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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

CALIFORNIA DEPARTMENT OF EDUCATION
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, APRIL 22, 2009
TIME: 4:10 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 TOM TORLAKSON

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

ROB COOK, 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: Lisa, can you please call the roll to help us establish it?

MS. JONES: Yes, I can. Senator Lowenthal.

SENATOR LOWENTHAL: Present.

MS. JONES: Senator Wyland?

SENATOR WYLAND: Here.

MS. JONES: Assembly Member Fuller.

ASSEMBLY MEMBER FULLER: Here.

MS. JONES: Scott Harvey.

MR. HARVEY: Present.

MS. JONES: Kathleen Moore.

MS. MOORE: Here.

MS. JONES: Rosario Girard.

MS. GIRARD: Here.

MS. JONES: Tom Sheehy.

CHAIRPERSON SHEEHY: Present.

MS. JONES: We have a quorum.

CHAIRPERSON SHEEHY: Thank you, Lisa.

MS. JONES: You're welcome.

CHAIRPERSON SHEEHY: Now that we have quorum present, I'd like to make an announcement. On March 13th, 2009, Ms. Katrina Valentine tendered her resignation to the State Allocation Board and to the Chair of the State

1 Allocation Board and I want to officially acknowledge that
2 and receive and put into our record for today's meeting
3 Ms. Valentine's resignation. Lisa, when you get a chance,
4 you can come take this letter and have it put into the
5 record; okay?

6 MS. JONES: Okay.

7 CHAIRPERSON SHEEHY: **Minutes.**

8 MR. COOK: The Minutes --

9 CHAIRPERSON SHEEHY: Where are you, Rob, I don't
10 see you.

11 MR. COOK: I'm hiding over here behind Lisa. The
12 Minutes for the last three Board meetings, March 25th, the
13 11th, and February 25th, are before you and ready for your
14 approval.

15 CHAIRPERSON SHEEHY: Okay. I'm sorry. One more
16 thing. I apologize, Board members and those of you in the
17 audience. For those of you who could not get into the room
18 but want to watch, we are being broadcast live both video
19 and audio at the OPSC home page. Rob, what's the address
20 for that?

21 MR. COOK: It's -- sorry.

22 CHAIRPERSON SHEEHY: www --

23 MR. COOK: opsc.dgs.ca.gov

24 CHAIRPERSON SHEEHY: We're also being -- okay.

25 Why was I given two addresses that are the same? I guess

1 that's the address you go to, the OPSC Website. Okay. With
2 that, the Minutes, are there any questions or comments from
3 Board members or members of the public on the Minutes?
4 Seeing none, is there a motion to approve the Minutes from
5 our last meeting?

6 SENATOR LOWENTHAL: Wait. Do I have three -- do
7 we have three Minutes here?

8 MS. MOORE: I have a --

9 CHAIRPERSON SHEEHY: We do have questions.
10 Ms. Moore.

11 SENATOR LOWENTHAL: Okay.

12 MS. MOORE: I just received these Minutes this
13 morning and I have not had the opportunity to review them
14 and because the -- while I can abstain from March 25th
15 because I was not here, I would like additional time to be
16 able to read the other two Minutes.

17 CHAIRPERSON SHEEHY: Without objection, we're
18 going to give -- would you like additional time today or
19 would you like us to take them up at the next meeting?
20 What's your --

21 MS. MOORE: How about the next meeting.

22 CHAIRPERSON SHEEHY: Okay. So we'll take them up
23 at the next meeting. Are there -- which ones would you be
24 comfortable -- are there any Minutes we can dispose of
25 today?

1 SENATOR LOWENTHAL: Did we get the March? When
2 did we get the March? I think there are notes I did see the
3 March.

4 CHAIRPERSON SHEEHY: The Minutes of February 25th
5 and March 11th have been in your packet since they were
6 released. The 25th came out later.

7 MS. MOORE: Oh, I stand corrected then.

8 CHAIRPERSON SHEEHY: That's okay.

9 MS. MOORE: I apologize.

10 CHAIRPERSON SHEEHY: Do you want to -- should we
11 put the Minutes from the 25th over, Kathleen, and then
12 approve the other Minutes? Is that -- I'm flexible.
13 Whatever you want to do.

14 MS. MOORE: My error then if they were there.

15 CHAIRPERSON SHEEHY: Mr. Lowenthal, did you have a
16 question about the Minutes?

17 SENATOR LOWENTHAL: No, I didn't. No, I had -- I
18 see this. No, I don't have a problem.

19 CHAIRPERSON SHEEHY: Okay.

20 MR. HARVEY: For the purposes of moving the
21 agenda, I'll move the Minutes for --

22 CHAIRPERSON SHEEHY: Why don't we put the Minutes
23 for the 25th over.

24 MR. HARVEY: That's fine.

25 CHAIRPERSON SHEEHY: And let's approve the balance

1 of them. Is that acceptable? Can you make that motion,
2 Mr. Harvey?

3 MR. HARVEY: That was going to be my motion.

4 CHAIRPERSON SHEEHY: Do we have a second?

5 ASSEMBLY MEMBER FULLER: Second.

6 CHAIRPERSON SHEEHY: Okay. All in favor.

7 (Ayes)

8 CHAIRPERSON SHEEHY: All right. So we got the
9 Minutes. Mr. Cook, do you want to give us your **Executive**
10 **Officer Report.**

11 MR. COOK: Yes, I would. Well, we've got some
12 good news to report at this Board. The recent bond sale was
13 effected on -- is providing \$541 million to our projects
14 from Proposition 1D and additional funds have been made
15 available to fund health and safety projects that were
16 exempted, from the freeze.

17 Our staff has been working endlessly with the --
18 and that's in a good way -- with the Department of Finance
19 and the State Treasurer's office so that we can expedite
20 funding to school districts' projects and also the State
21 Treasurer has been conducting a sale of Build America Bonds
22 and we look forward to having additional funds to provide to
23 districts in the near future.

24 Also on fund release priority, this Board has
25 adopted as its formal policy as first in, first out for

1 these -- for funding school district projects. That
2 discussion had -- is also being carried on at the
3 Implementation Committee. The Implementation Committee has
4 affirmed that approach and does not wish to differ from
5 first in, first out for project funding.

6 Also I wanted to share with you the results of our
7 first Webcast of our Board meeting. We had roughly
8 125 viewers out there and you will note in my comments, some
9 of the comments that we got back from viewers out there. We
10 had people in far-flung places in the State of California
11 that found it to be of great benefit. They did not have to
12 engage in travel. They didn't have to take the expense.
13 They didn't have to take the time and yet they could see
14 everything that we did here and we got some very
15 enthusiastic responses and -- anyway I -- just a nice step
16 forward in transparency.

17 And then finally we have three sets -- or two sets
18 of regulations that have been approved by the Office of
19 Administrative Law. One is the original emergency
20 regulation that we did to unplug the clock for the 18-month
21 time limit. That became effective on April 9th and we just
22 got notified today that our critically overcrowded schools
23 and charter time limit extensions were approved today by the
24 Office of Administrative Law.

25 CHAIRPERSON SHEEHY: Excellent. Mr. Cook, are

1 there any other emergency regulations this body needs to
2 consider as we move forward with the school facilities
3 program in light of our funding situations, I'd like you to
4 call that to your attention.

5 I have another announcement I want to make that
6 builds upon what Rob said. Ms. Jones --

7 MS. JONES: Yes.

8 CHAIRPERSON SHEEHY: -- could you come distribute
9 copies of these press releases to the Board members here,
10 and if they're not here, to their staff.

11 MS. JONES: Sure.

12 CHAIRPERSON SHEEHY: I want to publicly
13 acknowledge the great work done by our State Treasurer, Bill
14 Lockyer, and his staff. Today they received orders and
15 closed -- I believe closing is the correct term -- on over
16 \$6.85 billion in general obligation bonds. They make
17 California the first state in the nation to sell the Build
18 America Bonds that have recently been authorized by the
19 Obama administration.

20 This is a major step forward for us. It's going
21 to result in everybody that has a fund release request
22 before us right now, they're going to get their request
23 funded. I can't tell you exactly when, but it's going to
24 happen soon. Quite soon.

25 And it is also going to allow us, the State of

1 California, to restart over 5,000 public works projects that
2 all got put on hold. So this is great news for the state.
3 It's great news for all of our constituents and we're very
4 pleased that the Treasurer was able to do this. Department
5 of Finance staff has been working pretty closely with the
6 Treasurer and we just think he did a great job.

7 \$5.2 billion are Build America Bonds. The other
8 1.7 billion are taxable bonds that will be used for stem
9 cell research, low-income housing, and high-speed rail
10 programs among others. So you'll be hearing more about
11 this. You can go to the Treasurer's Website to get a copy
12 of the press release I just gave our Board members. You can
13 also go to the Governor's Website to get the Governor's
14 press release and finally you can go to the Department of
15 Finance Website to see a list of the 5,000 projects that are
16 going to be approved to be restarted.

17 And I'm not sure exactly what we're going to do,
18 but I'm recommending Finance come forward with a budget
19 letter sometime soon that'll be giving more instruction to
20 folks about how we're going to proceed.

21 So this is good news. I would add a cautionary
22 note. I would be remiss if I didn't tell you that our
23 economy continues to have some storm clouds on the horizon.
24 We don't see yet that we're at the end of this recession.
25 Department of Finance will be updating state revenues and

1 our economic forecast for the May revision, which will come
2 this year after the special election on May 19th and, you
3 know, we're going to have to see what happens with the
4 special election, what happens with the May revise.

5 So our fiscal situation may change again by the
6 end of May or early June, but I think for right now we can
7 all be really pleased with the work that we've accomplished
8 up to this point. Senator Wyland.

9 SENATOR WYLAND: I'd just to make a couple of
10 comments. As you know, I've commented on bond sales
11 virtually every meeting and I'd like to comment on this one.
12 I've talked to a couple of brokers in the last couple of
13 days. They could sell more. They could sell more. And I
14 wish the Treasurer's office would on a regular basis report
15 this.

16 Now, what's also astounding is that some of those
17 bonds, as you may have pointed out, are not tax-free bonds
18 and when you look at the actual rate of return -- the
19 percentages that you are getting on those, they're not
20 anything special. They're -- as a matter of fact, the
21 broker will tell you, they're sort of the equivalent of a
22 corporate bond, except people actually believe that the
23 State of California is good for it.

24 CHAIRPERSON SHEEHY: How on earth did they ever
25 get that idea.

1 SENATOR WYLAND: That's what the market is saying.
2 And we all know though that the Treasurer has asked for some
3 government guarantee for some short-term financing and other
4 things, but the market likes us.

5 The other thing I'd like to say is I think --

6 SENATOR LOWENTHAL: Or is it the market doesn't
7 trust anything else.

8 SENATOR WYLAND: You know, Senator Lowenthal's
9 comment that the market doesn't trust anything else may be
10 part of it, but that's the reality. The only other thing
11 I'd like to say is that -- and this affects us indirectly --
12 in terms of the economy, I wish I could send this directly
13 to the national administration.

14 The -- one of the single biggest problems -- and I
15 get it from my constituents all the time -- is there's no
16 credit. There was an article in the Wall Street Journal
17 just the other day or the day before which said that these
18 banks who've gotten our money to the tune of billions of
19 dollars are actually loaning less now than they were last
20 fall.

21 So anything that our administration could do who
22 has the real power to try to get these banks to start
23 lending because what happens is -- part of the problem with
24 these businesses not being able to do more and then pay more
25 taxes so we have more revenues is they can't get financing.

1 We -- all of us hear constantly that -- I hear
2 from businesses that have credit lines cut. So that is an
3 impediment. But anyway I'm thrilled as we all our with
4 the --

5 CHAIRPERSON SHEEHY: Thank you, Senator Wyland.
6 Did other members -- Ms. Moore.

7 MS. MOORE: Can I -- I think that's great news.
8 Fabulous. I just want to make sure that I understand how
9 the bond funds are being -- flowing out in terms of funds
10 releases and maybe it's a moot point if what you're saying,
11 Tom, is that all of the projects that sit on the unfunded --
12 on the list up onto what date will be funded. Do we know
13 that? What date that is?

14 CHAIRPERSON SHEEHY: Well, first of all, let me
15 just say a couple things. I've had a lot of concern
16 expressed to me by some school districts and advocates that
17 they were concerned about the 541 million, that it was going
18 to be just Prop. 1D money, and the reason why that was is
19 because those are the bonds the Treasurer sold. Nobody knew
20 that he was going to be able to sell as much as he could, so
21 it was sort of like it was all happening. It's like, well,
22 let's the 1D's.

23 But I think that the concerns that that might have
24 created vis-à-vis the first in, first -- I think this is all
25 sort of being ameliorated now by the fact that we just sold

1 these \$5 billion in Build America Bonds and I've been told
2 by my staff that there are going to be sufficient proceeds
3 to fund everybody that's in line right now that has come in
4 for a fund release, that they're all going to get taken care
5 of.

6 In addition, there's going to be -- I don't know
7 the exact dollar amount, but there will be significant
8 dollars available for those people that have received an
9 apportionment but who haven't come in yet for a fund
10 release.

11 So I think we have, you know, really cleared away
12 about 85, maybe 90 percent of the concern that I think we
13 had as a body in terms of were our apportionments going to
14 get funded.

15 So, you know, it doesn't mean that our problem is
16 fixed. It just means we've -- this means that March and
17 April were really good months for us. You know, we're going
18 to be able to get a lot of the bond money out to the schools
19 and that's a good thing.

20 But I'm sorry. Go ahead, Kathleen. I think you
21 might have had some other questions.

22 MS. MOORE: Well, that -- I think what you're
23 saying does ameliorate a portion of the concern. I think
24 there is some confusion around what first in, first out
25 means and that is -- I'll try and state it how I understand

1 it and then I would like -- if I'm not understanding it
2 correctly if I could be corrected, so that everybody knows
3 the lay of the land.

4 And as I understand it, it's first in, first out
5 with a 50-05 now. That that you had a 50-05 previously.
6 It's that that is being reconfirmed and that those are the
7 projects that will be funded.

8 MR. COOK: No. That's not the --

9 MS. MOORE: Okay. Could you state it how --

10 MR. COOK: That's not the understanding. It is --
11 and for most of our Board, they don't know what a 50-05 is,
12 but that is -- that's the geek name for -- sorry,
13 Kathleen -- for our fund release form.

14 MS. MOORE: I love being a geek.

15 MR. COOK: Okay. Yeah. There you go. Anyway --
16 and that's a -- that a part of our regulations, but
17 districts issued -- when they've met the requirements, they
18 bring in a fund release form to our office.

19 And under normal circumstances -- pardon me?

20 SENATOR LOWENTHAL: That they're under contract?
21 Is that the one?

22 MR. COOK: Yeah. They make certain certifications
23 on that form and they have to have 50 percent of their
24 project under contract when they come in with that form.

25 And first in, first out means that is the original

1 50-05 that they -- that form that they brought in to us.
2 And there are approximately \$1.4 billion worth of fund
3 release requests before us and we are taking care of their
4 first 541 million of the Prop. 1D projects.

5 MS. MOORE: Okay. So if I am on the list and I am
6 on the list as having submitted a 50-05 and I said I was
7 under contract in order to do --

8 MR. COOK: Um-hmm.

9 MS. MOORE: -- that back before all this
10 transpired, then you are going to go down that list and fund
11 those -- and provide the fund release for those projects in
12 the date order they were received.

13 MR. COOK: That's correct.

14 CHAIRPERSON SHEEHY: Senator Lowenthal.

15 SENATOR LOWENTHAL: It just -- again this is all
16 pretty new to me. So if a district was certified and had
17 done that, then all this occurred not anything due to the
18 district's actions -- they now, let's say, can't -- you
19 know, they had -- they didn't know when these bonds were
20 going to be sold or anything. We told every -- them that
21 they were frozen.

22 Now they may have canceled some of these and so
23 they now having -- you're saying they may have to
24 recertification again or something because they -- will they
25 lose their place?

1 MR. COOK: We are going through a very streamlined
2 recertification process for those funds just to confirm that
3 that we -- there's a --

4 SENATOR LOWENTHAL: Because it wasn't their fault.

5 MR. COOK: It certainly wasn't their fault. There
6 was a statutory obligation that districts have contracts in
7 place in order to receive a fund release.

8 SENATOR LOWENTHAL: Right. Right. But now
9 they're going -- it may take a little bit of time for them
10 to do. Are they going to go to the end of the line?

11 MR. COOK: We have how many projects? There are a
12 couple hundred projects that are involved here and probably
13 about 80 districts that are involved here. We have made
14 contact with all of those districts are asking just very
15 simple one-page confirmation that all of their
16 certifications are valid and we're moving along.

17 SENATOR LOWENTHAL: But they may take some time to
18 do that because of our action, they may have had to cancel
19 some of those contracts and they have to start again --

20 MR. COOK: Um-hmm.

21 SENATOR LOWENTHAL: -- not because of their,
22 because of us.

23 MR. COOK: Um-hmm.

24 SENATOR LOWENTHAL: And now what's going to happen
25 to them when you contact them? Are they -- so are they

1 going to say well, we'll have to redo these contracts.
2 It'll take me a little bit of time. Are they going to go to
3 the end of the line is what I'm saying.

4 MR. COOK: Well, so far the response has been
5 positive and we've got -- everyone's been able to recertify
6 so far.

7 SENATOR LOWENTHAL: Got it. I'm just saying I
8 want to protect those districts. It wasn't really their
9 fault. They did the certification. We now tell them we're
10 freezing the money. You better protect yourself. They
11 protected themselves. Now we're saying the money's here,
12 give us right away. There's a disconnect and we just have
13 to make sure that we don't place this onerous burden on them
14 and if they lose, you know, where they were, if it takes a
15 short period of time to recertify.

16 CHAIRPERSON SHEEHY: Senator Lowenthal, I think
17 that's an extremely important concern. I know Mr. Duffy
18 had -- you may want to -- if you'd like to talk about that,
19 you're welcome to. I would like to try to pass a couple
20 business items while we do have the members here, but I want
21 to just say I think that's a very important concern and I
22 don't want to minimize it on any level.

23 But with that said, I think the good news really
24 is that we just sold so many bonds that I think that whether
25 you were number 10 in line or number 110 in line right now,

1 I'm not sure that's going to matter anymore. But I think
2 you're -- to your point that, you know, now we're making
3 them jump another hoop. I'm going to defer to people that
4 know the legalities of all this better than I, but I just
5 know that having gone through the most extraordinary
6 circumstance we ever had in this program, it didn't surprise
7 me that there might have to be something like this just to
8 make sure that we're dotting all the I's, crossing all the
9 T's.

10 SENATOR LOWENTHAL: Absolutely. I understand
11 that.

12 CHAIRPERSON SHEEHY: But I think your concern is
13 an important one and I think we're going to get it taken
14 care of.

15 Mr. Smoot and Mr. Duffy, did you want to talk on
16 this point?

17 MR. DUFFY: Yes.

18 CHAIRPERSON SHEEHY: Tom, please, come forward.

19 SENATOR HANCOCK: Chairman --

20 CHAIRPERSON SHEEHY: Senator Hancock.

21 SENATOR HANCOCK: -- if I could be recognized at
22 some point, but I'd --

23 CHAIRPERSON SHEEHY: I'm sorry.

24 SENATOR HANCOCK: -- be delighted to hear them
25 too.

1 CHAIRPERSON SHEEHY: I apologize. We're going to
2 hear from Senator Hancock first, Tom.

3 SENATOR HANCOCK: First of all, I do think this is
4 good news. It's wonderful that we can move ahead, that we
5 can fund everything that's there. My concern is a little
6 add-on, that I'd like to see if it's possible to accommodate
7 and that is I'm extremely interested in our modernization
8 and our new building being as energy efficient and as green
9 as we can possible make it.

10 For many of these districts, they won't do
11 anything like this again for 25 or more years. We do have a
12 hundred million dollars in the bond for CHPS, green, and
13 healthy schools. Some of these districts may have come in
14 requesting the CHPS money, but we're also finding -- and
15 we've discussed this with the staff, that we haven't really
16 done a lot of very vigorous outreach about the availability
17 of this money.

18 And many of the things that you can get CHPS
19 certification for can be done without going out and
20 redesigning anything. It's using ecologically friendly
21 flooring material, paint, opening windows, that kind of
22 thing. And districts can get between 2 and 11 percent
23 additional money as a grant if they decide to do that.

24 And I'm wondering if it will be possible for us to
25 simply send a letter out to districts informing them that

1 that's a possibility and where they can find out more about
2 the program in the SAB.

3 CHAIRPERSON SHEEHY: That's a great suggestion,
4 Senator. Rob, did you have any comments? Can we send a
5 letter out?

6 MR. COOK: We can certainly send out a letter to
7 districts. We also have -- our state architect is present
8 with us today. I know Dave has done -- Dave Thorman has
9 done a great deal work in the fall developing a grid neutral
10 guidebook for school districts that I would be happy to
11 attach to that as well to get out to districts.

12 CHAIRPERSON SHEEHY: Do we have that money in the
13 OPSC budget? It's a lot of photocopying.

14 MR. COOK: It's actually published -- it's
15 published electronically, so --

16 CHAIRPERSON SHEEHY: Oh.

17 MR. COOK: -- I can send out a letter with a link.

18 CHAIRPERSON SHEEHY: All the better. Spoken as a
19 true finance guy.

20 SENATOR HANCOCK: And then maybe the CHPS
21 checklist too because when you see the things you can get
22 points for and some of them are so easy to accommodate, that
23 could kind of get people's imaginations going especially if
24 as Senator Lowenthal indicated, they may have to make some
25 minor tweaks to their plans anyway.

1 SENATOR LOWENTHAL: Right. They may.

2 CHAIRPERSON SHEEHY: That's a great suggestion.

3 Rob, can you see that that gets done and can you send a hard
4 copy of those communications to each one of the Board
5 members so they can see what's going out to the districts.

6 SENATOR HANCOCK: Great. Thank you.

7 CHAIRPERSON SHEEHY: Mr. Duffy.

8 MR. DUFFY: Mr. Chairman and members, Tom Duffy
9 for C.A.S.H. On this point -- and Senator Lowenthal, I
10 think you expressed -- Senator Lowenthal, articulated what I
11 think I had to both Mr. Sheehy and Mr. Cook that there may
12 be a district and there may be more than one that have
13 basically ceased to contract and stopped work. They have in
14 good faith entered a contract and supplied the documentation
15 prior.

16 SENATOR LOWENTHAL: Right.

17 MR. DUFFY: That in that they still need this
18 projects to -- of eligibility and as you said, through no
19 fault of their own, they've gotten into this dire
20 circumstance.

21 Our suggestion is that districts -- and we've
22 provided a letter to you. It's a two-page letter and
23 basically the heart of it is the paragraph that's second to
24 the last at the bottom where we identify that for this
25 situation and going into the future, to help projects get on

1 the street more quickly that you revise the process of
2 requiring the 50-05 and upon the action of this Board to
3 apportion funds to basically send communiqué to the
4 Controller's office to release funds. The district will be
5 audited -- every district project is audited and in the end,
6 we'll be able to see the contracts that the district has
7 entered into.

8 Now, we know that districts -- and you were just
9 talking and dialoguing about construction contracts. The
10 districts enter into contracts before projects even get to
11 you. They enter into contracts with architects and
12 engineers. They enter into contracts to purchase
13 properties.

14 So they are expending money and have -- can
15 demonstrate that these are active and viable projects. So
16 our suggestion -- and I won't belabor it. Our suggestion is
17 let's make it go faster and it would take care of the
18 situation that is the current situation that Senator
19 Lowenthal was mentioning as well as I think helping the
20 dollars get out there more quickly to projects.

21 CHAIRPERSON SHEEHY: Thank you --

22 MR. DUFFY: Thank you very much.

23 CHAIRPERSON SHEEHY: Thank you, Tom. Mr. Smoot.

24 MR. SMOOT: Good afternoon. Lyle Smoot
25 representing the Los Angeles Unified School District. I

1 just want to say, you know, I agree with what Tom said, but
2 I want to go a little bit further.

3 The certification -- recertification is not a
4 simple document. The certification itself, you can sign it
5 I suppose fairly simply, but you have to also attach a --
6 the first page and the signature page of the construction
7 contracts to the 50-05, the recertification, and mail them
8 to the office within 48 hours of this request.

9 Los Angeles Unified has recently received 48 of
10 these requests. We have money. I can't see any reason why
11 districts like us that everyone knows, why can't they just
12 certify that, you know, we've got money. We're not --
13 there's no change to our original 50-05. Why do we have to
14 go through this process of pulling copies of 48 contracts
15 that were just previously submitted and going through that
16 process. I mean in 48 hours, we're going to have to take
17 two or three staff members and go through this process.

18 So I just ask that somehow or other, if we're
19 going to have to go through this, it needs to be simplified
20 for districts that have money.

21 CHAIRPERSON SHEEHY: Rob, can you look in to
22 simplifying it and extending the 48 hours to 72.

23 MR. COOK: Um-hmm.

24 MR. SMOOT: Thank you very much.

25 MR. COOK: I will simplify according to Lyle's

1 ability to simplify my life, but --

2 MS. MOORE: I still have a --

3 CHAIRPERSON SHEEHY: Ms. Moore.

4 MS. MOORE: I still have a concern on this and I
5 think that we need to be very clear with districts. I think
6 it's very good that we may have more money that ultimately
7 makes this a nonissue, but for right now, we have
8 541 million that goes out to school districts.

9 I do not want -- I as one Board member and maybe
10 it's a policy decision that we all need to weigh in on is I
11 don't want a district that went through this situation where
12 they may have ceased a contract because of the actions of
13 the Pooled Money Investment Board and the actions of this
14 Board, receive this 48-hour request, not be able to certify
15 within 48 hours because indeed they ceased a contract and
16 they may have to reenter a contract and that is virtually
17 impossible in 48 hours, to be overstepped to another -- to
18 somebody else getting funding.

19 To me then they have been injured by us twice.
20 Once, you know, not through anyone's personal fault, but
21 because of the financial situation, they're injured, and
22 then we injure them again by saying by ceasing your
23 contract, which you had to do in some circumstances, we're
24 going to pass over you to somebody else that didn't have to.

25 I think that's a very important policy decision

1 and I would want to walk out of this room being clear today
2 as to how we're going to treat districts.

3 CHAIRPERSON SHEEHY: Rob, I think this is
4 obviously an issue that has struck a lot of concern. So why
5 don't we take a moment here and talk about what our options
6 are.

7 I'm not clear as to whether or not this is an
8 issue that can be resolved by this body taking an action,
9 whether it can be resolved with regulations, or whether in
10 fact we would need to have an amendment to a bill and get a
11 statutory change. I thought the under contract requirement
12 was a statutory issue and if that's the case, perhaps we can
13 get at it by getting a bill amended so that we can fix this
14 going forward because I think that Ms. Moore raises a really
15 good point.

16 We certainly don't want to do anything to make it
17 more difficult for schools. We're all victims of
18 circumstance here. Nobody saw this coming. I'm sure the
19 last thing the State Allocation Board wanted to do was to be
20 put in the situation where we had to hold things up, not
21 make apportionments, create waiting lists, and, you know,
22 obviously we want to get the money out as fast as we can,
23 but we also want to make sure that we comply with the law.

24 So could you please give us your thoughts on this,
25 what if anything that we could do, what would we need to do

1 going forward in order to address some of the issues that
2 have been raised by the Board members.

3 MR. COOK: You're correct. It's a statutory
4 obligations for districts to have their contracts in place
5 to receive a fund release. The -- but that said, fund
6 releases are administrative act. Those are -- this Board
7 approves the allocations and under normal times, those
8 requests for funds come in to my office and we manage those
9 and move them on on a flow basis over to the Controller's
10 office.

11 We are going through this recertification. We can
12 make some accommodations for, you know, substantial
13 districts that may have dozens of projects in the pipeline
14 and I'm sure we can come up with a solution that works well
15 for them.

16 And the good news with the sale of this most
17 recent set of bonds, I think it provides us a lot more
18 flexibility in order to try to keep folks in place and hold
19 them harmless as they get themselves back into contract, so
20 if we find that that's a problem. So -- I think that
21 provides us a lot of flexibility. There was --

22 CHAIRPERSON SHEEHY: Rob -- I'm sorry. Go ahead.

23 MR. COOK: Go ahead.

24 CHAIRPERSON SHEEHY: No, go ahead, Rob.

25 MR. COOK: There was a fair amount of concern that

1 we had a limited sum of money and those folks -- there are
2 lots of districts out there. I hear from them every day
3 that have very pressing obligations. They are looking at
4 alternative financing means to keep their head above water
5 and it's absolutely essential on our part that we certainly
6 try to get money into the hands of those who are in serious
7 need of those funds as quickly as we could.

8 CHAIRPERSON SHEEHY: Rob, I just want to make
9 sure. Are you saying that there are no regulations that we
10 could amend or adopt that would address the issue of
11 somebody that had come out of contract and was not in
12 contract right now vis-à-vis getting these funds. If they
13 had been in contract, because of the delay in funding,
14 because of the budget crisis and the inability to sell
15 bonds, they got out of contract through no fault of their
16 own, but now we have money --

17 MR. COOK: Um-hmm.

18 CHAIRPERSON SHEEHY: -- is there -- and so the
19 concern that I'm -- one of the concerns I'm hearing is, as
20 you know, through no fault of their own, they got out of
21 contract and now they're going to have to get back into
22 contract. In other words, they're going to have to go
23 through a couple more steps before they can get a fund
24 release. Is there anything short -- that you're aware of
25 short of amending a bill that would allow us to address that

1 issue now?

2 MR. COOK: What I'm envisioning -- of course we're
3 doing this on the fly. I think we can manage this
4 administratively. I don't believe that there are actually
5 any regulations that we would have to amend. It would be my
6 staff working with those individual districts that have a
7 fund release before. It may not be -- you know, they can't
8 recertify, that we would work with -- we could potentially
9 work with them till they had their contracts in place.

10 The most recent sale of bonds probably provides us
11 that luxury.

12 CHAIRPERSON SHEEHY: Flexibility.

13 MR. COOK: Right.

14 CHAIRPERSON SHEEHY: Not luxury.

15 MR. COOK: Yeah.

16 CHAIRPERSON SHEEHY: Flexibility. Ms. Moore,
17 what's your pleasure on this item? I mean I think it's an
18 important point you raise.

19 MS. MOORE: What I would just like to see is that
20 we do not injure any district that may be in line for
21 funding because they have withdrawn a contract due to the
22 circumstances of this.

23 So if -- Mr. Cook, if you're saying that they
24 won't be -- there won't be anyone injured like that, I take
25 you at your word and we move forward. But perhaps in order

1 for the Board to have the information, maybe -- if you're
2 saying 80 percent sent their stuff back immediately and off
3 they go. Great. Tell us who may have a problem and I think
4 that they deserve our attention.

5 CHAIRPERSON SHEEHY: Rob, I'm going to ask you to
6 put an item on for our next meeting, a report of all of
7 these districts that you reach out to that have qualified
8 for funding and that you've asked for the recertification.
9 The Board -- I -- the Board would like a report on how many
10 of them have -- you know, have, you know, got taken care of
11 it right away, how many of them had problems and what the
12 status are, if those problems have been able to be worked
13 out. In other words, we'd like to have a status report to
14 know and to feel comfortable that we're not causing any harm
15 to any school districts that -- you know, that where we
16 might be able to take some sort of other action.

17 In other words, give us a status report on this
18 specific issue. Hopefully you'll come back in a month and
19 say everybody's been taken care of, but if that's not the
20 case, we would like to know the nitty-gritty specifics of
21 who has and who hasn't.

22 MR. COOK: Well, you just announced my preferred
23 report for next month, so yes, we will.

24 CHAIRPERSON SHEEHY: Well, I'm glad I thought of
25 it, Rob, before you.

1 MR. COOK: Yes. Thank you.

2 CHAIRPERSON SHEEHY: Now, do we have any other
3 questions or comments from Board members? We're going to
4 have a shorter meeting today. We're going to probably need
5 to adjourn by 6:00 o'clock. We're going to go into closed
6 session at 5:30, so we've got about 45 minutes. If we could
7 take up the Consent Calendar and the -- and if we could also
8 take up our Special Consent items, at least clear those out,
9 we might be able to take on one of the other appeals that
10 will require more discussion.

11 So who's going to present us the **Consent Calendar**
12 today?

13 MR. COOK: The Consent agenda is before you for
14 your approval.

15 CHAIRPERSON SHEEHY: Are there any requests by
16 Board members to remove any of the items from the Consent
17 Calendar today?

18 MR. HARVEY: I would move approval.

19 MS. MOORE: Second.

20 CHAIRPERSON SHEEHY: We have a motion and a
21 second. All in favor.

22 (Ayes)

23 CHAIRPERSON SHEEHY: Okay. Rob, Tab 5 is going to
24 be a **Status of Funds Report**. We've covered a lot of ground
25 in that --

1 MR. COOK: Yes.

2 CHAIRPERSON SHEEHY: -- vein. Is there anything
3 that's really important that we haven't covered? We talked
4 about the bond sales. We talked about the fund releases.

5 MR. COOK: Right. I would offer it as
6 informational for the Board --

7 CHAIRPERSON SHEEHY: Okay.

8 MR. COOK: -- at this time in the effort to
9 conserve some time.

10 CHAIRPERSON SHEEHY: Any Board members have any
11 more questions about fund issues at this time? Seeing none,
12 we'll move on to Tab 6. Rob, who's going to present item
13 number 6?

14 MR. COOK: Masha, would you step forward, please.
15 Masha Lutsuk from our staff will be presenting that item.
16 This is an item regarding **Relocatable -- funds available for**
17 **the Relocatable Program.**

18 **MS. LUTSUK:** This item in front of you is a report
19 that we have been requested by the Board to provide on an
20 annual basis regarding the funds available from the State
21 Relocatable Classroom Program.

22 The exercise that we go through on page 134 is to
23 indicate the estimated and actual revenues for the program
24 as well as expenses to come to a number which is currently
25 \$4,096,945 that is available for transfer which represents

1 the excess amount that is not needed to operate the program.

2 And one important note here for you today is the
3 existing control section in the 2008-2009 Budget Act that
4 provides for the transfer of these funds into the general
5 fund.

6 And with that, just trying to keep the
7 presentation short, I'd be happy to address any questions
8 that you have.

9 CHAIRPERSON SHEEHY: Questions of staff. Senator
10 Lowenthal.

11 SENATOR LOWENTHAL: Yeah. My understanding --
12 we're on item 6, right --

13 CHAIRPERSON SHEEHY: Yes.

14 SENATOR LOWENTHAL: -- the relocatable -- that in
15 the past when these monies have been swept up that the State
16 Allocation Board made it clear that if this was going to
17 happen again that it should be an action item before the
18 Board so that they should -- and that last year when they
19 did the \$16 million, it was an action item before the Board.
20 How come this year it's never been an action item before the
21 Board.

22 MR. COOK: This is the action item before --

23 SENATOR LOWENTHAL: So if we voted no now?

24 MR. COOK: Well, we have the --

25 SENATOR LOWENTHAL: I think that's what an action

1 item means. We have some --

2 MR. COOK: We have the situation where this is
3 actual budget control language that was enacted in the --
4 the budget enacted in September.

5 CHAIRPERSON SHEEHY: Rob, I'm going to ask
6 Ms. Oropeza to give us a technical explanation of how this
7 works. I believe, Senator, that the Budget Act of '08 that
8 was passed by the Legislature and the Governor included a
9 control section that required these funds to be swept in the
10 general fund because of our budget deficit, but, Jeannie,
11 could you give us an update on that.

12 MS. OROPEZA: Yes. Jeannie Oropeza, Department of
13 Finance.

14 CHAIRPERSON SHEEHY: Your microphone's not on.

15 MS. OROPEZA: Jeannie Oropeza, Department of
16 Finance. Historically, we've had a controlled section at
17 the back of the Budget Act that allows us to transfer monies
18 from this account into the general fund.

19 We had been making the transfer for at least seven
20 years before the issue was initially raised as to why we
21 were transferring the money to the general fund. I think
22 now more than ever, the decision was made that we really
23 didn't have a choice as to whether or not we wanted to make
24 the transfer or allow the Board to spend it in other ways.

25 This simply means that we make additional cuts in

1 other areas of the general fund budget.

2 SENATOR LOWENTHAL: I understand all that and the
3 need, but I thought last year before the State Allocation
4 Board did indicate that they should be notified before this
5 should happen. It should be an action item. Last year,
6 there was an action item. This year, we're doing the same
7 thing, but there never was an action item. Why weren't we
8 notified.

9 MS. OROPEZA: You know, I can't tell you why it
10 wasn't brought before the Board. I can tell you it was a
11 rather unique circumstance with the budget that we actually
12 enacted two budgets and we enacted '09-'10 budget prior to
13 when we normally process a budget, so it just may have been
14 a timing issue with that. I don't think it was an
15 intentional action to not allow the Board to take a vote.

16 And the budget is still before you obviously, so
17 if you choose to try and reverse that action, it's still an
18 option that you have.

19 SENATOR LOWENTHAL: We could vote not to transfer
20 the \$4 million?

21 MS. OROPEZA: And you would have to make a budget
22 change in the -- when -- as we go through the budget process
23 to undo that transfer in the Budget Act.

24 CHAIRPERSON SHEEHY: Senator Lowenthal, this item
25 is on the agenda today. This body could take a vote today,

1 voting to -- we'd have to get some numbers, but basically
2 voting to reject that policy and then we'd have to --
3 there'd need to be a request of the Senator Budget Committee
4 and the Assembly Budget Committee to put an amendment into
5 the package of bills that were passed in February.

6 SENATOR LOWENTHAL: And I don't think that's
7 really what I was about. I just find it difficult when last
8 year when the Board was notified before the action took
9 place and did take a vote to transfer that money that that
10 was not communicated to this Board this year and the action
11 was done and after it's all been done, now we're being told.

12 MS. OROPEZA: I think again -- and I can't point
13 to why it was brought out at a later date, but I think it
14 was a uniqueness of how the budget was passed and how it was
15 passed in February rather than in July. I don't think it
16 was an intentional action by the OPSC staff or the
17 Department of Finance.

18 MR. COOK: Actually, yeah, if I can provide
19 clarity on that. One, we had an unusually late budget in
20 September. We are bringing this item forward before you at
21 approximately the same time as we did last year before the
22 Board. The Board took an affirmative action last year at
23 this time to release those funds, given it was going to be a
24 tough budget year.

25 SENATOR LOWENTHAL: Right.

1 MR. COOK: But that was -- there was no budget
2 control language in place at that time and it was a
3 voluntary action by this Board at that time without any
4 external forces acting upon it.

5 SENATOR LOWENTHAL: But by the Board did -- had
6 stated that they really wanted to have that ability to do
7 that.

8 MR. COOK: Absolutely. And has made that
9 statement for the last couple of years that I can recall.
10 In this instance, this budget control language was enacted
11 without -- you know, as part of the September budget that
12 was enacted. We're bringing this item forward at roughly
13 the same time as we did last year to at least discuss it
14 before the Board and as Jeannie has indicated, the budget is
15 open.

16 CHAIRPERSON SHEEHY: I'm sorry. I know
17 Mr. Harvey's going to be next, but I'm confused. Is this in
18 response to the Budget Act of '08, the bills that were
19 passed in September, or was this in response to the Budget
20 Act of '09 for which we passed the package of bills of
21 February? Which is it?

22 MR. COOK: This remain -- this was enacted in the
23 September budget and was again -- was contained in the
24 February budget as well.

25 MS. OROPEZA: I think this transfer would be made

1 for the '09-'10 fiscal year. If the Board doesn't spend the
2 money, we would be transferring it in '09-'10.

3 CHAIRPERSON SHEEHY: Okay. Mr. Harvey.

4 MR. HARVEY: Let me see if I can come at this a
5 different way. We get to offset the fund's operating costs;
6 correct?

7 MS. OROPEZA: Um-hmm.

8 MR. COOK: Um-hmm.

9 MR. HARVEY: Do we have any flexibility to put
10 other operating costs against this thus freeing up other
11 funds to go to schools directly?

12 MR. COOK: These are non-bond funds. They -- we
13 have identified the costs that are appropriately against the
14 state relocatable classroom program and that's what you have
15 before you.

16 MR. HARVEY: How about some of your other
17 operating costs, like this letter you're putting out, is
18 there -- I'm trying to be creative so that -- if this could
19 be used to benefit us since it was our dollars at one time,
20 could we do it and save dollars in another category for
21 another legitimate purpose?

22 MS. LUTSUK: Some of these funds that are broken
23 out for you on page 134 are actually going to be funds that
24 are going to go to school districts as reimbursement for
25 their costs of setting up the state relocatable classrooms

1 that are still being leased. So some of this money is going
2 to go directly to school districts as reimbursement of their
3 costs and everything else that we've put in there, we've
4 estimated with a good amount of cushion for us to make sure
5 that we cover all of our expenses. So if anything
6 additional -- if we find anything additional, it'll be
7 rather minimal I think as far as --

8 MR. HARVEY: What you're telling me is that we've
9 got a cushion in there, it's more likely we'll transfer more
10 (indiscernible) of the general fund. What I'm -- you know
11 where I'm trying to go with this. I'm trying to keep these
12 dollars under our control and under our use so it is
13 consistent with the Board's direction last time to say let
14 us know, we may choose not to have this transfer.

15 Our hands got tied by budget control language. I
16 don't know if there's another way of using these dollars for
17 our purpose. That's all I'm asking.

18 CHAIRPERSON SHEEHY: Rob, is there historically --
19 and obviously this was an -- it's been an extraordinary year
20 so far, but historically is there a reason why April was
21 picked -- people thought that April was a good month because
22 it was before the May revise and it's before the budget. Is
23 that why this was normally done in April?

24 I mean the intent was to -- the intent
25 historically has been to have this discussion in April so

1 that this body could weigh in before the budget got
2 finalized. Was that the intent?

3 MR. COOK: That's correct.

4 CHAIRPERSON SHEEHY: Okay. So this year, we get
5 the budget package in February, so we got preempted. I
6 think some of the Board members feel rightfully so, that
7 they got completely cut out of the process this year and I'm
8 pretty well convinced it wasn't intentional by Finance or
9 OPSC, but nevertheless it happened.

10 So is there any reason why we couldn't going
11 forward to try to avoid having that happen again have this
12 item be a January item. We've never had a budget enacted
13 six months early and if we had this in January, then we
14 could weigh in, you know, in the very first month of the
15 year. Is there any procedural or technical reason why we
16 couldn't do that? Jeannie.

17 MS. OROPEZA: Tom. I would suggest it be December
18 so that if we're putting together the budget, we know
19 whether or not --

20 CHAIRPERSON SHEEHY: December?

21 MS. OROPEZA: -- to include the control section.

22 CHAIRPERSON SHEEHY: Okay. That's an even better
23 suggestion. So we can send a signal to the Department of
24 Finance what the State Allocation Board's intention is for
25 this funding.

1 And, Jeannie, are you -- so that's your
2 recommendation then to accomplish that objective?

3 MS. OROPEZA: I think it would allow the Board to
4 make a decision prior to us putting a budget out. That's
5 what I'm hearing.

6 CHAIRPERSON SHEEHY: So if there's no objections
7 from the Board members, I want to formally request then
8 going forward that this funding and this item, rather than
9 being presented in the spring, be presented in December with
10 the specific intention of signaling the Department of
11 Finance and the budget writers what the intention is of this
12 body. Hearing no objection, that'll be the order.

13 MS. MOORE: If I may too --

14 CHAIRPERSON SHEEHY: Ms. Moore.

15 MS. MOORE: -- just additionally. I didn't
16 know -- I kind of wanted to recollection what happened last
17 year and I pulled up the old -- last year's agenda item
18 which shows the Education Code authority that the Board may
19 transfer at time. So I think in terms of approving this
20 item with what Mr. Sheehy said, I think we should list the
21 authority additionally, the Education Code authority, and in
22 fact amend this item to show there is an Education Code
23 authority together with the budget summary as the
24 authorities and then it appears that we not -- I mean we're
25 kind of hands tied, that we actually take the action to

1 approve because it's not clear to me in the recommendation,
2 is it 8 million, is it 4 million. It's the excess which is
3 4 million; correct?

4 MR. COOK: That's correct.

5 MS. MOORE: That we take the action to approve the
6 excess because our hands are essentially tied. It's already
7 been done unless we want to unravel budget language; correct
8 And we next year, you know, it's imperative that the Board
9 takes the action to -- because we could take the action to
10 say we want that 4 million to go to critically hardship
11 projects and we are precluded from that this year unless we
12 unravel the budget issue, that that's included in the item.

13 CHAIRPERSON SHEEHY: Okay. So that request is
14 to -- I'm sorry, I didn't --

15 MS. MOORE: Place -- I think amend this item to
16 indicate that there is an Education Code authority of the
17 State Allocation Board, so that anybody looking at this item
18 next year sees the trail because the trail from last year
19 was the authority is in Ed Code.

20 And then it is the Board's action that provides
21 any -- the decision around any excess funds that -- and
22 where they may go and options I think around that.

23 We are in extraordinary times and I'm sure the
24 general fund does need this funding, but -- so we have that,
25 the authority, and then our recommendation is the 4 million,

1 so it's clear that that's the excess this year.

2 MR. HARVEY: Is that a motion?

3 CHAIRPERSON SHEEHY: Hold on. Hold on.

4 MS. MOORE: Together with Mr. Sheehy's --

5 CHAIRPERSON SHEEHY: Request.

6 MS. MOORE: -- we'll visit this in December.

7 CHAIRPERSON SHEEHY: Okay. So that's great. Now
8 I'm just wondering -- we want to get this item revised to
9 reflect the information you just requested. Would it
10 therefore be helpful if we just simply bring this item back
11 to the next meeting as amended and vote on it then? That
12 leaves all of our options open.

13 SENATOR LOWENTHAL: That's fine.

14 MS. MOORE: That's fine.

15 CHAIRPERSON SHEEHY: Rob, can you take care of
16 that then as part of this request that have the item amended
17 as Ms. Moore requested.

18 MR. COOK: Certainly.

19 CHAIRPERSON SHEEHY: And that way when we vote --

20 SENATOR LOWENTHAL: Lot of trail --

21 CHAIRPERSON SHEEHY: Yeah. Then we'll have a
22 clear trail. Okay. Very good.

23 SENATOR WYLAND: Tom.

24 CHAIRPERSON SHEEHY: Yes, Senator Wyland.

25 SENATOR WYLAND: I'm wondering if the Board

1 would be willing to accommodate me in taking one item up
2 now. I know we want to finish early, but I'm going to have
3 to leave at about 5:30 and the item I'm talking about is
4 the -- on the Special Appeals, the Glendale Unified,
5 Los Angeles.

6 CHAIRPERSON SHEEHY: We can take that up. Because
7 that is going to involve a lot of discussion and we have
8 four items we can dispense with right now that I believe are
9 going to be noncontroversial --

10 SENATOR WYLAND: Okay.

11 CHAIRPERSON SHEEHY: -- would it be okay if we
12 tried to take up the **Consent Specials** first and unless
13 there's any requests by one of the Board members to remove
14 either item 7, 8, 9, or 10, we could vote on those all at
15 once because those are meant to be noncontroversial.

16 SENATOR WYLAND: Sure.

17 CHAIRPERSON SHEEHY: Is there anybody in the
18 audience today that wanted to present on one of those items?
19 I think we're prepared -- I think the staff has recommended
20 approval on all of those, so unless somebody had a concern,
21 we could take care of that business right now.

22 Rob, did you want to say anything about our
23 Consent Special items, numbers 7, 8, 9, and 10?

24 MR. COOK: Nothing in particular.

25 MS. MOORE: I'll move approval of the Consent

1 Specials.

2 CHAIRPERSON SHEEHY: Ms. Moore moves approval.

3 MR. HARVEY: Second.

4 CHAIRPERSON SHEEHY: We have a second. All in
5 favor.

6 (Ayes)

7 CHAIRPERSON SHEEHY: Consent Specials are
8 approved. Senator Wyland has requested that we move to the
9 Glendale item. Is that -- item number 14. Is that
10 agreeable to the Board? Hearing no objection, Rob, can you
11 please present item number 14.

12 MR. COOK: Yeah. I'll have Josh of our staff
13 present the **Glendale** item.

14 MR. DAMOTH: Okay. I'd like to say thank you to
15 the members of the Board for allowing me to present. My
16 name is Josh Damoth. I am a Policy and Specials Analyst at
17 the Office of Public School Construction.

18 I am presenting to you the Glendale Unified School
19 District's appeal request to receive reimbursement funding
20 for the Crescenta Valley new construction project that was
21 occupied in fall of 2002.

22 Before I get into the facts of the appeal, I'd
23 like to briefly lay out the critical facts for the Board's
24 consideration before reviewing the four options presented by
25 staff.

1 Before doing that, please allow me to quickly
2 describe how new construction program eligibility is
3 calculated. Eligibility is a foundational component of the
4 school facility program. In order for a school district to
5 apply for new construction funding, it must first
6 demonstrate to the state an ongoing need to house new
7 pupils.

8 Eligibility is calculated by subtracting the
9 existing classroom capacity of a district from a five-year
10 projection of the enrollment. If the end result is a
11 positive number, then the state may fund a new construction
12 project. If the end result is a negative number, then there
13 is sufficient housing for the pupils within the district if
14 the state cannot fund a new construction project.

15 So with that, I'd like to just -- I'd like to say
16 that prior to the completion of this presentation and
17 report, staff has met with the district on several occasions
18 and we believe that we are in agreement concerning the facts
19 and history of this appeal request.

20 First -- so bear with me if I just go -- as I go
21 through a few of these facts. First, the Board approved the
22 district's new construction eligibility in May of 2001.
23 This approved eligibility consisted of the projected
24 enrollment and the classroom inventory that existed in April
25 of 2000. The classrooms in this -- in the project that is

1 the subject of this appeal, Crescenta Valley, these
2 classrooms were included in the classroom inventory. They
3 were included based on a belief that the construction
4 contracts for the project were signed in December of 1999.

5 Then in September of 2001, the district submitted
6 an appeal to exclude the classrooms from the new
7 construction eligibility, already approved by this Board.
8 This appeal also requested to exclude classrooms in two
9 other schools.

10 The district submitted construction contracts for
11 all three schools with their appeal. The contract submitted
12 to the Crescenta Valley School were incorrect, which led the
13 district to withdraw their appeal to their own detriment.

14 A subsequent appeal was submitted and approved by
15 the State Allocation Board to exclude the classrooms from
16 the other two schools from the new construction eligibility.
17 The Crescenta Valley was left off of this subsequent appeal.

18 Later in September of 2007, Glendale submitted the
19 appeal request that I am presenting to you asking the Board
20 to reinstate its original 2001 appeal to exclude the
21 classrooms constructed in this project from its classroom
22 inventory and then subsequently to approve funding for the
23 Crescenta Valley project.

24 New construction contracts were submitted dated
25 August of 2000. The new documentation submitted has been

1 reviewed by staff and it appears that the December '99
2 contracts were in fact incorrect.

3 Before presenting options, I'm going to give you a
4 brief history of the funding applications that were
5 submitted to OPSC. It is important to note that the new
6 classrooms for Crescenta Valley High were occupied in fall
7 of 2002. The first funding application came in December of
8 2000. This application was withdrawn by the district for
9 reasons unrelated to this appeal.

10 Next in January of 2001, the funding application
11 was resubmitted. Staff returned this application to the
12 district in March of 2001 because the classrooms in the
13 project were already included in the new construction
14 eligibility which was approved by the Board.

15 Finally in November of 2004, the district
16 submitted another funding application for the project
17 pursuant to the provisions of regulation Section 1859.70.2.
18 However, this application was returned because it did not
19 meet a key provision of the section. The section requires
20 the school district to demonstrate current eligibility for
21 new construction funding at the time the request is
22 submitted. Glendale did not meet this requirement because
23 of overall declining enrollment and because of three other
24 new construction projects for which they had received
25 approximately \$20 million in state funding.

1 Options: Staff has presented four options for the
2 Board's consideration of this appeal. Staff believes that
3 options 1 and 4 are viable.

4 Under option 1, the district's 2001 appeal could
5 be reinstated and approved to restore 297 pupils to the
6 district based on their updated documentation that they
7 submitted.

8 Staff has presented proposed actions in option 1
9 for the Board's consideration. The proposed actions noted
10 would make the Board's finding narrow and specific to this
11 case so as not to set a precedent for excluding facilities
12 to other school districts.

13 Option 2 is presented for the Board to deny the
14 district's appeal request all together. If the Board
15 selects this option, no further action would be needed.

16 Now let me allow to speak to option 3 which is
17 reimburse -- which is to basically grant their appeal to
18 reimburse the district for costs associated with the
19 Crescenta project. This project has been occupied since
20 fall of 2002. The SFP requirements set forth in the bond
21 covenant, the statutes, and the SFP regulations state very
22 clearly that projects already housing pupils are ineligible
23 for Greene Act new construction funds.

24 Funding applications submitted to the OPSC after
25 the date of occupancy are returned unfunded to school

1 districts. In addition, the Glendale Unified School
2 District has a current high school 9-12 eligibility of
3 negative 960 pupils. To fund this project would
4 disadvantage other school districts that have complied with
5 statute denying them access to limited state resources.

6 For these reasons, staff does not recommend
7 option 3.

8 Finally in addition to option 1, staff does
9 recommend that the Board could select option 4. Potentially
10 the project could receive funding through a legislative
11 appropriation. This would reimburse funding to the
12 district. However, the source of this funding would need to
13 be determined by the Legislature.

14 And this concludes my presentation and I'm happy
15 to answer any questions because this is a complicated appeal
16 so --

17 CHAIRPERSON SHEEHY: Thanks, Josh, for the
18 presentation. Senator Lowenthal. Are there questions by
19 Board members?

20 SENATOR LOWENTHAL: I believe Senator Wyland.

21 CHAIRPERSON SHEEHY: Senator Wyland.

22 SENATOR WYLAND: Well, I assume there is other
23 testimony. I know we have the superintendent here. So
24 perhaps we should start there. I will tell you that I --
25 just in general that I think option 3 is the best frankly

1 and just as a general principal in my own experience,
2 especially with those districts that are not very, very big,
3 it is difficult sometimes to comply perfectly with every
4 rule. I know from my own experience on a school board, we
5 often do not have people with -- it takes a great deal of
6 expertise, what I'm trying to say, to comply with each one
7 of these things and often school districts in good faith
8 make errors. And that's sort of in general the way I look
9 at this one.

10 Although I recognize the cons and I do think we
11 have to look at them in each individual case, I think this
12 was a good faith --

13 CHAIRPERSON SHEEHY: Thank you, Senator Wyland.
14 Unless another Board member would like to be recognized
15 right now, can we hear from the district.

16 DR. ESCALANTE: Let's see if we can keep this in
17 simplicity as we were trying to do earlier. Good afternoon.
18 My name is Michael Escalante and I serve as Superintendent
19 of the Glendale Unified School District and I want to thank
20 Chairman Sheehy and members of the State Allocation Board
21 and OPSC staff for the opportunity of clearing up an issue
22 that really has taken way too long to be addressed.

23 Through the years, this project really has taken
24 many, many twists and turns and you have volumes of
25 paperwork which make it incredibly confusing, but the

1 fundamental issues really haven't changed and that is when
2 this project was originally set out in 2000, it met all of
3 the requirements. It met all of the requirements that were
4 needed in 2000 and this project never has been funded.

5 So the request really is quite simple. We're
6 requesting that a technical correction be allowed so the
7 Crescenta Valley High School project be approved based on
8 eligibility at the time of the original application in 2000.

9 This decision really would be consistent with the
10 State Allocation Board of 2002 when two of our other
11 projects were approved and baseline eligibility concerns
12 were addressed at that time.

13 Unfortunately, in 2002, the district made an error
14 and that was we submitted the wrong contract. Now you would
15 believe over a period of time we would be able to correct
16 that quite simply. If the correct contract for this
17 multi-prime project would have been submitted in 2002, it
18 would have been forwarded to the State Allocation Board with
19 all -- with the other two appeals and it would have been
20 approved.

21 Our appeal is based on a technical correction to
22 documents that were previously submitted and this is not
23 precedent setting.

24 When the original application was filed, the
25 following situations existed. First of all, the district

1 had eligibility. There's no question about that. The
2 funding application was submitted secondly within the 180
3 days of the signing of the construction contract. The
4 building was not occupied in 2000. We were just beginning
5 construction.

6 The district has never received funding for this
7 eligibility and we are not double dipping. So let's clearly
8 understand that.

9 So in an effort to complete this project, what we
10 had to do is go back and borrow from our bond funds in order
11 to keep this project moving along which has really short cut
12 other projects along the way.

13 As our projects are really coming to completion,
14 we now need reimbursement in order to maintain the promises
15 we made to the kids and to the staff and to the community to
16 fulfill all the projects that were originally supported by
17 our voters. So what we really need to do with that money is
18 we need to do things like complete the HVAC project at
19 Hoover High School and Glendale High School and it's
20 absolutely necessary in order to do a quality job on that
21 project.

22 So really help us correct years of confusion and
23 really years of frustration. Glendale is simply requesting
24 that the original application be approved. So myself and my
25 staff, we're all here to answer any questions and I think I

1 only took two minutes, so that's simplicity.

2 CHAIRPERSON SHEEHY: Thank you, Mr. Escalante, for
3 a succinct but thorough review of your appeal. We really
4 appreciate that. I have a question.

5 Is there a reason why Glendale waited eight years
6 to bring this before us?

7 DR. ESCALANTE: No. It didn't wait eight years.
8 There were numerous occasions, in fact we have a whole
9 timeline that we could provide you of all the different
10 appeals.

11 CHAIRPERSON SHEEHY: This specific appeal's been
12 before this Board before?

13 DR. ESCALANTE: This is Eva Lueck -- no, it never
14 came to the Board for appeal. It went through the
15 administrative process.

16 CHAIRPERSON SHEEHY: Oh, meaning -- okay. Do you
17 want to talk about that a little bit?

18 MS. LUECK: Certainly. Eva Lueck, Chief Business
19 Official for Glendale Unified.

20 CHAIRPERSON SHEEHY: Welcome.

21 MS. LUECK: And the challenge has been that when
22 it was discovered it was the incorrect contract, that was
23 submitted back in the 2001-2002 appeal, staff worked with
24 the OPSC staff in trying to see how that right -- that wrong
25 could be righted and in '04-'05 was when there was a

1 grandfathering period I believe put in and districts were
2 coming forward, so it was an opportunity to bring this back
3 again.

4 At that point in time, unfortunately it was viewed
5 as a new application and the district was advised that there
6 wasn't eligibility for a new application. It wasn't viewed
7 as an appeal of an original application.

8 CHAIRPERSON SHEEHY: Was that because you had
9 withdrawn it?

10 MS. LUECK: There's a little bit of controversy
11 over whether it was withdrawn or revoked.

12 CHAIRPERSON SHEEHY: Can you tell us a little bit
13 about that controversy? I'd be interested in knowing about
14 it.

15 MS. LUECK: When the original application was
16 submitted in December of 2000, it was determined by OPSC
17 that baseline eligibility for the district had not been
18 established and that was back at the time when the new bond
19 issue passed and everybody in the state had to establish
20 baseline.

21 So at that point in time, it was -- I don't know
22 if I have the correct term, but it was rejected. It was
23 returned saying that we did not have baseline established.

24 That was an issue with three of our school sites
25 under construction. That came forward on an appeal process

1 and, you know, we submitted our baseline papers in April of
2 2000. There was some confusion. It was agreed by the State
3 Allocation Board in 2002 that it was substantially complete,
4 the baseline eligibility, in April of 2000. So any
5 contracts signed after that date were appropriate.

6 Then we did inadvertently submit a wrong contract.
7 We submitted a contract for our gymnasium on that same
8 campus. That was a 1999 date. OPSC staff and district
9 staff both agreed that was outside of the date order that
10 was appropriate during that appeal process. So we agreed to
11 withdraw that appeal.

12 Whether that means that we withdrew an application
13 or revoked an application, I don't know that technical term,
14 but --

15 CHAIRPERSON SHEEHY: But you did actually withdraw
16 that appeal at that time because you --

17 MS. LUECK: We withdraw that appeal.

18 CHAIRPERSON SHEEHY: -- you had the wrong date in
19 the contract.

20 MS. LUECK: Correct.

21 SENATOR HANCOCK: Or was it the wrong project? I
22 thought -- inadvertently that it was a gymnasium instead of
23 something else?

24 MS. LUECK: You know, and that may sound a bit odd
25 and as I look back through the records, this was rebuilding

1 an entire high school campus and it was done in three phases
2 and multiple primes.

3 In the first two phase alone, there were over 60
4 contracts and so when they were pulling the contract to go
5 with the appeal -- and it was a very hectic time -- they
6 pulled the gymnasium contract. It was for concrete work and
7 it was our error. I was absolutely our error at that time.

8 We have gone back through. We've documented the
9 correct contract. We've documented our DSA dates. All of
10 that, we're in agreement with the staff of OPSC.

11 CHAIRPERSON SHEEHY: Mr. Harvey.

12 MR. HARVEY: As a follow-up to the withdrawal in
13 May of '02 --

14 MS. LUECK: Yes.

15 MR. HARVEY: -- you indicate that you were aware
16 at that point that there was an incorrect contract.

17 MS. LUECK: We were not. We believe -- we looked
18 at the contract date. Staff -- OPSC staff and district and
19 it was -- the date on it was April 1999. I don't know if it
20 was April, but it was a 1999 date and we had agreed with the
21 staff that our baseline eligibility was to be established in
22 April of 2000.

23 So that construction contract with a 1999 date was
24 clearly outside of what was appropriate to come forward in
25 the appeal.

1 MR. HARVEY: I guess what I'm getting to, since
2 you didn't occupy until the following fall and you still had
3 the spring an summer, why wasn't the proper contract
4 attached and an appeal immediately sought at that point in
5 time.

6 MS. LUECK: You know, I've been with the district
7 two and a half years, and I honestly don't know when it was
8 discovered that there was an incorrect contract. I know it
9 was before the 2004 date and it was after the 2002 date.
10 I'm not sure exactly when that occurred.

11 MR. HARVEY: I guess I'm still struggling with why
12 you withdrew in May '02 because that seems to be the act
13 which keeps you out of the proper finding in law which is
14 you can't occupy a classroom and then after the fact get
15 reimbursement for new construction. So I'm again trying to
16 figure out what kept you from getting the proper form, the
17 proper contract in prior to the fall of '02 when you
18 occupied Crescenta Valley.

19 MS. LUECK: I don't know.

20 DR. ESCALANTE: We were not there. Neither of us
21 were there at that time.

22 MS. LUECK: If there's anything in the OPSC
23 documents -- I know there were a lot of discussions back and
24 forth between both staff, but I don't have clarity on that
25 item.

1 MR. HARVEY: Thank you. I have a question of
2 staff. I hear the need that the district has to backfill
3 what they had to borrow from their bonds. If we give them
4 reimbursement for this Crescenta Valley project, they're
5 free to use it on other school facility needs?

6 MR. COOK: Well, at this point, I mean the bills
7 have obviously been paid for some time or you guys are in
8 arrears for -- but that's -- I'm sure those have been paid.
9 Those funds would be capital funds that would be available
10 to the district for another high priority capital purpose,
11 is what it would amount to.

12 MR. HARVEY: So they can do it. Here they are
13 asking for money to reimburse them for Crescenta Valley High
14 School classroom. They spent the money. Contracts are
15 paid. We give them the appeal and they can use it for a
16 high priority capital improvement, something else entirely
17 different from what the appeal was based on.

18 MR. COOK: I'd actually ask legal counsel to weigh
19 in on that question.

20 MR. NANJO: The difficulty is there's -- the
21 concept of how the school facilities program is supposed to
22 work is it's supposed to go to fund new construction for
23 school facilities that are not yet housed. Once they're
24 housed, then it becomes a reimbursement and that's not
25 something that's allowed under this program. That's kind of

1 the difficulties that the Attorney General's office
2 expressed in an opinion that they provided to this Board.

3 MS. LUECK: If I could just comment. Districts
4 are reimbursed all the time for construction expenses that
5 we have -- our local fund. That's just part of the timing
6 of what needs to occur. So from our perspective, it would
7 be a reimbursement of our GO bond. A very late
8 reimbursement, but it would be a reimbursement and that we
9 would spend it on another capital project.

10 Just for clarification, we withdrew our appeal in
11 2002. We didn't withdraw our application and I think that
12 is a bit of a difference.

13 MR. HARVEY: Okay. I just want to make sure we
14 weren't giving a gift of public funds by virtue of giving
15 you these dollars if indeed that's what the Board does and
16 you put them into a use other than Crescenta Valley. That's
17 all.

18 MR. NANJO: And that's the concern that the
19 Attorney General's office raised is that's what in effect
20 happens when you're -- the problem is they can reimburse
21 their own funds prior to occupancy. Once occupancy is --
22 once the schools are occupied by the schools [sic], it then
23 drops out of the program or at least that's what the opinion
24 was.

25 CHAIRPERSON SHEEHY: Henry, is your understanding

1 that that's a statutory requirement or a regulatory
2 requirement?

3 MR. NANJO: A statutory and also it's a bond
4 covenant. So it's --

5 CHAIRPERSON SHEEHY: It's a bond covenant as well?

6 MR. NANJO: Yes.

7 CHAIRPERSON SHEEHY: What did the bond covenant
8 say?

9 MR. NANJO: Essentially the bond covenants
10 allow -- specify what the use of the bonds are for. Again
11 paraphrasing what the Attorney General's office opinion was
12 based on is the fact that it's outside of the bond covenants
13 because for new construction, the SFP program does not allow
14 reimbursement of a school facility once it's occupied
15 because there are no -- there's no longer a need to house
16 unhoused pupils.

17 CHAIRPERSON SHEEHY: I want to say that I know --
18 I'm not sure that we're going to have this matter resolved
19 today for a couple of reasons. Number one, we're going to
20 go into closed session in five minutes because we really
21 have to deal with our personnel issues since we're going
22 to lose some members. And I'm not sure that we're going --
23 even in five minutes, I don't know that we have enough time
24 to finish discussing all the issues and we don't have all of
25 our members here either which may be important.

1 But I would like to just say that my review of
2 this indicates a lot of legal issues and I don't know
3 whether your appeal will be approved or not by this body,
4 but I'm concerned about this -- I'm concerned about some of
5 the legal implications if in fact your appeal is approved
6 and I want to just say for the record whether your appeal is
7 approved or not approved by this body, I'm going to draft
8 under my own request and my own signature a letter to the
9 Attorney General's office asking for an opinion on this
10 matter, not because of Glendale per se -- and by the way,
11 I'm going to cc that to every member on the Board to be
12 completely transparent.

13 But I want to make sure if we're going to reverse
14 actions that happened eight years ago that we're not opening
15 up the door to a lot of other issues that happened eight,
16 nine, or I don't know how far back we go. It's going to be
17 a year from now before we ever get anything from the
18 Attorney General, but I think it would be helpful to have
19 that because I just think we all need to have the same
20 information and know if it's a statutory thing, what can we
21 and can we not do.

22 And so I realize that you may in fact get your
23 appeal approved today or next month when we take it up again
24 if we can't finish it today, but I really think it's
25 important we have something on the record that we can all

1 look at. Ms. Moore.

2 MS. MOORE: Well, I'm concerned about requesting
3 another opinion of the AG and I know -- I don't know the
4 rules around that, whether an individual Board member can do
5 that or if it's an agreed of the State Allocation Board.

6 But we have gone to the AG. We have three
7 opinions on this from the AG.

8 CHAIRPERSON SHEEHY: On this item?

9 MS. MOORE: We have three opinions from the AG on
10 a similar item, two of which -- I think in each AG opinion,
11 Glendale is mentioned, and I'm not -- I don't know that for
12 absolute fact, but we visited this issue three times now
13 with the AG and I actually think we, in closed session, had
14 on the third time determined a direction that this is not in
15 keeping with in my remembrance of that.

16 And so I would have concerns about that. I
17 think -- and you're saying as an individual you can do that,
18 but as a Board, I would want to vote on that.

19 CHAIRPERSON SHEEHY: Okay. Fair enough. Well, I
20 certainly don't want to take any action that would be
21 considered preemptive of the prerogative of the Board, so I
22 appreciate your comments, Ms. Moore.

23 Then I think it might be appropriate -- I'm not
24 familiar of any closed session briefing where the AG briefed
25 us on the Glendale Unified School District issue. I was in

1 the closed session in November. I remember it was a
2 different subject then. There might have been other ones
3 that I wasn't in and I know that we have one, two, three,
4 four, five members -- new members on this Board that weren't
5 in any of those briefings.

6 So I have no prejudice against this issue and I'd
7 like to see your appeal approved, but I'm very concerned
8 about the legal implications. So if it is true, Henry, that
9 we've got three AG opinions on this issue, perhaps we need
10 to have the Attorney General come back in and talk about
11 this.

12 MR. NANJO: Let me clarify. What we have here is
13 three AG opinions. The first issue or first opinion dealt
14 with not Glendale but similar issues involving occupancy and
15 funding after occupancy. The second AG opinion did involve
16 Glendale and that I believe is the briefing that Ms. Moore
17 talked about.

18 And then there was a third letter opinion where
19 there was some concern because some additional facts which
20 called into question that second opinion. So that's kind of
21 the history of the opinions that this Board has received.

22 CHAIRPERSON SHEEHY: What is the timeline --
23 Henry, for my benefit, what was the -- for everybody's
24 benefits, what was the timeline of those briefings? Were
25 those briefings done with this configuration of the Board or

1 were they done with some earlier Board?

2 MR. NANJO: It was done with an earlier Board.

3 CHAIRPERSON SHEEHY: Well, and I think I was at
4 one of them.

5 MR. NANJO: That is correct.

6 CHAIRPERSON SHEEHY: But there were two other ones
7 where I wasn't on this body; correct?

8 MR. NANJO: There was at least one. I don't know
9 if there was two.

10 CHAIRPERSON SHEEHY: Well, I don't want to belabor
11 this point now. I'm just concerned about this issue because
12 I want to make sure, you know, going forward that we don't
13 continue to have disagreement over what we can and can't do
14 legally. And there's some doubt in my mind what we can and
15 can't do legally and I'd like to have that doubt resolved so
16 that we can all vote without having to worry about whether
17 that's an issue.

18 SENATOR WYLAND: I'd just like I say I respect
19 what you're trying to get at and I think that it is
20 important to understand that, but as you said, it would take
21 a long time. First of all, we'd have to agree I think we
22 want another opinion. We'd have to look at the ones that
23 have already been done.

24 From my point of view, I would actually like to
25 move today that we adopt --

1 CHAIRPERSON SHEEHY: Okay.

2 SENATOR WYLAND: -- option 3 and we'll see what
3 happens.

4 CHAIRPERSON SHEEHY: Okay.

5 SENATOR WYLAND: Subsequently, obviously we'll
6 have to take a look at these issues, but my take on this is
7 that there was an attempt at compliance, an error made, and
8 that we should go ahead and reimburse and that would be
9 my --

10 CHAIRPERSON SHEEHY: Okay. So Senator Wyland has
11 moved approval of option number 3. Is that right, Senator?

12 SENATOR WYLAND: Correct.

13 CHAIRPERSON SHEEHY: Okay. Do we have a second?

14 SENATOR LOWENTHAL: Second.

15 CHAIRPERSON SHEEHY: We have a second by Senator
16 Lowenthal. Do we want to have a vote now? We've got a
17 couple minutes left before the 5:30 witching hour.

18 Mr. Harvey, do you want --

19 SENATOR HANCOCK: I do have --

20 CHAIRPERSON SHEEHY: Senator Hancock.

21 SENATOR HANCOCK: -- some comments I'd like to
22 make, Mr. Sheehy, and that is I believe in flexibility in
23 these things and I kind of think maybe we need a mercy
24 clause or something because really the pressure that the
25 administration of the state is under and the pressure that

1 school districts are under to provide accurate data in
2 different situations.

3 In the absence of that, as a new Board member, I
4 have to say that I'm concerned with the long-term
5 implication if we're basically going to grant every request
6 for, you know, whoops, we made a mistake and we made a
7 mistake and so let's just move on.

8 I need to understand sort of the policy impact of
9 that and unfortunately I just don't think I do. So I'm not
10 going to be able to vote on that today.

11 I'd like to know how many of these appeals do we
12 hear in a year. Do we generally always grant them? We
13 granted the last one a couple of meetings ago that was
14 contentious.

15 Why then -- what kind of a precedent would we be
16 setting or not setting or are these fairly rare considering
17 the administrative pressures that school districts are
18 under.

19 But I'm not comfortable taking action today.
20 There may be, you know, a majority of the Board that is, but
21 I want --

22 MR. NANJO: Chair Sheehy, I would be remiss if I
23 didn't mention, just so the Board members are aware, there
24 is some question as to whether the Attorney General's
25 opinion squarely still meets the facts as presented by

1 Glendale.

2 With that being said, the ramifications of
3 granting the appeal if it's later found to be in violation
4 of bond covenants is there would be a duty on this Board to
5 go make the bond funds whole which means we would have to at
6 that time go back to the school district and recover those
7 funds that were given with interest and we would not have
8 any flexibility on not doing that. So --

9 CHAIRPERSON SHEEHY: Okay. Nobody wants to do
10 that.

11 MR. NANJO: Right.

12 CHAIRPERSON SHEEHY: That's -- you know, and
13 Senator Hancock, thank you for that. I share the concern.
14 I just -- look, I was here in October and I was here for the
15 closed session in November and I know everything that took
16 place and -- but that notwithstanding, I don't feel I
17 understand this well enough. I'm with you, Senator Hancock.
18 I don't feel I understand this well enough to be
19 comfortable.

20 I am concerned about precedent setting and opening
21 up the door to a number of other appeals and I just want to
22 make sure that we're on firm, solid legal ground whatever
23 the decision of this body is. You know, I'd like to see
24 your issue, Mr. Escalante, taken care of because I'm sure
25 you could put that money to good use in your district, but I

1 can't with my fiduciary responsibility vote to approve the
2 appeal for that funding if there's a significant chance that
3 we're going against state statute and I'm not convinced that
4 we're not doing that.

5 So I just -- I really would like to have more
6 information. Certainly, Ms. Moore, we're going to take your
7 comments to heart and I'm not going to do anything that
8 would preempt this body from asking or not asking for an
9 opinion, but I -- one way or another, I think it would be
10 helpful -- because these Board members, you -- probably most
11 of you are going to be here longer than I am because you're
12 not going to term out in a year and a half, but I think it
13 would be helpful for us all to know going forward what we
14 can and can't do legally and I think there is some question
15 here.

16 Ms. Fuller.

17 ASSEMBLY MEMBER FULLER: I'm sorry, but I just
18 have to say two things. The first is that, correct me if
19 I'm wrong, Henry, but this case is very parallel to the
20 Davis case.

21 MR. NANJO: That is correct.

22 ASSEMBLY MEMBER FULLER: And we approved the Davis
23 case.

24 MR. NANJO: That is correct.

25 ASSEMBLY MEMBER FULLER: And so if we have to take

1 money back from Davis, we might just have to take it back
2 from these guys; right?

3 MR. NANJO: That is correct.

4 ASSEMBLY MEMBER FULLER: Okay. So you guys know
5 that, but you'd like to have like consideration as soon as
6 possible basically school districts need to have some
7 certainty in their life; is that right? Okay. So that's
8 one.

9 Two, I agree with Ms. Hancock and you that we need
10 to as a whole come to some agreement around when we have
11 latitude to do an appeal and when not, but I think that the
12 Senator is right on when she says we need a mercy clause
13 because I know this district and they're a district who does
14 everything right in every area for as long as I've known
15 them regardless of which superintendent they have.

16 And to me if you put the wrong the piece of paper
17 on but all your applications were lined up and then just
18 because you put the wrong contract out of 60 contracts on,
19 but your application was still good, now you have to take
20 the whole thing back and you don't get to make any little
21 errors and your enrollment has declined now, so now you lose
22 your own project, I just think that's crazy.

23 So to me if that's what's going on here, number
24 one is, is they put in an application, they had the
25 eligibility. Some clerk stapled the wrong contract onto the

1 deal. They all get it back. They all try to go the right
2 thing. Nobody has a rule to fix it and so at the bottom,
3 they come into a review -- appeal and at the appeal,
4 somebody tells them to revoke it. They revoke it. Nobody
5 even knows because those people are all gone.

6 You got to put the kids in school. They did not
7 build this school and then say oh, now we want some money.
8 They applied to the build school. They wouldn't have built
9 the school if they hadn't had the eligibility to start the
10 school because I know this district. They would not have
11 done that.

12 So anyway, let's do whatever it takes to get us
13 all on the same page, but let's get a mercy clause and let's
14 not forget that we allowed Davis and I was the one that
15 wasn't all that excited about allowing Davis. Okay. Now we
16 did it. Okay. Now these guys are just like Davis more or
17 less.

18 So I guess I would bow to the wisdom of waiting
19 one month but not six months or eight months and I would
20 want a complete analysis of how the Davis case and this case
21 are parallel.

22 CHAIRPERSON SHEEHY: That's fine. Senator Wyland,
23 do you still want to have the vote now?

24 SENATOR WYLAND: I think I'd like to take the vote
25 assuming that that does not prejudice -- I want to make sure

1 that that is not a final decision so that --

2 CHAIRPERSON SHEEHY: Well, if there's six votes
3 here today to grant option 3, their appeal, then I think we
4 should take the vote and grant the appeal. I have no
5 problem with that.

6 SENATOR WYLAND: But if there are not, then I'd
7 like --

8 CHAIRPERSON SHEEHY: Well, if there's not, then
9 we'll bring it back -- if it's not, it just means that it --
10 if it's not, it doesn't mean that they -- because we haven't
11 adopted any rules along those lines, what it means is, is
12 that --

13 SENATOR WYLAND: They can come back.

14 CHAIRPERSON SHEEHY: If there's not six votes for
15 a final -- if there's six votes for a final action today,
16 that'll be a final action. If there's not, they can come
17 back at the next meeting.

18 SENATOR WYLAND: Right. Okay. I'm more -- I'm
19 used other sorts of rules that --

20 CHAIRPERSON SHEEHY: Senator Torlakson, did you
21 want to say something?

22 ASSEMBLY MEMBER TORLAKSON: Just very briefly I
23 think. I remember Jean Fuller outlined the situation as I
24 see it also and it's all fundamentally about the children
25 and their best welfare and the district's ability to provide

1 for all their children and I think they had no choice. This
2 is sort of a technical error. They had to house those
3 students, and here we are, so I'm for a mercy clause or an
4 errors and omissions clause or something that doesn't allow
5 rampant, you know, abuse of our system, but an error like
6 this where they had to take care of the kids and they need
7 the money now to take care of more kids, I'm for voting for
8 the kids.

9 CHAIRPERSON SHEEHY: Okay.

10 SENATOR HANCOCK: But I thought the discussion was
11 about declining enrollment. Now how does that come in.
12 More kids.

13 SENATOR LOWENTHAL: That was later on.

14 SENATOR HANCOCK: That was later on. In other
15 words, they wouldn't be eligible if they applied now, but
16 they were eligible when they did apply, but there was -- the
17 mistake was made.

18 ASSEMBLY MEMBER FULLER: And at the point that the
19 mistake was made, they weren't eligible, so then it's like
20 okay, was their whole application pulled and they had to
21 like start over or was their application still good. They
22 just had to put the right contract on.

23 CHAIRPERSON SHEEHY: Well, one thing's for sure.
24 I think there's unanimous support here to have staff come
25 back and report to the Board on this mercy clause issue.

1 What could be adopted either through regulation or statute,
2 some sort of errors and omission thing like Ms. Fuller said,
3 if they had all their contracts lined up, everything was
4 done, and there was a clerical error at the last minute, you
5 know.

6 So if there's something that this body can do to
7 provide -- you know, I don't know the right term. I like
8 the mercy clause issue, then that would be very helpful and
9 I think that there'd be unanimous support for that.

10 Now, Senator Wyland has a motion on the floor.
11 Senator Lowenthal has seconded that motion. We're going to
12 lose our members in 20 minutes and we have very important
13 closed session business to do, so if it's okay with -- if
14 there's no objection from the Board members, why don't we
15 have a vote.

16 We have a motion to approve option number 3 and
17 after that vote is concluded, then we'll need to adjourn the
18 open session and move back into the closed session. Is that
19 agreeable.

20 Okay. So we have a motion and a second to approve
21 option number 3 which would -- I think is the option the
22 district wants; right?

23 SENATOR WYLAND: With the understanding it's sort
24 of an amended motion that says to approve option 3 and if
25 there are not sufficient votes then to bring it back in a

1 month.

2 CHAIRPERSON SHEEHY: If there are not sufficient
3 votes, this item will automatically come back on the next
4 agenda. We will have a full, fair hearing. Don't worry,
5 Senator Wyland. We'll make sure that happens.

6 Ms. Page, can you call the roll, please.

7 MS. JONES: Yes. Senator Lowenthal.

8 SENATOR LOWENTHAL: Aye.

9 MS. JONES: Senator Hancock.

10 Senator Wyland.

11 SENATOR WYLAND: Aye.

12 MS. JONES: Assembly Member Fuller.

13 ASSEMBLY MEMBER FULLER: Aye.

14 MS. JONES: Assembly Member Torlakson.

15 ASSEMBLY MEMBER TORLAKSON: Aye.

16 MS. JONES: Scott Harvey.

17 Kathleen Moore.

18 MS. MOORE: Aye.

19 MS. JONES: Rosario Girard.

20 Tom Sheehy.

21 CHAIRPERSON SHEEHY: No.

22 MS. JONES: The motion does not pass. It's 5, 1,
23 and 3 abstentions.

24 CHAIRPERSON SHEEHY: So again let's make sure that
25 this item is back on our docket for next month's hearing and

1 so we can have more discussion and another vote.

2 SENATOR HANCOCK: Mr. Chairman.

3 CHAIRPERSON SHEEHY: Yes, Senator Hancock.

4 SENATOR HANCOCK: If I could just say, I would
5 be -- I would really like to see a set policy because the
6 last time this came up, if I remember it, it was literally a
7 clerk that had cancer and was undergoing chemotherapy and
8 forgot to send something in; right?

9 We don't want abuse, but I'll tell you. I also
10 know some school districts that are under such pressure
11 because they're bankrupt or something that they make
12 mistakes sometimes and I want to have a policy so that we
13 will be able to recognize those things, but we won't lay
14 ourselves open to kind of it doesn't matter what you do, you
15 can come back and get a variance.

16 CHAIRPERSON SHEEHY: Rob Cook, are you hearing
17 what Senator Hancock's saying. She is once again affirming
18 we want to have some sort of policy on a mercy clause. So I
19 want to have a full discussion of that at the next meeting.

20 Mr. Duffy, we could take additional comments from
21 you when we come out of close session.

22 MR. DUFFY: No. I just wanted to know -- people
23 are wanting to know are you going to go back into open
24 session and deal with the rest of the items or --

25 CHAIRPERSON SHEEHY: I think we're going to lose

1 our quorum.

2 MR. DUFFY: Okay.

3 CHAIRPERSON SHEEHY: But if we have a quorum
4 present, we could conduct more business. I just don't think
5 we will, Tom.

6 MR. DUFFY: Okay. Thank you.

7 CHAIRPERSON SHEEHY: So, folks, I'm not going to
8 preguess what my colleagues are going to do, but I think we
9 will lose some votes.

10 So if you could all please clear the room, unless
11 you are staff.

12 (Whereupon at 5:43 p.m., the open meeting was recessed
13 for the closed session and resumed as follows at 6:22 p.m.)

14 CHAIRPERSON SHEEHY: Ladies and gentlemen, the
15 State Allocation Board has adjourned the closed session and
16 we are entering back into the open session. Is there any
17 further items to come before the Board today? Is there
18 anybody from the public that wanted to come make any
19 statements?

20 I'm perfectly willing to stay here. We don't have
21 a quorum anymore, but I will stay if there's anybody from
22 the public who wanted to come address the Board and if any
23 of my colleagues want to stay, that's fine.

24 Anybody want to come address the Board on any
25 issue that was on the agenda. Okay. Mr. Duffy.

1 MR. DUFFY: Just to clarify, you have two letters
2 from C.A.S.H. Tom Duffy for C.A.S.H.

3 CHAIRPERSON SHEEHY: Tom, can you press the
4 microphone so we can all hear you.

5 MR. DUFFY: Yes. You have two letters that were
6 received today from C.A.S.H. and hopefully you have them.
7 One of them is on the seismic item and I won't belabor, but
8 just our thought is -- I appreciate the report. I'd really
9 like to have a discussion of what really could work with
10 this program because we keep hearing from districts that
11 it's hard to penetrate.

12 And so we ask that you ask the Implementation
13 Committee and all the practitioners that are there to really
14 discuss this item and say what -- and I appreciate your
15 taking the time to listen. Thank you very much.

16 CHAIRPERSON SHEEHY: Tom, thank you very much. Is
17 there anybody else here that had anything they wanted to say
18 before the Board today? Yes, sir.

19 MR. SPEAKER: Is this on item 11 through --

20 CHAIRPERSON SHEEHY: Sir, anything you want. I
21 mean as long as it's pertaining to the agenda item -- as
22 long it's not an item we've already heard testimony on and
23 closed on.

24 MR. SPEAKER: Yes.

25 MS. MOORE: Just so you know that we can't take

1 action because we do not have a quorum.

2 CHAIRPERSON SHEEHY: Yeah. We're not taking any
3 more action, but we're inviting public comment if there is
4 any.

5 MR. SPEAKER: Then if it's going to next month,
6 I'll --

7 CHAIRPERSON SHEEHY: It's going to go to next
8 month.

9 MR. SPEAKER: Okay. Thank you.

10 CHAIRPERSON SHEEHY: Yes, sir. Is there anyone
11 else? Okay. Seeing no other public comment that would come
12 before the Board today, without objection, the State
13 Allocation Board open session is now adjourned.

14 (Whereupon, at 6:24 p.m. the proceedings were recessed.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
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COUNTY OF SACRAMENTO)

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That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on May 14, 2009.

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