA: The entire program was rolled into  
16 the flexibility pot --

17 MS. MOORE: Okay. Thank you.

18 MS. OROPEZA: -- and so I'm just saying you need  
19 to take that into consideration before you take an action on  
20 how you distribute the money.

21 CHAIRPERSON SHEEHY: Okay. Mr. Harvey.

22 MR. HARVEY: Can you tell me from your  
23 perspective, do we have any flexibility in dipping into that  
24 10 percent set-aside?

25 MS. OROPEZA: The way the rules were changed, I

1 think it's a whole new arena and so the rules basically say  
2 that districts that receive that money in the current  
3 year -- and I think it doesn't distinguish between the 10  
4 percent hardship versus the other pot of money -- will  
5 continue to receive this money for the next four years.

6 So I just kind of caution --

7 CHAIRPERSON SHEEHY: And each year -- when you  
8 say -- Ms. Oropeza, when you say continue to receive this  
9 money for the next four years, you mean if they got a dollar  
10 this year, they get a dollar next year.

11 MS. OROPEZA: That's correct. That's the --  
12 that's part --

13 CHAIRPERSON SHEEHY: So these projects that drop  
14 off don't just lose one year of funding. They really lose  
15 five years of funding.

16 MS. OROPEZA: The four -- the current year plus  
17 the next four years.

18 CHAIRPERSON SHEEHY: Five. They lose the current  
19 year plus four.

20 MS. OROPEZA: Right.

21 CHAIRPERSON SHEEHY: That's five years. They lose  
22 five years of funding.

23 MS. OROPEZA: Right.

24 CHAIRPERSON SHEEHY: So -- I'm sorry. Mr. Harvey,  
25 go ahead.

1           MR. COOK: Pardon me. There's some confusion  
2 going on here. There's a -- the law allows for up to a  
3 10 percent set-aside for extreme hardships. The projects  
4 that we just described as extreme hardships. If you wipe  
5 out the extreme hardship money, this 10 percent, these  
6 projects still don't get funded.

7           In fact there are several other extreme hardships.  
8 They're basically health and safety projects that don't get  
9 funded.

10           MS. OROPEZA: I guess my point is that we really  
11 should look at how you're going to distribute the money  
12 because that's how the money's going to be distributed going  
13 forward. So it's -- you know, unlike other years, you know,  
14 the pool of people that comes in every year changes. That's  
15 not going to happen.

16           MR. HARVEY: Ms. Oropeza, are you saying that as  
17 part of this new budget deal, the apportionment which staff  
18 told us was pretty prescriptive. It was technical. It was  
19 clean. We have some ability to apportion it more freely  
20 now?

21           MS. OROPEZA: Well, I think they are correct in  
22 terms how -- under correct law, how they normally distribute  
23 the money and that there is -- they can set aside 10 percent  
24 for extreme hardship. All of that is correct. All of that,  
25 what they send -- I'm not disputing that. I'm just saying

1 before you take a final action on who gets the money and how  
2 it gets distributed, just know that you're going to lock it  
3 in for the next five years.

4 CHAIRPERSON SHEEHY: Okay. Ms. Oropeza, it's  
5 great that you're telling us that we're locking it in for  
6 five years. I don't think -- well, that's not great. I  
7 mean I appreciate your telling us. I'm not sure anybody  
8 feels great about that.

9 But the question, I -- I think the question the  
10 Board would like to know is, is there an alternative  
11 available that would allow additional districts to get their  
12 projects funded this year so that they're not shut out for  
13 the next five.

14 Because I mean if OPSC has followed the law in  
15 calculating this, we can't just ask them to disregard -- I  
16 don't think it would be appropriate to ask them to disregard  
17 the law.

18 MS. OROPEZA: I'm not asking them to disregard the  
19 law. I'm just saying take a look at the projects that fell  
20 off because you have the 10 percent set-aside for hardship.  
21 Whether or not that gets done that way.

22 MR. COOK: I would like to clear -- I would like  
23 to really clear this up.

24 CHAIRPERSON SHEEHY: Mr. Cook.

25 MR. COOK: All of the districts that are eligible

1 for deferred maintenance are getting funded. There is the  
2 basic funds for deferred maintenance. There is allowed in  
3 statute up to 10 percent to be set aside for extreme  
4 hardships which are health and safety projects.

5 If we were to eliminate the health and safety  
6 funding all together, everyone would get a little bit more  
7 money. Okay? But we would not be funding any health and  
8 safety projects. So that's the choice before the Board.

9 Now, we've put forward -- the Board in prior years  
10 has always chosen to put forward the maximum towards the  
11 health and safety projects and that's what you have before  
12 you. Everyone -- and like I said, no district is getting  
13 bumped out of deferred maintenance as a result of setting  
14 that money aside.

15 CHAIRPERSON SHEEHY: Well, then what was the basis  
16 for those ones that we were pulling for the agenda? That's  
17 what I --

18 MR. COOK: Those are health and safety projects.  
19 Because the dollar figure is smaller -- because the overall  
20 dollar figure in the budget is smaller, the amount we're  
21 able to set aside for health and safety projects is smaller  
22 and those last five health and safety projects got bumped  
23 out.

24 CHAIRPERSON SHEEHY: Oh, I see.

25 MR. HARVEY: Rob, what I'm trying to get to is can

1 we not under this new format, take the 10 percent set-aside  
2 and fund everybody that would have received it on this list  
3 that you gave us. Put the five back in and reapportion the  
4 hardship so everybody gets extreme hardship. Why can't we  
5 do that? You take the 10 percent. You make that as your  
6 nugget. You don't exceed the 10 percent. You just  
7 redistribute it.

8           The ones that -- everyone would get a little bit  
9 less, but they get it in five years.

10           CHAIRPERSON SHEEHY: Okay. Rob, if you could  
11 respond to Mr. Harvey and then we have Ms. Brownley.

12           MR. COOK: I think there's some confusion on how  
13 the program works. Everybody who is eligible for deferred  
14 maintenance is getting a sum of money in this funding  
15 action. The set-aside -- and not everyone is eligible for  
16 health and safety projects. They have to have a legitimate  
17 health and safety project that's been approved through this  
18 program.

19           There is a list of those projects. The 10 percent  
20 set-aside helps us to fund the next several projects in line  
21 and then we run out of money and we have to wait for the  
22 next budget in order to fund additional health and safety  
23 projects.

24           From staff's perspective, funding health and  
25 safety projects is a good thing and we recognize that

1 everyone will be locked in for the next five years at  
2 whatever we're setting in here, but absent that, we're  
3 letting critical facility problems go unattended.

4 CHAIRPERSON SHEEHY: Okay. Ms. Oropeza, did you  
5 want to add on to what Mr. Cook said?

6 MS. OROPEZA: Just -- yeah. I think what I heard  
7 Member Harvey say was not to not fund those but to give  
8 everybody 90 percent instead of the full 100 percent and  
9 kick some people out. So you don't necessarily fully fund  
10 them, but you end giving them 90, 95 percent. I don't know  
11 what the amount is. So that gets locked in to all of those  
12 districts that had health and safety projects and you don't  
13 exclude them.

14 MR. HARVEY: That's what I was trying to say. You  
15 take the extreme hardship category and redistribute it  
16 amongst those in that category.

17 MS. OROPEZA: Everybody that -- right. Everybody  
18 that had an eligible health and safety --

19 MR. HARVEY: The five that you pulled out would be  
20 back in and everybody would get 95 or somewhat percent of  
21 the extreme hardship category.

22 MR. COOK: So -- okay. I didn't realize what  
23 you --

24 MR. HARVEY: That's what I -- I'm sorry. I'm  
25 inarticulate.

1 MR. COOK: You're trying to give everybody a  
2 haircut here.

3 MS. OROPEZA: Yeah.

4 MR. COOK: That's what you're -- and -- so we can  
5 fund more.

6 CHAIRPERSON SHEEHY: Yeah. But -- okay. So bring  
7 me into the circle of trust. If everybody gets -- you guys  
8 all have this thing going. I don't know what you're talking  
9 about.

10 If you give everybody a haircut, that's the bad  
11 news. What's the good news? Who are we -- are we helping  
12 other people that otherwise don't get anything? Is that the  
13 concept?

14 MR. HARVEY: Yes.

15 ASSEMBLY MEMBER FULLER: Everybody gets  
16 95 percent.

17 MS. OROPEZA: Those five districts that get  
18 exclude now would receive some amount of money. Not the  
19 full amount, but they wouldn't be excluded for five years.

20 CHAIRPERSON SHEEHY: Okay. All right.  
21 Assemblywoman Brownley.

22 ASSEMBLY MEMBER BROWNLEY: Just erring on the side  
23 of caution. Can we postpone this till the next meeting?

24 CHAIRPERSON SHEEHY: Is there -- I --  
25 Ms. Brownley, I certainly have no problem with that. Are

1 there any Board members here -- is there anybody here in the  
2 audience -- Ms. Fuller.

3 ASSEMBLY MEMBER FULLER: Well, I just want to  
4 know, Rob or Jeannie, is it against any statute to fund a  
5 percentage of the amount of the project if we use this idea?  
6 In other words, do we have to change anything? Can we give  
7 everybody whatever it is, 96 percent of what they're asking  
8 for and give everybody that instead of giving a hundred  
9 percent to most of the projects and zero to five because if  
10 we can spread it and we can give everybody a smaller piece,  
11 then everybody remains in the program for four more years.  
12 When the fund builds back up, people will be able to -- or  
13 when that project builds up, they'll be able to maximize  
14 their flexibility and there's no -- everybody's a little bit  
15 of a loser but nobody's a big-time loser.

16 MR. HARVEY: Right. That's the idea.

17 CHAIRPERSON SHEEHY: Rob, can you respond to  
18 Ms. Fuller's question? Or Jeannie or somebody?

19 MR. COOK: I'm -- yeah. I'm trying -- well,  
20 anyway. I'm trying to understand this on -- I mean Jeannie  
21 and I have been having a sidebar over here --

22 CHAIRPERSON SHEEHY: Okay.

23 MR. COOK: -- on what this five year implication  
24 is.

25 CHAIRPERSON SHEEHY: Mr. Cook, I don't -- if I'm

1 wrong, somebody please tell me, but I don't think anybody on  
2 this Board wants to be rushed into a decision tonight if  
3 this could wait and we get some of these details worked out,  
4 since this is a five year, our action tonight is going to be  
5 in place for five years. We want to make sure everybody's  
6 comfortable with how that action takes place.

7 I also understand that we have Mr. Jim Patton here  
8 tonight that would like to talk on this item and I see  
9 Mr. Duffy is there, so why don't we hear from you folks.

10 MR. PATTON: I'm Jim Patton and I represent  
11 Anderson Valley School District, one of the five, the  
12 district in Mendocino County. And we worked for a year and  
13 a half in cooperation with OPSC staff on this issue.

14 The amount that we're seeking is \$591,000 and it  
15 is to repair locker rooms, the boys' and girls' locker rooms  
16 in the gymnasium. The gymnasium was built in 1955. It's  
17 the focal point of the community. It has a basketball team  
18 that has won nationwide recognition.

19 The locker room now is at a point where it will  
20 need to be closed. We've taken temporary measures for a  
21 year and a half, but now we have mold, termites. The locker  
22 room tile walls are only of fascia and behind it is all  
23 sorts of other kind of damage.

24 There is no other facility in the district that  
25 can serve visiting teams, home teams, PE classes, and it's

1 essentially going to be unusable. And so in terms of date  
2 order, I know you had a discussion about that much earlier  
3 today. We're right up there. We're number 34 in terms of  
4 when we applied, how we got the approval, and so to separate  
5 out now, I mean it is a health and safety issue. It really  
6 is and we will have to close that gymnasium and there is no  
7 place else for the kids to go in Anderson Valley,  
8 Booneville.

9 CHAIRPERSON SHEEHY: Mr. Patton, could you help me  
10 understand -- I don't know -- maybe some of the others. So  
11 what exactly are you asking or advocating for? I'm not sure  
12 I understand.

13 MR. PATTON: I'm asking that you fund all the  
14 projects including the five that dropped off, Anderson  
15 Valley being one of them.

16 CHAIRPERSON SHEEHY: And can we fund the five that  
17 dropped off by giving everybody else a haircut? Is that  
18 what we were talking about before?

19 MR. PATTON: It seems like it would be a minimal  
20 thing to do for all the other districts. The other thing  
21 is, is I'm kind of mystified because how -- it's never been  
22 clear to me until just now, five minutes ago, that health  
23 and safety are separated from other deferred maintenance  
24 critical hardships. That's the first time I've heard it and  
25 if we went back to look at when we applied, we're -- as I

1 said, of all those pages, we're 34<sup>th</sup> or 44<sup>th</sup> on the list and  
2 we've been working for a year and a half in cooperation with  
3 OPSC on this issue.

4 CHAIRPERSON SHEEHY: Okay. Thank you, Mr. Patton.  
5 Do we have any questions of the Board members of Mr. Patton?  
6 Okay. Mr. Duffy.

7 MR. DUFFY: Mr. Chairman and members, Tom Duffy  
8 again for C.A.S.H. I just want to really understand what it  
9 is that we may be doing. If the idea is that the total  
10 amount of the funds would be reduced to fund those five  
11 projects, that's consistent with I think -- what I just  
12 said, it's consistent with the discussion. So that would  
13 happen. Those five projects get funded. The lock-in that  
14 you're talking about for five years would be every district  
15 gets the same amount of money for the next five years and  
16 that's -- unless something else happens. Is that --

17 CHAIRPERSON SHEEHY: I see Ms. Oropeza shaking her  
18 head up and down indicating a yes.

19 MR. DUFFY: Okay. And that is something that  
20 we'll help to make sure districts understand and  
21 communicate.

22 CHAIRPERSON SHEEHY: I mean why is it that every  
23 district would get the same amount of money every year?  
24 Does that assume they have the same need every year? What  
25 if the need's less? I don't know if I'm the only one here

1 that's having a hard time understanding this. I -- it makes  
2 me wonder how I got to be Chief Deputy of Finance.

3 I mean if they don't need -- like say they get  
4 500,000 this year, but they don't need 500,000 next year, do  
5 they still get the 500,000? Ms. Oropeza.

6 MS. OROPEZA: So the concept was to take basically  
7 43 different categorical programs and basically block grant,  
8 if you will, those dollars. And so if schools need more  
9 than that 500,000 they received, they have flexibility to  
10 use any of the other dollars they choose to spend on that.

11 If they need less and they prefer to spend the  
12 money on class size reduction or professional development or  
13 whatever the case may be, that was the concept. And so the  
14 only way to provide some assurance to schools that they will  
15 know how much money they're going to receive in year one and  
16 two and three and so forth was to lock in based on -- like  
17 we do most all other categorical block grants, lock the  
18 monies in and then we can adjust them for growth if the  
19 Legislature chooses to increase them or decreases, whatever  
20 the case may be.

21 But now they know how much money in total they'll  
22 receive and they can budget appropriately for, you know,  
23 teacher training or just hiring -- whatever the case may be.

24 CHAIRPERSON SHEEHY: Okay.

25 ASSEMBLY MEMBER BROWNLEY: Now, but, Mr. Chair --

1           CHAIRPERSON SHEEHY: Yes.

2           ASSEMBLY MEMBER BROWNLEY: -- every school  
3 district -- I can say unequivocally, their deferred  
4 maintenance money is never enough. I mean it is -- most of  
5 the time, it is fixing roofs that are already leaking. The  
6 idea is to fix the roof before it leaks and so I think that  
7 there's just always a -- you know, a very strong demand on  
8 these monies and we're trying to give them flexibility about  
9 matching the money and also the flexibility in terms of  
10 moving accounts around, but I think it's clear that  
11 districts' needs are always great. So I don't think it's  
12 fair to say, you know, they have a certain need this year  
13 and another need next year. I think it's just a continuum  
14 of need.

15           CHAIRPERSON SHEEHY: I appreciate you calling that  
16 to my attention. I see your point. It makes a lot of  
17 sense. Okay. Mr. Cook and then Mr. Harvey.

18           MR. COOK: If I may, some of the recent changes to  
19 the program were not comprehended when we put this funding  
20 item together. That's quite obvious. I suggest that we put  
21 this item over so that we can then come forward with all of  
22 those issues, you know, well considered, and the Board can  
23 then make a decision fully informed and fully understanding  
24 what the implications of that decision are.

25           CHAIRPERSON SHEEHY: Is there any objection of any

1 of the Board members to putting this item over to the next  
2 meeting?

3 MR. HARVEY: I object. I mean this is one  
4 program --

5 CHAIRPERSON SHEEHY: There's at least one  
6 objection

7 MR. HARVEY: -- that you said we could get the  
8 dollars out and schools could use it. How ironic that we're  
9 on the cusp of doing that and we're stumbling over whether  
10 or not a certain category of folk could take a little  
11 haircut so everybody gets funded.

12 I'm comfortable moving on that, but if my  
13 colleagues want to put it over for a month, we'll put it  
14 over for a month.

15 CHAIRPERSON SHEEHY: Mr. Harvey, you can always  
16 make a motion.

17 MR. HARVEY: I will move.

18 MR. DUFFY: Mr. Harvey, could you describe the way  
19 you envision what you were just saying?

20 MR. HARVEY: I'll try it one more time. I know  
21 people are having a difficult time understanding what I'm  
22 trying to do.

23 Mr. Duffy, what I'm trying to do is to take those  
24 dollars in the less extreme hardship -- that's the  
25 10 percent that's been alluded to and fund all of the

1 projects that were in the original staff report before we  
2 pulled five out.

3           So all of the projects that were on that list  
4 would get a little bit less of the 10 percent set-aside, but  
5 everybody would get something. Anderson Valley would get  
6 something.

7           If we don't do it, they'll get zip. I'm trying to  
8 spread a discrete amount of money over more school  
9 districts.

10           MR. DUFFY: So your motion then would be to direct  
11 staff to include those that were left off and recalculate so  
12 that that isn't something you have to do right now.

13           CHAIRPERSON SHEEHY: Within the same pot of money.

14           MR. DUFFY: Yes, within the same --

15           MR. HARVEY: Same pot of money.

16           MR. DUFFY: Yes.

17           MR. HARVEY: But we get the money out before we  
18 meet next month.

19           CHAIRPERSON SHEEHY: I think Mr. Harvey's  
20 trying -- just trying to make sure we get the money out as  
21 soon as possible.

22           MR. DUFFY: I think you have the opportunity to do  
23 that. You have the opportunity to do it right now.

24           CHAIRPERSON SHEEHY: Rob and Jeannie, is -- I  
25 think there's support for Mr. Harvey's motion. Have we

1 worked out the technical issues here or is there still  
2 some -- I'd like to -- I'd like if we can to wrap this one  
3 up and move on. We have other items to discuss and --

4 Do we need to take a five-minute recess?

5 MR. COOK: Yes, please. Let's.

6 CHAIRPERSON SHEEHY: The State Allocation Board  
7 will be in recess for five minutes.

8 (Off record from 6:25 p.m. until 6:33 p.m.)

9 CHAIRPERSON SHEEHY: We're going to reconvene the  
10 State Allocation Board here. Noticing that the Honorable  
11 Will Bush is here, Mr. Harvey decided he wanted to restate  
12 his motion.

13 MR. HARVEY: Just to prove that I bring value to  
14 the Board, Mr. Bush.

15 CHAIRPERSON SHEEHY: Okay. So -- I'm sorry. Are  
16 you actually going to do --

17 MR. HARVEY: I am actually going to do it because  
18 I've been persuaded that there maybe merit in allowing  
19 90 percent of the dollars to go now and my motion would be  
20 that those dollars go. We bring back the 10 percent that  
21 we've been wrestling with, that is the extreme hardship  
22 category, and because of the change in law, the implications  
23 thereof, it probably is more meritorious to take some time  
24 understanding what we're doing there.

25 But we get 90 percent of the funds out, we bring

1 back the 10 percent, and that would be my motion.

2 CHAIRPERSON SHEEHY: Okay. Mr. Cook, is that  
3 doable and is that going to --

4 MR. COOK: Absolutely.

5 CHAIRPERSON SHEEHY: -- address the issues that  
6 have been raised --

7 ASSEMBLY MEMBER FULLER: And I will second it.

8 CHAIRPERSON SHEEHY: -- by this.

9 MR. COOK: Absolutely.

10 CHAIRPERSON SHEEHY: Ms. Fuller is seconding that  
11 motion. And we're okay with that? Is there anybody here in  
12 this room that is not okay that wanted to come --  
13 Ms. Garrity, did you want to come address the -- all right.  
14 I mean I think we have a motion and a second. I think we're  
15 good to go. Is there some other -- Mr. Duffy.

16 MR. DUFFY: I'm confused.

17 CHAIRPERSON SHEEHY: Okay. Mr. Duffy, please.

18 MR. DUFFY: If I could -- thank you for your  
19 patience with me. Rob, your recommendation that you and I  
20 just talked about a few minutes ago --

21 MR. COOK: Um-hmm.

22 MR. DUFFY: -- could you just go through that one  
23 more time with me.

24 MR. COOK: Very simply, we -- this Board,  
25 Mr. Harvey's motion, would be approving the deferred

1 maintenance funding less the extreme hardship money noted on  
2 this page of \$23.9 million and we will bring the  
3 \$23.9 million back with a recommendation on how we would  
4 distribute those funds, to our next Board.

5 MR. DUFFY: And that 23 million is enough to  
6 accomplish what we just talked about a few minutes ago?

7 MR. COOK: We're going to have to figure out how  
8 we redistribute it so that we can fund as many projects as  
9 possible. I think that's the charge from the --

10 MR. HARVEY: I would hope staff would bring us one  
11 or two options perhaps.

12 MR. COOK: Yes.

13 CHAIRPERSON SHEEHY: I think the more options the  
14 better. So the 23 million would come back before the Board  
15 at the next meeting with options on how we could fund the  
16 additional projects; is that correct?

17 MR. COOK: That's correct.

18 CHAIRPERSON SHEEHY: Is there any objection -- do  
19 the members feel that they have enough information on this  
20 item to -- we have a motion and a second. Ms. Brownley.

21 ASSEMBLY MEMBER BROWNLEY: I'm sorry, I was a  
22 minute late, so I'm not sure that I understand what the --

23 CHAIRPERSON SHEEHY: Okay. Rob. Rob, could you  
24 please repeat the motion that Mr. Harvey has made and maybe  
25 if needs to be any additional explanation for our benefit,

1 do that one more time.

2 MR. COOK: Okay. If I could. The Board would  
3 move to apportion all of the deferred maintenance less the  
4 10 percent set-aside for extreme hardships of \$23.9 million.  
5 Those funds will come back to this Board at our next meeting  
6 with recommendations from staff on how to distribute those  
7 funds to maximize the results for districts out there.

8 MS. MOORE: So, Mr. Sheehy.

9 CHAIRPERSON SHEEHY: Yes, Ms. Moore.

10 MS. MOORE: Just to be clear, then we will not be  
11 funding tonight any critical hardship projects -- critical  
12 hardship maintenance projects, correct?

13 MR. COOK: That is correct.

14 ASSEMBLY MEMBER BROWNLEY: And Ms. Oropeza's  
15 comments relative to that proposal? Yeah, you're good?  
16 Okay.

17 CHAIRPERSON SHEEHY: Okay. Well, I've gotten my  
18 green light because Ms. Oropeza said she's good and if she  
19 said she's good, it must be good. So we have a motion and a  
20 second. Seeing no opposition to this item, all in favor.

21 (Ayes)

22 CHAIRPERSON SHEEHY: Okay.

23 SENATOR HANCOCK: No. I'm sorry.

24 CHAIRPERSON SHEEHY: Oh.

25 SENATOR HANCOCK: But in my talking to staff

1 people, I don't think we know what we're voting on and I  
2 think there may be problems with it and I would vote to hold  
3 it over for a month, but --

4 CHAIRPERSON SHEEHY: Okay. Mr. -- okay. So  
5 please expunge -- with -- assuming there's no objection,  
6 we're going to expunge the record on that vote and we still  
7 have a motion and a second. Mr. Wyland.

8 SENATOR WYLAND: I don't know if this is the  
9 appropriate time, but I wonder if we might discuss meeting  
10 in two weeks rather than a month. We've got a lot of things  
11 on the agenda and we're not covering everything and it might  
12 make it easier to address some of these issues. I don't  
13 know what others -- what ideas others have about whether  
14 that might be something we might do.

15 CHAIRPERSON SHEEHY: Thoughts of the Board members  
16 about having a special meeting in a couple weeks?

17 ASSEMBLY MEMBER FULLER: On this matter?

18 CHAIRPERSON SHEEHY: This matter and --

19 ASSEMBLY MEMBER FULLER: On all the --

20 MR. HARVEY: All of it.

21 ASSEMBLY MEMBER FULLER: All the set-aside. Okay.

22 CHAIRPERSON SHEEHY: Are there any --

23 SENATOR LOWENTHAL: Would we lay this over for two  
24 weeks then? What would we do about this issue?

25 SENATOR WYLAND: That's for us to decide tonight.

1 MR. HARVEY: There's no disagreement on the  
2 90 percent.

3 SENATOR WYLAND: We should all understand it.  
4 That's for sure.

5 CHAIRPERSON SHEEHY: The pleasure of the Board?

6 ASSEMBLY MEMBER FULLER: Okay. Let me try. Okay.  
7 We've got two things going here. The first is the motion  
8 that's on the table and that is, if you look at your sheet,  
9 if you would go down to where it says subtotal --

10 SENATOR LOWENTHAL: Um-hmm.

11 ASSEMBLY MEMBER FULLER: Okay? And you see  
12 239 million plus. 66.

13 MR. COOK: It's in the loose package of  
14 information that we've given you and it is stamped page 66.  
15 That is the detail of all the funding available.

16 SENATOR HANCOCK: Okay. I need the loose package  
17 of information and I know that through no fault of the  
18 staff, many of us did not get packets till today.

19 ASSEMBLY MEMBER FULLER: I understand. Me too.

20 SENATOR HANCOCK: All 256 pages, so that's why --

21 SENATOR LOWENTHAL: 66.

22 ASSEMBLY MEMBER FULLER: It's all right.

23 SENATOR HANCOCK: 66. I'm just interested in  
24 having us fully understand what we're voting on because I --

25 ASSEMBLY MEMBER FULLER: I totally agree. I

1 totally agree. Let me just do this all because we're going  
2 to have to vote on this one way or the other or drop it.

3 SENATOR LOWENTHAL: All right. We're here. We're  
4 ready.

5 ASSEMBLY MEMBER FULLER: All right. So -- now  
6 somebody -- yeah. 239 million is -- okay. Now, above the  
7 subtotal -- okay. Now, below the subtotal, it says less  
8 extreme hardship and that's -- okay.

9 Now we have been spending all this time talking  
10 about the less extreme hardship amount which is right under  
11 the subtotal. See that, 23,913.547.

12 So what Mr. Harvey's proposing is that we hold  
13 that over and bring it back and talk about whether we want  
14 to leave those five projects off or whether we don't and  
15 that's what we've been talking about.

16 But the -- all the above totals -- the subtotal  
17 and above, those we have had no disagreement with tonight.  
18 And so there's a lot of people needing money and we'd like  
19 to let those go and not hold those hostage because there's  
20 been no questions or no discussion at all on that part.

21 So the central question before us, how to  
22 redistribute the 23,913,547 would be brought back and the  
23 above the subtotal, the subtotal between 2008 and down to  
24 the subtotal part, that money would all go out because  
25 there's been no questions whatsoever.

1           SENATOR WYLAND: That money really would go out?  
2 I mean the checks, is that what you're saying?

3           ASSEMBLY MEMBER FULLER: Yes.

4           MR. COOK: That is correct.

5           SENATOR WYLAND: It's good to have a former  
6 superintendent on our Board.

7           ASSEMBLY MEMBER FULLER: It has been a very  
8 confusing night for former superintendents also.

9           MR. COOK: If I can direct your attention to the  
10 bottom of that very page on the recommendations. In essence  
11 what we are talking about is recommendations 1 through 3 at  
12 the bottom of this page. That's what this action would do  
13 and what it would release.

14           We would bring back the other two items, 4 and 5,  
15 to a future Board.

16           CHAIRPERSON SHEEHY: Okay. So Mr. Harvey's motion  
17 would be to approve items 1, 2, and 3 and come back in two  
18 weeks on items 4 and 5; is that an accurate assessment?  
19 Mr. Harvey, are you willing to restate your motion that way?

20           MR. HARVEY: I am willing to restate my motion  
21 that way.

22           CHAIRPERSON SHEEHY: Ms. Fuller, are you willing  
23 to second that motion?

24           ASSEMBLY MEMBER FULLER: Yes.

25           CHAIRPERSON SHEEHY: Okay. We have a motion and a

1 second to approve staff recommendations 1, 2, and 3 and to  
2 defer items 4 and 5 till our next meeting.

3 MR. COOK: Um-hmm.

4 CHAIRPERSON SHEEHY: Senator Hancock, is that  
5 agreeable to you?

6 SENATOR HANCOCK: Yes, I think it is. I've been  
7 trying to be sure that I understand, but Ms. Fuller's  
8 explanation was very clear and to the point. Thank you.

9 CHAIRPERSON SHEEHY: Is there any more questions  
10 by Board members on this item before we take a vote? Okay.  
11 Seeing no opposition to the motion and the second, all in  
12 favor.

13 (Ayes)

14 CHAIRPERSON SHEEHY: Okay. So that motion's  
15 approved.

16 ASSEMBLY MEMBER FULLER: Now go back to the two  
17 weeks.

18 CHAIRPERSON SHEEHY: Now we're going to have a  
19 discussion about coming back in two weeks. Are there any  
20 questions or comments or discussion from Board members about  
21 that?

22 ASSEMBLY MEMBER BROWNLEY: I'm not sure I  
23 understand the motion. So to come back in two weeks to take  
24 care of --

25 SENATOR WYLAND: Well, I'm not actually even

1 making a motion. I'm making a comment: Should we consider  
2 given the quantity of material and a lot that we're not  
3 doing tonight coming back in two weeks rather than a month  
4 to act -- I mean it's relatively easy for us in Sacramento.  
5 It may be more of a hardship for others from other areas.

6 SENATOR LOWENTHAL: Really.

7 CHAIRPERSON SHEEHY: Of course, Ms. Girard is  
8 flying up from Riverside, but, Rose, is that something you  
9 could manage?

10 MS. GIRARD: Yeah. I'll do it.

11 CHAIRPERSON SHEEHY: Okay.

12 SENATOR HANCOCK: Are there some cases, like the  
13 Bakersfield case, that we might want to take up tonight  
14 because there are people here who have come for that.

15 CHAIRPERSON SHEEHY: Well, I think there are  
16 several more items that the Board members would like to take  
17 up tonight and I think that there's still the energy to do  
18 that, so I don't think Mr. Wyland's suggesting that we  
19 adjourn right now.

20 SENATOR WYLAND: No. No. I -- yeah. What I'm  
21 talking about is all those items that we --

22 SENATOR LOWENTHAL: Will not be dealing with.

23 SENATOR WYLAND: Yeah. We agreed on we would --

24 CHAIRPERSON SHEEHY: The items that we agreed that  
25 we're going to put over including this \$23 million that the

1 staff's going to come back with.

2 SENATOR LOWENTHAL: Right.

3 SENATOR WYLAND: Yeah.

4 CHAIRPERSON SHEEHY: I don't believe that we --  
5 that there's any -- I haven't heard any objection.

6 Ms. Fuller.

7 ASSEMBLY MEMBER FULLER: Okay. If we all go back  
8 to the sheet that was handed out, it has Items, 9, 10, 13,  
9 19, 21, 23, 24, 25, plus this one we just put over. I think  
10 you're suggesting that if we can find a date -- that we  
11 direct our Chairman to find a date that -- and if we can get  
12 a quorum and find a date that we come back and consider  
13 these because we all believe that the money needs to get out  
14 as soon as possible in all cases and also it would just be  
15 making a very long meeting at the next meeting if we don't  
16 have a special -- we used to call them special sessions -- a  
17 special session.

18 CHAIRPERSON SHEEHY: So, Mr. Wyland, are you  
19 agreeable then to making a motion for a special session  
20 consistent with what Ms. Fuller just said?

21 SENATOR WYLAND: I make the motion that Ms. Fuller  
22 just outlined.

23 CHAIRPERSON SHEEHY: And do we have a second?

24 ASSEMBLY MEMBER BROWNLEY: I'll second.

25 CHAIRPERSON SHEEHY: Ms. Brownley seconds. Is

1 there any opposition? Seeing none, all in favor.

2 (Ayes)

3 CHAIRPERSON SHEEHY: Rob, can you please  
4 coordinate with all the members' offices to see if we can  
5 schedule something in a couple weeks.

6 MR. COOK: Absolutely.

7 CHAIRPERSON SHEEHY: Yes, Senator Lowenthal.

8 SENATOR LOWENTHAL: I'm just wondering if -- I  
9 don't know what the order is, but there are lots of people  
10 here -- I know the Assembly Member -- if we could go to Item  
11 No. 15 because it's just an inconvenience if we don't -- you  
12 know, to so many people.

13 CHAIRPERSON SHEEHY: Without objection, we'll move  
14 to Item No. 15. Rob.

15 MR. COOK: Okay. This is San Bernardino City  
16 Unified item that was before the Board at our last meeting  
17 and was the subject of a great deal of discussion and a  
18 couple of motions on the topic. I will try to summarize  
19 this since none of our discussions have been short tonight.

20 MR. NANJO: Excuse me for interrupting. Mr. Cook,  
21 wasn't this also scheduled for a closed session.

22 MR. COOK: There -- yes, in fact there was noticed  
23 a special closed session on this -- on part of this item --  
24 related item.

25 MR. NANJO: Just to query whether it's the

1 pleasure of the Board to have the closed session before or  
2 after the item, if you're still intending to do a closed  
3 session.

4 CHAIRPERSON SHEEHY: What's the pleasure of the  
5 Board?

6 SENATOR LOWENTHAL: I personally want to go ahead  
7 right now and not have the closed session and if we feel the  
8 need at the end to have a closed session, we will, but let's  
9 hear the item. At the end, we will determine whether we  
10 have a need for a closed session.

11 CHAIRPERSON SHEEHY: Is that -- is  
12 Mr. Lowenthal's --

13 ASSEMBLY MEMBER BROWNLEY: Can you tell me what  
14 the closed session was regarding?

15 MR. COOK: The closed session --

16 ASSEMBLY MEMBER BROWNLEY: How was it posted?

17 MR. COOK: The closed session is regarding pending  
18 litigation with the district that is the subject of this  
19 item.

20 MR. NANJO: If it pleases the Board, it makes  
21 sense to have either -- if you're going to have a closed  
22 session, it makes sense to have it before the item. If you  
23 want to dispense with the closed session, that's fine. I  
24 can make some limited comments during the open session item.  
25 That's fine.

1           CHAIRPERSON SHEEHY: Is there any -- so  
2 Mr. Lowenthal has asked that we proceed with this item and,  
3 Henry, you've indicated that if that's the will of the Board  
4 to move forward now, that if you feel it's important, you  
5 can stop and interject the things that we need to know  
6 relative to the pending litigation; is that accurate, Henry?

7           MR. NANJO: That's correct.

8           CHAIRPERSON SHEEHY: Okay. So is there any  
9 objection to the Board proceeding on that basis?  
10 Mr. Harvey, go ahead.

11           MR. HARVEY: Question -- for clarity. Is there  
12 any opportunity for the discussion or action on Item 15 to  
13 prejudice the lawsuit?

14           MR. NANJO: I think I made the comment the last  
15 time this was up. I would repeat that the comments made by  
16 Board members could affect the lawsuit, so I would recommend  
17 that the members just keep that in mind. I'm not suggesting  
18 that you not make comments. I'm just giving you that  
19 caveat, if you will.

20           CHAIRPERSON SHEEHY: Okay. So we're going to  
21 go -- oh, I'm sorry, Ms. Fuller.

22           ASSEMBLY MEMBER FULLER: I hate myself for this  
23 comment, but while I feel prepared to vote, I also do not  
24 feel prepared to deny our counsel the opportunity to  
25 instruct the Board prior to a vote. So I feel like -- I

1 don't -- I think that we need to hear counsel, but we'd have  
2 to do it really short. Otherwise I probably will have to  
3 abstain, but I would -- but I feel prepared to vote, if that  
4 makes sense. Do you understand where I'm going?

5 I just don't think that we as a Board would want  
6 to put ourselves in a legal position that we didn't take  
7 advantage of our own counsel prior to open litigation, even  
8 though I hate to have to do it.

9 CHAIRPERSON SHEEHY: Ms. Fuller, like you, I'm  
10 prepared to vote on this item, but I'm very sympathetic to  
11 the point that you just made. Ms. Hancock, did you want to  
12 comment?

13 SENATOR HANCOCK: I agree. Should we have --

14 CHAIRPERSON SHEEHY: Senator Lowenthal, since  
15 there are several Board members that have expressed concern,  
16 would you be amenable to us going in and having a short  
17 closed session or do you want to have further discussion?

18 SENATOR LOWENTHAL: Fine. Amenable to it, but I  
19 don't agree with it and I'm willing to go along.

20 ASSEMBLY MEMBER TORLAKSON: Where do we do this.

21 CHAIRPERSON SHEEHY: Okay. We're going to do it  
22 right here. Henry, how long is this going to take?

23 MR. NANJO: I will endeavor to keep my comments to  
24 five minutes or less.

25 CHAIRPERSON SHEEHY: Henry, that would be a

1 record.

2 SENATOR LOWENTHAL: Okay. Good. That's a record.

3 SENATOR HANCOCK: Excuse me. Mr. Sheehy.

4 CHAIRPERSON SHEEHY: Yes.

5 SENATOR HANCOCK: My experience with closed  
6 sessions is you go into another room because you're not  
7 making comments for the public record because it has to do  
8 with a lawsuit.

9 CHAIRPERSON SHEEHY: Well, Senator Hancock, we're  
10 going to ask everybody to leave and our counsel --

11 SENATOR HANCOCK: Oh, they leave.

12 ASSEMBLY MEMBER TORLAKSON: That's the  
13 implication.

14 SENATOR HANCOCK: Sorry, everybody.

15 CHAIRPERSON SHEEHY: Okay. So we're going to go  
16 into closed session. We're going to reconvene in  
17 approximately ten minutes at 7:00 o'clock. If you're not  
18 staff to the OPSC, could you please clear the room.

19 (Whereupon at 6:50 p.m., the open meeting was recessed  
20 for the closed session and resumed as follows at 7:04 p.m.)

21 CHAIRPERSON SHEEHY: The State Allocation Board  
22 met in closed session and heard from counsel and was advised  
23 by counsel on matters of litigation before that involve us,  
24 so let the record show that. And, Senator Torlakson, we're  
25 on Tab No. 15 (**San Bernardino City Unified**). Did you want

1 to make a motion.

2 ASSEMBLY MEMBER TORLAKSON: Thank you,  
3 Mr. Chairman. I would and I was asked by the Chairman to  
4 make the motion and then briefly explain the import of it.

5 The Board finds that the districts ORG application  
6 submitted to OPSC in July of 2008 is valid. Further the  
7 staff shall utilize the calculation described  
8 Regulation 1859.81.1, subsection (e) which is the deduction  
9 of the amount received for product design in the preliminary  
10 apportionment from the construction grant to determine the  
11 amount of the ultimate ORG grant.

12 And basically there was the issue of the mixing of  
13 two different pots of money. This says that there shall be  
14 no duplicate payment for the design work and the site work,  
15 that that will be deducted. That's basically the import of  
16 the motion, to grant their appeal and determine that if we  
17 had heard it earlier however in the time sequence we would  
18 have got it, that we deem their application valid as of July  
19 and at that time, they were eligible for the hardship money.

20 CHAIRPERSON SHEEHY: Okay. So Senator Torlakson  
21 has made a motion. Is there a second on this item

22 SENATOR LOWENTHAL: Second.

23 CHAIRPERSON SHEEHY: Senator Lowenthal has  
24 seconded the item. Ms. Rice, could you please call the  
25 roll.

1 MS. JONES: Yes. Senator Lowenthal.

2 SENATOR LOWENTHAL: Aye.

3 MS. JONES: Senator Hancock.

4 SENATOR HANCOCK: Aye.

5 MS. JONES: Senator Wyland.

6 SENATOR WYLAND: Aye.

7 MS. JONES: Assembly Member Fuller. (No audible  
8 response)

9 Assembly Member Brownley.

10 ASSEMBLY MEMBER BROWNLEY: Aye.

11 CHAIRPERSON SHEEHY: Assembly Member Torlakson.

12 ASSEMBLY MEMBER TORLAKSON: Aye.

13 MS. JONES: Scott Harvey.

14 MR. HARVEY: No.

15 MS. JONES: Kathleen Moore.

16 MS. MOORE: Aye.

17 MS. JONES: Rose Girard.

18 MS. GIRARD: Aye.

19 MS. JONES: Tom Sheehy.

20 CHAIRPERSON SHEEHY: No.

21 Okay. So we -- that motion carries, correct?

22 MS. JONES: 7-2-1. Correct. It carries.

23 CHAIRPERSON SHEEHY: 7 to 1? I believe Mr. Harvey  
24 and Mr. Sheehy were no and Ms. Fuller was an abstention.

25 MS. JONES: 7-2-1.

1           CHAIRPERSON SHEEHY: 7-2-1. Okay. So that appeal  
2 has been approved. What is the next item on the agenda/

3           MR. COOK: It's Item No. 12, **Grant Adjustments**.  
4 Tab 12. And briefly the Board has before it -- there are  
5 three adjustments to grants that we provide to school  
6 districts that are before the Board tonight, one of which is  
7 an adjustment according to a construction cost index. It is  
8 statutory and normally taken up in January. We're at  
9 February.

10           The second one is a regulation that was put in  
11 place a couple of years ago regarding general site. It was  
12 put in place during a time when the Board was wrestling with  
13 the issue of adequacy of the grants. It seems to be an  
14 issue that we continue to wrestle with, but that was put to  
15 place, and it sunsetted at the end of last year.

16           And the third is a grant adjustment that is -- the  
17 Board is able to take according to Assembly Bill 127 that  
18 allows the Board to increase or decrease the grants:  
19 increase up to 6 percent in any given year and decrease by  
20 an unlimited amount.

21           The recommendation that you have before you is  
22 that we would adopt the Construction Cost Index of 6 percent  
23 as -- the index for Eight California Cities as most  
24 reflective of the current climate in the State of  
25 California; that we would move the sunset for the general

1 site regulation to the end of this year, December -- well,  
2 actually January 1 of 2010; and consider that as we go  
3 forward in working with our Implementation Committee and  
4 others on determining a methodology for examining the  
5 Project Information Worksheet data and other data that may  
6 come into it to make a determination on the AB127  
7 adjustment.

8 CHAIRPERSON SHEEHY: Okay. Do we have any  
9 discussion on the staff recommendation?

10 SENATOR HANCOCK: I would move the staff  
11 recommendation.

12 CHAIRPERSON SHEEHY: Okay. So we have a motion by  
13 Senator Hancock. Do we have a second.

14 MS. MOORE: I'll second.

15 CHAIRPERSON SHEEHY: We have a second by  
16 Ms. Moore. Mr. Harvey.

17 MR. HARVEY: Just a very quick question. I don't  
18 want to deprive anybody grant increases they're entitled to,  
19 but in this economic climate, it's so counterintuitive that  
20 there would be an increase in the construction index. Can  
21 you tell me a little bit about why that is or are we using  
22 the right index for this criteria.

23 MR. COOK: The index we're using and we're  
24 statutorily obligated to use a Class B Construction Cost  
25 Index. We have over the course of time used two Marshall &

1 Swift Indexes. One is for Ten Western States. The other  
2 one is for Eight California Cities.

3 Those indexes take into account labor and  
4 materials costs. When we were given these numbers, given  
5 that we're in a building recession if not depression at the  
6 moment, the numbers came back high. In fact this will be  
7 the third highest CCI increase this Board has awarded in the  
8 history, you know, of the modern program, in the last ten  
9 years, which seems odd given the current bid climate.

10 We contacted Marshall & Swift and had discussions  
11 with the people who put together the index. They indicated  
12 that a shortage of steel in China as a result of an  
13 earthquake there had driven up that component of the index  
14 and that's what the published index is.

15 CHAIRPERSON SHEEHY: Mr. Harvey, I'd like to make  
16 a comment that addresses your point. I'm not sure if that's  
17 to your satisfaction, but I had a discussion about this item  
18 with another Board member and that individual had asked, you  
19 know, why we hadn't done this in January and I said that I  
20 asked to see if we could see some more data because I just  
21 felt with -- consistent with your comment with the economy  
22 and everything that the inflation index might in fact be  
23 dropping and maybe we should see the fourth quarter data,  
24 and that particular Board member said to me, they said,  
25 well, you know, Tom, there have been other times when we've

1 adopted construction indexes when inflation was going up and  
2 had we waited another quarter, then in fact it would have  
3 been a higher grant amount.

4           And so I think the point, without putting words in  
5 that member's mouth, was that this thing cuts both ways and  
6 it is a one-year adjustment and, you know, inflation is --  
7 we don't exactly what inflation's going to do. We don't  
8 know exactly what this Construction Cost Index is going to  
9 do, but clearly there have been times in the past when we've  
10 adopted it and it's gone up and we've adopted it and it's  
11 gone down and that's okay with me. In other words, I'm  
12 prepared to accept where we are at this time in time and the  
13 staff recommendation.

14           I realize you may feel differently, Mr. Harvey,  
15 but I thought that there was a certain amount of logic to  
16 that and I'm willing to support the staff recommendation.

17           Mr. Wyland.

18           SENATOR WYLAND: I also had planned on supporting  
19 the staff recommendation, but actually Mr. Harvey's comments  
20 have made me change my mind as well as staff's.

21           In a former life, I sold all sorts of building  
22 products to various contractors and probably supplied over  
23 the years 20 or 30 schools. Most schools in California use  
24 very, very, very little steel. Most of them are wood frame  
25 structures essentially with steel in certain places.

1           We all know steel has gone up tremendously in cost  
2 and has fallen just as fast. China has -- and that was  
3 Chinese demand. China now has, I read the other day, empty  
4 office space equaling the entire amount of office space in  
5 the City of -- in Manhattan in the City of New York.

6           So I suspect that that data somehow is old and I  
7 do speak to building contractors and what I hear is that  
8 most of them, their competitive bidding has been driven down  
9 so far, what they're trying to simply do is keep their  
10 central -- keep their staff, bid it right down to -- you  
11 know, not really make any profit, but keep going.

12           So -- but I don't -- that would be a difficult  
13 discussion here and I'm not -- I'm simply explaining why I  
14 decided I'm not going to support it tonight.

15           CHAIRPERSON SHEEHY: Okay. Assemblywoman  
16 Brownley.

17           ASSEMBLY MEMBER BROWNLEY: Yeah. I just wanted to  
18 understand why the California Cities versus the Western  
19 States. Did you just -- is that -- was that the answer that  
20 you just gave Mr. Harvey -- or I'm wondering why you're  
21 finding the Eight California States [sic] as a better  
22 indicator for -- yeah, why does that reflect the current  
23 costs of construction in California versus the Western  
24 States -- the Ten Western States at 7.73 percent.

25           MR. COOK: Um-hmm. Well, for a number of years in

1 this program, we used the Ten Western States part of this  
2 index, and if you turn to stamped page 194(b), there's a  
3 chart of those two indexes over time. And as you might  
4 note, they have changed -- they've traded places. One's  
5 been higher in one year; one's been -- you know, one's  
6 higher in another year over the course of time.

7 In 2005, this Board decided that the Eight  
8 California Cities Index was the most reflective of the  
9 climate in the State of California given that it is an index  
10 strictly limited to the State of California and so we moved  
11 to that for a couple of years. By all indications, it's  
12 still the most indicative of what is occurring in California  
13 versus what's happening in Utah or Idaho or Nevada or any of  
14 the other ten western states that are in the other index.

15 ASSEMBLY MEMBER BROWNLEY: And are they both kind  
16 of created at the same time?

17 MR. COOK: They're both created at the same time  
18 by the same firm.

19 ASSEMBLY MEMBER BROWNLEY: Thank you.

20 CHAIRPERSON SHEEHY: Any other questions or  
21 comments by Board members on this item? I forget -- we had  
22 a motion -- Ms. Hancock moved this item, correct?

23 MR. COOK: And seconded.

24 SENATOR HANCOCK: I did.

25 CHAIRPERSON SHEEHY: Okay. Mr. Duffy, did you

1 want to address the Board?

2 MR. DUFFY: Yes. And thank you, Mr. Chairman.  
3 Again Tom Duffy for C.A.S.H. We support what your staff is  
4 suggesting and we thank them and we thank you. We asked you  
5 last month to do this, in particular the CCI because of the  
6 relationship to developer fees.

7 But, Senator Wyland, school construction -- I've  
8 became involved in building schools about 30 years ago.  
9 School construction once used mainly wood. Steel is used in  
10 school buildings for a variety of reasons, so you do find a  
11 lot of steel in schools. In fact, right across the river in  
12 West Sacramento, Washington Unified, there's the new high  
13 school that was basically all steel.

14 SENATOR WYLAND: We don't need to press it  
15 further, but we built a big new high school in my district  
16 that was essentially wood frame construction. It does vary,  
17 but --

18 MR. DUFFY: Right.

19 SENATOR WYLAND: -- my guess is that index is  
20 based on commercial buildings which are essentially all  
21 steel. My guess is also that it's -- those are trailing  
22 numbers. This has happened -- the falling commodity prices  
23 has happened very, very recently and, you know, I mean I'm  
24 not going to make a big deal of this, but I think that's  
25 what's occurred.

1           Big commercial buildings are steel buildings, but  
2 the builders and contractors I've talked to in commercial  
3 building, they are desperate. They are very hungry. Those  
4 material costs I know -- and to the extent wood frame  
5 construction, which is used in most elementary schools in  
6 California, I just think those prices are -- but I'm --  
7 that's fine.

8           MR. DUFFY: I just wanted to share that and  
9 just --

10          CHAIRPERSON SHEEHY: Okay. I'm sorry. Go ahead,  
11 Mr. Duffy.

12          MR. DUFFY: One other thing.

13          CHAIRPERSON SHEEHY: Yes.

14          MR. DUFFY: I think you summed it up, Mr. Sheehy,  
15 when you said it cuts both ways. There were times beginning  
16 in late 2003/early 2004 because of China, because of steel,  
17 because of gyp board, accelerations of costs, we had  
18 tremendous costs and were building incomplete schools while  
19 the index was lagging behind.

20          So I like your comment. I appreciate it. I think  
21 I'm going to use it.

22          CHAIRPERSON SHEEHY: Okay. Well, you know,  
23 anytime that I can help C.A.S.H. do its job, I'm happy to do  
24 it.

25          MR. DUFFY: Thank you.

1           CHAIRPERSON SHEEHY: Okay. Ms. Rice, we have a  
2 motion and a second. Could you please call the roll. The  
3 motion was to approve the staff recommendation on -- this is  
4 Item No. 12 -- Tab 12.

5           MS. JONES: Senator Lowenthal.

6           SENATOR LOWENTHAL: Aye.

7           MS. JONES: Senator Hancock.

8           SENATOR HANCOCK: Aye.

9           MS. JONES: Senator Wyland.

10          SENATOR WYLAND: No.

11          MS. JONES: Assembly Member Fuller.

12          ASSEMBLY MEMBER FULLER: Aye.

13          MS. JONES: Assembly Brownley.

14          ASSEMBLY MEMBER BROWNLEY: Aye.

15          MS. JONES: Assembly Member Torlakson.

16          ASSEMBLY MEMBER TORLAKSON: Aye.

17          MS. JONES: Scott Harvey.

18          MR. HARVEY: No.

19          MS. JONES: Kathleen Moore.

20          MS. MOORE: Aye.

21          MS. JONES: Rosario is gone. Tom Sheehy.

22          CHAIRPERSON SHEEHY: Aye.

23          MS. JONES: Okay. 8-1-1.

24          CHAIRPERSON SHEEHY: I'm sorry. I -- Ms. Rice --  
25 I mean Lisa, I saw that there were two no votes. I thought

1 you said 8-1-1.

2 MR. COOK: Yeah. My count is 8-2.

3 MS. JONES: Excuse me. My bad. 8-2.

4 CHAIRPERSON SHEEHY: Okay. And I had Mr. Wyland  
5 and Mr. Harvey as the nos. Did you have that?

6 MS. JONES: Yes.

7 CHAIRPERSON SHEEHY: Okay. Great. That item has  
8 been approved. What's next? Are we on --

9 SENATOR LOWENTHAL: Can I ask to move to Item 14.

10 CHAIRPERSON SHEEHY: Yes. Mr. Lowenthal's  
11 requested we move to Item 14.

12 SENATOR LOWENTHAL: And I'd like to make a motion  
13 immediately on item -- if I may -- on Item 14.

14 CHAIRPERSON SHEEHY: Well, I have no problem with  
15 that, but I'm hoping we have a discussion after your motion.

16 SENATOR LOWENTHAL: Oh, yes. Absolutely. I just  
17 want to lay it out in a motion.

18 CHAIRPERSON SHEEHY: Okay. So seeing no objection  
19 to Mr. Lowenthal's request, we'll move to **Item No. 14.**  
20 Mr. Lowenthal.

21 SENATOR LOWENTHAL: Yeah. This the deal of the  
22 **audit of financial hardship, the interagency agreement.** I'd  
23 like to make a motion, one, to convene a subcommittee of  
24 this Board to study the scope of the OPSC auditing authority  
25 and bring recommendations to the State Allocation Board

1 defining that authority. This subcommittee should try to  
2 find a balance between our fiduciary responsibilities for  
3 bond accountability and the best use of state and local  
4 resources in conducting an audit.

5 And the second part of the motion is to convene a  
6 second subcommittee of this Board to develop recommended  
7 rules and procedures for the SAB.

8 CHAIRPERSON SHEEHY: Well, that's very thoughtful.  
9 So we have a motion. Do we have a second?

10 ASSEMBLY MEMBER TORLAKSON: Second.

11 CHAIRPERSON SHEEHY: Okay. Thank you, Senator  
12 Lowenthal. And the second part of that motion was to  
13 convene a subcommittee to look at establishing --

14 SENATOR LOWENTHAL: Rules and procedures.

15 CHAIRPERSON SHEEHY: Oh, that's excellent -- I'm  
16 glad that you made that motion, Senator Lowenthal.

17 SENATOR LOWENTHAL: Thank you.

18 CHAIRPERSON SHEEHY: Okay. So we have a motion  
19 and second before us. But I'd like to have some discussion.  
20 I know that unfortunately this item was controversial for  
21 some and I know there are some very strong opinions  
22 regarding this. So if it's possible, we could have OSAE,  
23 our Office of State Evaluations and Audits -- we have  
24 Mr. Botelho here who is the Chief of the Office of State  
25 Evaluations and Audits and I think you're going to hear

1 Mr. Botelho say among other things -- and I want the  
2 audience to understand that first of all, Department of  
3 Finance is very proud of OSAE. They have an exemplary  
4 record in doing program reviews and auditing.

5 They are part of the Department of Finance, but  
6 they are an independent branch of Finance. In fact they're  
7 so independent that they have their own offices on Capitol  
8 Mall separate from the rest of the Department. And we do  
9 not edit their work or do any political overlay on it, which  
10 makes them in fact an independent auditing arm. And with  
11 that, David, could you please --

12 SENATOR HANCOCK: Can I just ask a brief question,  
13 Mr. Sheehy?

14 CHAIRPERSON SHEEHY: Sure.

15 SENATOR HANCOCK: So you work for Elaine Howle,  
16 the State Auditor?

17 SENATOR LOWENTHAL: No.

18 MR. BOTELHO: No. For the Department of Finance.

19 SENATOR HANCOCK: Oh.

20 MR. BOTELHO: For Michael Genest, our Director.

21 SENATOR HANCOCK: Okay. So --

22 CHAIRPERSON SHEEHY: Mr. Botelho is ultimately  
23 accountable to my boss, Mike Genest, but the point I was  
24 trying to make, Senator, is that he doesn't do an audit and  
25 then submit it to Mike and get Mike to approve it. He does

1 an audit and he -- in terms with his client and then he --  
2 in other words, he's completely independent.

3 SENATOR HANCOCK: Oh.

4 CHAIRPERSON SHEEHY: Unlike the other work that  
5 the Department of Finance does which gets reviewed by the  
6 Executive Office and we decide what we are and aren't going  
7 to publish. Does that help?

8 SENATOR HANCOCK: Yeah, it does help. Thank you.  
9 I just -- you know, we have a lot of independent arms  
10 obviously, this auditing office, the state auditing office  
11 of Elaine Howle, and the LAO.

12 CHAIRPERSON SHEEHY: And the State Controller's  
13 Office -- and the State Controller's Office does auditing.

14 SENATOR HANCOCK: And the State Controller's --  
15 yeah. So, you know, I was just trying to -- I was a little  
16 confused, but thank you.

17 CHAIRPERSON SHEEHY: And OSAE is open for  
18 business, so if you have an audit you'd like them to look  
19 at, we do charge of course. They're on a reimburse basis.  
20 We're open for business. Senator Hancock.

21 SENATOR HANCOCK: So we could go the audit  
22 committee of the Legislature and get Ms. Howle to do it  
23 free, right?

24 CHAIRPERSON SHEEHY: Yes. Senator Lowenthal.

25 SENATOR LOWENTHAL: I'd like to make one comment.

1 They may be asked to do an audit on some things, but they  
2 seem to expand what they --

3 CHAIRPERSON SHEEHY: Senator Lowenthal, I'm sure  
4 that we're going to have a lively discussion about that.  
5 David and Rob, could you please set the table for the Board  
6 on the origins of this particular engagement and what the  
7 findings were and I'm sure there's going to be some  
8 interesting discussion.

9 MR. COOK: Well, I'll certainly start off with the  
10 origins and then I'll hand it off. A little over a year  
11 ago, about a year ago September, a performance audit on our  
12 financial hardship program was presented before this Board.  
13 That performance audit found a number of shortcomings with  
14 our financial hardship program.

15 It found that we were overfunding some districts  
16 that were not eligible for financial hardship and that in  
17 some of the most needy districts, we were actually  
18 extracting more of their cash on hand than was prudent or  
19 wise.

20 It also found that our staff was in need of  
21 training. The Board accepted that report and asked for  
22 their work plan to be developed and presented at the  
23 following Board. That was October of 2007.

24 Part of that work plan was to obtain training for  
25 our staff in a very complex area, financial hardship,

1 required, as the complicated financial analysis that my  
2 office conducts. And we turned to Department of Finance  
3 Office of States Audits and Evaluations as one of the  
4 premiere audit operations within state government. And with  
5 that --

6 MR. BOTELHO: Mary Kelly is one of the audit  
7 managers and was the manager responsible for this assignment  
8 and most familiar with the report. I'm going to have Mary  
9 walk us through the report.

10 MS. KELLY: Chair and members, thank you very  
11 much. We entered into an interagency agreement with  
12 Department of General Services to provide training to the  
13 OPSC auditors as well as to assist OPSC in developing some  
14 audit tools.

15 In performing that work, we did research on their  
16 current activity, activities of other departments  
17 responsible for Proposition 1D bond funds. We looked at the  
18 control environment in which the OPSC operates and did our  
19 standard background research and information before we  
20 helped them develop any of their tools.

21 At the conclusion of the work that we performed  
22 for them, we developed a close-out letter for the  
23 interagency agreement and we described the training that we  
24 provided to staff. We described the enhancements to the  
25 interim project monitoring process that OPSC was

1 establishing and we identified some areas of concern that we  
2 noted in doing our background research.

3           Specifically and probably what everybody is  
4 interested in talking about is when we were looking at the  
5 internal control environment in which the OPSC is operating  
6 and in which they were trying to establish these audit tools  
7 and other monitoring procedures, we became concerned with  
8 the control environment, particularly three areas. One is  
9 the assignment of fiscal responsibility to a local level.  
10 Secondly is the situation in which controls that are in  
11 place by OPSC can be overridden by the State Allocation  
12 Board, and third there's questions that were made by various  
13 groups about the objectivity of the State Allocation Board  
14 in regards to the OPSC's controls over oversight,  
15 accountability, and transparency of the bond funds.

16           CHAIRPERSON SHEEHY: I have Ms. Moore and then  
17 Senator Lowenthal.

18           MS. MOORE: It's Ms. Kelly, correct?

19           MS. KELLY: It is, yes.

20           MS. MOORE: Just in what you indicated were the  
21 three areas that you had concerns within, a couple of  
22 questions.

23           MS. KELLY: Sure.

24           MS. MOORE: One, you said there was questions  
25 about objectivity made by others. Are you saying that those

1 questions of objectivity were not made by your audit  
2 finding?

3 MS. KELLY: Actually they're -- I think in our  
4 report we talk about three different areas when we're  
5 dealing with the condition about lack of objectivity. One  
6 is we cited a report by the Little Hoover Commission that  
7 identified certain areas that led them to conclude that  
8 there was some inherent conflict of interest between the  
9 executive and legislative branches that, to quote the  
10 report, that on occasion has permitted --

11 MS. MOORE: That's okay. I've read that report.

12 MS. KELLY: Oh, okay. Okay. All right. Great.  
13 So that is the one area. The second was conflict of roles  
14 that were identified and do you want me to elaborate on that  
15 one?

16 MS. MOORE: My question is this -- my question is  
17 this. Are you saying -- and it's a little bit different  
18 than what was in here before -- but that the questions about  
19 the objectivity of this Board, the State Allocation Board,  
20 in general and particularly the Superintendent of Public  
21 Instruction's representative, those questions of  
22 objectivity, were they your findings or findings that you  
23 found elsewhere?

24 MS. KELLY: Well --

25 MS. MOORE: Okay. Will you speak to your

1 findings.

2 MS. KELLY: Okay. Okay. We -- when we were  
3 evaluating the makeup of the Board and reading about the  
4 issues that were identified by others in regards to the  
5 Board, we did identify that there's a potential for conflict  
6 of roles in the dual roles of the Superintendent's delegate  
7 and it's not specific to the Superintendent's delegate. If  
8 the Director of Department of General Services had delegated  
9 the State Architect to the State Allocation Board, we would  
10 have had like concerns.

11 That was our finding and I don't know if this is  
12 clear or not, but this was not an audit. And I think  
13 Senator Lowenthal alluded to the fact that, you know, while  
14 we have a scope and we expanded, we have several roles as  
15 auditors for the state's executive branch and in none of our  
16 assignments can we put blinders on and do it specifically  
17 what was asked. If we see other things that come to our  
18 attention, we bring it to management's attention.

19 So this was not an audit report. Our -- we have a  
20 group in our -- in the Office of State Audits and  
21 Evaluations that actually does bond accountability oversight  
22 audits, that they will get into the specifics of these type  
23 of issues, other control environment issues, other internal  
24 control issues to determine whether or not OPSC is  
25 adequately overseeing the distribution, the administration

1 of these bond funds.

2 But members of the executive branch in having to  
3 report to where we -- we're in charge of the Financial  
4 Integrity and State Managers Accountability Act. We oversee  
5 state department and agencies' internal controls -- their  
6 reporting on those controls and whatnot.

7 So these issues are something that we brought to  
8 management's attention to say, hey, this is -- this could be  
9 a potential problem with any controls you guys try to  
10 implement to oversee these bond funds.

11 MS. MOORE: Thank you for your answer. And I know  
12 that we're anxious to take a vote up here, so I'm going to  
13 defer to that, but I would like to enter into the record a  
14 letter from the Superintendent of Public Instruction that  
15 has been distributed to each of the Board members concerning  
16 this issue and our adamant -- the finding that your findings  
17 about objectivity are patently false.

18 So with that you can receive a copy of this letter  
19 as well, but we're actually thinking that you went way  
20 beyond the authority of the audit into areas of objectivity  
21 of the State Allocation Board which were not the purpose of  
22 your stated interagency agreement.

23 CHAIRPERSON SHEEHY: Thank you, Ms. Moore. Has --  
24 excuse me, Senator Lowenthal. One moment. Ms. Moore, has  
25 the letter you referenced, have all the Board members had a

1 chance yet to receive that? I'm sure they're all --

2 MS. MOORE: I know that it was distributed this  
3 afternoon and I certainly have copies here and it's from the  
4 Superintendent of Public Instruction.

5 CHAIRPERSON SHEEHY: I appreciate that. I know --  
6 no, I received one. I just want to make sure the Board  
7 members had access to that. Senator Lowenthal.

8 SENATOR LOWENTHAL: Yeah. I just want to say that  
9 while this report is may be certainly appropriate for  
10 management kinds of decisions, I think it's totally  
11 inappropriate for the State Allocation Board. I do not  
12 accept this report. I think you've gone far beyond what you  
13 want and I would just like to say that not only do I not  
14 accept the report, I'd like to enter the fact you can have  
15 this report for management. That's fine. I think it's a  
16 direct attack upon the State Allocation Board. It's a  
17 direct attack upon the Legislature and a complete lack of  
18 understanding of the role of the Legislature, and with that  
19 I'd like to call the motion on -- so that we can vote on it  
20 because we're going to lose some members right now.

21 CHAIRPERSON SHEEHY: Thank you, Senator -- well,  
22 Senator Lowenthal, I'm prepared to support your motion for  
23 counting votes. So -- but thank you for your comments.  
24 Could you for the benefit of the members and for my benefit  
25 repeat what your motion was? I think there were two parts

1 to it.

2           SENATOR LOWENTHAL: I think one is to convene a  
3 subcommittee of this Board to study the scope of the OPSC  
4 auditing authority in bringing these recommendations to the  
5 State Allocation Board defining that authority, and as I  
6 mentioned, these recommendations should try to seek a  
7 balance between our fiduciary responsibilities for bond  
8 accountability and the best use of state and local resources  
9 in conducting audits and the second part of it is to convene  
10 a second subcommittee of this Board to develop recommended  
11 rules and procedures for the State Allocation Board.

12           CHAIRPERSON SHEEHY: Mr. Harvey.

13           MR. HARVEY: Mr. Lowenthal, if I might, can I read  
14 the language relative to scope of the entities --

15           SENATOR LOWENTHAL: To study the scope of the OPSC  
16 auditing authority --

17           MR. HARVEY: Are you questioning --

18           SENATOR LOWENTHAL: -- and bring recommendations  
19 to the State Allocation Board defining that authority.  
20 Because this is -- in this report, there is a tremendous  
21 expansion of that authority or it may be interpreted as  
22 that. I think that's really the Board's responsibility to  
23 define the scope of that authority and to figure out what is  
24 the balance and the relationship between existing -- between  
25 state resources and local resources. I think that's this

1 Board's decision. I think a subcommittee should bring those  
2 recommendations back.

3 CHAIRPERSON SHEEHY: And I would just, if I may,  
4 Mr. Harvey, apologize, your indulgence. I'd note for the  
5 record that the second portion of Mr. Lowenthal's  
6 recommendation really comes directly out of Mr. Botelho's  
7 report --

8 SENATOR LOWENTHAL: Right.

9 CHAIRPERSON SHEEHY: -- which I'm just very  
10 pleased that you've included that as part of your motion. I  
11 think that --

12 SENATOR LOWENTHAL: Well, I think that there are  
13 things that need to be done. I think that the Board -- that  
14 it went far beyond -- what I tried to do is to look at some  
15 of those issues and bring it back to the Board to make those  
16 kinds of -- to have a subcommittee make recommendations to  
17 the Board.

18 I think the concept of the role of the audit -- of  
19 having the audit and of OPSC and also how this committee  
20 operates -- or this Board operates are something that we  
21 should be struggling with and deciding and we should have a  
22 subcommittee to work on that.

23 MR. HARVEY: Okay. One quick question. Are there  
24 any regulatory or statutory guidelines that you follow for  
25 scopes of audits? You alluded to seven factors, if I'm

1 correct. Are those found anywhere or are those just what  
2 you do?

3 CHAIRPERSON SHEEHY: I guess a good question is,  
4 you know, what does current law say. Because if there's  
5 completely no discussion of current law and the regs or  
6 statute under what the scope is, really what Senator  
7 Lowenthal has moved is extremely helpful because -- I mean I  
8 don't know. So what exists under current law

9 MR. COOK: Well, generally -- and I'm not prepared  
10 to quote the statute on this topic at the moment. The scope  
11 of our audits is the scope of the statute and regulations  
12 under which a project was funded.

13 CHAIRPERSON SHEEHY: Okay.

14 MR. COOK: And I will tell you with the assistance  
15 of OSAE we have attempted to increase the competence and  
16 skill level of our staff and move them more and more towards  
17 U.S. Government Accountability Office Yellow Book standards,  
18 which is the gold standard for auditing, but I will defer.

19 CHAIRPERSON SHEEHY: Well -- but I'd like to add  
20 one more thing, Mr. Cook. Also since you ultimately report  
21 up through your chain of command to Governor Schwarzenegger,  
22 you have to be responsive to the Governor's executive orders  
23 and hasn't the Governor issued some executive orders on bond  
24 accountability?

25 MR. COOK: Yes. In fact that was one aspect of

1 the interagency agreement that I neglected to raise.

2 CHAIRPERSON SHEEHY: And presumably then that  
3 language would also be considered by the subcommittee.

4 Senator Lowenthal, I do have one question, but I'm  
5 prepared to support both aspects of your motion and if we  
6 need to separate the question, we will. I don't know if we  
7 do.

8 But how do we go about membership of -- I have two  
9 questions, one to you and maybe one to Henry. How do we go  
10 about determining who makes up the subcommittee and, Henry,  
11 what restrictions if any exist over how the subcommittee  
12 should be made up vis-à-vis open meeting laws and so on.

13 MR. NANJO: Well, the subcommittee would have to  
14 follow open meeting laws unless it meets one of the  
15 exceptions and I don't, as I'm sitting here, think of one  
16 that it would meet, so I'd have to take a look at that.

17 As far as the membership of the subcommittee,  
18 that's selected by the Board itself.

19 CHAIRPERSON SHEEHY: I would respectfully request  
20 that -- you know, we have a majority of members on the Board  
21 that are legislators, and so I think it's completely  
22 appropriate for a majority of the members on the  
23 subcommittee to be legislators, but I would also request  
24 that either Mr. Harvey or I -- since we both are accountable  
25 to the administrative that either Mr. Harvey or I also be

1 included on such a subcommittee, if that's agreeable to you,  
2 Senator Lowenthal.

3 SENATOR LOWENTHAL: That's fine. That's fine.

4 CHAIRPERSON SHEEHY: Okay. And then -- so that  
5 subcommittee would be I'm assuming a subcommittee of at  
6 least three.

7 SENATOR LOWENTHAL: Right.

8 CHAIRPERSON SHEEHY: Okay.

9 SENATOR LOWENTHAL: And I think it's the Chair's  
10 prerogative to choose the members of that --

11 CHAIRPERSON SHEEHY: And I will be happy to accept  
12 your recommendation, Mr. Lowenthal, on the legislators since  
13 you're the maker of the motion if that's okay with the other  
14 members and Mr. Harvey and I will discuss who is most  
15 appropriate to serve on that subcommittee. I'm going to  
16 talk about it with Mr. Harvey. I'm thinking it's probably  
17 him because since I chair this committee, I don't know if it  
18 would be appropriate for me to serve on the subcommittee and  
19 I trust Scott.

20 So we have a motion and a second. I think  
21 Mr. Lowenthal's done a good job of describing the motion.  
22 Do we have any other questions from Board members? Are there  
23 any other comments from anybody in the -- I think Mr. Duffy  
24 wanted to address the Board.

25 MR. DUFFY: Yes. And thank you in advance for

1 your patience. We --

2 SENATOR LOWENTHAL: No. We're going to lose a  
3 member.

4 MR. DUFFY: Say it again.

5 SENATOR LOWENTHAL: Be quickly because we're going  
6 to lose votes.

7 MR. DUFFY: Okay. This -- there's been this long  
8 agony of saga over two reports done by the same company.  
9 This body asked that the original report be rejected.  
10 Senator Scott led that effort that it not be used, not be  
11 referenced, not be on a Website.

12 I find it hugely disturbing that this body that I  
13 respect was not listened to and yet this comes back again.  
14 And within that report, you basically are seen as not having  
15 the role that we think that you should have, that you don't  
16 report to staff, they report to you. You determine.

17 When I was a superintendent, people would say,  
18 well, who do you want on the board. My response was whoever  
19 the public sends me because the public I trust and I think  
20 the public is extended into this building and those of you  
21 that are the members of the Legislature that are appointed,  
22 somebody's trusting you and we're trusting them and we're  
23 trusting also the administration.

24 But we enjoy the fact that you grapple with issues  
25 and that you have a tug of war with your staff because we

1 think that that creates good policy.

2 But again back to the substance of this. There's  
3 an attack upon you. There's an attack upon what we think is  
4 bedrock and that is the SB50 deal --

5 CHAIRPERSON SHEEHY: I'm sorry, Mr. Duffy. May I  
6 interject just one moment.

7 MR. DUFFY: Yes.

8 CHAIRPERSON SHEEHY: And then you can have as much  
9 time as you want. I know that Senator Lowenthal has said  
10 that he feels that this was an attack upon the Legislature.  
11 I would be remiss if I didn't say that I strongly disagree  
12 with him. I don't believe -- I can't speak on behalf of  
13 OSAE. Mr. Botelho can address that himself if he'd like to.

14 My reading of the report does not indicate that it  
15 was an attack on the Legislature and I'm sorry that Senator  
16 Lowenthal feels that way, but I respect how he feels. So  
17 when you're addressing this body, please indicate that some  
18 of the members may feel it's an attack on them. I don't  
19 believe that all of the do.

20 MR. DUFFY: Okay. And thank you for that.  
21 What -- the comment about the Little Hoover Commission  
22 report, I clearly saw that as a direct attack on the elected  
23 members of this body and Mr. de Leon challenged the  
24 executive director of that body and basically I think in his  
25 examination had that person really change his viewpoint and

1 his approach to the Board.

2           So -- but I'll back away from that one. But  
3 certainly the Little Hoover report was an attack.

4           And thirdly, the State Superintendent of Public  
5 Instruction and having someone with expertise such as  
6 Ms. Moore there -- I think she's a wonderful resource for  
7 you and for all of us, but I'm really troubled by this. We  
8 have state agencies that work very hard, like DSA and CDE  
9 and OPSC and DTSC, to further this goal of housing children  
10 in state facilities. We're California. We do that. Why do  
11 we need to spend time dealing with things like this. This  
12 should have never been done. This was a mistaken.

13           So -- and Mr. Lowenthal, I think your suggestions  
14 are good suggestions. Why not a subcommittee? Why not a  
15 subcommittee to basically help guide this body. So thank  
16 you and I'll try not to take up any more of your time, but I  
17 appreciate your patience.

18           CHAIRPERSON SHEEHY: Mr. Duffy, thank you very  
19 much for your comments. Are there other members from the  
20 public today that would like to comment on this item?  
21 Seeing none, we have a motion and a second. Do we need a  
22 roll call vote on this or could we just do this by unanimous  
23 consent? Okay.

24           We have a motion and a second. All in favor.

25           (Ayes)

1           CHAIRPERSON SHEEHY: Okay. So Mr. Lowenthal's  
2 motion passes. What do we have -- do we have anything left  
3 to go through, Mr. Cook? I think, you know, we're going to  
4 lose members here at this point. If it's okay with the  
5 members, if there's anything left, can we roll over to the  
6 next meeting that we talked about having, the special  
7 meeting? Is that okay or is there something here that --

8           ASSEMBLY MEMBER BROWNLEY: Yeah, is there any --

9           MS. MORGAN: We do have some emergency regulations  
10 that --

11           CHAIRPERSON SHEEHY: Okay. Can we adopt those?  
12 Is there -- that's not controversial, is it? Can we adopt  
13 that --

14           MR. NANJO: Mr. Cook, isn't Murrieta on still?

15           MR. COOK: Murrieta is still on before -- is one  
16 of the items before the Board.

17           CHAIRPERSON SHEEHY: We still have a quorum. We  
18 can do business if it's the rule of the Board. Okay.  
19 Mr. Lowenthal, Murrieta or the regs? I think we should do  
20 the **emergency regs**. We don't want to put those off.

21           MR. COOK: Yes. I agree. If we can turn --

22           CHAIRPERSON SHEEHY: Which tab is that, Rob?

23           MS. MORGAN: That's Tab 22 on page 245. These --

24           CHAIRPERSON SHEEHY: 22, page 245. These are the  
25 ones at the last meeting we had asked that they come back so

1 that we'd have a chance to meet with Mr. Thorman, the head  
2 of the department of -- the head of the Division of the  
3 State Architect. Is that right, Ms. Morgan?

4 MS. MORGAN: Yes.

5 CHAIRPERSON SHEEHY: And we revised those. Now,  
6 have these regulations been vetted with all of the advocates  
7 and staff and so on and so forth? Do we have -- is there  
8 any controversy over this or is this a noncontroversial  
9 item?

10 MS. MORGAN: We have vetted them. We did receive  
11 a letter just today suggesting that there are some projects  
12 that would be outside of the qualifications for exemption  
13 that are currently in DSA for which the district was  
14 concerned that they would not be out in enough time to meet  
15 the timeline.

16 MR. COOK: Um-hmm.

17 MS. MORGAN: I've shared that with the State  
18 Architect and he assures us that they will indeed be  
19 approved in enough time --

20 CHAIRPERSON SHEEHY: Okay.

21 MS. MORGAN: -- and he is here should you have any  
22 questions.

23 CHAIRPERSON SHEEHY: Okay. Okay. Ms. Morgan, I  
24 see that Mr. Duffy's interested in commenting. One second,  
25 Tom. And I see that Mr. Thorman's here. Tom, would you

1 like to wait till Mr. Thorman goes?

2 MR. THORMAN: No. I'm just here in case --

3 CHAIRPERSON SHEEHY: Answer questions. Tom, could  
4 you please come and share with us your concerns.

5 MR. DUFFY: Yes. And I mentioned to Rob before  
6 the meeting that we had a problem with this, so we went  
7 through the language in the back of the room -- several of  
8 us -- and the idea here is to preserve everyone the  
9 opportunity.

10 The way that this is written, we believe that  
11 certain projects could basically be left out and so in --  
12 and I can -- I don't know how we do this, but got several  
13 experts in the back of the room. We went through this  
14 language and we think if we strike a number of the phrases,  
15 Rob, and put in a couple periods, we can preserve such as  
16 this having to do right here would basically -- you're  
17 eliminating certain projects before DSA.

18 If you simply end the sentence right there and  
19 take out the rest of that, leave the last sentence in there,  
20 then you're covering all bases for all projects, whether  
21 they're in DSA nor or on their way into DSA now.

22 And we do the same thing for the joint use on the  
23 backside.

24 MR. HARVEY: While you're thinking about that,  
25 Mr. Cook, could I have Mr. Thorman come forward.

1 MR. COOK: Certainly.

2 MR. HARVEY: I thought I heard Ms. Morgan say that  
3 it was his feeling that every project would be handled with  
4 the language as drafted.

5 MS. MORGAN: That is my understanding.

6 MR. THORMAN: That's correct.

7 MR. HARVEY: Dave, you heard the allegation that  
8 there is concern that some projects before you would not  
9 make the cut. Can you tell me why you believe that's wrong?

10 MR. THORMAN: I believe that's wrong because I  
11 have worked with my four regional managers and they have  
12 told me that every project that is currently in process will  
13 be approved, assuming that the architects do what they're  
14 supposed to do. Time is not a problem. They will be  
15 approved by the 26<sup>th</sup> of March.

16 CHAIRPERSON SHEEHY: Okay. We have a  
17 disagreement, Tom, do we, between Mr. Thorman and you? Is  
18 that right?

19 MR. DUFFY: Well, I didn't know I had a  
20 disagreement with Mr. Thorman.

21 CHAIRPERSON SHEEHY: I'm sorry. I thought --

22 MR. DUFFY: No, I didn't know that until just now  
23 that I --

24 CHAIRPERSON SHEEHY: Okay. Well, I don't think  
25 anybody here wants to slow down emergency regulations, but I

1 don't think anybody also wants to approve something if  
2 there's a fatal flaw. We have agreed to try to have a  
3 special meeting of this body in a couple weeks.

4 MR. DUFFY: I think you really need to do this  
5 today because of the fact that time is moving.

6 CHAIRPERSON SHEEHY: Okay. We barely have a  
7 quorum, Mr. Duffy. If you can work this out in five  
8 minutes, we'll do it, but I don't think it's appropriate for  
9 me to keep the Board members here any longer than that.

10 MR. DUFFY: Okay. Okay.

11 CHAIRPERSON SHEEHY: And so --

12 MR. DUFFY: Can you see what I'm trying to do  
13 there.

14 CHAIRPERSON SHEEHY: So if the Board members don't  
15 lynch me, I'm going to give you five minutes to work this  
16 out and if you can, that's great, and if you can't I would  
17 respectfully request we bring it back in two weeks or to --  
18 yes, Senator Lowenthal.

19 SENATOR LOWENTHAL: I would also like to say that  
20 I believe -- I would hope that's this is our last item and  
21 everything else be laid over. Murrieta is fine with laying  
22 over --

23 CHAIRPERSON SHEEHY: Okay. Yeah, that's --  
24 Senator Lowenthal, if there's no objection from the other  
25 members, that's just fine.

1           SENATOR LOWENTHAL: We checked with them.

2           CHAIRPERSON SHEEHY: Okay. So this will in fact  
3 be the last item. We're going to take a five-minute recess.  
4 We're going to come back and we're either going to put this  
5 over or we're going to approve something. Five minutes.

6           (Off record from 7:47 p.m. until 7:59 p.m.)

7           CHAIRPERSON SHEEHY: Gentlemen, we have a peace  
8 accord? Ladies and gentlemen, we're going to go ahead and  
9 take up this item. We think we have some language that  
10 works, but Mr. Cook and Ms. Morgan, if I could have your  
11 attention for a moment. I think that Senator Torlakson  
12 wanted to make a quick comment or request before we finish  
13 up our business tonight. Senator.

14           ASSEMBLY MEMBER TORLAKSON: This is something I'll  
15 actually work with staff. Just sort of thinking about the  
16 site and design work and prefunding and just look with staff  
17 at that issue and maybe bring back -- have the staff bring  
18 back some ideas about how districts that they go and the  
19 overcrowding fund -- relief grant fund might be able to get  
20 advance payment for the site and design work. That might  
21 address some of the issues that we dealt with earlier.

22           I'll just talk to staff about that and see if they  
23 have some ideas and if they have an agenda they can bring  
24 back, that would be helpful.

25           CHAIRPERSON SHEEHY: That'd be great. So Rob and

1 Lori, if there's some -- an action that we can take on  
2 Senator Torlakson's request, can we please have that  
3 agendized -- or, you know, work with Senator Torlakson to  
4 help clarify what he would like to try to bring to the  
5 Board.

6 MR. COOK: Certainly. We can work with him.

7 CHAIRPERSON SHEEHY: Okay. Now, when we had  
8 recessed five minutes ago, we were at an impasse over  
9 language in emergency regulations dealing with the -- of the  
10 State Architect and we do have the State Architect here and  
11 I think some of the concern was coming from the C.A.S.H.  
12 representative, and so I wonder -- now I understand, do we  
13 have agreement now on the language, Mr. Duffy?

14 MR. DUFFY: We think so.

15 CHAIRPERSON SHEEHY: Okay. And Mr. Thorman,  
16 you're not -- you're okay. So Mr. Cook, could you please  
17 explain for the benefit of the Board the changes that you've  
18 made to the language so we can see if we can vote on this  
19 and get on with our evening.

20 MR. COOK: Okay. The original concept that we  
21 were putting forward to the Board was to help preserve --  
22 career technical education projects and joint-use projects  
23 both have a 12-month clock that ticks from the time they get  
24 an apportionment by this Board till they have to have  
25 stamped plans from the Division of State Architect and get

1 into our office with them.

2 CHAIRPERSON SHEEHY: I'm sorry. CT and who?

3 MR. COOK: And joint use --

4 CHAIRPERSON SHEEHY: Okay.

5 MR. COOK: -- applications. And that's because  
6 most of those are conceptually approved. Folks haven't done  
7 their designs and it's also meant to move these projects  
8 along. There's been a great -- well, general public policy  
9 pressure to make sure that these projects show up out in the  
10 districts as quickly as possible.

11 One of the downsides is the first deadline that  
12 we're going to run into for career technical education  
13 facilities is coming up in March. That's when we did our  
14 first round of funding and there was some concern that some  
15 districts given the current crisis might not be able to get  
16 their projects into and out of DSA in time and then they  
17 would fail. They would automatically be rescinded.

18 The concept we had before you was anybody who  
19 didn't get them within 30 days of their deadline before DSA  
20 would be -- could get an exemption. The proposal that we  
21 have now before you -- modified proposal is to strike out  
22 that 30-day limitation and be able to provide a 12-month  
23 extension to all joint use and all career tech projects.  
24 This provision would sunset January 1 of 2010. That  
25 provision --

1           CHAIRPERSON SHEEHY: And is that sunset date, is  
2 that consistent with the other emergency regs that this  
3 body's adopted?

4           MR. COOK: Yes, it is.

5           CHAIRPERSON SHEEHY: So we'd be doing the same  
6 thing.

7           MS. MOORE: So what changed?

8           CHAIRPERSON SHEEHY: So what changed?

9           MR. COOK: What changed? We had a limitation on  
10 who this could apply to and that's those folks who didn't  
11 get their plans into DSA within 30 days of expiration  
12 basically. Now it's wide open. It's anyone would be  
13 eligible for this.

14          MS. MOORE: So in terms of the language that we're  
15 adopting, what's changed in the language in the last five  
16 minutes?

17          CHAIRPERSON SHEEHY: Do we have a mock-up that you  
18 could provide Ms. Moore and the other members?

19          MS. MOORE: Or just read it is fine.

20          MS. MORGAN: Starting on the item for joint use  
21 large A, I'll pick up in the middle of that paragraph. In  
22 the event the Board makes the determination and finding, the  
23 Board may suspend the 12-month period for a period not to  
24 exceed 12 months beyond the time period as required in small  
25 b.1. On the CTE --

1 MR. COOK: That would be a strike out of that --  
2 the entire line up above that which was the -- kind of -- it  
3 limited --

4 MR. HARVEY: Only if is what you're --

5 MR. COOK: Right.

6 MS. MORGAN: Yeah.

7 MR. COOK: Right.

8 MS. MORGAN: The once the suspension period has  
9 concluded, the rest of that paragraph remains.

10 MS. MOORE: Thank you.

11 MS. MORGAN: And on the following page for the  
12 career technical education, you would go to the third line  
13 and you would put a period after small d. The rest of that  
14 sentence would be struck and the final sentence regarding  
15 the sunset date would remain.

16 MR. HARVEY: Move approval of the regulations as  
17 amended.

18 CHAIRPERSON SHEEHY: We have a motion to approve  
19 the amended regulations.

20 ASSEMBLY MEMBER BROWNLEY: Second.

21 CHAIRPERSON SHEEHY: We have a second. Any  
22 further questions of staff? Seeing none, all in favor.

23 (Ayes)

24 CHAIRPERSON SHEEHY: Okay. So the last thing I'm  
25 going to say before we go is, Rob, make -- please do the

1 best you can. I know you got a lot to do. That letter that  
2 we talked about at the beginning of this hearing that  
3 incorporated the different concepts that Senator Lowenthal  
4 and others had, make sure that we get a draft of that out of  
5 the members' offices for their staff and members to react to  
6 by Friday afternoon so that we can try to get that letter  
7 out early next week and if any Senators or Assembly Members  
8 or Board members have any comments on that letter, we'll  
9 incorporate those and get that letter out, okay?

10 MR. COOK: And just we aren't building, you know,  
11 a horse by committee, but anyway we'll get that out to you.

12 CHAIRPERSON SHEEHY: We're not going to build a  
13 horse by committee. I just want everybody to have input.  
14 This is a sensitive issue and, you know, I think folks want  
15 to take a look at it. Okay? All right. This meeting's  
16 adjourned.

17 (Whereupon, at 8:07 p.m. the proceedings were recessed.)

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

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That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on April 11, 2009.

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Mary C. Clark  
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