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STATE ALLOCATION BOARD SUBCOMMITTEE
ON THE SCOPE OF THE OFFICE OF
PUBLIC SCHOOL CONSTRUCTION AUDITS

STATE CAPITOL, ROOM 437
SACRAMENTO, CALIFORNIA 95814

DATE: MONDAY, DECEMBER 14, 2009

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APPEARANCES

SENATOR ALAN LOWENTHAL, CHAIR

SCOTT HARVEY, MEMBER SAB (DGS)

KATHLEEN MOORE, MEMBER SAB (CDE)

P R O C E E D I N G S

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2
3 SENATOR LOWENTHAL: Welcome to the California --
4 this is our second hearing in the State Allocation Board. I
5 want to welcome everyone and we're again focusing as our
6 second hearing on -- this is our Subcommittee on Audit.

7 The Subcommittee was established, just to fill
8 everyone in, by a unanimous decision of the State Allocation
9 Board in February of this year in recognition of concerns
10 that were raised by school districts regarding changes in
11 audit procedures and requirements.

12 The Board requested that a subcommittee study the
13 scope of the OPSC auditing authority and bring
14 recommendations to the State Allocation Board defining that
15 authority.

16 The Board further specified that the
17 recommendations should seek to find a balance between our
18 fiduciary responsibilities for Board accountability and the
19 best use of state and local resources in conducting audits.

20 The Subcommittee met in August and heard from the
21 State Auditor on audit practices and from the Office of
22 Public School Construction and from school district
23 representatives on challenges with the current auditing
24 processes. We also heard from the Department of Education
25 on their model for vetting new audit requirements through an

1 audit committee.

2 We're going to begin this hearing with an overview
3 of the history and the intent of the school facility program
4 with Rick Simpson who is the Deputy Chief of Staff to
5 Speaker Karen Bass. Rick was the lead legislative staff
6 during the development of SB50 which was the legislation
7 that created the school facility program in 1997.

8 Furthermore, Rick has also served as the lead
9 negotiator for all school facility propositions in the
10 Assembly since Proposition 1A, including Propositions 47,
11 55, and 1D. Rick's expertise in the history and the intent
12 of the school facility program will assist us in our work to
13 develop an audit program that is consistent with the goals
14 of the school facility program.

15 We're then going to receive a legal analysis, the
16 second part, from attorneys who represent school districts
17 on school facility issues. They will explore both the State
18 Allocation Board and the OPSC audit authority based on their
19 interpretations of school facility program law and the
20 Governor's Executive Order for Bond Accountability.

21 I am somewhat concerned that the cart has been
22 placed in front of the horse in regard to audits. OPSC
23 testified in August that a new pilot audit program has been
24 put in place. I'm not aware at this time that the State
25 Allocation Board provided direction to OPSC for this audit

1 pilot program or on the implementation of the Governor's
2 Executive Order for Bond Accountability.

3 Further we've heard from districts that this pilot
4 program is not truly a pilot but rather a fully implemented
5 new audit program.

6 If it is the opinion of these attorneys that the
7 State Allocation Board has the audit authority, then later
8 on when we talk about discussing recommendations, I would
9 like to talk about possible -- and I'll get back to that in
10 just a minute -- possible recommendations that we can take
11 to the fully Board regarding the role of the SAB.

12 In our third segment of the agenda, we're going to
13 discuss past, current, and future audit practices. This
14 will provide the Subcommittee with the opportunity to follow
15 up and clarify testimony received from OPSC and districts at
16 our August hearing.

17 We hope to clarify what the OPSC believes were the
18 problems with the past audits and how these problems are
19 addressed in current audits. When we attain an
20 understanding of what was lacking in past audits, then we
21 can begin to determine what future audits should look like.

22 The Subcommittee should, and I would hope that
23 they will, establish and make recommendations at that time
24 to the full SAB the proper authority and the scope of what
25 audits should look like.

1 The next section regards audit communication and
2 we're going to look at how communication is given to
3 districts about the audit process both from the OPSC's
4 perspective and also from the district's perspective and to
5 see if this communication process should and could be
6 clarified.

7 Finally in the last agenda section -- and all this
8 is going to take place in three hours. Finally in the last
9 agenda section, we will discuss what I mentioned before:
10 begin to talk about some possible recommendations and
11 discussion among ourselves for the Board and what the next
12 steps would be for us to do as a subcommittee in defining
13 the scope of audits.

14 Questions that we really should be discussing as
15 we listen to the testimony today in our last section when we
16 begin to talk about recommendations that we want to take
17 before the full Board are: Should the Subcommittee
18 recommend to the State Allocation Board an immediate
19 suspension of the "new audit program" until the Board
20 defines the scope of audit processes? Do we need to develop
21 a working group to develop appropriate transparent audit
22 procedures? How should the new audit procedures be
23 communicated with districts if they are developed, and so
24 on. And we'll just use this as a vehicle to really discuss
25 among ourselves what are possible recommendations to the

1 full committee.

2 With that, I'd like to introduce our Subcommittee
3 members. I am Senator Lowenthal. Should have introduced
4 myself at the beginning, but I just jumped right in. Other
5 members of our Subcommittee -- we have three members.
6 There's Kathleen Moore representative on the State
7 Allocation Board from the Department of Education and Scott
8 Harvey from the Department of General Services, and I would
9 like to ask both of those if they'd like to make some
10 introductory statement.

11 MS. MOORE: Given the amount of material that we
12 have to go through, I think you've adequately covered the
13 opening statement and I'll defer to you and to Mr. Harvey,
14 if you have any further comments.

15 MR. HARVEY: Well, I think even at our first
16 session there was no question that there is a role for
17 auditing local school districts' expenditures of state
18 dollars. The question has been what should that template
19 look like. What role should the state play if any and what
20 is it that we're doing now that we can do better.

21 So for me, I'm going to be anxious to hear about
22 the obligations we have to be guardians of state bond
23 dollars and that there be independent audits in the classic
24 definition of independent and we'll go from there, but thank
25 you for setting the scene, Senator. This should be an

1 interesting three hours.

2 SENATOR LOWENTHAL: Thank you. Well, let's begin
3 with our first presenter, talk about the history of the
4 lease-purchase program, the evolution of the school facility
5 program, and we're pleased to introduce Rick Simpson who is
6 the Deputy Chief of Staff for Speaker Karen Bass and her
7 chief advisor on educational policy. Welcome.

8 MR. SIMPSON: Thank you, Senator. I was thinking
9 back on all of the bond measures and Speakers and others
10 that I've had the privilege to work for over the years and
11 just thankful that you didn't invite me here because I'm old
12 and have seen lots of history.

13 Just maybe a little bit to set the context. SB50
14 was -- and when we were working on it, we conceived of it as
15 a three-legged stool and was to address three specific
16 issues related to the school facility program and it was
17 explicitly intended to make -- to be a complete overhaul of
18 a lot of the fiscal architecture for -- just hung up on the
19 Speaker of the Assembly -- fiscal architecture for school
20 facilities.

21 One leg of the stool was a bond measure itself and
22 we did I believe it was a 9.2, \$9.3 billion -- Mr. Chairman,
23 could you excuse me for just a moment.

24 (Telephone interruption)

25 MR. SIMPSON: -- three legs to this -- I

1 apologize, Senator -- three legs to the stool. One was
2 adequate financing for school facilities and we created a
3 9.2, \$9.3 billion facilities bond that was at that time I
4 believe the largest -- certainly the largest education bond
5 in American history I think. Certainly in California
6 history -- to provide the state level resources for school
7 facilities.

8 We also dealt extensively with what had become a
9 very controversial set of issues in school facilities around
10 developer fees. There were a series of court decisions
11 affectionately known as the Mira, Hart and Murrieta
12 Decisions that collectively had the effect -- and this will
13 sound I'm sure pejorative to some of my friends -- but the
14 home building community was concerned at that time that --
15 that while back in the mid 1980s, we had tried to place
16 limits on the level of developer fees that school districts
17 could charge home builders.

18 That legislation according to certain court
19 decisions had not limited the ability of local planning
20 agencies -- cities in particular and counties as well --
21 from imposing conditions at the time of a general -- a
22 legislative act, a general plan amendment or a zoning
23 change.

24 We had placed limitations on developer fees at the
25 time of the subdivision map approval, but at an earlier

1 point in the process, if you had to change a general plan or
2 zoning or something like that, a legislative act, had made
3 no change in that law and therefore local agencies at the
4 behest of school districts were refusing to make legislative
5 acts that could facilitate development until the schools
6 were satisfied.

7 And so there was a tense relationship as it were
8 between the home building industry and schools. So we --
9 that was another issue that we dealt with.

10 And the third leg of the stool was the state
11 program, which I think is of most interest to you. The rap
12 on the state program at the time was that it was quite
13 discretionary, that the Allocation Board in particular had
14 enormous discretion on who got funded, how much they
15 received in state bond funding, that the rap, correct or
16 incorrect, was that whichever school districts either had
17 the cleverest consultations or the consultants who had the
18 best relationships with members of the Allocation Board did
19 better.

20 And it was this sort of discretionary nature of
21 the program that caused a lot of angst particularly for the
22 Governor's office. At that time Governor Wilson was in
23 office. And so the three directions of this three-legged
24 stool were to try to craft a bond measure that adequately
25 provided funding to resolve the developer fee issues and to

1 rewrite a state program that was much less discretionary,
2 was more formula driven, acknowledged that there was
3 intended to be a state-local partnership in funding between
4 the state and local school communities.

5 At that time, you will recall, it was 1998. It
6 was a couple of years before Prop. 39 passed. So it was
7 still a two-thirds vote to pass local school bonds, but that
8 changed not long thereafter.

9 But the whole underlying philosophy was to, as I
10 say, make it more formula driven, leave much more discretion
11 to school districts. For example, in the SB50, we allowed
12 school districts to keep -- if they were able to build what
13 they needed to build at a lower cost than the state
14 allowances -- the state plus local allowances provided, they
15 could keep the difference and could use that for some other
16 facilities-related cost at the local level and that was
17 supposed to be up to them as to -- it was -- that was
18 intended as an incentive for them to be cost efficient
19 because there were a lot of pressures for cost efficiencies
20 because we tied the -- explicitly tied the developer fee
21 levels to the costs of the state program and we were trying
22 to create an explicit incentive for folks to be more
23 efficient.

24 We had -- we also had provisions in there that
25 allowed under some circumstances outside architects to do

1 the plan review if there was a backlog at the state
2 architect's office. We had off-the-shelf plans that were
3 supposed to be -- you know, if you didn't want to redesign
4 everything from scratch every time, you could use
5 off-the-shelf plans and could be more cost efficient that
6 way.

7 So there was -- there were incentives on cost
8 efficiency. The whole underlying theory was that it was to
9 be more formula driven, more transparent so there would be
10 good discretion of lobbyists and the politics and all that
11 was sort of taken out of it. That was certainly one of the
12 foremost themes of the Wilson administration and the staff I
13 worked with, Chris Kahn (ph) and his colleagues in the
14 Governor's office at the time.

15 So -- that was it. I guess I would be happy if
16 there's other questions about that. As I say, it was seen
17 as a linked package that the state-local relationship --
18 this was a program that was funded concurrently both from
19 state bond funds and from local funds. It wasn't I think
20 seen as a -- as primarily a state program. This was
21 explicitly a partnership.

22 I will tell you that we developed a relationship
23 with some of the taxpayer groups, California Taxpayers
24 Associations, for example, over the years. They had been
25 tremendous partners in the school facilities financing.

1 They have been of enormous help in going up and down the
2 state helping us school bonds. They have used the
3 public-private partnership, if you will, that we created in
4 SB50 as a model when they talked to similar taxpayer groups
5 around the country and I've had conversations with the Cal
6 Tax Exec over the years about that issue.

7 So we explicitly tried to have a state-local -- a
8 public-private partnership for building school facilities
9 that was, as I say, transparent, formula driven, and left a
10 great deal of discretion to school districts.

11 SENATOR LOWENTHAL: Again fill me in. Since, as
12 you pointed out, you're not an old guy at all, you're really
13 a very young guy doing --

14 MR. SIMPSON: Tell that to my grandkids, yeah.
15 Thank you, Senator.

16 SENATOR LOWENTHAL: -- this for a long period of
17 time, maybe that's the --

18 MR. SIMPSON: There you go.

19 SENATOR LOWENTHAL: -- best way of doing it.

20 MR. SIMPSON: I told Speaker Bass the other day
21 that I'd been around here for 32 budgets. The problem was
22 half of those were in the last 15 months.

23 SENATOR LOWENTHAL: That is true.

24 MR. SIMPSON: Yeah.

25 SENATOR LOWENTHAL: Can you give us some

1 background in terms of the creation -- how OPSC was created
2 as you recall or --

3 MR. SIMPSON: Well --

4 SENATOR LOWENTHAL: -- how that fit into this and
5 the state -- and you talked about giving discretion to the
6 State Allocation Board and then Governor Wilson said, well,
7 wait a second. Let's make sure it just doesn't become a
8 free for all political process. We want to have limits
9 placed and let's have it more formula driven and the
10 allocation of grants. Can you fill me --

11 MR. SIMPSON: Sure.

12 SENATOR LOWENTHAL: -- in as someone who really
13 doesn't know much of that history in terms of that -- the
14 development.

15 MR. SIMPSON: Sure. I don't think we saw SB50 as
16 sort of creating OPSC. I think they changed the name
17 sometime in that era, but it --

18 SENATOR LOWENTHAL: Uh-huh.

19 MR. SIMPSON: -- was -- there was -- it was -- its
20 predecessor agency, whatever the term was --

21 MS. JONES: OLA.

22 MR. SIMPSON: OLA, yeah. Office of Local
23 Assistance. That's it. Thank you. We didn't talk a lot
24 about their particular roll, but I think it was -- you know,
25 we had a set of rules that were created for eligibility that

1 we expected OPSC or at least the state agency to implement.
2 I would say without -- again trying not to be pejorative. I
3 don't think we saw the role of the state agency as being
4 cops -- gotcha' kind of cops. And I know that's some of the
5 rap from some of the school community.

6 I think it was that the -- implementing a new
7 funding model that was kind of -- more on auto pilot than on
8 with lots of discretion that there were formulas if you were
9 eligible based on your enrollment projections, you'd be
10 entitled to so many pupil grants times the number of
11 unhoused pupils to build these. And most of the sort of
12 state oversight I think was intended to be on the backend.

13 When you do -- you check eligibility certainly to
14 make sure that your enrollment projections were in line, but
15 I think most of the concept -- and it wasn't a lot of
16 discussion frankly was that it would be -- certainly the
17 state had the opportunity after the fact to audit, but that
18 it was intended, as I say, to be almost formulaic grant
19 program like a lot of school -- like a lot of school finance
20 programs. I don't know if that answers your question or
21 not.

22 SENATOR LOWENTHAL: Well, let me just take it to
23 the next step then. Given what you know now about -- and
24 we're really here trying to understand the audit process and
25 the scope and the authority of the audit process based upon

1 a historical analysis of really what was outlined
2 originally. Do you think now in your understanding of let's
3 say the new audit processes that the role of the state now
4 or maybe OPSC has gone -- do you think it's gone beyond the
5 intent of what the original SB50 really intended it to be,
6 that audit process?

7 MR. SIMPSON: Well, first of all, I will confess
8 I'm not a -- would not suggest that I'm expert on all the
9 audit processes --

10 SENATOR LOWENTHAL: Okay.

11 MR. SIMPSON: -- that OPSC is doing now. What I
12 have heard anecdotally from some of my colleagues in the
13 education committee does give me some pause. For example, I
14 have been told -- and again I will simply accept that it's
15 true. I have heard that there have been audits suggested --
16 fairly detailed audits about what and the appropriateness of
17 the funds that districts -- the savings if you will, what
18 districts are using them for and making some judgment calls
19 about whether those uses of savings are appropriate or not.

20 I don't think that's consistent with the original
21 intent. If there's a suggestion that school districts are
22 using it illegally, that they're using savings if it doesn't
23 cost the whole pupil grant times the number of pupils to
24 build an elementary school and they can do it more
25 efficiently and they then have some of those savings to

1 use -- as long as they're using for some other facilities
2 program, I think the folks who worked with me on the
3 original bill would say that's fine, that we shouldn't be
4 second guessing their judgment call as to -- as long they're
5 not using it, like putting it in their salary schedule or
6 something like that, that that should be appropriate, that
7 we didn't have any intent of further restricting.

8 As long as they're using it for facilities-related
9 purpose --

10 SENATOR LOWENTHAL: Actually when you began, you
11 said that you wanted to almost provide this as an
12 incentive --

13 MR. SIMPSON: It was explicitly an incentive.

14 SENATOR LOWENTHAL: Right. And --

15 MR. SIMPSON: It was explicitly an incentive.

16 That was one of our cost containment measures.

17 SENATOR LOWENTHAL: What I'm hearing you saying as
18 long as they -- and keeping costs down, if they could
19 actually keep costs even further that they would be provided
20 as long as it is legitimate and possibly what you've
21 heard -- we're not sure that it's so or not, but what you're
22 saying is that from some school districts you've heard that
23 rather being this incentive, the audit actually is beginning
24 to focus on some of these outside expenditures which was the
25 intent was to provide as much flexibility as possible.

1 MR. SIMPSON: I would say so. I mean if again --

2 SENATOR LOWENTHAL: Again it had to be within
3 certain --

4 MR. SIMPSON: Yeah. If there's a concern that the
5 funds are being used for purposes that are not permitted by
6 law, you know, as I say for your operational budget of your
7 school district or home to school transportation or
8 something like that, that would certainly be an appropriate
9 subject for audit and oversight and -- but I would say if
10 it's the case that the audits are second guessing the
11 judgment of the school districts about what other facilities
12 purpose they use those savings for, my personal view is that
13 would be sort of outside the original concept. It was --

14 SENATOR LOWENTHAL: -- what we're asking.

15 MR. SIMPSON: Okay. It was intended explicitly as
16 an incentive. It was part of our cost containment list of
17 items as well as -- so there we are.

18 SENATOR LOWENTHAL: Okay. Thank you.

19 MR. HARVEY: Thank you for that perspective.

20 MR. SIMPSON: Sure.

21 MR. HARVEY: It helped set the scene for me at
22 least and I -- I do want to follow up on your last statement
23 because I too feel that there is a need for audit to ensure
24 that funds are appropriately spent and if you have some
25 inkling that something hasn't been done right, the question

1 then becomes who should do it and I think that's what we're
2 wrestling with.

3 I think the claim I have heard is that you've got
4 certain county offices of education doing certain things.
5 You have local citizen advisory committee that are doing
6 certain things and what is it if at all the state should do.
7 And I'm going to continue to probe on that very question
8 because with bond dollars at stake, I'm inclined to believe
9 there has to be some role for the state and that's what I'm
10 interested in defining, what that role should be.

11 But I'm glad you admit that there is an audit
12 function and for me the question is who does it.

13 MR. SIMPSON: Fair point.

14 MR. HARVEY: Would you agree with that?

15 MR. SIMPSON: I would say that's an appropriate
16 subject for this committee and the Allocation Board to
17 explore. You know, you are correct that when Prop. 39
18 passed that included a local citizens oversight committee
19 and included audit related language in the Constitution and
20 I believe in the implementing statute as well.

21 So sorting out whose responsibilities are what, I
22 think the concept of the local audit in Prop. 39 was to make
23 sure that the property tax dollars being levied for bond
24 purposes and then the bonds that were supported by those
25 were used for the purposes that were outlined to the voters

1 and for -- you know, so there was some accountability with
2 the public trust one has in going before the voters and
3 seeking funds there.

4 So sorting out those different audit categories
5 and who's responsible for it does certainly make some sense.

6 MR. HARVEY: Did you have a chance to read what
7 the Little Hoover Commission had to say about some of the
8 citizen advisory audit functions?

9 MR. SIMPSON: No, I didn't. What'd they say?

10 MR. HARVEY: They indicated that there probably
11 needed to be a little more education. There needed to be
12 true independence, some statutory suggestions for change or
13 recommended and again that may be something we'll want to
14 talk about --

15 MR. SIMPSON: Um-hmm.

16 MR. HARVEY: -- if we determine that is a role
17 that they should play, but Little Hoover Commission did say
18 that there were some inadequacies particularly in the
19 understanding of what they should be doing and who was
20 serving on those committees.

21 MR. SIMPSON: Quite possible. I mean there are,
22 as you know, hundreds and hundreds of those committees
23 around the state because many, many school districts have
24 been successful in passing bonds --

25 MR. HARVEY: Exactly.

1 MR. SIMPSON: -- and have that obligation. So
2 you're going to have the same variance in quality and
3 responsibility that you will have in almost any sort of
4 public sector issue.

5 MR. HARVEY: So it helps feed and inform what we
6 should be doing at the state level.

7 MR. SIMPSON: Um-hmm.

8 MR. HARVEY: Thank you.

9 SENATOR LOWENTHAL: Kathleen?

10 MS. MOORE: Mr. Simpson, I appreciate the
11 underlying philosophy on having more discretion for school
12 districts and was also am not old but was around when all
13 this came forward as well and from the school district
14 perspective, knew excruciatingly what the negotiation was
15 for what school districts in essence gave up in order for
16 this greater amount of flexibility and that was, as you
17 indicated, Murrieta and the local ability to levy developer
18 fees to greater levels as well as we went from square
19 footage to student grant program and we no longer really
20 looked at what -- as carefully at what the square footages
21 were, but how --

22 MR. SIMPSON: Um-hmm.

23 MS. MOORE: -- are you providing for the --

24 MR. SIMPSON: That was certainly another --

25 MS. MOORE: -- for the student.

1 MR. SIMPSON: -- I think explicit theme that we
2 weren't going to tell you what to build. We, you know, took
3 a shot and maybe imperfect though it was, at what the sort
4 of average costs were and said, you know, beyond that, it's
5 up to you. You're the ones who know best, your student
6 population, your instructional needs, and the facilities
7 that you need to serve in.

8 MS. MOORE: And we certainly limited the state's
9 investment at that level when we said for the first time
10 ever if something happens during construction, so sorry, too
11 back on you, hope you had adequate reserves in your
12 programming because this is full and final.

13 MR. SIMPSON: Right. Much more hands off, kind of
14 arm's length relationship I think was contemplated.

15 MS. MOORE: Correct. So that I think -- I
16 appreciate that perspective as well, having lived through
17 that. And then just from your vantage point as well
18 watching the legislative process over the last ten years,
19 you know, putting into place another very large
20 infrastructure bond, having our Governor, you know, issue an
21 executive order about bond accountability, do you have any
22 insights around what may have changed over the last ten
23 years as well that might have an impact here or are we
24 simply looking at what it was at the beginning and how we
25 may have gotten to the point that we are now?

1 MR. SIMPSON: Well, a couple -- I'd say a couple
2 of things. One is I do know that a year or two ago, the
3 Governor and the Treasurer were working on some architecture
4 for bond oversight, particularly on the 2008 -- whatever it
5 was, the Prop. 1A, 1B, those things.

6 And quite honestly, the pushback from myself and
7 some of my education colleagues was that we didn't need that
8 in the school facilities area. I said I can't -- couldn't
9 speak to transportation or housing or some of the others,
10 but we had a program that was working quite well. I
11 would -- and I have said it in speeches over a number of
12 years that the school facilities financing architecture we
13 put together in 1998 is arguably one of the most successful
14 education reform measures we've ever done in this state. We
15 have -- I mean Rob can correct me if I have outdated
16 numbers, but I believe as a result of SB50 and the bond
17 measures the voters have been generous with, we have in the
18 last decade housed more than a million new students. We
19 have modernized facilities for more than 2 million new
20 students.

21 We have been successful enough that the voters
22 have trusted us with tens of billions of dollars of
23 additional state bonds and probably an equal amount at the
24 local level. So I guess I would suggest that the underlying
25 architecture of what we put together, the kind of

1 state-local relationship that we both contemplated and I
2 think implemented, certainly in the early days, has been
3 demonstrably successful.

4 So if someone is suggesting to dramatically change
5 that relationship of the state to locals and how we go about
6 structuring school facilities, I would suggest the burden
7 ought to be on them. I think we've demonstrably been
8 successful perhaps beyond our wildest expectations and so I
9 think there's a lot to be said for at least -- I mean
10 there's -- we're learning. We know more than we did some
11 time ago.

12 We probably didn't have the best data on costs,
13 for example, and we sort of flopped around that for a couple
14 years. So we're always going to be tweaking it, but the
15 basic state-local relationship and the funding architecture
16 and the partnership that we've developed with the home
17 building, with schools, with taxpayers I think has been
18 pretty successful.

19 MS. MOORE: Okay. Have you heard from your
20 colleagues in the Legislature or legislators any concerns
21 around expenditure of funds in this program? What I'm
22 hearing you say is that it's -- and I think Rob refers to it
23 as the crown jewel in the bond infrastructure program. Do
24 you hear anything that we should be aware of as we
25 contemplate this audit issue?

1 MR. SIMPSON: Well, I haven't heard anything
2 systemic. I mean there are always going to be anecdotal
3 kinds of issues that pop up, but I have certainly not heard
4 anything systemic that would suggest that the
5 architecture or the structure of what's in place and the
6 fundamental relationship between the state and local school
7 districts is broken.

8 As I say, you know, you're always going to have
9 the odd --

10 MS. MOORE: Sure.

11 MR. SIMPSON: -- circumstance out there and that's
12 where -- you know, whether it's state audit, local audits,
13 you know, when there is -- or bad actors or people being
14 irresponsible, of course that's, you know, the
15 responsibility of government to protect the, you know,
16 public's investment.

17 But as I say, I haven't heard from my colleagues
18 or from the members that I work for anything systemic.

19 MS. MOORE: Thank you.

20 MR. HARVEY: One last comment.

21 SENATOR LOWENTHAL: Scott.

22 MR. HARVEY: If I may, I want to congratulate you
23 for being a Renaissance man and I'm hoping I will see you in
24 a master's competition as a fencer. Is this upcoming? I
25 see that you have done amazing well. U.S. Olympic fencing.

1 MR. SIMPSON: I was on the Olympic squad which was
2 the group the team was eventually selected from. If I had
3 been successful in making the Olympic fencing team, it would
4 have been 1980, the year we boycotted the Olympics.

5 MR. HARVEY: You see.

6 MS. MOORE: You have good timing.

7 MR. HARVEY: There is a role for you in a master's
8 competition.

9 MR. SIMPSON: Yeah, I know. That's a story for
10 another day.

11 SENATOR LOWENTHAL: I have one last question. You
12 talked about how in the formation of SB50 and the
13 development of SB50 and -- which really laid the groundwork,
14 you know, which really was the school facility program, how
15 the Governor was concerned about the role of the State
16 Allocation Board in terms of how it would engage in its
17 decision-making process, you know, what parameters should be
18 placed upon them.

19 Was there also much discussion at that time about
20 other issues relating to the role of the State Allocation
21 Board besides that decision making -- say, for example,
22 vis-à-vis the Office of Public School Construction, was
23 there -- how people viewed the State Allocation Board --

24 MR. SIMPSON: Right. Right.

25 SENATOR LOWENTHAL: -- at that time. That's

1 really what we're asking. What exactly is the role of the
2 State Allocation Board in this and how do we --

3 MR. SIMPSON: Sure.

4 SENATOR LOWENTHAL: -- you know, where do we go
5 from here.

6 MR. SIMPSON: I think a couple things. One is the
7 particular angst the drove a lot of what we did in SB50 was
8 the perceived sort of ad-hoc discretionary nature of
9 decisions by the Board -- by your predecessors on the Board
10 related to funding school facilities, that it was kind of
11 who you knew, who had the best, you know, advocates that
12 drove a lot of decision.

13 As you know, you as a Board are a very odd duck in
14 state government.

15 SENATOR LOWENTHAL: We are.

16 MR. SIMPSON: Yeah. I believe you are the only
17 executive branch body -- because you are a member of the
18 executive branch as the Allocation Board -- that has a
19 majority of legislators serving on it and serving as full
20 voting members.

21 The Constitution, you know, has very explicit
22 conflict of office provisions from which this Board is
23 explicitly exempted. So there is this tension between the
24 legislative and executive branches as there always has been.

25 SENATOR LOWENTHAL: I hadn't noticed.

1 MR. SIMPSON: Yeah, yeah. Right. Right. So I --
2 while we were -- you know, were and then and continue to be
3 aware of that tension, I think we kind of decided to stumble
4 along and deal with that on another day. I think, you know,
5 there have been -- I think the Hoover Commission or somebody
6 had also some -- series of recommendations about, you know,
7 who appoints what and the respective relationships. It
8 wasn't an issue the -- sort of fundamental governance wasn't
9 an issue we addressed in SB50. We did address it a little
10 bit in I think AB -- it was AB16, Prop. 47, the bill that
11 put 47 and 55 on the ballot by adding a couple of -- three
12 members to the Board.

13 I think that was the last time we made a
14 governance change. We added a member of the minority party
15 in each house and then a public appointment by the Governor,
16 went from seven members to ten members at that time.

17 But with that exception, we certainly recognize
18 the tension that exists in a body that has executive powers
19 because that's what --

20 SENATOR LOWENTHAL: Um-hmm.

21 MR. SIMPSON: -- you are a quasi-legislative,
22 sometimes quasi-judicial body, has executive powers but is
23 populated with a majority of members of the Legislature and
24 we sort of hope that people of goodwill will work together
25 for the public benefit.

1 SENATOR LOWENTHAL: Well, we are struggling with
2 that issue in part and I think it's always going to be a
3 struggle and it always has been I think, you know, to some
4 extent because you're right, there is a certain degree --
5 you know, when I mentioned the cart before the horse, it
6 depends upon who defines what -- who's the cart and who's
7 the horse, you know, and so --

8 MR. SIMPSON: Exactly.

9 SENATOR LOWENTHAL: -- we may have differences
10 even there. But having said that, this was very
11 illuminating to hear some of the -- at least the background
12 of how we got to where we are today.

13 MR. SIMPSON: I'm always happy to join you again
14 or if I can be of help to this conversation, please let me
15 know.

16 SENATOR LOWENTHAL: Thank you.

17 MR. SIMPSON: Thanks.

18 MR. HARVEY: Thank you.

19 MS. MOORE: Thank you.

20 SENATOR LOWENTHAL: Okay. Moving right along, our
21 second -- I have so much paperwork, I can't even find the
22 agenda. I know there's an agenda. Here it is. I have it
23 right here. And we have Terry Tao to give us the -- talk
24 about some of the statutory authority as you perceive it for
25 program audits and also talk about the Governor's Executive

1 Order if you can and, you know, how you view the law and the
2 statutory and maybe you can help us with who's the cart and
3 who's the horse.

4 MR. TAO: Thank you very much, Senator Lowenthal,
5 and I appreciate being asked to look at the statutory,
6 regulatory, and legal structure.

7 I will start by introducing myself. I know some
8 of you may already know me. I am from the law firm of
9 Atkinson, Andelson. We're about 140 lawyers, the majority
10 of which represent school districts throughout the state. I
11 live and breathe school facilities and that's what I've been
12 doing for the past 17, 18 years and have worked in the
13 lease-purchase program as well as the current school
14 facilities program.

15 With that, I will tell you that with the statutory
16 authority as far as the State Allocation Board is concerned,
17 it actually is quite clear as far as authorities and lines
18 of communication and who is responsible for what.

19 I do understand that the question that's asked is
20 what is the authority under the Executive Order for audits.
21 So I'll first start with the statutes a little bit and
22 they're actually in the materials.

23 What you'll see in the materials is a number of
24 Education Code sections that address the authority and what
25 occurs as far as rule making is concerned. You'll see

1 Education Code Section 17070.20 that talks about the
2 Director of General Services shall administer the chapter
3 and then 17070.35(a) talks about the Board, that is the
4 State Allocation Board, is responsible for adopting rules
5 and regulations pursuant to the Administrative Procedures
6 Act and that the State Allocation Board is responsible to
7 determine eligibility and to apportion funds to eligible
8 school districts.

9 Most everything associated with the statutes are
10 written in terms of Board and there are a couple of sections
11 that specifically address, under the Government Code, how
12 OPSC fits in.

13 If you turn to Government Code Section 15490, it
14 specifically addresses that there is a State Allocation
15 Board and that what the members are consisting of, but a
16 little lower down on that page, it talks about how the
17 Director of General Services shall provide assistance to the
18 Board as the Board requires.

19 So essentially the Director of General Services
20 provides two people in the statutory authority, if you boil
21 it down. It primarily provides an Executive Office and the
22 Assistant Executive Officer and then there is some authority
23 under 15490(c) subsection (3) for the State Allocation Board
24 to add additional employees as necessary, hence the
25 formation of the Office of Public School Construction.

1 I will tell you that I did look into the history a
2 little bit. The State Allocation Board was created in 1947
3 as a successor to the post -- it's -- I don't remember the
4 exact name, but it was the post-war public works board and
5 it appears that there have been various different ways that
6 the State Allocation Board administered first through the
7 Department of Finance and then later it got moved over to
8 the Department of General Services.

9 But turning back to audits very quickly, there
10 is -- the primary section with regard to audits is Education
11 Code Section 17076.10 and it says the Board may require an
12 audit of these reports, meaning the school district
13 expenditure reports, or other district records to ensure
14 that all funds received pursuant to this chapter are
15 expended in accordance with program requirements.

16 That is the cornerstone of where the authority for
17 audits occurs. It's in statute and then it's further
18 expanded by regulations. I won't go through those
19 regulations today.

20 SENATOR LOWENTHAL: So when you say the Board may
21 require an audit of these reports or -- so it has to be
22 called for by the Board itself?

23 MR. TAO: Yes.

24 SENATOR LOWENTHAL: Audits must be called for by
25 the Board?

1 MR. TAO: It is something that would be pursuant
2 through the --

3 SENATOR LOWENTHAL: Okay.

4 MR. TAO: -- rule making authority and policy
5 which would be transferred on to OPSC to administer
6 essentially, yes.

7 SENATOR LOWENTHAL: Okay.

8 MR. TAO: Now, I went also through the Executive
9 Order and there's a couple of things that I think are
10 important to note. The Executive Order itself, if you look
11 at it really carefully, it talks about departments. And
12 throughout the Executive Order, it talks about departments,
13 but after the whereases and the now therefores under
14 paragraph 1 in the Executive Order, you'll see it says all
15 agencies, departments, boards, offices, commissions,
16 et cetera, and then it redefines it as departments.

17 So essentially what this Executive Order does is
18 it orders two entities that are directly responsible for
19 school facilities bond funds to be responsible under the
20 Executive Order and that gets kind of interesting and I'll
21 talk about that in a second, but it orders the State
22 Allocation Board and the Department of General Services and
23 its branch office of Office of Public School Construction to
24 be responsible for this Executive Order.

25 The mix of Education Code Section 17076.10(a) and

1 the Executive Order means that audits need to originate from
2 State Allocation Board to Office of Public School
3 Construction and as far as responsibility for the audit
4 function under this Executive Order, this Executive Order is
5 actually directed to the State Allocation Board and not to
6 the Office of Public School Construction because they are
7 not the administrating body with regard to bonds.

8 The State Allocation Board is under the 17070.35
9 section which says that you as the Board apportion and
10 administer the state bond funds.

11 This posed kind of an interesting question too
12 because I went back and looked at what OPSC has been putting
13 out and I did note that OPSC put out a report that was
14 required pursuant to this Executive Order that I would
15 assume under the way the law works should have come through
16 the State Allocation Board for approval and the State
17 Allocation Board would have been the responsible entity to
18 pass that on because the State Allocation Board would be the
19 entity that would be responsible for the three-step audit
20 procedure that's talked about within this Executive Order.

21 There is one other thing. Executive Orders by law
22 don't create new law. There are actually two cases.
23 There's a case called Harper vs. Deukmejian, 1987,
24 43 Cal3d. 1078, and there's an Attorney General Opinion at
25 75 Opinions of the Attorney General 263.

1 They both basically say that the Executive Order
2 is simply a ministerial act from the Governor which requires
3 supervision over the ministerial officers that are
4 responsible for carrying out responsibilities of their
5 offices.

6 It's clear that the Department of General Services
7 falls under the Executive Order. It's not clear whether or
8 not the State Allocation Board falls under this order, but
9 it does appear that the State Allocation Board is one of the
10 suggested entities that would be following this order.

11 Now, there is one other document that I thought
12 would be important to go through that I've provided in
13 supplemental materials. There is a Government Code
14 Section 11340.5. This is the Administrative Procedures Act.
15 This statute says no state agency shall issue, utilize,
16 enforce, or attempt to enforce any guideline, criterion,
17 bulletin, manual, instruction, order, standard, or general
18 application or other rule without first essentially going
19 through the Administrative Procedures Act.

20 For all intents and purposes, what occurs is there
21 would be essentially the creation of an underground
22 regulation with regard to audit procedures that did not go
23 through the APA rule making process and would be considered
24 potentially an abuse of discretion on the part of the State
25 Allocation Board not of the Office of Public School

1 Construction in the administering of the audits.

2 So, for example, if -- I know it sounds bad. If a
3 lawyer were to sue the state over an audit, it's not the
4 Office of Public School Construction that's ultimately
5 responsible for the audits that are being undertaken that
6 perhaps did not go through proper rule making. It would
7 actually be the State Allocation Board that would get sued
8 for the abuse of discretion of not going through the
9 rule-making process.

10 This particular issue with regard to the
11 rule-making process poses some interesting problems because
12 from what I understand the breadth of the new proposed
13 audits is fairly significant and quite a departure from what
14 it is that's been done before in the past.

15 It makes it very difficult for school districts to
16 plan and with regard to the ability to plan especially with
17 these troubled financial times that we're in, what you'll be
18 seeing is if you, for example, find through audit through
19 something that was unanticipated that's unpublished that a
20 school district has to return significant amounts of funds
21 to the State Allocation Board, then there's a possibility
22 the school districts could go insolvent.

23 This would also pose the additional problem if
24 you're looking at school districts that are insolvent or
25 going insolvent, there's a higher degree that the districts

1 may use legal authority in order to try to undercut the
2 audit procedures that are being proposed just because they
3 don't follow the APA.

4 I did put one example in. It's in the
5 supplemental materials at page 4 and this is just an example
6 of something that may potentially be a violation of the
7 Administrative Procedures Act. This is a management
8 representations document that went out November 26, 2007.
9 My understanding is that school districts are responsible at
10 the end of audits to provide this management representations
11 letter.

12 I do not understand that this went through rule
13 making. There are a couple of problems associated with it
14 and I'll just note quickly what they are.

15 It talks about this management representation
16 letter as part of an audit process for proper internal
17 controls, but it talks about it -- this representations
18 letter coming out at the end of the audit. So there's no
19 way for a school district when they originally made their
20 application to have made these representations or to have
21 understood that these were the actual representations.

22 If you look at the representations themselves on
23 page 5, you'll see two boxes, one indicating there have been
24 no irregularities involving management or employees who have
25 significant roles in the internal control structure and that

1 there have been no irregularities involving employees that
2 could have a material effect on the financial statements.

3 These are particular representations that are
4 going to be to extremely difficult for a school district to
5 answer at the end of a project that may have no bearing on
6 the responsibilities under Education Code
7 Section 17076.10(a) which is the authority for the audits in
8 the first place.

9 Also 17076.10(a), the audit statute, arises from
10 the expenditure of funds for a particular project. So the
11 limit of the audit authority is that particular project when
12 the audit is occurring. For example, if we're looking at
13 management procedures, that's a little beyond what the scope
14 of the expenditures associated with a particular project are
15 and I have heard that there are school districts, as part of
16 their audit, receiving requests for review of original
17 eligibility, that there might be portables that should have
18 been counted, so the eligibility number should be reduced,
19 and those types of issues that are coming up that seem quite
20 far afield from the original authority of 17076.10(a).

21 I also understand that in some cases with regard
22 to these audits, they seemingly exceed the time period that
23 is set up under the regulatory Section 1859.106 which
24 specifically says two years with regard to audits and then
25 an additional six months to complete the audits, but that's

1 a whole other issue onto itself that I would imagine should
2 be addressed.

3 SENATOR LOWENTHAL: Thank you. I have a few --
4 just a few questions. At first when you were talking about
5 the Education Code 17076.10 where you said that the Board
6 may require an audit of those reports or other district
7 records to ensure that all funds received pursuant to this
8 chapter are expended in accordance with program
9 requirements, that does not say who does it.

10 Could the Board request some other agency besides
11 OPSC to do an audit?

12 MR. TAO: They could.

13 SENATOR LOWENTHAL: So there's not a requirement
14 that audits must be done by OPSC in the Education Code in
15 that section; is that --

16 MR. TAO: That is correct.

17 SENATOR LOWENTHAL: And then in terms of the scope
18 of the -- as I understand what you're saying and your
19 interpretation in terms of both the Education Code and also
20 other statutory -- well, which would be in the Education
21 Code, that SAB must direct the OPSC to conduct an audit?

22 MR. TAO: That is correct. The Office of Public
23 School Construction acts under the direction of and answers
24 to the State Allocation Board. Essentially, they -- for
25 lack of a better term -- they are a body to the State

1 Allocation Board to do as the State Allocation Board deems
2 necessary to apportion funds.

3 SENATOR LOWENTHAL: When there's an audit
4 procedure that's developed like now, does there have to be a
5 public vetting process on that?

6 MR. TAO: If it's a new procedure, there would be.

7 SENATOR LOWENTHAL: And you said the authority to
8 develop any kind of new procedures or so forth really rests
9 in the State Allocation Board.

10 MR. TAO: That is correct, Senator Lowenthal. It
11 is a State Allocation Board duty under 17076.10(a).

12 SENATOR LOWENTHAL: And if OPSC does begin an
13 audit process without having the SAB direct them at first,
14 what does that mean?

15 MR. TAO: If it's an underground regulation, for
16 example, a manual that's unpublished, a procedure that's
17 unpublished and has not gone through the Administrative
18 Procedures Act, then it would subject the State Allocation
19 Board to a writ of mandate for an abuse of discretion,
20 meaning that the State Allocation Board used a role that is
21 unpublished and it's possible that the audit findings would
22 be set aside.

23 SENATOR LOWENTHAL: When the OPSC does an audit
24 now or has done audits without being directed by the State
25 Allocation Board, what do you say we should be doing?

1 Should we suspend that?

2 MR. TAO: I -- my recommendation would be that
3 the -- for the -- until the audit procedures are vetted
4 through the APA, Administrative Procedures Act, that the
5 audit authority return to the published audit authority as
6 it exists and has occurred in the past and then the rest of
7 the audit procedure -- the new audit procedure go through
8 the typical vetting process, Implementation Committee, State
9 Allocation Board meeting, and then Administrative Procedures
10 Act.

11 SENATOR LOWENTHAL: Thank you.

12 MS. MOORE: If I may just follow up on that,
13 Mr. Tao. You did in your documents provide a regulatory
14 section as well. You did not touch on that. You alluded to
15 it.

16 I'm just -- from your testimony, my knowledge is
17 that prior to our change in policy and perhaps the pilot
18 that I (coughing) hear more about from the Office of Public
19 School Construction staff, our -- we had a May 2008 audit
20 guide. Is that -- does that stem from the regulatory
21 schemework that was in place concerning expenditure audits
22 from your perspective?

23 MR. TAO: I didn't think so. I did not have any
24 understanding that that particular guide had gone through
25 the vetting process, but I don't know that for certain.

1 I've attended a number of Implementation Committee meetings.
2 I've attended many of the State Allocation Board meetings
3 and was unaware that that particular document went through
4 the vetting process.

5 MS. MOORE: And then the expenditure audit
6 regulations that are in place at this time, what I'm
7 understanding your testimony to say is that absent any
8 change in those regulations, we should be conducting
9 business under those at this point; is that correct?

10 MR. TAO: That is correct, Ms. Moore.

11 MS. MOORE: And then one other point that I don't
12 want to spend a lot of time on, but you made a pretty
13 interesting statement when you said it was not clear that
14 the State Allocation Board is under the Executive Order.
15 Could you elaborate on that a moment?

16 MR. TAO: Sure. Actually I had somebody do some
17 research on this and what I found was that under the
18 Harper vs. Deukmejian and the 75 Opinions of the Attorney
19 General that the Governor's authority -- and I'll just quote
20 from the Constitution -- is to -- the Governor shall
21 supervise the official conduct of all executive and
22 ministerial offices when he is issuing Executive Orders and
23 it's not clear that that constitutional authority extends to
24 boards.

25 It is certain that his authority as the Governor

1 doesn't extend to those entities that are created by
2 Constitution, for example, the University of California
3 system, the PUC, and a number of other related boards.
4 Since you're an executive board and it's not clear that
5 you're quasi-legislative too, the Governor by definition
6 would have no authority over a legislative body.

7 In fact there is a case that specifically applies,
8 People ex rel. Deukmejian, vs. CHE, Incorporated, that
9 basically says that -- oh, I don't think that's the right
10 one. There is a case. I don't have it here.

11 There is a case that specifically says his
12 authority does not extend beyond those executive and
13 ministerial offices and does not extend into other areas of
14 government at the state level.

15 MS. MOORE: And can you then elaborate one more
16 time. You indicated that the Department of General Services
17 and the -- you believed that there's -- you've just
18 explained the grayness around that -- the State Allocation
19 Board are subject to the Executive Order. Was that -- is
20 that your testimony?

21 MR. TAO: That is not exactly my testimony: that
22 the Executive Order attempts to request all bond-related
23 funds be subject to the Executive Order and all departments,
24 including the State Allocation Board, be subject to the
25 Executive Order.

1 However, it does note at the very end of the
2 Executive Order that there are certain departments that are
3 not under the Executive Order's authority and State
4 Allocation Board may actually be one of those departments
5 because it's partially legislative in nature.

6 MS. MOORE: Okay.

7 MR. TAO: I did not have enough time to find the
8 answer to that particular question, but somebody's still
9 working on it.

10 MS. MOORE: Thank you.

11 SENATOR LOWENTHAL: Mr. Harvey.

12 MR. HARVEY: Interesting conundrum is something
13 that Mr. Rick Simpson said just before he left which was
14 that this was an executive function and a healthy tension
15 exists because there had to be an exemption created in the
16 Constitution to allow the legislative body to sit on an
17 executive function.

18 So this whole issue of who we are I think is still
19 an open discussion and I think it may cause another view
20 about whether or not the Executive Order applies to this
21 body.

22 Let me also ask your opinion -- you were kind
23 enough to give us one code section out of what is known as
24 the Financial Integrity and State Managers Accountability
25 Act of '90 -- or '83. In it, it talks about each state

1 agency must maintain effective systems of internal
2 accountability and administrative control.

3 I've seen definitions where we are a state agency.
4 So again I would suggest some may have thought when they
5 contemplated this code section that we were covered either
6 because we were a department of General Services or we are a
7 state agency as the Allocation Board and it further says in
8 Section 13402, state agency heads are responsible for the
9 establishment and maintenance of a system or systems of
10 internal accounting and administrative control.

11 Again I'm not willing to give up the fact that the
12 Allocation Board really is part of this executive function,
13 but it seems to me that the Director of DGS has an
14 obligation to maintain internal controls and could he or she
15 not have some interest in abiding by the Governor's
16 Executive Order and therefore have an audit function of the
17 State Allocation Board dollars?

18 MR. TAO: Well, I'd like to believe it's that
19 simple, Mr. Harvey, but it's not. The reason why I question
20 the ability of the Executive Order to cover the State
21 Allocation Board was not because of that particular section,
22 which is the section right before the one that I had cited,
23 but instead because the State Allocation Board members are
24 specifically addressed within the Constitution.

25 That section actually is also included in the

1 materials. State Constitution Article 16, Section 1
2 particularly prescribes that members of the Legislature
3 shall sit on this Board and shall have voting rights.

4 MR. HARVEY: But Mr. Simpson said that exemption
5 was sought to allow a legislative function to be part of the
6 executive function, so it seems to me --

7 MR. TAO: Well, and that's --

8 MR. HARVEY: -- again the case that I heard him
9 make is that the healthy tension that exists on this body is
10 that it is an executive function.

11 MR. TAO: But why don't we just take your example
12 and take it one step further. If we take your example --
13 and let's just assume it to be true because I didn't have
14 the answer for you. I did not know whether or not you would
15 be subject to the controls of the audit sections under
16 Government Code Section 13402 or you're considered a
17 constitutional branch. Let's just assume you are.

18 The issue is if the State Allocation Board under
19 the way the statutes are written, 17076.10 of the Education
20 Code, then what becomes necessary is for the State
21 Allocation Board to administer the audit function, not for
22 the Office of Public School Construction to administer it
23 without the consent perhaps of the State Allocation Board.
24 It still needs to be vetted at a minimum through the State
25 Allocation Board process and also with regard to these types

1 of roles -- and we'll take an example.

2 ADA for schools, for example, those rules actually
3 needed to be vetted through the Administrative Procedures
4 Act also and are somewhat regularly challenged on an audit
5 if there are the equivalent of underground rules. There is
6 a case in particular called Merced vs. the State Audit
7 Appeals Board that specifically addresses that there's a
8 possibility that there could be underground regulations that
9 would subject the audit appeals board to a legal challenge.

10 MR. HARVEY: Well, these are interesting questions
11 and hopefully we may include them as our recommendations to
12 the full Board because again that's all we can do. We, by
13 ourselves, at this level cannot direct. We can only
14 recommend.

15 Let me also comment on a couple of other things.
16 Last meeting, we heard from Elaine Howle and Laura Chick and
17 to me, they said some very profound things about what a
18 scope of an audit should include and they indicated that
19 internal controls were very important to the entity
20 receiving the dollars.

21 So again at some point in time, we may want to
22 talk about whether or not this management representation
23 letter is in or out of scope, but to me it touches on asking
24 districts do you have the right internal controls to handle
25 these dollars and if Elaine Howle and Laura Chick are

1 correct, that may be an appropriate question.

2 And finally two quick other observations. The
3 State Allocation Board is not specifically mentioned amongst
4 those other entities. The PUC and others are mentioned, but
5 we are not, which I guess raises that gray question about
6 whether we might not be executive.

7 And finally if you're looking to have an outside
8 source do our audits, I would put on the table right now
9 Elaine Howle. I think we should actually have under
10 discussion an independent body like that to perhaps do our
11 audits. So for what it's worth, I will come back to that
12 when we're doing our recommendations.

13 MR. TAO: Mr. Harvey, one issue. Education Code
14 Section 17070.63 is the section that says that this is a
15 grant program and that all amounts that are provided are
16 full and final. So essentially an amount of money is
17 provided to school districts for the purposes of doing the
18 school construction.

19 What happens to that money afterwards, as long as
20 it's not misspent --

21 MR. HARVEY: There you go.

22 MR. TAO: -- is --

23 MR. HARVEY: How do you know if it's not misspent
24 without some kind of audit. I think, Mr. Tao, we all agree
25 there needs to be an audit. What we're wrestling with is

1 the tone, texture, and who. Thank you.

2 SENATOR LOWENTHAL: And also sets the parameters
3 for that. I think that whether -- as I understand what
4 you're saying is -- and I'm trying to understand, whether we
5 are subject to the State Allocation Board, to the Governor's
6 Executive Order SO207, whether we are or not, within the
7 already-existing statutory framework that defines the State
8 Allocation Board, there still is defined that the State
9 Allocation Board would set the direction rather than the
10 Office of Public Construction. Is that not true?

11 MR. TAO: That is correct.

12 SENATOR LOWENTHAL: It's really the State -- and
13 that's the issue that we're grappling with I think more than
14 whether we fall underneath the Executive Order. Right now
15 we're really trying to find out what's our role vis-à-vis
16 who sets that and what is the scope of that authority and
17 that's really the kinds of recommendations and who can this
18 Board -- if it is really this Board, who else can this Board
19 ask to do audits besides the existing -- through the Office
20 of Public School Construction. That's all we're asking at
21 this moment. Thank you.

22 MR. TAO: Thank you.

23 SENATOR LOWENTHAL: Let's move on to kind of where
24 we are now about past audit practices, the changes in the
25 audit practices to the more current audit practices, and

1 where do we go from here. And so let's have a discussion
2 now -- let's move on to the actual practices themselves and
3 let's just talk a little bit about past audit practices and
4 I think we have two -- I think OPSC and a district. We've
5 already heard some from OPSC at a prior hearing, but let's
6 go on. Is that not so? Are they part of --

7 MS. KAPLAN: Um-hmm. And then you can ask
8 questions based on the past presentation.

9 SENATOR LOWENTHAL: All right. Let's -- so let's
10 have someone from OPSC talk about -- should we follow up on
11 that hearing? Let's just go back and ask -- you know, just
12 discuss -- as I remember back in August when I asked about
13 the role of the SAB relative to the Governor's Executive
14 Order, why the Board wasn't involved in the development of
15 the response, I think, Mr. Cook, you responded at that time
16 that I was touching on one of the weird governance
17 structures --

18 MR. COOK: Um-hmm.

19 SENATOR LOWENTHAL: -- that we have with the SAB
20 and OPSC and you didn't really elaborate on that. Maybe you
21 can describe that governance structure issue in the context
22 of the Board's statutory authority.

23 MR. COOK: Yes, I would like to touch on that.
24 First of all, when the Governor's Executive Order came out,
25 the Board was in fact informed of that Executive Order on at

1 least two different occasions and progress in meeting the --
2 progress on that Executive Order. There were some things
3 that were put in place. There were some performance
4 objectives that were put in place within a three- or
5 four-month time frame at tops when that Executive Order
6 first came out. That was back in early 2007.

7 SENATOR LOWENTHAL: So there was -- so the Board
8 actually voted on the change in the procedures?

9 MR. COOK: The Board was informed of the
10 performance under the requirements. There were certain
11 things to be put up on a Website. There were reporting
12 requirements put in place. The Board was informed of those
13 issues.

14 SENATOR LOWENTHAL: Informed meaning what?

15 MR. COOK: There was no formal vote taken by the
16 Board on the matter.

17 SENATOR LOWENTHAL: Fine. How does the structure
18 that we're talking about now, the new governance structure,
19 affect the SAB's authority to conduct audits or not? Is
20 there any disconnect here? Do we -- you know, exactly what
21 is our role?

22 MR. COOK: Well, the -- Mr. Tao cited one of the
23 statutes, the key statute that creates the audit authority
24 for the SAB itself. The SAB further adopted regulations in
25 1998 that directed the Office of Public School Construction

1 to audit every project. That statement has been made since
2 the beginning of the program.

3 SENATOR LOWENTHAL: Okay. So you're saying it's
4 already in regulations that -- what about identifying
5 outside, if -- Mr. Tao also said that there's no reason why
6 the Board could not -- and it was just suggested maybe -- by
7 Mr. Harvey maybe we should be looking at either the State
8 Auditor or anyone else doing audits. Is there anything to
9 preclude the Board from identifying not the OPSC to do
10 audits, but any other?

11 MR. COOK: It would require -- probably -- I'm
12 guessing at this -- would probably require statutory change.
13 I do know that under the lease-purchase program the state
14 controller's office conducted those audits. I don't know
15 that for a fact, but I would assume that there would be a
16 statutory obligation.

17 There would certainly be some sort of financial
18 consideration that would have to be dealt with through the
19 Budget Act.

20 SENATOR LOWENTHAL: How do you as the OPSC
21 Executive Officer reconcile any of these conflicts that
22 we're talking about in terms of policy perspective between
23 the administration and the Board in terms of, for example,
24 the development and implementation of the audit policy
25 itself. How do you reconcile these -- the conflict between

1 the administration and the Board?

2 MR. COOK: Well, until very recently, there hasn't
3 been any conflict that I have been aware between the
4 administration and the Board or administration members and
5 legislative members of the Board -- till very recently.

6 SENATOR LOWENTHAL: Um-hmm.

7 MR. COOK: For the decade that this program has
8 been in place, there's been very strong statements on behalf
9 of the Board itself to support the audit function. Very
10 notably, there was a resolution signed by all members of the
11 Board back in 1999 stating -- supporting budget action on
12 behalf of staffing for the Office of Public School
13 Construction for both program side to process applications
14 and audit. That specifically all seven members -- the seven
15 members at the time, administration/legislative, signed that
16 resolution.

17 Further, in 2007 -- or pardon me -- '08-'09 Budget
18 Act as it was moving through the Legislature, we had no
19 fewer than five members of our current or future Board
20 members that supported seven audit positions through their
21 various budget subcommittees. And just very briefly, Gene
22 Mullen, Julia Brownley, Jean Fuller, Jack Scott, Bob
23 Margett, unanimous support for those audit positions and
24 that budget change proposal also implemented requirements
25 under the Governor's Executive Order.

1 It was specifically called out in that budget
2 change proposal that went before two separate budget subs in
3 each legislative house and to one, all of our Board members
4 who happened to be legislators, current at that time and
5 future --

6 SENATOR LOWENTHAL: Um-hmm.

7 MR. COOK: -- supported those actions.

8 SENATOR LOWENTHAL: Some other questions about the
9 past. Did the Governor's -- the old audit process, did that
10 meet the Governor's Executive Order and if not, how was it
11 insufficient?

12 MR. COOK: The old audit process I'd have to say
13 is unfortunately not really an audit process. We were not
14 meeting standards. We were -- they were audits in name
15 only.

16 As we found out through a performance audit
17 conducted on our program, we found that we had
18 insufficiently trained staff and that we weren't operating
19 according to standards.

20 What I have here is what we call the gold standard
21 for auditing. This is the standards adopted by the
22 Controller General of the United States, the Government
23 Accountability Office. This is the same standard that
24 anyone can download from the Internet, but it is the same
25 standard that Elaine Howle holds herself to at Bureau of

1 State Audits, that the State Controller's office, that the
2 Franchise Tax Board and the Board of Equalization hold
3 themselves to.

4 This going -- moving towards this standard which
5 is exactly where we're going provides the most transparency
6 and the best standard of any approach we could possible
7 take.

8 MS. MOORE: If I may, Mr. Cook. I was aware of
9 testimony that you provided when the Executive Order did
10 come forward and in fact you indicated that we of all
11 agencies were pointed to as an example of how the audit
12 function and how accountable that this program was, which
13 seems to fly in the face of what you just said.

14 MR. COOK: My testimony at the time -- and I sat
15 as a Board member at the time -- was reporting on how I
16 would say efficiently and effectively we met the reporting
17 requirements.

18 We put together -- we had the reporting
19 requirements in place well ahead of any other agency. As a
20 result of all the data that we collect, we were able to put
21 a great deal of information forward.

22 That aspect -- or those requirements had nothing
23 to do with the audit function but our ability to be
24 transparent with projects that we were approving.

25 MS. MOORE: Well, I as one Board member would

1 certainly want to not characterize the work that went prior
2 to maybe what -- I think you're referring to the Macias
3 report and some of the recommendations that came out of that
4 which was controversial before the entire Board at the time,
5 but that what was done prior to two years as not being
6 audits.

7 Districts and -- the nomenclature was audit. They
8 were told that, you know, they were having an audit. They
9 performed the functions and the required documents for such.
10 So I think we had millions and in fact billions of dollars
11 expended that was over state oversight and I think that
12 we -- that I would -- I wouldn't want to see it
13 characterized as not being an audit.

14 MR. COOK: Let me correct or clarify one item.
15 The Macias performance audit that went forward on this Board
16 was unanimously adopted and accepted by the Board and in
17 fact directed me to come back with a work plan the following
18 month to implement its recommendations which was then
19 subsequently adopted by the full Board as well.

20 So that particular report was not controversial.

21 MS. MOORE: I thought that was around financial
22 hardship.

23 MR. COOK: It was around financial hardship.

24 MS. MOORE: Yes.

25 MR. COOK: But the Board adopted it

1 wholeheartedly.

2 MS. MOORE: So is it your testimony that we --
3 that this program did not have audits prior to two years
4 ago?

5 MR. COOK: This program had audits in name only
6 prior to two years ago.

7 SENATOR LOWENTHAL: Do you realize that that
8 potentially has a tremendous impact upon districts who have
9 put out bonds and who have -- what you're saying is that
10 there were literally billions of dollars that were given
11 out, that there were no audits done ever before two years
12 ago -- real audits and that -- what effect do you think this
13 has on local school districts who thought that they were
14 complying and now you're saying that there never were any
15 audits that were ever done -- real audits.

16 MR. MEHL: Let me address that with my old age and
17 my four decades of audit experience. One of the things
18 that --

19 MS. SILVERMAN: Dennis, microphone.

20 MR. HARVEY: And identify yourself too, please.

21 MR. MEHL: Oh, I'm sorry. Dennis Mehl.

22 SENATOR LOWENTHAL: Identify -- okay.

23 MR. MEHL: And I had worked for Department of
24 Finance for almost, you know, 38 years and then I'm here as
25 a retired annuitant.

1 But one of the things I think that's a little
2 confusing to everybody is some of this terminology and in my
3 years of auditing, what I call an audit, the benchmark of a
4 true audit is going to the field to review source documents.

5 When I testified last August, I mentioned I was a
6 little bit shocked that all they were doing was desk reviews
7 with a vast amount of money that came through the
8 organization.

9 Now to their credit then -- and I gave them this
10 credit, they recognized this a number of years ago and
11 slowly have been building a true field audit program
12 starting with hiring the Department of Finance to provide
13 nine or ten training courses.

14 SENATOR LOWENTHAL: When was this?

15 MR. MEHL: This is about two and a half years ago
16 I believe. And so that was the start of building this
17 professional audit group. What was going on, we called desk
18 reviews and program monitoring. Very critical and important
19 functions to administer a program to monitor documents that
20 came in. It just didn't meet what you would call a field
21 audit standard of going out and looking at a source
22 document.

23 So then Department of Finance provided one of our
24 audit programs that we had been using for auditing library
25 construction projects and then they have taken that and

1 refined it a number of times, but the information in their
2 audit program and procedures, the basic documents are in
3 this expenditure audit guide that's been around for years.

4 And it talks about what kind of documents need to
5 be provided. The detailed listing of project expenditures
6 should reflect all expenditures for the project --

7 MS. MOORE: Can you say what you're referring to?
8 Is that this -- the library audit guide or --

9 MR. MEHL: This is an -- no. This is your --

10 MS. MOORE: -- Office of Public School
11 Construction audit guide?

12 MR. MEHL: This is your audit guide and it's
13 called the Expenditure Audit Guide and it's been around on
14 your Website for years as a tool for districts to say --

15 MS. MOORE: So how could we have an audit guide if
16 we were not doing audits?

17 MR. MEHL: I would say that's the terminology of
18 this document should have been a handbook of accounting and
19 preparatory procedures for field audits. That's how I
20 would -- and it talks about also that there could on-site
21 field reviews.

22 The difference -- to me the primary difference
23 based on my experience -- my limited experience is that
24 we're going to the field to look at the source document
25 itself rather than a copy of a document that gets mailed in

1 and, number two, to look at the district's internal control
2 structure over these expenditures and if they have a good
3 internal control structure and they can show that there were
4 procedures for documenting expenditures, for keeping data,
5 et cetera, what that internal control structure is greatly
6 reduce the audit time in the field because we don't have to
7 test so many original invoices and documents.

8 And part of that planning process, I also
9 mentioned last August, was to look at other audit reports.
10 By looking at other audit reports, we do not duplicate other
11 audits.

12 So this program is now including a better up-front
13 planning process which is part of a field audit process and
14 it's not -- it's new in terms of going to the field. It's
15 new in terms of looking at a district's internal controls,
16 and it's new in the planning process to make sure we look at
17 other audits and documents so that we don't duplicate other
18 processes.

19 MS. MOORE: Are you testifying that those are the
20 changes that were made and what I think Ms. Silverman and
21 you testified before about the changed audit program and the
22 pilot, so to speak, I think at the last -- at our hearing in
23 August? Is that what you're referring to, that those three
24 items that you just talked about were changes that occurred
25 to an existing audit program?

1 MR. MEHL: She can clarify for me. There were
2 limited field audits over the last 20 years or so, but they
3 weren't really a concerted effort in terms of here's the
4 direction for the program.

5 The change also is the internal control reviews at
6 the district level. Significant. And the change also is
7 the planning process that takes care -- that takes place in
8 the office before anybody goes to the field.

9 Those are the changes and I don't really call it a
10 new process because I don't want to say that things weren't
11 in place, but things weren't in place. Things were not in
12 place. OSAE has been doing grant audits on bond funds for
13 years and years and years.

14 They're not rocket science, but if you're going to
15 do a true audit, you really need to go to the field and take
16 a look at what your funds have built, number one, and take a
17 look at the source documents.

18 SENATOR LOWENTHAL: Can I follow up on that?

19 MR. MEHL: Yes, sir.

20 SENATOR LOWENTHAL: You know, one of the issues
21 that came up with -- and I'm just trying to understand. I'm
22 not an auditor. So I can get real confused in all of this,
23 but -- what constitutes an audit. But one of the things
24 that Rick Simpson said when he first testified as in the
25 development of the school facilities program, the idea was

1 if there were efficiencies done by local school districts --
2 once receiving the grants, if they had greater flexibility
3 or incentive to be able to use those resources in other
4 ways.

5 In the old audit -- whatever that is called,
6 whether it's an audit -- did you expand into other
7 project -- into other areas beyond what was the specific
8 project itself because one of the contentions is, is how --
9 what's the scope of these audits. Do we do just the project
10 or do we expand into other ways in which districts are
11 utilizing the resources, especially if there are savings on
12 the part of the district.

13 The question is what did they do before? Did they
14 expand into other areas before? Because we're hearing now
15 that districts are saying you're expanding into all these
16 other areas.

17 MR. INMAN: My name is Steve Inman, Audit
18 Supervisor for the OPSC. I'd like to answer that question.
19 Our audit program does not expand into other projects
20 outside of the audit of the projects being closed out.

21 For example, the --

22 SENATOR LOWENTHAL: You don't really question how
23 any of that other money, if there were savings, were spent?

24 MR. INMAN: We do. There is criteria under OPSC
25 that savings be used on other high priority capital needs of

1 the district. Okay.

2 So as far as savings go, we include that in our
3 audit program to determine that the savings were expended on
4 high priority capital outlay. Okay. And that would be a
5 future project. It could be a solely district-funded
6 project. Okay? Or it could be applied to -- as the
7 district's contribution to a future SFP project. Okay.

8 But we have to track that and determine that those
9 funds were used appropriately per that criteria.

10 SENATOR LOWENTHAL: Is that any different between
11 now -- how that's done between now, the present auditing
12 practice, the pilot project per se and the one before the
13 Executive Order? How those -- is there a --

14 MS. SILVERMAN: Hi, Lisa Silverman, Office of
15 Public School Construction. Actually what you're referring
16 to is a first savings audit. So what Steve is -- it's the
17 project of its kind. We were trying to track the
18 expenditures of the funds.

19 Part of the tracking is to account for those funds
20 for savings and as Rick mentioned earlier, you know, the
21 goal isn't for those funds to be expended on administrative
22 salaries, and so that's part of his program check is to
23 ensure that they weren't spent for administrative overhead.

24 SENATOR LOWENTHAL: Has there been any change
25 between what was the old process and the present process

1 regarding this area?

2 MS. SILVERMAN: It's a first of its kind. This is
3 the first savings audit we had incurred. So the project
4 savings have never audited or never been reviewed.

5 SENATOR LOWENTHAL: What you're saying is you've
6 never looked before on the project savings.

7 MS. SILVERMAN: Correct.

8 SENATOR LOWENTHAL: And how those savings --

9 MS. SILVERMAN: Right. Although it's always been
10 documented in the guidebook that savings must be accounted
11 for.

12 MS. MOORE: Could we go back, Mr. Cook and
13 Ms. Silverman, again -- and I know it may be a little
14 repetitive of our August hearing. However, it seems to be
15 kind of the bone of contention so to speak that we had an
16 audit process I believe -- or -- and an audit guide that
17 existed prior to the Executive Order and then when the
18 Executive Order came in, there was a report required I
19 believe and that report went forward as it was to I think
20 the Department of Finance in 2007 -- was not -- let's say
21 acted upon the State Allocation Board.

22 And then subsequent to that, there is -- and I'm
23 just characterizing it. I'm asking you to talk about it.

24 MR. COOK: Um-hmm.

25 MS. MOORE: There were changes done to the audit

1 process and I think what we're as a subcommittee trying to
2 get at is what were those changes -- what are those changes.
3 You know, and it begs the question of authority. We're
4 already -- you know, we're talking about the issue of
5 authority and I think that will be part of the
6 recommendations that come out of here around the audit
7 authority.

8 But what has changed since the Executive Order
9 went forward and if you could talk a little bit about that
10 and then the pilot. I was confusing the pilot and overall
11 changes. Are these changes for -- have you implemented
12 changes for all school districts, all audits? Are we simply
13 risk auditing? Could you speak to that?

14 MR. COOK: I'll take part of this and then I'll
15 hand off to Lisa. First of all, the reporting under the
16 Executive Order, the Board acts on the reporting every
17 month. It's our consent agenda and the projects that are
18 funded. That's what goes up on that Website is -- are
19 projects that are funded through this program. It's nothing
20 more than transparency.

21 MS. MOORE: Rob, I was referring -- it says in the
22 Executive Order that by 2007 the departments will provide a
23 report. Is that -- so the report that we provided in 2007
24 to the Department of Finance is the Web page reporting?

25 MR. COOK: We update it monthly.

1 MS. MOORE: Okay.

2 MR. COOK: Basically on -- it's project by
3 project.

4 MS. MOORE: Okay.

5 MR. COOK: Now I know there was an awful lot more
6 in that question that took --

7 MS. MOORE: The question was what did we do before
8 the Executive Order concerning audits, what are we doing
9 currently, what has changed, talk about the pilot, what that
10 has to do with the change, are we auditing all districts --

11 MR. COOK: Um-hmm.

12 MS. MOORE: -- and then I thought my final
13 question around that would be how is this communicated to
14 school districts.

15 MR. COOK: I'll take one thing before I let Lisa
16 step on this and get into the specifics. The real
17 catalyst -- a real true catalyst here was that performance
18 audit that identified the shortcomings that we had in the
19 program.

20 When you have information like that that shows the
21 shortcomings, it's incumbent upon all of us in public
22 service in order to rectify -- correct those shortcomings
23 and that was the beginning of a substantial increase in our
24 capability, a substantial amount of training, a
25 substantial -- and frankly a great effort, if I can pat

1 myself on the back, of recruiting people with substantial
2 experience in multiple areas to bring into a program -- the
3 voters have been generous enough to authorize \$35 billion in
4 bonds and every bond measure has promoted strict
5 accountability as one of the selling points, that there
6 would be mandatory audits.

7 The last -- Prop. 1D even had the ballot argument
8 stating that misuse of these funds would result in jail
9 time. I mean these are substantial claims. It's incumbent
10 on all of us to make sure that we're fulfilling our
11 obligations under that.

12 So I'd say a key catalyst here was frankly finding
13 out the shortcomings we had in the program and that was the
14 beginning of what I would consider a change.

15 MS. SILVERMAN: And in relation to your past
16 practice question, truly we didn't provide adequate
17 oversight as Rob mentioned before with the desk reviews and
18 we were reviewing every project on the workload. We had
19 over 6- to 7,000 projects to audit. I mean that was a
20 tremendous workload for a staff of 36 auditors to keep up
21 with because it didn't have a risk-based audit model.

22 And additionally we had -- we were reviewing
23 30 percent of all the expenditures in a project. That
24 became a cumbersome process. That actually took -- it
25 stretched the audit from -- it could be from a six month

1 period up to six or seven years and I'm sure you could
2 probably find people in the audience that could testify to
3 that. And that's not the way to conduct an audit.

4 I mean we want to ensure that we send the right
5 people, we have people with training, and they have a
6 risk-based model in which they're doing planning, becoming
7 more efficient with the process, and so in essence I think
8 the past practice didn't meet the standards as Dennis
9 mentioned and how would you know if you didn't go out in the
10 field whether or not they accurately reported, whether or
11 not they built the project. Otherwise you're just basing
12 your -- your audit's based on -- or the review's based on
13 self-certification.

14 I mean it's -- I mean we've gone out in the field
15 with the current model. There actually are school districts
16 that are thrilled to show and show you the projects, what
17 state dollars have provided, what they provide to the
18 community, and so -- you know, and some of the comments
19 where have you been, we're happy to show you our project,
20 we're thrilled, you know, and we want to activate -- become
21 more involved with this process and show you our community
22 and show the schools that are being built.

23 So I think that's a positive thing.

24 MS. MOORE: So is it collectively, I think your
25 testimony, that three things changed from what we are

1 referring to as the prior process to what is the current
2 process and/or pilot and that is that you're field auditing
3 and that you are -- say it say -- internal controls --

4 MR. MEHL: Looking at internal controls.

5 MS. MOORE: -- and that you are risk auditing.
6 You are not auditing all school districts.

7 MS. SILVERMAN: Correct.

8 MS. MOORE: So how does a school district know
9 they are not the subject of an audit and their final
10 statement is the final statement and it's closed out? Is
11 that communicated to them?

12 MS. SILVERMAN: Well, it communicated -- there is
13 statutory timelines in which we can initiate an audit. So
14 if you haven't received a letter from our office two years
15 after you completed the project, then, guess what, you
16 passed go. Because I mean collectively we couldn't send
17 out, you know, 8,000 letters to a number of school
18 districts.

19 MS. MOORE: So those were the three changes that
20 were made to the current system.

21 MR. MEHL: But let me clarify the term pilot
22 because that was kind of --

23 MS. MOORE: Please do.

24 MR. MEHL: -- that was kind of my gig. That was
25 my idea. Even though I'm old, I still can have an original

1 thought sometimes.

2 I said based on Lisa's concept when she hired
3 Department of Finance, she said we need an interim audit
4 program. We can't just wait till we get to the end of the
5 process, eight years.

6 So based on that kind of concept, I suggested,
7 well, let's go out with a fiscal person and a program person
8 at the application stage of a project and let's show them
9 the 13 internal control questions that somebody may ask them
10 three or four years later and we leave those questions with
11 them. And we've only done this in two districts. That's
12 definitely a pilot. Okay.

13 But I'm kind of thrilled with the results because
14 the districts that we went to thought it was a lot of added
15 value to know in case they do get audited, these are the
16 kinds of internal controls put in place because as we know,
17 school districts have a lot of turnover. There's a lot of
18 things that don't get done. There's a lot of documentation
19 to get done.

20 So we leave them to say what are your written
21 procedures, what is your separation of duties, how are you
22 going to have backup and training, how do you record your
23 accounting --

24 MS. MOORE: So if I may -- if I may -- and I think
25 you're -- I don't -- we have a lot to cover and I think

1 you've -- and you're getting -- you've made the point I
2 think of it.

3 MR. MEHL: Thank you.

4 MS. MOORE: But as I understand then, that pilot
5 is separate from what we're changing in terms of the
6 procedures and I think there was -- the last -- when I
7 looked over the last testimony in this interchanging of the
8 pilot and new process I think confused a lot of folks.

9 SENATOR LOWENTHAL: Right.

10 MR. MEHL: Thank you.

11 MS. MOORE: And so what you're saying is the pilot
12 is more about up front, we're going to tell you how we're
13 going to audit you and we're going to tell you what types of
14 internal controls -- and quite frankly, this is a prototype
15 of how we think it would be appropriate to operate your
16 system from our vantage point.

17 That's very separate than changes to the auditing
18 process that I think have occurred and we're kind of, you
19 know, peeling back the onion here as the Subcommittee to
20 understand what should occur, who has the authority, and the
21 how do we communicate that with the clientele of the Office
22 of Public School Construction, the State Allocation Board,
23 the school district, County Office of Education's charters.
24 How do we communicate that and not be in a gotcha' situation
25 so that the districts know these are the standards and

1 frankly I think what our problem is, is that we annually --
2 we can annually change but we're over multi years -- a
3 project is over multi years.

4 So what audit guidelines do they fall under I
5 think is the primary concern of any school district? Is it
6 at the -- you know, day one when I submitted my application?
7 Is it, you know, day -- you know, seven year when the --
8 when someone comes out to audit me?

9 I think -- we get through a lot of those issues.
10 Districts are going to embrace. Whatever the system is,
11 I've always seen them been resilient that way, but we have
12 to communicate what is the system and what is -- what are we
13 going to check the issue against, and I think that's the
14 role of this committee to understand that.

15 MR. HARVEY: It's interesting how we all look back
16 and see things through our own filters. I will tell you
17 after our last meeting, I felt that what this Subcommittee
18 would benefit from was hearing the fruits of your pilot
19 program.

20 I had felt that we had talked about the past
21 practice, learned that it had deficiencies. We were not
22 worrying about pointing fingers, but we were saying this is
23 an evolutionary process. We've made some changes. We can
24 question whether those changes were done with the proper
25 authorities, but to me the best news out of our last hearing

1 was that we were finally doing it right.

2 What I mean by that was we were meeting with --
3 interviews, letting people know up front what to expect and
4 then making sure throughout that next three- or four-year
5 process there were no surprises and the fact that we were
6 also doing risk management audits. Not the whole kit and
7 caboodle.

8 So I was kind of excited about learning the fruits
9 of the pilot. I jumped ahead. I'm about trying to make
10 sure what we do is fair and equitable and appropriate and I
11 was more worried about getting best practices on the table
12 and making sure we had the best way of communicating to
13 districts what we were about to do.

14 So I can hardly wait till we get there because to
15 me it was an evolutionary process. We didn't do it very
16 well before. We did some changes we thought were
17 appropriate and now we can question who had the authority to
18 do it, but finally it was let's make sure these audits are
19 done according to the standards, what Elaine Howle had to
20 say, and we do it up front and no gotcha'.

21 So I'm kind of excited about where we go on this
22 next step.

23 SENATOR LOWENTHAL: Where we go right now because
24 we're kind of -- there are lots more questions we could ask,
25 but let's move on to the next -- let's hear from the

1 district perspective. We've heard it from OPSC. Peggy
2 Reyes and Shawn Atlow and Lettie Boggs. I'd like to kind of
3 follow up. Maybe -- what I'd like to see next is some
4 response following up on Scott Harvey.

5 I'd like to start off by saying to the district
6 folks are we now doing right? Is that what's really going
7 on and is there an attitude of gotcha'? Is that what you
8 feel that's really happened now is that not only have we
9 upgraded it, but that the state how now moved into a
10 perspective that now that we have this -- we've upgraded our
11 standards and now we're kind of looking at districts with a
12 magnifying glass and trying to find out how do we get you
13 now because you're now following. Before we weren't doing
14 real audits. That's what we heard. Now we're doing the
15 real thing and we're going to find out how you've done -- is
16 that really what's really going on or is it that there are
17 other issues that are going on.

18 But -- so from the district's perspective, how
19 have things changed and is this the right way -- are we
20 doing it the right way now? Is that what we're really
21 hearing and according to your perspective and -- is there an
22 attitude that the state has?

23 Not saying that you're -- we're going to -- you
24 know, we just want to hear and -- also is there a difference
25 between those districts where the state is funding you a

1 hundred percent and you're our partner where you're picking
2 up half the money and so is there -- how do we work that out
3 also. Do we treat you as our partner because you're putting
4 up half the money?

5 MS. REYES: Good afternoon. I'm Peggy Reyes,
6 Director of Facilities for Desert Sands Unified School
7 District. I've been at Desert Sands for 34 years, the last
8 15 as Director of Facilities, and during that time, we've
9 completed 22 new construction projects and 17 modernization
10 projects.

11 This afternoon I will focus on projects completed
12 since 2002 and the audit timelines and criteria to the
13 present. I provided you a summary of completed projects and
14 audit timelines as shown here.

15 Prior to 2007, audits were initiated between one
16 and eight months after submission of our final expenditure
17 report. Since 2007, ten projects were completed and seven
18 were selected for the new field audit. The time between
19 submission of those final expenditure reports and initiation
20 of the audits was between 14 months and two and a half
21 years.

22 So if we're following -- after two years, I had a
23 couple of projects that I should have a freebie on.

24 I will now focus on what worked, what didn't,
25 timelines, questions asked, and touch on the differences

1 between audits completed pre-2007 to the recent field audits
2 at Desert Sands.

3 What worked in the previous audits: Districts
4 would submit their final expenditure report and wait between
5 one and eight months to receive an audit letter requesting
6 information. Once the letter was received, the district had
7 30 days to copy, mail off the documents to OPSC. A district
8 could request a pre-closeout meeting if they so chose.

9 Documents would be copied and mailed and then we'd
10 wait to hear back from our auditor via telephone or email.
11 The number of questions would be determined by the
12 particular auditor. Typically a formal letter requesting
13 additional documentation would be received with a 15-day
14 response time.

15 OPSC would send a review of project financing and
16 expenditures with which the district could concur or submit
17 additional information in response to adjustments.

18 In 2006, we were able to scan documents and submit
19 via email which really helped to save time and money.

20 In Desert Sands, our projects are multi-prime,
21 between 20 and 22 categories for each project. The
22 examples -- the projects on our first example was replacing
23 portables with permanent classrooms and this is in the
24 background information I've given you.

25 For audits completed in 2004 consisted of the

1 district sending copies of the following. Construction
2 contracts: The audit requested copies of five contracts for
3 each project rather than all 20 categories. On 15 contracts
4 were requested in comparison to 60 contracts that are now
5 required. Qualification appraisal documents for architect
6 and construction manager, verification the district
7 deposited at least 3 percent of its unrestricted general
8 fund into a routine restricted maintenance accounts for the
9 fiscal year of the audits -- the projects.

10 Then in 2005, the audits requested additional
11 information. We went from only having to submit three
12 things to now we had to submit ten things: bids, bid
13 summaries, notices to proceed, notice of completion, the
14 qualification appraisal documents again, and now they wanted
15 the matrix comparing the scoring and the board minutes,
16 architect agreements, construction contracts, final
17 billings, approved GSA change orders, sampling of selective
18 warrants, verification district deposit at least 2 percent
19 of its unrestricted general fund into routine restricted
20 maintenance account, and documentation identifying the
21 savings remaining in the restricted facility fund.

22 So it did change from 2004 to 2005.

23 What didn't work: Well, our experience was that
24 it worked okay. We submitted the information and then we
25 waited to hear. The only comment we had is that the

1 inconsistency of questions and documentation requested
2 depended on who the auditor was that was assigned to your
3 project.

4 The timelines: Our experience is that the audits
5 were initiated between one and eight months following the
6 final expenditure report. Audits were completed between
7 three and six months and the projects were closed out
8 shortly after the completion of the audit.

9 The new audit's supposed to be quicker, but from
10 my experience, it hasn't been so far. We started with a
11 telephone call on September 3rd notifying us of the upcoming
12 audit, received letter September 15th, with a site visit
13 scheduled for the next week.

14 Then in October, we received a letter requesting
15 additional information and clarification with 30 days to
16 respond. We are still waiting. We're up to three months
17 and counting. This is no quicker than what we had
18 experienced previously.

19 Questions asked: Audits focused on did the
20 contract amounts match the expenditures, including change
21 orders; were change orders DSA approved and if not, did the
22 district provide supporting document; did the expenditures
23 meet the 60 percent commensurate goal; was a competitive
24 process used to select the architect, construction manager.

25 The audit did not include reviewing the district's

1 general ledgers for all costs associated with the project.
2 Audits were limited to expenditures to support the state
3 funding and the district's match.

4 Desert Sands is not a financial hardship district,
5 so I do not have information as to the depth of previous
6 audits for a financial hardship district.

7 I provided a detailed summary of the recent audit
8 experience for the Committee's information, but as a new
9 audit process will be -- later, I will close with the
10 following.

11 The audit process and documentation that is
12 reviewed has increased significantly since 2004. Districts
13 support audits and are very used to them since we go -- we
14 undergo one every year with our general auditors.

15 Districts have been aware of the need to maintain
16 project files with all the pertinent documents: contracts,
17 warrants, notices to proceed, notices of completion,
18 advertising, bidding documentation, competitive process for
19 architect and construction management services, and labor
20 compliance program documentation.

21 What is new is the review of all funds not just
22 facilities funds in reconciling the detailed listing of
23 project expenditure to the general ledger.

24 Districts that are not financial hardship have not
25 been subject to this review and often spend more than the

1 state funding and district match. Total expenditures for a
2 project include OPSC ineligible items that the district
3 wants to be able to track for local purposes.

4 I'd like to thank the Committee for this
5 opportunity to share this information from one district's
6 perspective.

7 SENATOR LOWENTHAL: Thank you.

8 MS. ATLOW: My name is Shawn Atlow. I'm from Los
9 Angeles Unified School District. I believe my district is
10 one of a few districts that have gone through the new
11 process.

12 I won't spend a lot of time talking about the old
13 process. It was consistent with what Peggy just testified
14 to. Time frames were slightly different in some cases, but
15 document types and process were the same.

16 I'm going to spend my time speaking about the
17 audit that we just went through that began in July 2009.
18 Actually the audit began earlier than that, but the new
19 process was conducted with us in July 2009.

20 So this audit focused on 16 projects that were
21 apportioned between July 2000 and December 2002. These
22 projects were reviewed as part of an on-site audit in
23 October 2007. They were reviewed again in July 2009 I
24 believe because the OPSC still had questions about the
25 savings on some of those projects.

1 The stated objectives of that audit were to review
2 or determine that we had proper accounting of all SFP
3 savings, ensure that we had appropriate allocation of all
4 SFP interest, verification that the district made required
5 contributions, determine whether the reported project
6 expenditures were allowable and supportable or supported,
7 and document the district's internal controls.

8 As OPSC testified previously, they did in fact
9 start with an entrance conference where they covered the
10 scope and the objectives of the audit and then they
11 requested some documentation from us so that they could
12 review that information.

13 The types of things that they requested -- some if
14 it focused on SFP project expenditures, some on savings
15 expenditures. They asked for some supporting documentation
16 like payment packets or warrants, invoices. They requested
17 general ledgers so they could compare that to expenditure
18 reports that we had previously provided.

19 They asked for a lot of information on our
20 interest calculations including the source documents for
21 those calculations and those things were somewhat consistent
22 with what we'd done with them in the past. It was mainly
23 focused on SFP expenditures.

24 But we spent a lot of time on things that were not
25 or didn't appear to be directly related to SFP expenditures.

1 We were asked to provide organizational charts, processes
2 for preparing expenditure reports, our process for declaring
3 and using SFP savings, copies of our policies and
4 procedures -- financial policies and procedures, selected
5 sections from our desktop procedures.

6 We were asked to sign the management
7 representation letter. We were also asked to describe and
8 provide quite a bit of explanation on our financial systems,
9 including requests for the chart of accounts, descriptions
10 of our integrated financial system, the relationship between
11 the district's financial systems and the county's financial
12 systems, reports on balances of selected accounts, screen
13 shots from our financial systems, and actually the OPSC
14 auditors observing some of our staff doing work within the
15 financial system.

16 The OPSC also requested copies of the single
17 audits from previous years, 2005, 2006, and 2007. They
18 asked us for supporting documentation for some of the fund
19 transfers that they saw named in those audits.

20 They asked a lot of questions about an audit
21 finding related to FEMA and we spent quite a bit of time
22 trying to walk them through what happened with the FEMA
23 audit. I think -- I'm not sure where those questions
24 originated, but I know that there were some questions
25 related to the Federal OIG audit and an audit finding that

1 they saw on one of our financial reports.

2 And that's I would say a pretty good summary of
3 what we did in July and September of this year.

4 The total time of the audit -- it started July
5 2009. I would say it -- it's not completed yet, but it
6 seems that OPSC has requested and gotten all of the
7 information that they need from the district.

8 I think we gave them the final information
9 sometime in September or October. We have not yet seen a
10 report as a result of this audit and the total time that
11 OPSC was at our district was about three weeks. We did a
12 lot of back and forth via telephone and email starting in
13 July and probably ending in September and we anticipate or
14 hope to get the final report from OPSC so we can address any
15 of their findings.

16 MS. BOGGS: Hello. I'm Lettie Boggs with COLBI
17 Technologies, and in preparation for this hearing today, I
18 spoke with auditors from Faber, Tron & Day (ph), from
19 Vincenti, Lloyd, Stutzman, and Nigro, Nigro & White, three
20 of the well-known audit firms for school districts as well
21 as folks from county offices and several of our clients.

22 One of the things that I think districts are
23 experiencing in this new approach to audit is that it
24 doesn't appear that there's an acknowledgement from OPSC
25 that the other audit forms exist.

1 In the accounting standards manual --

2 SENATOR LOWENTHAL: What are the audit forms
3 you're talking --

4 MS. BOGGS: Well, I'll explain. In the accounting
5 standards manual that they reference that they're working
6 toward, there are several types of audits. There are
7 financial audits which are typically done fiscally to
8 measure the fiscal performance. So that's a financial
9 audit.

10 There are performance audit standards. There are
11 compliance audit standards. And so different audits audit
12 different things.

13 Historically, the OPSC audits follow the format of
14 a compliance audit. They were auditing did the district
15 comply with the regulations and requirements for the grant
16 they were given by OPSC and the State Allocation Board.

17 So that's a compliance audit standard which
18 differs from a financial audit standard.

19 Now that being said, a compliance audit
20 standard -- any audit looks at internal controls because you
21 cannot trust the viability of the documentation if there are
22 no controls in its preparation.

23 So all of them essentially look at internal
24 controls. And so that is something that they did not have
25 in their previous audits that probably should have been

1 there.

2 But they were compliance audits and they were
3 looking at whether or not the districts complied with the
4 requirements of the Office of Public School Construction.

5 I think in the future districts would be greatly
6 helped if the audits focused on what no one else does, the
7 piece that is specific to OPSC's role in funding school
8 districts.

9 There is an independent auditor audit caused by
10 every school board in every school district in California
11 and if any school district fails to cause an independent
12 audit, the county office will cause it for them. So there's
13 actually even a backup to that.

14 Internal controls and fraud -- verification of
15 fraud policies are part of that audit standard, so those are
16 always reviewed by the independent auditor.

17 Now they have generally focus areas at different
18 times, so they don't audit everything thoroughly every time.
19 They focus and they make sure that over time they're hitting
20 everything.

21 They have comments from those audits and then the
22 district response to comments and then during the next year
23 cycle, they verify that those response to comments were
24 followed through. So there's a continuous improvement
25 process.

1 Those audits and those comments and responses to
2 comments go to the governing board of the district and are
3 public document and they also go to the county office. The
4 county office has a complete schedule whereby they are
5 required to follow up on those audit comments.

6 There is significant auditing occurring already in
7 areas that OPSC is perceiving themselves deficient in. I
8 believe that when the audits were originally conceived there
9 was an acknowledgement that this body of work was already
10 occurring and they built from there rather than redoing what
11 was already done because one principal audit standard of all
12 audits is also to promote efficiency.

13 And we want to be sure that what we're doing now
14 also promotes efficiency with state dollars as well as local
15 dollars and re-auditing for the third time may not be the
16 most efficient way to handle that component, but it is
17 absolutely a valid audit component.

18 So this audit is kind of a hybrid and should
19 really look at those efficiency components.

20 The purpose of the OPSC audit that I think would
21 really be helpful to districts would be to acknowledge the
22 other roles and then to move OPSC to a more incremental
23 approach of auditing the components of the program so that
24 as districts move through the process, they know they're
25 done with that piece. They're good.

1 So, for instance, when they go through
2 eligibility, OPSC has an internal check that their
3 eligibility award process is sufficient and that district's
4 eligibility won't again be called into question later.

5 When they get to project approval, that project
6 approval should be complete and reliable so that the
7 district isn't subject to having that question as they move
8 through the process.

9 So actually when they get to the end of a project,
10 the piece that is left to be audited is essentially the
11 expenditure audit, contracts and expenditure compliance, and
12 that I believe is why OPSC's previous audits focus primarily
13 on that because the other things were verified as they went
14 along.

15 There are ways to achieve great efficiencies in
16 this because we're already in a very highly defined system.
17 For instance, with savings, if the Office of Public School
18 Construction was to work with the office at the Department
19 of Ed and cause a restricted fund to be created for savings,
20 the district could acknowledge their savings were
21 transferred to the restricted fund and then internal audits
22 and county offices would monitor every payment that goes out
23 of the restricted fund just as they monitor and audit things
24 now, which would be a tremendous efficiency from the
25 perspective of what we're having to do now for savings.

1 So looking at the totality of the processes
2 involved and finding the right place to verify and monitor
3 would be -- would achieve the most efficiency for school
4 districts and prevent the redundancy that I think is so
5 frustrating. Thank you.

6 MR. HARVEY: Well, this is an evolutionary process
7 very clearly. It's interesting you see it as redundancy.
8 I've heard OPSC staff say we look at what's been done, but
9 there are no redundancies and like the Senator, I'm not an
10 auditor and it makes it very, very difficult to -- he
11 said/she said kind of statements makes it very difficult for
12 us to determine what it really is.

13 All I know is that every bond -- and I'll read
14 from them -- 47, 55, and 1D talk about funds can only be
15 spent to build or renovate schools. Every dollar spent must
16 be strictly accounted for on a project-by-project basis with
17 independent state and local audits.

18 So, you know, we haven't moved too far off where
19 we began which is the need for audits and then the question
20 who's best prepared to protect what OPSC does as it
21 allocates bond dollars with direction saying it's a
22 project-by-project -- I mean who does that.

23 I still come from the perspective that it's an
24 evolutionary process and I thank you for indicating that
25 what we used to do without internal controls being part of

1 it really is where we not should -- where we shouldn't have
2 been and now we're moving to say it again a risk management
3 based audit that allows school districts to hear up front
4 the kinds of questions they're going to hear at the end of
5 the process and it's not each and every school and indeed if
6 you have the two year time frame, you're good to go.

7 So I keep wanting to make sure we work together to
8 devise a process that satisfies the direction in the bond,
9 satisfies state statute, and is indeed not a redundant
10 process.

11 MS. BOGGS: But I think -- let me give another
12 example compared to the fund example.

13 Every school district causes a state-approved and
14 licensed inspector to be on site at their project. So for
15 OPSC to say that no one acknowledged the project was built
16 is a lack of acknowledgement that DSA caused that project to
17 be continuously inspected.

18 So to coordinate that component -- and they have
19 to sign off with their license on the line at the end of
20 every project that it was in fact complete.

21 So that document could easily be provided to OPSC
22 and they could acknowledge that another state agency has
23 caused continuous inspection and so the state is very aware
24 that this project actually got built.

25 So that's why I'm saying efficiencies could be

1 achieved by coordinating what school districts go to and not
2 having every agency stand as an island and I think to do
3 that -- I think the Committee's on the on the right track --
4 we need to talk about this in a totality and let's see where
5 the most efficient place to take care of each of these
6 components might be.

7 MR. HARVEY: If I invite DSA in, will they tell me
8 that each and every project is continuously inspected?

9 MS. BOGGS: We are caused to have a DSA inspector
10 by law --

11 MR. HARVEY: I know you're supposed to. That's
12 not the question I asked.

13 MS. BOGGS: They do and OPSC verifies we pay them.
14 If I submitted a 5006 with no DSA inspector, I would get a
15 question as to why.

16 MR. HARVEY: That was your term continuously.
17 That's all.

18 MS. BOGGS: Yeah.

19 MR. HARVEY: Okay.

20 MS. BOGGS: No. I believe that's the term --

21 MR. HARVEY: Very good. Well, I look forward to
22 working with the stakeholders because there's no question
23 that audits are appropriate. The haunting question is by
24 whom and when.

25 MS. BOGGS: Right and I think the level of audit

1 for the level of risk is a very appropriate question and I
2 think they're on the right track in doing risk assessment as
3 to whether or not it's appropriate to full audit.

4 If a district's paying 150 percent overall
5 compared to the grant for OPSC, that might not be a high
6 risk target for where the state funds went, for instance.

7 MS. ATLOW: I'd like to add to -- we haven't had a
8 single project where the audit requirements were
9 communicated in an opening meeting or a conference at the
10 beginning when we were filing our applications.

11 So I know we're very concerned about a new
12 procedure applied to projects that have in many cases been
13 apportioned for ten years. And so it does raise this
14 question of is this effort kind of the gotcha' thing.

15 It's unclear to us what the outcome will be if
16 OPSC finds something that they're not satisfied with and
17 since we were not really able to prepare for this new
18 process, it's difficult for us to anticipate how it will go
19 also and we're very concerned about that.

20 MS. REYES: I would like to echo that. When the
21 field auditors came out and we -- they were there for a week
22 and we talked about ways of better communication and better
23 articulation between the district and OPSC, we said it would
24 be so helpful for the district if at the time of our
25 submittal of our 5004, then we'd know what type of audit

1 guidelines would be in place as we progress through the
2 project and also as we would submit our annual expenditure
3 report, have a meeting with OPSC to see if we're tracking or
4 if there's a problem, then we would know and we'd be able to
5 make some corrections.

6 So we discussed the need for continual
7 communication and incremental audit rather than waiting till
8 the final expenditures and closeout audit. It'd be very
9 helpful to districts.

10 SENATOR LOWENTHAL: So how would you describe the
11 communication now?

12 MS. REYES: We'll be --

13 SENATOR LOWENTHAL: Each of you.

14 MS. REYES: Right now, our most recent field
15 audit, we had a telephone call to the assistant
16 superintendent of business who said we'll be coming out and
17 auditing seven projects in a couple of weeks.

18 Then the 21st, so it was two and a half weeks
19 later. We got a letter the week before -- and I provided
20 that in the background information to you -- itemizing all
21 the criteria, all the different information they wanted to
22 look at, the documents. So when they arrived then on the
23 21st, we had our entrance interview and I provided a copy
24 of that agenda as well.

25 They -- as said Shawn said, they wanted to look at

1 internal controls and have you sign a management letter,
2 much more extensive than anything we had undergone in the
3 past. And so this was all new to us and the districts had
4 heard that there was a new process starting, but nobody
5 really knew what to expect, so it was all -- everybody was
6 very apprehensive.

7 We welcome the audit. We know we're spending our
8 money on the right projects in the right way and when the
9 auditors came out, I was happy to show them the two
10 projects, take them out to the field. This is the new
11 school we built. This is the one we did a modernization
12 project at. These are our DSA approved plans. This was at
13 our -- our funding application to OPSC. We built exactly
14 what we said we were going to do.

15 So we have nothing to hide. We just want to know
16 what the rules of the game are going to be so when we play
17 the game now, at the end of the game, they're still the same
18 rules or if they change, they get communicated to us so that
19 we know what we're going to be audited on.

20 That's the thing we ask is that just communicate
21 to us.

22 SENATOR LOWENTHAL: And this gets back to the next
23 really panel on communication, but do you feel, Shawn, the
24 same way?

25 MS. ATLOW: Yes. As I mentioned before, this

1 is -- the new procedures were introduced as part of an
2 in-depth audit on projects that were already complete. So
3 they're looking at things that have already occurred, in
4 some cases have been finished for years, and applying what
5 appears to be new criteria and new standards that we may or
6 may not meet.

7 I think OPSC gave us some favorable feedback, so
8 it seems that things are moving forward, but it just creates
9 a certain level of anxiety when you don't know what rules
10 are being applied, especially after the fact.

11 SENATOR LOWENTHAL: Um-hmm. Good. Well, that's
12 very helpful. Anybody else? If not, let's kind of then go
13 back to this -- maybe we can really have maybe OPSC come up.

14 I think this issue of communication -- what
15 rules -- you know, what are the -- I think what I'm hearing
16 is if we knew up front what the rules were and we had
17 ongoing feedback, not wait until the end, but as we go
18 through this process, we would really welcome this. We want
19 to be a partner with the state.

20 But right now, what I'm hearing is we're not quite
21 sure what the rules are. There's a certain degree of
22 apprehension. These are projects that were done quite a
23 while ago at times. We operated under a set of assumptions
24 or rules at that time. Now there's a new set of rules.

25 We have the sense that we're being picked on or

1 looked at in some way as though we've done something wrong
2 when in fact we welcome this. We're not really thinking
3 that we've done anything wrong. We want to work with you.

4 How would you improve that? You mentioned --
5 maybe a little bit more detail. You've mentioned I think
6 that you'd like to see this process not at the back end as
7 it unfolds, to be a lot more clearer.

8 Would you like it only to pertain to projects that
9 have already gone -- in the future; is that what you're also
10 saying? How can we be subjected to this when in fact we
11 developed other projects under one set of assumptions or
12 rules. Is that what you're saying? It's kind of unfair
13 now?

14 MS. ATLOW: Well, we certainly don't want to be
15 held to new rules after the fact. It's very difficult to
16 manage that or address it. When someone asks a question
17 about -- or suggest that you have a standard in place or
18 that you should have had a standard in place, you know, if
19 you didn't, what do you do about that?

20 SENATOR LOWENTHAL: Um-hmm.

21 MS. ATLOW: So we don't want there to be any
22 punishment or harm brought to the district if we didn't meet
23 some expectation that we didn't know about up front.

24 I would say in addition to that we'd like things
25 to not be cumbersome or duplicative. It's very expensive.

1 SENATOR LOWENTHAL: That we heard before --

2 MS. ATLOW: And it's a lot of work to respond to
3 some of those things. So I would agree with Lettie on that
4 point.

5 SENATOR LOWENTHAL: All right. I'm trying to
6 think of -- do you feel that the audits go beyond the
7 specific project? We raised the question earlier and maybe
8 that audits may be -- did you -- you know, when you
9 mentioned I think, Lettie, about is this a compliance, did
10 we do what we said we were going to be doing? Did we comply
11 with OPSC's -- the objectives and the grant that we
12 submitted.

13 MS. BOGGS: Um-hmm.

14 SENATOR LOWENTHAL: The issue that comes up is
15 well, that may be -- you know, that we've heard is that
16 well, school districts may end up with significant or at
17 least some substantial, even a little bit, of savings based
18 upon efficiencies and other ways in which they follow out
19 and comply with what they said.

20 Do you feel that sometimes the audits go beyond --
21 even the new go beyond what -- a specific project and
22 include other issues or other expenditures? Have you had
23 any of those issues that come up?

24 MS. REYES: Well, as a non-financial hardship
25 district, yes. We have a local constituency that has

1 approved tremendous amount of local funding for us to spend
2 and they don't want portables. They want permanent
3 construction --

4 SENATOR LOWENTHAL: Um-hmm.

5 MS. REYES: -- and they want data and they want
6 computers in every classroom. So we routinely spend more
7 than the state's funding and our match by probably at least
8 30 percent every project.

9 I felt that when we had our audit I was being
10 scrutinized as if I was a financial hardship district and
11 somehow we weren't spending the money wisely or something,
12 that they wanted to track back every expenditure. I have
13 limited staff to report all the expenditures on the DLOPE
14 and so then when they said well, your general ledger
15 expenditures don't match your DLOPE, you know, where is this
16 inconsistency, where's this missing money, and I said well,
17 the missing money expenditures were on local funds.

18 We provide for monies for libraries for startup
19 books and we provide additional computers and so my
20 instructions to my accounting person was you need to report
21 the state's money, our district match, and then a cushion,
22 but since we're so far above that, you've got, you know, 20
23 projects you're working on, you don't report everything.

24 So there was tremendous emphasis placed on
25 matching general ledger to the DLOPE and I didn't see that

1 because we are not financial hardship.

2 SENATOR LOWENTHAL: And how did that get worked
3 out?

4 MS. REYES: I don't know yet. I'm still waiting
5 for my letter.

6 SENATOR LOWENTHAL: Ahh.

7 MS. REYES: So --

8 SENATOR LOWENTHAL: Anybody else feels that the
9 state is -- that the audits really go beyond the project and
10 really request information that's more than just --

11 MS. ATLOW: I experienced that as well in this
12 last audit. I didn't have the exact problem that Peggy had
13 since we report all of our expenditures on the DLOPE, but
14 there were other areas where I thought it wasn't at all
15 related to the SFP funding, particularly the issue with
16 FEMA.

17 I think the original question did connect to the
18 SFP a little bit, but we addressed that -- or I thought we
19 had addressed it and shown that we had spent the SFP money
20 appropriately. But we did have to respond to a lot more
21 questions about some of the findings in the Federal OIG
22 audit and some of the resolutions to the FEMA issue that was
23 raised in that audit and we also had to provide
24 documentation for those resolutions and I mean none of it
25 had anything to do with SFP funded projects.

1 So I think that was kind of far outside the scope
2 of SFP funding.

3 SENATOR LOWENTHAL: What recommendations would you
4 make to us?

5 MS. ATLOW: Well, in that case, I would avoid
6 asking about findings that are outside of the scope of the
7 SFP and I don't know what Peggy would prefer, but it seems
8 if we've met the requirements of the SFP that I don't see
9 why we would have to delve into all of the expenditures
10 related to a project, especially those that are locally
11 funded.

12 MS. REYES: We have since purchased an accounting
13 software program that will now automatically generate the
14 report for us as we enter our requisitions and our warrants
15 and everything, so that's not a problem for the future.

16 The reason given by OPSC for wanting all the
17 expenditures is so that they could know what a true project
18 cost, but my answer to that was well, this is too late
19 because we're providing information on the PIW, the Project
20 Information Worksheet, at the time we submit our projects
21 and then we update that annually with the expenditure
22 reports, so a real -- more -- a real time project cost is
23 already -- that information is being provided.

24 If we wait till the audit, that's too late and the
25 information is old.

1 MS. BOGGS: I think that the multi-fund/multi-year
2 accounting issue in districts is a very complex one. School
3 districts -- most departments in school districts operate on
4 a single fund basis annualized, and so the complexity of
5 what we do in the school facilities department is very real.
6 It is very complicated.

7 And there are several correct ways to do it for
8 school districts. They're a matter of preference or local
9 issues dictate how they manage cash in that multi-fund
10 environment.

11 They're not right or wrong. They're just
12 different. And all of them can be done correctly.

13 So we don't understand. I think I -- I've gotten
14 this question from several clients. We don't understand why
15 this matters to OPSC at this point. Why are we -- you know,
16 because traditionally OPSC has not concerned itself with
17 cash management, which is typically why you look at the GL
18 and why you look at transfers other than for financial
19 hardship where they're verifying which funds area available.
20 We're not quite sure what the purpose of the scrutiny of the
21 GL is for.

22 SENATOR LOWENTHAL: I want to thank the three of
23 you and I think that before we kind -- we've really tapped
24 into the communications, but I would like to see from
25 Corona-Norco. Is that Lennie, is that --

1 MS. BOGGS: And I also -- I was pitch-hitting on
2 that last one.

3 SENATOR LOWENTHAL: Oh, you were?

4 MS. BOGGS: I haven't read my one on communication
5 yet, so --

6 SENATOR LOWENTHAL: Okay. Let's go to --

7 MS. KAPLAN: Yeah and then Corona-Norco and Nancy
8 Baker and Lena.

9 SENATOR LOWENTHAL: So let's kind of go --

10 MR. HARVEY: And then OPSC staff --

11 SENATOR LOWENTHAL: And OPSC can respond.

12 MS. BAKER: Hi. I'm Nancy Baker from Corona-Norco
13 Unified School District and I have been with the district 11
14 years now and have been involved in all of the audit process
15 from day one and I can't tell you how many projects we've
16 done. There's been numerous ones. And I completed all the
17 projects from when it was LLP -- the LLP program and
18 transitioned into the SB50 program.

19 And it didn't seem through that transition that
20 there were a whole lot of differences and as the person who
21 was in charge of providing all this information, we -- it's
22 all documented, all the expenditures that ever take place in
23 the project itself, the warrants, the vendor, and how you
24 spent it.

25 And OPSC had guidelines letting you know exactly

1 how for you to spend the money. And that was proved on
2 these expenditure reports.

3 And it's kind of a little offensive to hear that
4 there never was an audit done, that that really wasn't an
5 audit process because we complied always with the standards
6 that were set forth to us and every project was audited and
7 you were to provide all the documentation for the project
8 such as architect agreements, the contracts, and all of that
9 was documented and the schools were built.

10 We did have the DSA inspectors on site all the
11 time. And -- so to hear that there was never an audit
12 process is kind of a little bit offensive to us and that if
13 I had not been here today to hear of the new procedures, we
14 would, as a school district, would not know that that would
15 be taking place.

16 SENATOR LOWENTHAL: You were not communicated
17 there was --

18 MS. BAKER: We were not communicated. We had no
19 idea and we've always been proud of our processes and as a
20 school district representative, we want to do a good job and
21 be stewards of the taxpayers' money. And we've always
22 complied with all the regulations. We have no problem with
23 whatever is asked of us but that it be communicated to us.

24 And in the past, we've had workshops and those
25 sorts of things to let us know, but now there's no

1 communication and this is very different for us.

2 SENATOR LOWENTHAL: So it's a surprise to you that
3 you -- you've always thought that you were -- that there was
4 an audit process that had gone on for years and years and
5 now to be told that that really wasn't an audit process is a
6 surprise to you.

7 MS. BAKER: It is a surprise because it is an
8 audit process. We have independent auditors who do come to
9 our school and they audit all of your -- our internal
10 procedures to make sure that there's no fraud that takes
11 place and that is already done for us and they even audit
12 our fund 35. Fund 35 is where you provide these
13 expenditures for the schools. They also audit those.

14 And we provide all the invoices that have to do
15 with our projects and they also look at that process as
16 well. And another thing is when we get funding for these
17 projects, we have to put all the funding into fund 35 and
18 that is also looked at by our independent auditors.

19 And so all of that is reviewed and we were
20 reviewed on several accounts by different outside firms as
21 well as OPSC.

22 SENATOR LOWENTHAL: Thank you. Mr. Scott.

23 MR. HARVEY: Just very quickly, again my filter
24 says that we're getting better at auditing. What we had was
25 a kind of audit. I'm sorry it was offensive for you to hear

1 that it wasn't a complete audit, but I think that's what
2 we're doing. We're working toward a better system.

3 And let me ask -- maybe it's the broadcast mailing
4 list we use, but Mr. Tao referenced a November 26th, '07,
5 letter that went to all school districts and county
6 superintendents of schools and it talked about the new
7 process with internal controls being part of it.

8 So it looks like we did some outreach. I'm not
9 sure we did all we could have with workshops and individual
10 letters to people at your level. Maybe that's something we
11 should do in the future, but it looks like there was an
12 effort made to talk to both superintendents and county
13 superintendents of schools.

14 SENATOR LOWENTHAL: Never got to you.

15 MS. BAKER: No.

16 SENATOR LOWENTHAL: That's what you said.

17 MR. HARVEY: Or superintendent.

18 MS. BAKER: I will tell you our clients as well
19 feel it didn't get to them.

20 SENATOR LOWENTHAL: Huh?

21 MS. BAKER: Our clients as well have said it.

22 SENATOR LOWENTHAL: It just didn't get down.

23 MS. BAKER: When we told them about, it was the
24 first they'd heard it.

25 SENATOR LOWENTHAL: Yeah. That may be -- the

1 issue of the change. I'm not -- is that people were
2 surprised, never got to the operations level. It may have
3 been communicated and --

4 MS. BAKER: And in the past, any changes that were
5 going to occur have been communicated at this level and
6 workshops provided several months --

7 SENATOR LOWENTHAL: And you were provided --

8 MS. BAKER: -- prior to the implementation of and
9 we've always been happy to be in compliance with everything.

10 SENATOR LOWENTHAL: All right.

11 MS. BOGGS: In discussion with -- in discussing
12 audit communications, I'd like to address the historic
13 norms, the audit communication, and some observations and
14 requests for improving the audit communication between OPSC
15 and the school districts.

16 Historically prior to 2009, the audit practice of
17 OPSC was to communicate audit expectations primarily through
18 an audit guide posted on the OPSC Website. This audit guide
19 provided a general picture of the expectations for the OPSC
20 audit.

21 Once an audit began, the district was notified via
22 mailed correspondence from OPSC auditor assigned to the
23 audit. This correspondence typically requested major
24 contracts and related expenditure data which the auditor
25 determined from the previously submitted detailed listing of

1 project expenditures.

2 During the audit, additional information might be
3 requested to clarify things such as contract dates or board
4 approvals. The audit appeared to be primarily focused on
5 program compliance regarding dates of contracts in
6 comparison to submission of SAB documents, legal notices and
7 board actions per program requirements, and expenditures
8 with related documents.

9 Labor compliance verification, routine restricted
10 maintenance percentage verification, and qualification base
11 selection documents were added over time as routine
12 components of the audit.

13 Historically, OPSC did not involve themselves in
14 the mechanics of cash management or subsidiary funding
15 except to verify that sufficient match was provided to the
16 state grant amount.

17 In addition the audit guide and communication
18 through letters, the old audits were known entity with
19 districts communicating with each other about expectations
20 and what they were experience. This led over time to a body
21 of information about how to maintain records that OPSC would
22 want to see.

23 With the change in audit procedures, districts are
24 struggling now with two factors. One, they don't have the
25 new types of information in storage with the project records

1 for projects already completed. The project is done. It
2 takes a significant time commitment to go find the old
3 documentation as they didn't know it would be needed and in
4 some cases it in fact doesn't exist.

5 Two, the people who did the project may no longer
6 be in the district. The project may have been completed
7 with no irregularities and routine project records of the
8 time being stored. However, the district cannot verify that
9 due to personnel changes and therefore may stand in jeopardy
10 of not being able to document something they did not know
11 they would need to document and they may stand to lose
12 funding after the fact.

13 Regarding the new audit, it has retained all of
14 the prior audit components, though they are undergoing a
15 shift and appeared refocusing on expenditures that are
16 significant to the project cost which is a laudable change
17 in that it's more risk focused.

18 From discussions with some of the few districts
19 that have experienced the new audit and I list -- and again
20 they're just the same things Peggy listed. On-site visits
21 are routine and encompass multiple projects at the same
22 time.

23 There's an entrance interview and an audit agenda,
24 but I must stress this happens at the beginning of audit not
25 at the beginning of a project. A review of internal

1 controls is included, a review and verification of fraud
2 policy, and a verification that districts know the fraud
3 policy and procedure.

4 There are general ledgers for all fund years of a
5 project being requested, audit reports for all project
6 years, audit comments and responses to comments, and site
7 visits for selected projects.

8 The primary difference in the new audit is the
9 level of documentation being requested, including types of
10 information never before requested and the amount of time
11 required by district staff for audit preparation and during
12 the audit.

13 This change in scope and process has not been
14 reflected in the audit guide or in documentation provided to
15 districts who are documenting active projects which will
16 someday be subject to audit.

17 Districts need this guidance so that appropriate
18 documents can be retained throughout the project. Also as
19 employee turnover occurs, the information has not been lost
20 and the complexity of various projects and the resulting
21 motivation for various decisions and methodologies of
22 managing the funds needs to be documented in real time so
23 that districts have the ability to discuss it years later
24 during audit.

25 But in many cases, you can't go back and make it

1 if it wasn't collected at the time.

2 Some suggestions for our way forward: At a
3 minimum, the districts need to know what will be expected of
4 the project audits. These guidelines need to be documented
5 and in place so that they can govern the data management
6 during the project.

7 Most districts would like to get an A on their
8 audit, but to do that, they need to know what an A looks
9 like. I expect they would take exception to be given a D or
10 an F without any prior notice of how to get an A.

11 Audits need to be conducted based on the
12 guidelines in place during the project being audited not
13 those in place now that were unimaginable when the project
14 was occurring.

15 A list of audit guideline changes should be
16 maintained and dated so that OPSC knows which guidelines
17 were in place at the time of each project being audited and
18 the audit documentation expectations should be reflected in
19 the guidelines.

20 Audits should not be used as a threat or an
21 intrusive practice that punishes districts. Audits are an
22 important component of providing efficient and well
23 documented use of state and local funds.

24 They're a bit like traffic laws. Traffic laws are
25 in place not to make the city rich through collection of

1 violation fines, but to promote good behaviors that provide
2 safety to the community.

3 Audit guidelines and the enforcement of those
4 guidelines through audits should act to promote good policy
5 and good behavior for managing project funds.

6 They're not a punishment or a means to return
7 funds to the state in a punitive manner after the district
8 has expended the funds.

9 The use of good guidelines promotes these positive
10 objectives and minimizes abuse through audits or the
11 perception of abuse by audit for inappropriate reasons.

12 None of the items in the new audit are exceptional
13 audit requirements. Some of them are redundant to other
14 well-audited processes and many are not anticipated and may
15 therefore cause unwarranted concern on both sides.

16 They could have easily been provided at the time,
17 but they may be difficult now. The primary concern is that
18 districts need to know what the anticipated process will be
19 so that they can prepare for it and that process needs to
20 reflect the best methodologies and efficiencies for
21 verifying compliance with OPSC grants. Thank you.

22 SENATOR LOWENTHAL: And we have a copy of that?

23 MS. BAKER: Yes, you do.

24 SENATOR LOWENTHAL: Yeah. That will be very
25 helpful which kind of will help us in -- as we lead into the

1 section on recommendations because those are a series of
2 recommendations that we can look -- I'm just wondering
3 whether Rob and OPSC wants to come back and kind of --

4 MR. HARVEY: Briefly respond.

5 SENATOR LOWENTHAL: -- briefly to any of the
6 issues about communication. I think that's the key one. I
7 think that there's people thinking they're operating under
8 one set, now under another. They completed the project
9 under one and now they're being audited under a different.
10 They didn't even know that this was going on.

11 The superintendent may have received a letter.

12 MR. COOK: Um-hmm.

13 SENATOR LOWENTHAL: That's not your -- but somehow
14 there was a breakdown in many ways and if it's not so, at
15 least it's a perception that it was so and how can we
16 respond to all of this.

17 MR. COOK: Okay. First of all, I want to clear
18 up -- first of all, good communication is absolutely
19 essential in all of this anyway. So, you know, good
20 recommendations on that are, you know, welcomed by us in all
21 cases.

22 SENATOR LOWENTHAL: Well, obviously without
23 pointing -- and I'm not here to point any blame or -- there
24 obviously is some communication issues and that -- which
25 would happen anywhere I think when there's ever a change

1 and, you know, how that change is implemented is always one
2 in which some people feel they've gotten the information and
3 other people feel that they haven't, and how do we work on
4 that issue.

5 MR. COOK: I'd like to also take this opportunity
6 to clear up a misconception. It certainly should be a base
7 level of understanding for folks. We do do -- as Lettie
8 mentioned, we do compliance audits.

9 SENATOR LOWENTHAL: Right.

10 MR. COOK: These are compliance audits. No
11 question about that. And the basis of that compliance is
12 the statute, regulations, and certifications at the time
13 this project was approved and it always has been that.
14 Always. That hasn't changed. There is no change in that
15 aspect.

16 The key change is that we have adopted leading,
17 you know, audit standards to go do those compliance audits
18 by, the same standards that BSA or controller or any other
19 major audit organization would follow.

20 SENATOR LOWENTHAL: And those --

21 MR. COOK: That's the key change.

22 SENATOR LOWENTHAL: -- districts know exactly what
23 those standards are and know those --

24 MR. COOK: Their current independent auditors are
25 required to follow those very same standards. These

1 approaches are things that they would experience in their
2 annual audits because those same approaches are required by
3 those auditors.

4 SENATOR LOWENTHAL: So what you're saying is
5 everybody was doing it except for OPSC?

6 MR. COOK: That is correct.

7 SENATOR LOWENTHAL: Very interesting.

8 MR. COOK: Now -- and as I said -- and this is a
9 bit of a breakdown. We do try to communicate with
10 districts. We have an email blast system that includes --
11 we have the superintendent and the key facilities contact at
12 every district that I'm aware in that system and we try to
13 put out routine communications.

14 This issue has been a part of those routine
15 communications and I apologize if it's broken down somewhere
16 along the lines. We're more than happy to add folks to that
17 distribution list to make sure that folks see this.

18 But there have been more than a few communications
19 that we've put out to the field on various things that they
20 should expect. The -- anyway, Lisa can give you the
21 specifics.

22 MS. SILVERMAN: Well, and I think another item
23 that we'd like to share is whenever you initiate an audit --
24 and you -- talk about the new procedure. I think we try to
25 make it very clear about the type of documents we're

1 requesting and to request source documents or general ledger
2 reconciliation is to reconcile the source of the
3 expenditure.

4 SENATOR LOWENTHAL: Are you requesting different
5 types of -- any --

6 MS. SILVERMAN: To ask for invoices and receipts,
7 what you want to do is -- as auditors you want to trace that
8 back to the source document. So where'd that expenditure
9 come from. That's a normal routine audit question and
10 perhaps again as Rob mentioned that wasn't a standard
11 question we asked in the past, but to ask that question now
12 is -- and we should have asked that question -- is to
13 validate the source of those funds and expenditures.

14 SENATOR LOWENTHAL: Did you send out to districts,
15 hey, we have not been asking these questions before. We
16 have not been doing any of this. You know, it's not you.
17 We have not been following a set of standards. Now we are.

18 These -- we're going to be asking far more
19 complete -- did you let them know that?

20 MS. SILVERMAN: Well, I imagine when the auditor
21 set up the initial conference or the initial request for
22 information, they would be outlining that information.

23 SENATOR LOWENTHAL: But did they know that
24 things -- the rules were changing? You were going to be
25 asking for more in-depth or complete documentation.

1 MS. SILVERMAN: Well, I imagine -- that's the same
2 type of requirement that would be in place --

3 SENATOR LOWENTHAL: I'm just asking if they --

4 MS. SILVERMAN: -- for a federal audit as well.

5 SENATOR LOWENTHAL: But you had not been asking
6 for that for years and years.

7 MR. COOK: I would say -- we provided general
8 communication to folks and then in -- and as Ms. Reyes
9 mentioned, her intake letter that she received would have
10 explained that.

11 Had -- were we -- have we communicated that -- in
12 one of those letters, by the way, this is different than
13 what we've done before? No, I don't think that's been part
14 of the content.

15 SENATOR LOWENTHAL: You know, the question has
16 always been is the fact that really what you're trying to do
17 is upgrade your standards because you -- it's because of
18 the -- we -- the agency itself or the state had not been
19 really operating under, you know, a really accepted, you
20 know, standards of best practices of auditing compliance and
21 so -- we just had not been doing that historically to then
22 sending out a letter which may seem like to people out
23 there, well, there's a new cop in town. You'd better come
24 up with this stuff when it really wasn't them.

25 It was really us. We were the ones that were not

1 asking, if in fact that's so.

2 MR. COOK: Um-hmm.

3 SENATOR LOWENTHAL: We were the ones that were not
4 doing this. It wasn't that they were doing something wrong.
5 It's that we were not using best auditing practices.

6 MR. COOK: Um-hmm.

7 SENATOR LOWENTHAL: And now we were going to
8 follow these practices, but it was not -- I'm saying in the
9 communication and the changes, it may have been perceived by
10 many out there, oh, my goodness, now they're coming after us
11 because we haven't done something, now we have to do more
12 complete, when in fact it had nothing to do with them.

13 They were doing what they thought they were
14 supposed to be doing. It was that all of a sudden we
15 learned that we were not doing what we should have been
16 doing. But it was not communicated that way to people and
17 people thought that there was an adversarial relationship
18 and that's where the communication broke down was this --
19 what was perceived as adversarial when in fact it really
20 shouldn't have been adversarial because we weren't trying to
21 be adversarial and they shouldn't.

22 We weren't going -- is what you're telling us is
23 we were just trying to operate under good business practices
24 which we hadn't been before. It wasn't that they doing
25 something wrong, but that's not the way it was perceived

1 when all of a sudden they were told to get this and that and
2 this -- but -- and I think that's something we have to be
3 sensitive to --

4 MR. COOK: Um-hmm.

5 SENATOR LOWENTHAL: -- really sensitive too
6 because they're our partners, we're asking in most of these
7 cases to put up money themselves and in the future, we will
8 be creating as a state more partnerships rather than less
9 partnerships. We're not going to have the resources.

10 And so I think what we're talking about without
11 pointing fingers is vitally important to how we function in
12 the future and I can perceive how people thought oh, my
13 gosh, they're coming after me now. They're asking for this
14 and this. I didn't know. When in fact, it was really we
15 should have been doing that for years and years and it's
16 nothing -- if that's really what you're saying, plus the
17 Board didn't even know any of this in specifics is what I'm
18 also going to say.

19 MR. COOK: Um-hmm.

20 SENATOR LOWENTHAL: That's my reading of it. I'm
21 finished.

22 MS. MOORE: Okay? Yeah. Well, as I listened to
23 everyone today, I've jotted down kind of the themes that I
24 saw running through I think the testimony and also knowing
25 what we learned in August as well and this is where I see

1 it.

2 We have a process issue and I think the main way
3 that we have conducted business in the past is that the
4 State Allocation Board approves regulations and policies and
5 procedures and that's a very large communication process
6 because people follow that and they know what's occurring at
7 the state level because the Board approved it.

8 So I think there's a process issue that could
9 probably help with communication. There's a scope and type
10 issue. What is the scope and what is the type of audit.

11 We heard there are a number of types of audits.
12 We were doing compliance audits. We now are doing
13 compliance financial, perhaps performance. What is it the
14 type of audit we want to do and what do we think is
15 appropriate to guard I think the state investment in
16 schools.

17 There's also content and that I think is part of
18 the -- what type of audit it is, what is the content that
19 people must provide the state in order to be complete in
20 their audit.

21 I think we have a transition issue. We have the
22 transition of new and old. It's all the -- you know very
23 well, Mr. Cook, about change -- you know, managing change
24 and it's how do we manage the change of this transition I
25 think because it appears that in some ways we're getting

1 better and in other ways we may be redundant and we need to
2 look at that.

3 I heard a lot about redundancy and different
4 opinions about redundancy, but I think that it bears more
5 investigation. Are we being redundant. Are there ways that
6 we can be more efficient as government and that we will take
7 into consideration what's already gone before, what the
8 county offices do, what Prop. 39 committees do, what the
9 financial audits that are done every year, what are the --
10 what can we build on from those audits and what is missing
11 and I think Ms. Boggs talked a lot about that. What's
12 missing that we should really concentrate on from our
13 limited resources at the State Allocation Board level and
14 the very limited resources now at the school district level
15 as well.

16 And then I heard about promoting best practices
17 and policy and I think the Board is really interested in
18 that and I think that the school districts are interested in
19 that. How can we do it better to promote best practices and
20 how can the Office of Public School Construction help with
21 that.

22 And then of course communication and really in
23 this program as I've understood communication, communication
24 really begins with the law. It then begins with regulation.
25 It's then policies and procedures and it's how we

1 communicate out to the districts.

2 But we have to know that we're on firm legal and
3 regulatory standards in order to implement these processes.
4 So I'd want to see our recommendations address these areas
5 as we move forward.

6 SENATOR LOWENTHAL: Well, that was a great list of
7 recommendations of what we should be doing. Thank you.

8 MR. HARVEY: Well, if we're talking about what we
9 would like to hear, you know, in the future, one that has
10 crossed my mind is getting some guidance, some comments,
11 some input from the Pooled Money Investment Board on how
12 they see and what they believe our audits should be since
13 frankly they're now determining who gets what.

14 We've had more than one discussion about please
15 include school bonds as your highest priority and I think
16 that's what we should be saying as the State Allocation
17 Board.

18 Now, if they're going to be making determinations
19 between schools and highways and parks and what have you,
20 what do they expect us as a Board and as OPSC to have as an
21 audit function because I would hate to fall down in the
22 pecking order simply because someone opines that we didn't
23 have something that was adequate, something that was best
24 practice, something to watch out for the bond dollars.

25 So the one thing that crossed my mind today

1 besides the very complete list that Ms. Moore has
2 articulated is if we're going to do some additional due
3 diligence, the one voice we haven't heard from is the Pooled
4 Money Investment Board, the controller, the treasurer,
5 finance, who sit on that board and allocate frankly these
6 very precious dollars that we're now simply putting on an
7 unfunded list.

8 So it's very, very important that we continue to
9 get bond money and we need to satisfy their interest as far
10 as I'm concerned. So that's one more that I would add.

11 SENATOR LOWENTHAL: Good. What I would do in
12 terms of maybe some recommendations also is first I'd go
13 back to -- that the -- we have to put up hopefully on our
14 January 27th meeting either to approve or not to approve
15 what we've done.

16 The State Allocation Board has not approved any of
17 this. And so we have to come to grips with it first as --
18 where do we go from here. I think that -- or if we're going
19 to suspend it and not approve, what do we need to do.

20 I think that there have been a number of
21 suggestions in terms of the complexity and moving from a --
22 as we move from a compliance audit to I think both
23 financial, performance, also getting input, we need some
24 kind of working group to advise the State Allocation Board
25 and this group. We're not the group.

1 We need, as was pointed out, whether it's OPSC
2 also working with the treasurer's office and we're -- I mean
3 what are we really -- what are the financial considerations
4 that we really need to be looking at to make sure that we're
5 using state monies wisely and how can we do that in a way
6 that with our partners, the school districts, so that we can
7 ensure that we -- with the highly competitive environment
8 that's going to occur in the future in terms of funding that
9 we're doing it in a way that meets the overall goals and
10 needs of the State of California.

11 So we need to get some kind of working group I
12 think to assist us in developing -- the Assistant Executive
13 Officer and OPSC in actually developing this.

14 MS. MOORE: Senator Lowenthal, if I may.

15 SENATOR LOWENTHAL: Yeah.

16 MS. MOORE: Are you suggesting that we have a
17 working group that the Assistant Executive Officer operates
18 reporting to the Subcommittee? Is that what you're
19 suggesting?

20 SENATOR LOWENTHAL: I think that might be -- or
21 really back to the Board itself, I think we really should be
22 doing it. I'm not sure whether we should be doing it back,
23 but I would be open to either one.

24 MS. MOORE: Okay. Thank you.

25 SENATOR LOWENTHAL: Because I think we're going to

1 have to -- you know, at the -- at our Subcommittee look at
2 what this working group comes up with and it should be
3 originally back -- maybe back to the Subcommittee --

4 MS. MOORE: Okay.

5 SENATOR LOWENTHAL: -- to hear a working group
6 come up with what is the scope, what is the authority, you
7 know, just want should these audits really look like and
8 then come back to us and then I think the SAB then should
9 take some action either in developing some kind of audit
10 guide and audit process and that we should review that
11 periodically, you know, to see whether it's working.

12 What we're hearing is I think some of the
13 difficulties of introducing anything new that they have
14 done, and so we need to do just to make sure as if we do
15 something new or we kind of look at this process that we
16 follow up and get some feedback back maybe in six months or
17 a year from now as we adopt these new procedures that we
18 hear back from everyone, how it's working.

19 Again I think -- and have some kind of timeline
20 for this. I think again my feeling is, is that we all have
21 to -- we have to have systems that are transparent. We have
22 to be focused on developing partnerships and accountability.
23 We're accountable and I think we're accountable for clearly
24 defining what we want and how monies will be allocated and I
25 think districts are accountable for whether they comply with

1 that.

2 But to do that, we have to have real good
3 communication and -- between both district and the state and
4 I would hope that this would be seen as an opportunity. Not
5 that anybody's right or wrong, is that we are going to be
6 embarking on more transparency and more accountability in
7 state government as we move forward or else no ones going to
8 believe anything that we do.

9 You know, and we're going to have adversarial
10 relationships completely and my goal of being in Sacramento
11 is not to live in a world of adversarial relationships.
12 It's to live in a -- you know, where we're accountable, but
13 that we work and we create partnerships and what I'm hearing
14 is while it's very important what we're doing, this was not
15 done in a way in which people feel that we actually created
16 a partnership, that this was seen as an adversarial thing
17 and that's unfortunate because I don't think it was the
18 intention to develop. It was the intention just to up the
19 standards and do what is really the right thing to do.

20 And so -- and I don't doubt that that was really
21 what -- but somehow we've got to learn from this and make
22 sure that the process works better. That's all.

23 MR. HARVEY: If I may respond. I think it is
24 probably time for this Subcommittee to go back to the SAB.
25 I mean we are simply a creature of the SAB and all we can do

1 is recommend.

2 SENATOR LOWENTHAL: That's right.

3 MR. HARVEY: It's not until the full body --

4 SENATOR LOWENTHAL: Absolutely.

5 MR. HARVEY: -- gives guidance do we have any
6 policy or direction. So I am comfortable bringing the issue
7 of working group to that body and any time frame would be
8 subsequent to August -- January 27th.

9 SENATOR LOWENTHAL: Right.

10 MR. HARVEY: We wouldn't be having any meetings
11 until the full body says --

12 SENATOR LOWENTHAL: No. Absolutely.

13 MR. HARVEY: -- it's proper, we do want to do
14 this. I will tell you, if you are asking me to go through a
15 sequence of recommendations, the one that I'm not willing to
16 endorse is some action to suspend or validate what we're
17 doing.

18 I think that is a question that I'm not satisfied
19 that we haven't had the authority to do particularly --

20 SENATOR LOWENTHAL: Who's the we?

21 MR. HARVEY: We being the State Allocation
22 Board/OPSC.

23 MS. MOORE: I'm -- could you explain that? Do you
24 mean suspend -- suspend what?

25 MR. HARVEY: What I heard the Senator say was he

1 wanted some action --

2 SENATOR LOWENTHAL: Action by the State Allocation
3 Board.

4 MR. HARVEY: -- item on the State Allocation Board
5 meeting to either suspend what we're currently doing or to
6 validate it. And I said I'm not ready to do that yet
7 because I don't think we flushed out all of the issues. So
8 if he's asking for guidance from this Subcommittee to the
9 full Board, I'm very happy to endorse everything else he
10 suggested but for that recommend which says he wants the
11 full Board to either say suspend it because it wasn't the
12 right thing to do apparently or valid it.

13 SENATOR LOWENTHAL: But are you saying also,
14 Scott, that at some point the State Allocation Board has to
15 either approve or not at some point what the policies are.
16 I think that that's the issue. The State Allocation Board
17 has not done that. Whether it's done in January or not is
18 open to debate.

19 The issue there is at the State -- there is a role
20 for the State Allocation Board.

21 MR. HARVEY: Well, there's no question about that.

22 SENATOR LOWENTHAL: And they have not done that
23 role.

24 MR. HARVEY: There's no question about that. And
25 again I guess I'm for fast forwarding. Everything I've

1 heard both in August and today acknowledges that where we
2 want to go and what we want to become is where we should be,
3 and yet we're continuing to spend a lot of time talking
4 about what we used to do and this interim step and whether
5 it's redundant or not and I heard that the pilot, which was
6 only a two district test, had everything that an audit
7 should contain not only as it relates to the substance of
8 the audit but the way in which you approach it.

9 You have an entrance interview before you even
10 start the process.

11 SENATOR LOWENTHAL: Um-hmm.

12 MR. HARVEY: And then you progress through your
13 stages and it's not something at the very end. It's very
14 interactive and it goes throughout the process.

15 So I would love to flip a switch to say let's have
16 the working group take a look at what the pilot talked
17 about, see if it is valuable for something that we can
18 institute on a statewide basis because it's risk management
19 driven. It's not every district. It relieves the cost to
20 local districts as a result. It relieves the cost to the
21 state.

22 I don't know. Maybe it's because I'm -- I don't
23 have a lot of time left here. I'm looking to get to go and
24 to me it is the better pilot that we've heard about. I'd
25 like to find a way of having the Board endorse that.

1 MS. KAPLAN: Can I -- Mr. Harvey, I think you're
2 absolutely correct. Part of my recommendation that I put in
3 on whether it was approve or suspend the new process was
4 based on whatever it was heard from the attorney and in
5 looking out for the best interest of the State Allocation
6 Board.

7 I think every district would agree that we can
8 make an audit process better and more transparent, but how
9 do we do it without jeopardizing the State Allocation Board
10 for many lawsuits is this new process is seen violating the
11 Office of Administrative -- or OAL -- Office of
12 Administrative Law and their process for regulations and new
13 guidelines.

14 MR. HARVEY: All due respect to Mr. Tao, he's one
15 attorney. I would love to hear if there are other folk who
16 disagree or find that what we have done is consistent with
17 statute and regulation. That's the other reason I was not
18 as comfortable moving on the first recommendation because
19 while he made some very strong points, I'd like to hear if
20 there are others that agree or would disagree.

21 MS. KAPLAN: I'm happy to take recommendation and
22 find other attorneys and get other opinions. I mean is that
23 something you would like me to do between now and then for
24 the January meeting?

25 MR. HARVEY: I would love to have because again

1 attorneys will --

2 MS. KAPLAN: Born to disagree.

3 MR. HARVEY: Born to disagree.

4 MS. MOORE: I would agree with that as well
5 because I really think it's the baseline issue around
6 authority and around what is the Board responsibility
7 concerning laws, regulations, policies, and procedures.

8 So I think that will go a long way then to the
9 next steps I think of the work group and what -- I do think
10 that we -- in terms of good government, we should be looking
11 at if there are redundancies, if there are better ways that
12 we can implement the audits in more cost effective ways for
13 both the state personnel and the local personnel because we
14 are dealing in a substantially less governmental environment
15 where staffs have been reduced on both sides.

16 And so I think those are important components of
17 this as well while getting the job done, while ensuring that
18 we are in fact overseeing the dollars that we approve as
19 State Allocation Board members.

20 SENATOR LOWENTHAL: I'm a little confused, which
21 is not a bad place to be at this moment, but I am. Are you
22 saying that what action should the State Allocation Board be
23 taking? Should we be approving what is going on -- or
24 should be holding back. I'm not sure what you said.

25 MS. MOORE: Yes. I think that this issue should

1 be vetted at the State Allocation Board level.

2 SENATOR LOWENTHAL: I do too, but -- so does
3 Scott. But I think the issue where we -- is that should we
4 be doing it before we have all of this to -- you know, or
5 should we -- right now or should we continue on where we're
6 going at this moment and then at the end of the process,
7 either have the State Allocation Board either approve
8 what's -- you know, a new set of auditing procedures or not.

9 Should we now and in January either approve the
10 audit -- the new procedures or suspend the new procedures
11 and I think Scott's saying he does not really want to see us
12 suspend anything until we actually really talk about what
13 we're -- we're going to have something in place.

14 MR. HARVEY: I would defer to Lisa and then I have
15 a comment perhaps.

16 MS. KAPLAN: Yeah. I think what I'm hearing is as
17 between you as a subcommittee what I'm hearing differences
18 is, is I think the base of the decision for recommendation
19 one is the legal authority. So I think is what I need to do
20 before the January Board meeting, as quickly as possible, is
21 to get direction from you what -- I'm assuming talk to DGS
22 staff counsel, what other sources of attorneys or opinions
23 would you like me to get, get them back to you and the rest
24 of the State Allocation Board --

25 SENATOR LOWENTHAL: Leg. Counsel.

1 MS. KAPLAN: -- Leg. Counsel because then I
2 believe once we have all these opinions then the Board can
3 debate it at the January 27th meeting and then that --
4 SENATOR LOWENTHAL: Okay. That's fine.
5 MS. KAPLAN: -- that's the next step. So --
6 SENATOR LOWENTHAL: That's fine.
7 MS. KAPLAN: -- are there any other attorneys --
8 does state auditor have attorneys or --
9 MS. MOORE: Attorney general.
10 MS. KAPLAN: -- the treasury or controller?
11 MS. MOORE: Attorney general.
12 MS. KAPLAN: Oh, AG.
13 MR. HARVEY: Attorney general.
14 SENATOR LOWENTHAL: AG. I think you can use your
15 judgment --
16 MS. KAPLAN: Okay.
17 SENATOR LOWENTHAL: -- to get that.
18 MS. KAPLAN: Okay.
19 SENATOR LOWENTHAL: We just need to know what our
20 authority is.
21 MS. KAPLAN: I will expedite those, get them in
22 writing, get them to you and the rest of the State
23 Allocation Board I guess, Rob, for discussion, January?
24 Yes?
25 MR. COOK: Um-hmm.

1 MS. KAPLAN: Discussion in January and then you
2 guys could give us feedback.

3 MR. HARVEY: Super. Then the other thing I'm sure
4 your notes reflect is getting some reaction from the Pooled
5 Money Investment Board --

6 MS. KAPLAN: Yes. Correct.

7 MR. HARVEY: -- on what they expect us to have as
8 an audit function if they're going to be giving us dollars
9 or bonds.

10 MS. KAPLAN: And then any other direction that you
11 would like to have me look into, let me know. Happy to --

12 SENATOR LOWENTHAL: Good.

13 MS. MOORE: Has the Pooled Money Investment Board
14 ever talked about audits of infrastructures to your
15 knowledge, Mr. --

16 MR. HARVEY: No, but I -- but since -- I'll say it
17 again, Kathleen. What troubles me is we're now in a battle
18 every time they meet to allocate dollars. Who's going to
19 get them.

20 MS. MOORE: Oh, I see. So you're advocating we'll
21 know their standards --

22 MR. HARVEY: Exactly.

23 MS. MOORE: -- so that we can be in the best
24 position possible.

25 MR. HARVEY: I would hate to have --

1 MS. MOORE: If they have a standard.

2 MR. HARVEY: If they have a standard or if they
3 have a concern --

4 MS. MOORE: Gotcha'.

5 MR. HARVEY: -- or if they have an interest in all
6 this language about you must do independent and state
7 audits, I would hate to have somebody at that level say, you
8 know what, you've just changed the way and I'd rather give
9 the money to so and so, so and so because they do what I
10 think is proper in this audit field.

11 I just didn't want it to become another excuse not
12 to give us the money we need for our schools.

13 MS. KAPLAN: I will get that.

14 SENATOR LOWENTHAL: Good. Is there anyone who
15 would like to address the hearing? I think there is someone
16 that would like to address the hearing. Mr. Duffy.

17 MR. DUFFY: Senator, thank you. Senator and
18 members, thank you very much for acknowledging me. Tom
19 Duffy for C.A.S.H. Something that was not stated earlier by
20 Mr. Simpson when he talked about the change in the program,
21 SB50, was that prior to SB50 the State Allocation Board
22 required a district to enter into an agreement, what was
23 called the lease-purchase agreement, that had the district
24 operating as an agent of the state to construct or modernize
25 a facility.

1 What that did -- and the state also required the
2 district to sign an architect's agreement that the state
3 required and with little variation. So it was uniform
4 throughout California.

5 Both of those entities -- both of those documents
6 and especially the lease-purchase document meant that during
7 litigation and the discovery phase of litigation a
8 contractor who was suing a district would find that the
9 state had an interest in their project and therefore would
10 sue the state along with the district. Not every time, but
11 it did occur.

12 And it was one of the reasons that the program
13 changed and that's important that you know as you consider
14 the conditions of audits and what is expected of districts
15 to provide to the state because the state basically now
16 severed that kind of relationship.

17 So they're -- the state is off the hook. The
18 district's responsible to whatever it does.

19 If the state is going to be auditing to the extent
20 that we're understanding --

21 SENATOR LOWENTHAL: Um-hmm.

22 MR. DUFFY: -- the audits to occur, looking at
23 change orders, looking at how a district goes into the
24 contract and we -- we've been interested in this topic since
25 last May. We met with OPSC and we appreciated their

1 forbearance at that time to meet with us to help us
2 understand what this new audit process was.

3 But my point is that there was a change in the
4 substance of the program to get the state out of the public
5 eye in regard to district actions. It seems to me that
6 there's an intrusion now in how districts are taking care of
7 their business and the state is asking questions and I think
8 that's important that you understand.

9 SENATOR LOWENTHAL: Are you saying that that opens
10 up the state then to litigation also as we move more and
11 more into this area?

12 MR. DUFFY: If I were superintendent of a school
13 district today and the kinds of audits that are going on as
14 we understand them to be going on and if there was some
15 difficulty, I would certainly question that, Senator. I
16 would say, you know, we let you off the hook.

17 We -- C.A.S.H. was at the table to negotiate that.

18 SENATOR LOWENTHAL: Um-hmm.

19 MR. DUFFY: We let you off the hook. Why are you
20 now asking us for change orders and how we're taking care of
21 business.

22 Second item and not wanting to prolong this --
23 C.A.S.H. is about accountability and transparency. This is
24 the Prop. 39 handbook and I don't know if you have them, but
25 I want to make sure that each of you have one and that

1 Ms. Kaplan has one, get one for Mavonne.

2 We did this back in 2001. Prop. 39 was approved
3 by the voters in 2000. In it on page 14, you begin to look
4 at what we propose districts do for accountability at the
5 local level because of the oversight committees -- the bond
6 oversight committees that are required by Prop. 39,
7 something that we supported and wrote into statute when
8 Senator O'Connell and Assembly Member Lempert were moving
9 forward with Prop. 39.

10 I bring this to your attention because it's
11 important that you recognize that we representing schools
12 said this is how you should conduct business. Do it. Make
13 sure the public understands what you're doing.

14 And again it's on page 14 and it's in detail what
15 we suggested they do because of accountability at the local
16 level.

17 The last thing that I want to mention is that it
18 has come up in several of our discussions about the audits
19 that OPSC is conducting the audits and OPSC is dispensing
20 the dollars through the Allocation Board, basically
21 preparing applications for the Board, and I think,
22 Mr. Harvey, you mentioned this early in this hearing that it
23 may be that you want to look at another entity looking at
24 how school districts are spending these dollars.

25 But I want to go back to the school district

1 representatives that spoke earlier. They talked about
2 changed that were not announced.

3 What we've always believed -- and I did this at
4 the local level as a school district superintendent. What
5 we've always believed is that this program is to be a 50-50
6 program unless we're talking about hardship, but that the
7 state should look to see that the district has basically
8 provided its 50 percent share.

9 And because it is a pupil grant driven program
10 that grants provide the numbers of classrooms that looking
11 at the district to make sure that the district built the
12 classrooms that they said they would build is certainly
13 appropriate.

14 If the district had to make some change and didn't
15 have enough funding to build the multipurpose room or the
16 library, then that's a circumstance at the district level.
17 The grants are there as we understand the program, as we
18 negotiated this program, to provide the districts with the
19 flexibility to do what they can to house pupils and to serve
20 pupils.

21 Every district isn't the same. I live in the City
22 of Davis. City of Davis people support every bond, every
23 parcel tax, and so that community has resources that others
24 do not have.

25 The community where I was the superintendent

1 didn't -- they were very conservative voters -- didn't
2 provide that kind -- that level of support and funding.

3 So in different places in California you have have
4 districts and have-not districts. What I'm arguing I think
5 is that we need to recognize that this program was built to
6 provide flexibility to the district and that hard and fast
7 details in auditing are not necessarily what we envisioned
8 at the beginning. Thank you very much.

9 MR. HARVEY: If I may just very quickly.

10 SENATOR LOWENTHAL: Um-hmm.

11 MR. HARVEY: I hope, Ms. Kaplan, that you do add
12 the concept of outside audit. I specifically recommended to
13 Elaine Howle.

14 MS. KAPLAN: How would you like me to consider
15 that as I'm gathering information? So I -- it'll definitely
16 be in my notes. Oh, legally confirm that we can do that.

17 MR. HARVEY: That we can do that and then we have
18 the discussion about the propriety --

19 SENATOR LOWENTHAL: And also what are the
20 recommendations to the Board.

21 MR. HARVEY: Exactly.

22 MS. KAPLAN: Okay.

23 MR. HARVEY: And finally, Mr. Duffy, I hope
24 perhaps -- or I would suggest or recommend maybe that that
25 booklet become mandatory and there be sanctions if it's not

1 adopted because what struck me in the Little Hoover
2 Commission June '09 statement about the Prop. 39 process was
3 in many cases school and community college districts do not
4 conduct required performance audits using generally accepted
5 government auditing standards as required by Prop. 39.

6 Experts have said that school districts had been
7 particularly lax in conducting performance audits which can
8 shed light on opportunities for potential cost savings and
9 ensure that funds are spent only on initiative-specified
10 projects.

11 So if you have best practices for them, we need to
12 find a way that they actually do adopt them because it was
13 disheartening to read that there are some that don't follow
14 the law.

15 MR. DUFFY: And, Mr. Harvey, I was disappointed to
16 read what you had just quoted. Our experience in working
17 with the school districts is that they're fastidious about
18 following the requirements and that the auditors that audit
19 every district -- the independent auditors that audit
20 districts every year are asked to look at the -- what is the
21 listing of projects that was identified before the voters
22 for their Prop. 39 election and the -- that listing, it is
23 to provide a specific school and kinds of projects and
24 auditors do use that. It's called Exhibit B. That is part
25 of what a board adopts when it adopts a resolution to place

1 a bond on the ballot.

2 So I believe that what the Little Hoover
3 Commission has reported is not entirely accurate.

4 Remember that community colleges are also -- also
5 have the lower threshold of 55 percent vote requirement and
6 I think what is specified in that report is a community
7 college not a K-12 district.

8 Anyway thank you very much.

9 SENATOR LOWENTHAL: Thank you.

10 MR. DUFFY: You've been very patient.

11 SENATOR LOWENTHAL: With that, this meeting is
12 adjourned.

13 (Whereupon, at 5:00 p.m. the proceedings were recessed.)

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