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CALIFORNIA STATE ALLOCATION BOARD  
PUBLIC MEETING

STATE CAPITOL, ROOM 447  
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, FEBRUARY 24, 2010  
TIME: 4:08 P.M.

Reported By: Mary Clark Transcribing  
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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

CYNTHIA BRYANT, Chief Deputy Director, Policy, designated representative for Ana Matosantos, Director, Department of Finance

RON DIEDRICK, Acting Director, Department of General Services.

LYN GREENE, Appointee of Arnold Schwarzenegger, Governor of the State of California.

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

SENATOR ALAN LOWENTHAL

SENATOR LONI HANCOCK

SENATOR BOB HUFF

ASSEMBLY MEMBER JEAN FULLER

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER JOAN BUCHANAN

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA SILVERMAN, Acting Executive Officer

JUAN MIRELES, Program Operations Manager, Policy

LISA KAPLAN, Assistant Executive Officer

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

TERESA BORON-IRWIN, Staff Counsel

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CHAIRPERSON BRYANT: Call the meeting of the State Allocation Board to order. Secretary, will you call the roll.

MS. GENERA: Senator Huff.

SENATOR HUFF: Here.

MS. GENERA: Assembly Member Buchanan.

ASSEMBLY MEMBER BUCHANAN: Here.

MS. GENERA: Ron Diedrick.

MR. DIEDRICK: Here.

MS. GENERA: Kathleen Moore.

MS. MOORE: Here.

MS. GENERA: Lyn Greene.

MS. GREENE: Here.

MS. GENERA: Cynthia Bryant.

CHAIRPERSON BRYANT: Here.

MS. GENERA: We have a quorum.

CHAIRPERSON BRYANT: Thank you. So I just want to welcome -- do a couple welcomes. I didn't do this last time because I was -- you know, it was my first day; I was a little confused, but I did want to acknowledge Assembly Member Buchanan who's sitting in for Assembly Member Torlakson.

Also today we have Ron Diedrick representing

1 himself as opposed to our usual Scott Harvey and extend a  
2 warm welcome to Lyn Greene who's appointed by the Governor  
3 since our last meeting to serve as the public member of the  
4 State Allocation Board.

5           And lastly I did want to acknowledge that between  
6 our last meeting and this meeting we had a change in the  
7 center seat here and Lisa Silverman has agreed to become the  
8 Acting Executive Officer of the Office of Public School  
9 Construction, so I want to congratulate her and welcome her  
10 and we'll move onto the rest of the agenda.

11           **Tab 2** is the **Minutes** from the last meeting. There  
12 are revised -- our binders have revised Minutes. I think  
13 everybody's concerns have been addressed. Does anyone have  
14 any other comments on the Minutes? Is there any public  
15 comment on the Minutes? Is there a motion?

16           MS. MOORE: I'll move the Minutes.

17           ASSEMBLY MEMBER BUCHANAN: Second.

18           CHAIRPERSON BRYANT: Been moved and seconded. All  
19 those in favor. Do we need to call the roll? Call the  
20 roll.

21           MS. GENERA: Senator Huff.

22           SENATOR HUFF: Aye.

23           MS. GENERA: Assembly Member Buchanan.

24           ASSEMBLY MEMBER BUCHANAN: Yes.

25           MS. GENERA: Ron Diedrick.

1 MR. DIEDRICK: Aye.

2 MS. GENERA: Kathleen Moore.

3 MS. MOORE: Aye.

4 MS. GENERA: Lyn Greene.

5 MS. GREENE: Abstain.

6 MS. GENERA: Cynthia Bryant.

7 CHAIRPERSON BRYANT: Aye.

8 MS. GENERA: We should probably hold that over  
9 until more members are here.

10 CHAIRPERSON BRYANT: Okay. We'll leave that one  
11 open. Don't let me forget to go back to it.

12 Without -- if there's no objections from the rest  
13 of the Board, I'd really like to suggest that we reorder the  
14 agenda slightly today. I'd like to -- we'll do Lisa's  
15 Executive Officer report and then what I'd like to do is  
16 move to Tab 11, work through that section through Tab 17,  
17 and then return to the Consent and Consent Specials.

18 My thinking is, is that we can get some of those  
19 items knocked off that have been on the agenda for a couple  
20 months now and also we can hear from the State Treasurer on  
21 the bond sales. I think -- and on staff for other financial  
22 issues and I think that will better inform us on the  
23 discussion we'll have related to the Consent Calendar and  
24 also to Tab 7.

25 And also Senator Hancock when she does join us has

1 to actually leave a little early and she really wanted to  
2 make sure we got to the high performance issue. So if  
3 there's no objections, we'll go ahead and proceed that way.  
4 Is that okay with everybody? Okay.

5 Lisa, do you want to do your report?

6 MS. SILVERMAN: Sure. Again we want to share some  
7 exciting news in the **Executive Officer's Statement**. This  
8 month has kind of been precedent for us. We are bringing  
9 forward some funded approvals.

10 For the first time since December 2008, the Office  
11 of Public School Construction will be providing active  
12 apportionments totaling \$110 million at today's meeting.  
13 Currently there's \$136 million available to provide  
14 apportionments to projects that previously received an  
15 unfunded approval.

16 The next topic is the high performance. At the  
17 January 2010 State Allocation Board meeting, staff was  
18 directed to assemble a work group consisting of  
19 stakeholders, including architects, school district  
20 representatives, and members of the Collaborative for High  
21 Performance Schools and the Coalition for Adequate School  
22 Housing to address concerns related to the participation in  
23 this program, specifically in modernization funding.

24 Staff is coordinating two meetings for the month  
25 of March in anticipation of presenting an item to your April

1 Implementation meeting. Again the whole incentive is to  
2 bring some requirements -- you know, additional requirements  
3 to the program to perhaps stimulate more applications coming  
4 through.

5           And in the seismic mitigation area, a special  
6 Implementation Committee meeting is scheduled for March 4th,  
7 2010, to discuss the revisions to the regulations and to  
8 increase participation in the program.

9           And the next item I'd like to share with you is  
10 the update on the bond market. Today Mr. Blake Fowler from  
11 the State Treasurer's Office will provide us an update on  
12 the current status of the state bond market.

13           And the last item I'd like to touch on is our  
14 outreach program that we've been implementing in the audit  
15 area. On February 17th, 2010, staff had the opportunity to  
16 present what to expect in an audit at the Santa Clara County  
17 Office Facilities meeting. The purpose of the presentation  
18 is to provide tips in identifying appropriate documentation  
19 needed to have a successful audit. This presentation was  
20 well received by the district participants.

21           Staff will conduct similar workshops on March 5th  
22 at the Butte County Office of Education, March 12th at the  
23 Merced County Office of Education, and March 19th at the  
24 Orange County Office of Education.

25           And we'll be partnering up with the Division of

1 State Architect who would also be presenting at these  
2 upcoming events. With that I conclude with my statement.

3 CHAIRPERSON BRYANT: Are there any questions for  
4 Ms. Silverman? Any comments? We've just been joined by  
5 Senator Lowenthal and Assembly Member Fuller. I asked  
6 before you got here if we could start today with Tab 11 so  
7 that we can move through these regulatory items that we  
8 haven't been able to get to before and also have the  
9 financial information in front of us prior to having our  
10 discussions on the funding items, if that's okay. Okay.

11 All right. So we'll move to **Tab 11** which is  
12 **modernization funding for accessibility and fire code**  
13 **requirements.**

14 MS. SILVERMAN: Oh, yes. I'd like to introduce  
15 you to Masha Lutsuk, our Operations Manager, and she'll be  
16 presenting the item.

17 MS. LUTSUK: Good afternoon. The item is located  
18 behind Tab 11 and it's stamped page 298 for your reference,  
19 and it consists of proposed regulation and form changes and  
20 it's to modify the funding for modernization projects  
21 specifically for costs of accessibility and fire code  
22 upgrades.

23 Since about 1999, these costs were addressed  
24 through a 3 percent allowance. It was 3 percent of the base  
25 grant and it was added to all modernization projects that

1 requested the funding. And for the many projects, the  
2 allowance proved to be insufficient.

3 So in 2006, the State Allocation Board approved a  
4 regulation amendment that allowed funding based on estimated  
5 costs for code compliance specific to each project and we  
6 refer to it commonly as the 60 percent grant.

7 It is -- modernization is funded 60/40 and that's  
8 where the 60 comes from. We basically take the estimated  
9 costs for items that are directly related to accessibility  
10 and fire code upgrades. We make a deduction for a certain  
11 percentage from the base grant and we provide that funding  
12 directly to the project.

13 At that time in 2006, the Board directed us to  
14 valuate this new funding method along with existing  
15 3 percent allowance and determine the best way to provide  
16 state funding for these excessive costs.

17 In 2008, we reported back to the Board, and based  
18 on analysis of projects, found that 60 percent option  
19 provided a far greater amount than the 3 percent option and  
20 the Board directed us to draft regulations to discontinue  
21 the 3 percent grant.

22 And the item that we present today accomplishes  
23 this. We have one small exception. Through the discussions  
24 at the Implementation Committee, we found that there is a  
25 specific category of modernization projects refer to them

1 like-for-like and that is when a district is allowed to use  
2 the grant to replace facilities in like kind.

3 In those types of projects, we cannot separate the  
4 compliance costs from the main cost estimate because the  
5 upgrade costs are imbedded in the design. The new building  
6 is already designed with all the accessibility and fire code  
7 elements.

8 So for these projects, we propose to retain the  
9 option of 3 percent. So their allowance would be bumped up  
10 by 3 percent to cover the accessibility costs.

11 So in accordance with prior direction by the  
12 Board, we are recommending to continue funding based on  
13 60 percent for all projects and allow projects for like to  
14 like replacement to have an option. They can either pick  
15 the 60 percent grant if they specific items they can  
16 identify or pick the 3 percent allowance.

17 In our item, we also discuss the history of the  
18 grants for your benefit, the discussions at the Imp.  
19 Committee that we had, and we provide some historical data  
20 on modernization project with respect to the grant and how  
21 much money was allotted through this grant.

22 So I'd be happy to take any questions.

23 CHAIRPERSON BRYANT: Are there any questions from  
24 the Board? I think we have public comment, I think. I see.

25 MR. SMOOT: Good morning -- afternoon, whatever it

1 is. My name's Lyle Smoot, representing Los Angeles Unified  
2 School District, and I'd like to ask you to consider not  
3 changing the current regulations. Leave the options in  
4 place because there are a number of projects as indicated in  
5 the report that show the 3 percent option because that  
6 option provided more money in that particular set of  
7 circumstances.

8           The way the formula works for this what we call  
9 the 60 percent option because only -- it only covers  
10 60 percent of the hard costs of the project, so it's the  
11 equivalent of 36 percent apportionment instead of the  
12 60 percent apportionment, and as a result, you get less  
13 money out of the total project until you reach approximately  
14 17 percent additional access compliance costs.

15           So anything -- if you have a project that is less  
16 than 17 percent of the project as access compliance, you get  
17 less money and you get less money than you currently get for  
18 those projects.

19           And so we'd like to see you just leave it alone.  
20 Okay.

21           CHAIRPERSON BRYANT: Thank you.

22           MS. BECKER: Hi, my name's Christina Becker. I'm  
23 the Director of Modernization, Facilities, Maintenance, and  
24 Operations for Santee Schools, a small urban district down  
25 in Eastern San Diego. So I think we're representing those

1 spectrums of the state's school districts large and small.

2           And I am also asking that you consider Option 3.  
3 I think that that has been the fairest option that we've  
4 been working under for a few years and I am a registered  
5 architect. I've been doing this for 25 years with many of  
6 the districts in San Diego County.

7           And as this regulation evolved in terms of the  
8 interpretation of access compliance, it's been struggling  
9 for us meeting that with DSA and I really appreciated it  
10 when they came out with the regs that we had, the 3 percent  
11 or if I had an extremely topographically challenging site,  
12 the 60 percent rule really did help.

13           What was interesting is that we went with our case  
14 study on five of our schools on our modernizations and we  
15 were perplexed that even though they are very similar, only  
16 some of the projects fell under the 3 percent and some of  
17 the projects fell under the 60, you know, percent  
18 calculation.

19           So I'll let Joanne Branch of the County Office of  
20 Ed speak on behalf of the particulars of that, but we go  
21 through -- our projects were very typical mods. We had  
22 taken 35 to 40 years before we could pass a local bond and  
23 modernize our schools so they were very old schools at 35 to  
24 40 years old and it was minimum modernization work that we  
25 were able to do, but yet to take that 3 percent away takes a

1 half million from my small district and that's a huge impact  
2 for us.

3 So leaving that Option 3 on would be our  
4 recommendation. Thank you very much.

5 MS. BRANCH: Hello. Thank you, Chairman, members  
6 of the Board. My name is Joanne Branch. I'm a School  
7 Facilities Planning Coordinator at the San Diego County  
8 Office of Education.

9 Our department specializes in assisting small and  
10 medium sized districts through the complicated processes of  
11 obtaining state funding support for their construction  
12 projects. I've been working in school facilities for 20  
13 years and with the SFP program for 5.

14 I'd like to provide a quick testimony to the three  
15 basic reasons to retain the 3 percent option. One: The  
16 data analysis staff prepared is based on a flawed tool that  
17 did not take into account some aspects of the changes in the  
18 program during the time that tool existed.

19 Two: During the time of crisis, there's no harm  
20 in leaving the districts as many options as they currently  
21 have to keep the money that they've planned to spend flowing  
22 and there may be unintended consequences with changing the  
23 rule at this point in time.

24 Three: The data reflects a period of learning for  
25 DSA where rules were inconsistently implemented and

1 additional training is needed before eliminating that  
2 3 percent option that the minimum provides.

3 I'll begin with one, the tool used is flawed. The  
4 use of the 60 percent calculation as a basis for removing  
5 the 3 percent minimum safety net is potentially an incorrect  
6 approach. Although vetted at the Implementation Committee,  
7 the practitioners there never agreed that the use of the  
8 modernization grant as the basis for this calculation is a  
9 method that's accurate or appropriate.

10 Additionally with the passage of AB127 in 2006,  
11 which delinked to the modernization and new construction  
12 grants, the tool currently used is not just faulty but is  
13 falling further behind and losing more ground as the new  
14 construction grant is increased, but the modernization grant  
15 values fall behind.

16 The tool is very detailed and cost driven and the  
17 leaders who were at OPSC when it was developed are no longer  
18 there. Before basing a decision to eliminate an option on  
19 the data from the use of a faulty tool, the tool needs to be  
20 readdressed.

21 There is no harm in leaving our options in place.  
22 The base grant assumes a 7 percent ADA cost when it was  
23 established in 1988 at the beginning of SFP. When the  
24 3 percent rule was established, DSA had an unwritten,  
25 nonregulatory, arbitrary cap limiting the cost impacts of

1 required ADA work to a maximum of 10 percent of the value of  
2 construction.

3           So 7 percent was in the base grant and the  
4 3 percent check box on the form equaled the 10 percent of  
5 the DSA's maximum rule. There's no question of what if the  
6 district is doing something where maximum wasn't triggered.  
7 That just won't happen. The district's work on these sites  
8 does trigger that value.

9           When the 10 percent rule was found not lawful by  
10 DSA in 2003 and some time had passed, DSA came forward to  
11 the SAB and reported that the 3 percent adding to make the  
12 total of 10 percent for ADA was not always enough. The  
13 additional option of using a huge detailed worksheet to  
14 prove excessive cost was implemented along with a  
15 calculator.

16           During this time by a change in form, not by a  
17 change in regulation, staff implemented the ADA FLS  
18 worksheet as mandatory even when requesting the base  
19 3 percent, which is contrary to existing regulations. That  
20 resulted in everyone having to do the worksheet and skewed  
21 the data.

22           Districts had no choice but to comply. Some  
23 architects charged extra for this unanticipated effort.

24           Looking at the top of the chart in the handout  
25 that's in your package, you see that the eight modernization

1 projects used for the Santee evaluation. Every project had  
2 some minimum ADA work. Regulations are -- this was only  
3 included in the members package.

4           Every project had some minimum required ADA work.  
5 Regulations are constantly being reinterpreted and tightened  
6 with associated cost impacts at DSA and the federal  
7 regulations regarding ADA. It would be a very rare event  
8 indeed if even a site modernized three years ago didn't have  
9 some ADA work that had to happen.

10           Staff comments state that the 60 percent  
11 calculation provides state funding for 60 percent of the  
12 cost to meet eligibility requirements providing hardship  
13 grants for projects that do not include any code compliance  
14 updates.

15           The claim in the agenda item that excess cost  
16 grants will be provided to projects that do not have  
17 excessive costs is shown to be incorrect, at least on the  
18 sample projects we recently experienced at this small  
19 district.

20           You can note in the top of the chart and handout  
21 there is no project that had zero minimum ADA work. If  
22 staff has seen this in some projects, they should provide  
23 the Board with a report to prove that there is a chance that  
24 some money that's due would happen.

25           As shown here, the so-called 60 percent is in fact

1 a complicated calculation that does not provide 60 percent  
2 especially when a project uses only a few grants and yet  
3 triggers an unknown amount far exceeding 10 percent of the  
4 construction value.

5           The calculation as used actually can result in a  
6 negative number -- the 60 percent calculation -- which is  
7 then rounded to zero and many times I have heard the term  
8 60 percent and I just cringe because when you dig in it ends  
9 up being at like 25 percent of the minimum amount of work  
10 that's due for DSA. And that just really skews the  
11 district's ability to plan for their cash flow for their  
12 projects.

13           Based on this, the original 3 percent error  
14 correction should be retained as a minimum and a safety net  
15 that districts can rely on when planning their projects  
16 especially considering how woefully underfunded and  
17 stagnated the modernization grant is currently. And that's  
18 clearly also showed in that handout which shows that right  
19 now at least in Santee's case they paid 70 percent of the  
20 project cost.

21           Let's see. Lastly the DSA's implementation of  
22 this -- the worksheet which is required to be prepared by  
23 the architect and verified by the PVT and the DSA, there are  
24 experiential reports from architects who have been working  
25 with DSA and I've had a great conversation recently with

1 Masha on this topic and staff's agreed to take a look at  
2 this. There's an inconsistency in the way DSA's implemented  
3 this process.

4           It's reported that although DSA will not approve  
5 plans without certain ADA work being done, they're not  
6 allowing that same work to then be incorporated into the  
7 required worksheet which is frustrating. No comprehensive  
8 training was provided to DSA to date as to the desired  
9 interpretations that should be applied and currently there's  
10 no appeal process if the district disagrees.

11           I have two specific examples if you'd like them.  
12 I think they were included in your package already. I can  
13 add them to my testimony or continue on.

14           CHAIRPERSON BRYANT: I think we have them all --  
15 we have your -- I have it. Does everyone have her  
16 testimony? Okay.

17           MS. BRANCH: Thank you. So it is requested that  
18 an evaluation of the worksheet approval process be done with  
19 the goal of uniform implementation statewide through  
20 training to DSA staff and practitioners charged with filling  
21 out the worksheet so that we actually are doing that  
22 60 percent calculation as accurately as we can.

23           Based on these three reasons, I close respectfully  
24 requesting that Option 3, take no action, be approved at  
25 today's meeting to leave districts all options right now and

1 avoid unintended consequences, and I'd like to amend the  
2 testimony that is in the package to add that Option 3 should  
3 be amended to add the 60 percent worksheet option for like-  
4 for-like replacement.

5           Additionally I recommend that DSA's processes be  
6 evaluated. Thank you for your time.

7           CHAIRPERSON BRYANT: Thank you.

8           MS. SCOTT: Good afternoon. My name is Lynn Scott  
9 and I'm representing Aspen Street Architects. We work with  
10 small and rural school districts and I would like to support  
11 the testimony you've had in allowing the 3 percent option to  
12 remain, but I strongly encourage you to also implement the  
13 choice of a 3 percent or a 60 percent for like-for-like  
14 replacement.

15           The like-for-like replacement projects are not  
16 asking for any funds for the inside of relocatables that are  
17 being purchased. They're complying with all the  
18 requirements of DSA for path of travel, restrooms, parking  
19 spaces, et cetera, and they're being very damaged by being  
20 limited to that 3 percent.

21           So I would just like to encourage you to keep the  
22 3 percent option, but allow districts that are willing to go  
23 through the worksheet to have 60 percent on their  
24 like-for-like replacements. Thank you.

25           CHAIRPERSON BRYANT: Any -- raise any questions

1 for Board members? Staff, can you respond to -- I'm  
2 really -- I got a little confused on the like-for-like  
3 replacement issue they're bringing up there.

4 MS. LUTSUK: The regulations allow for the  
5 modernization grant to be used to replace facilities in like  
6 kind. So when that happens and an old facility's demolished  
7 and a new classroom is put back up, all the elements that  
8 are required by current code for fire code and sprinklers,  
9 whatnot, and accessibility are already imbedded in the  
10 design.

11 So those projects basically they can't complete  
12 the worksheet to get the 60 percent grant because they can't  
13 split the costs of those items away from the entire design.  
14 So that is why it's important to maintain some kind of an  
15 allowance for those projects.

16 But a like-for-like replacement project could, for  
17 example, also involve items for accessibility like new  
18 walkways that could be itemized. So that's why those  
19 projects want to maintain the flexibility to be able to --  
20 if we just keep the 60 percent option for them and they're  
21 doing nothing but like for like and all the new drinking  
22 fountains, fire sprinklers, ADA accessible restrooms are in  
23 the design, they won't be able to get any money whatsoever.  
24 So that's the like-for-like.

25 CHAIRPERSON BRYANT: So that's what our current

1 regulations would result in that, what they are today, or  
2 that's if we make the change?

3 MS. LUTSUK: Our proposal is to maintain the  
4 option for like-for-like replacement projects and to retain  
5 the 60 percent allowance for all other mod projects that are  
6 doing the typical modernization work which is to extend the  
7 useful life of the building, new HVAC, new windows, new  
8 paint, et cetera.

9 CHAIRPERSON BRYANT: Okay. Senator Hancock.

10 SENATOR HANCOCK: Yeah. I was just intrigued by  
11 the last speaker's suggestion. Is there a problem if we  
12 just now and in the future give districts a choice? Because  
13 that would seem like a good way to move forward.

14 MS. LUTSUK: If I may respond, the main difference  
15 between the two types of allowances is that the authority  
16 for them comes from the Education Code that allows the Board  
17 in addition to the base grant to adopt regulations for  
18 grants to address excessive cost hardships. Examples of  
19 those are districts building on small school sites. They  
20 get an additional grant and it's based on that specific  
21 school site.

22 An example of that is multilevel construction,  
23 when a site is so small that you can't build multistory,  
24 there's a specific multistory grant. So the main difference  
25 is by providing a 3 percent allowance flat across the board,

1 we're not bringing that specificity. It's an allowance.

2           The 60 percent allowance is based on the itemized  
3 compliance costs that are associated with each individual  
4 project and that's really the main difference between them  
5 that the 60 percent option in the -- is more closely related  
6 to the tenth for excessive cost hardship grant.

7           SENATOR HANCOCK: I thought there was a previous  
8 option that did give districts the choice.

9           MS. LUTSUK: The original -- my understanding is  
10 when the SFP was originally implemented the regulations did  
11 not contain any funding for accessibility. Districts were  
12 just getting a base grant -- per pupil grant for all their  
13 modernization work.

14           When the issue was brought up that accessibility  
15 was not addressed, the quick solution was to provide a  
16 3 percent allowance on top of the base grant and any project  
17 could seek that allowance.

18           Like I said in my presentation, in 2006 -- and  
19 what triggered this was the DSA report that surveyed  
20 projects and the main question that was asked is how much of  
21 the modernization funding in total goes to accessibility and  
22 fire code upgrades instead of true modernization, like new  
23 windows, new roofs, et cetera, and their survey found that  
24 it was a vast range. Some projects -- it was from zero to  
25 100 percent, basically saying that there are some projects

1 that have no compliance costs based on DSA survey and those  
2 that spend a hundred percent of all their funding for  
3 modernization on just accessibility and fire code  
4 compliance.

5           So that triggered the 60 percent option and the  
6 Board's original guidance to us was to have a pilot program,  
7 a period of time during both options are in effect and then  
8 evaluate the two options against each other and pick one to  
9 move forward with.

10           So that is why we're bringing the item today in  
11 compliance with that prior Board direction.

12           SENATOR HANCOCK: I guess I would suggest, Madam  
13 Chair, that we ask ourselves if -- I mean if it's worked  
14 well to have both options available and a school district  
15 can look at its needs and decide which one it wants, that  
16 our life -- everybody's life would be easier if we did that.  
17 We could just continue the way we are.

18           MS. MOORE: And can I just ask.

19           CHAIRPERSON BRYANT: Yes.

20           MS. MOORE: In order to achieve that, is that  
21 essentially Option 3, that if we take no action today, then  
22 school districts are allowed -- school districts and county  
23 offices are allowed to choose the option. Is that correct?

24           MS. LUTSUK: That's correct. Yes. But it's -- we  
25 still do maintain and that's in response to public

1 testimony. There was a mention about form changes and the  
2 checklist because along with the allowance comes the  
3 requirement to submit the checklist.

4 Our form currently requires both options to submit  
5 a checklist and that was in response to Board's direction to  
6 gather data. Even if you choose the 3 percent allowance,  
7 still how much accessibility approximately -- you know,  
8 is -- accessibility work is in your project. So that would  
9 be the -- one of the things that the public comment  
10 addressed that would stay the same. We would still require  
11 a checklist for both even if we're not basing -- under the  
12 3 percent option, we're not using the checklist for anything  
13 other than to gather data.

14 The allowance is just the 3 percent of the base  
15 grant. So along with the flexibility comes the requirement  
16 for submittals to us.

17 MS. MOORE: And was there any public concern about  
18 continuing that?

19 MS. LUTSUK: I believe there was based on the  
20 testimony.

21 MS. MOORE: And so what was -- what did they --  
22 what was the public concern about continuing the flexibility  
23 of 60 percent or 3 percent, making the choice -- what was  
24 the public concern regarding that?

25 MS. LUTSUK: I believe Ms. Branch addressed the

1 fact that it does cost money. An architect may charge extra  
2 fees for the district to complete the itemized checklist.  
3 And it's not used to base the funding on and if it's not  
4 used to inform the Board of future decision about which  
5 option to choose, then it's -- comment to that would be  
6 would that be necessary to submit -- the districts if the  
7 Option 3 is chosen.

8 And perhaps the Option 3 could be chosen right now  
9 in perpetuity or for a certain period of time.

10 CHAIRPERSON BRYANT: Do you think -- I think this  
11 is probably a question for Ms. Silverman or -- oh, do you  
12 want to go ahead?

13 ASSEMBLY MEMBER BUCHANAN: I have a question  
14 whenever --

15 CHAIRPERSON BRYANT: I was just going to ask I  
16 mean could we take that action today to take Option 3 plus  
17 eliminate the worksheet or is it something that would have  
18 to come back another time.

19 MS. LUTSUK: The worksheet was collecting data in  
20 order to inform the Board's decision to be able to pick an  
21 option and in our -- I think in one of our -- we included  
22 some data in the attachments where we used that information  
23 where we presenting information to the Board if the  
24 3 percent option was not available how much money would  
25 those districts get and how much money they would get would

1 be determined with the checklist. So --

2 MR. MIRELES: So an option would be if the Board  
3 chose to go with Option 3, take no action, we could -- the  
4 Board could also direct staff to go back and take a look at  
5 the 60 percent requirement and the worksheet to review it.  
6 So an option for the Board today would be to go with  
7 Option 3 plus an additional evaluation of the -- some of the  
8 concerns that were raised.

9 MS. LUTSUK: And if I may add, we would need form  
10 changes for that that are not presented here today. So we  
11 would have to come back to you anyway with that.

12 CHAIRPERSON BRYANT: Assembly Member Buchanan.

13 ASSEMBLY MEMBER BUCHANAN: It seems to me -- just  
14 having this be my second meeting, but with my involvement in  
15 facilities on the Board that -- I mean some of the questions  
16 we need to ask at some point in time, and I think Ms. Moore  
17 brought it up at the last meeting, is what the grant amount  
18 should be because if you're automatically getting the  
19 additional 3 percent, then we probably should just change  
20 the grant and, you know, that should be part of the process  
21 now.

22 So -- and I don't see any reason to have school  
23 districts go through hoops filling out a form if we're not  
24 using a form because whether you pay for it or have staff  
25 time, it's still time and money and we should be trying to

1 simply processes.

2           So what seems logical to me is to, you know,  
3 continue the current program, to eliminate the form, but at  
4 some point in time, I think we need to take a look at the  
5 grant amounts and, you know, whether they should be changed  
6 or whether the 60 percent, how that -- you know, what really  
7 makes sense in terms of what we're doing because keep -- it  
8 seems like we keep patching a system.

9           You know, we've got a base amount and one thing  
10 comes up or another, but at what point in time is it part of  
11 the routine modernization or whatever and it should just be  
12 that amount and built in and we're not asking people to jump  
13 through additional hoops.

14           CHAIRPERSON BRYANT: Assembly Member Brownley.

15           ASSEMBLY MEMBER BROWNLEY: Thank you, Madam Chair.  
16 You know, I'd just like to make a motion really to follow up  
17 on the suggestion from staff and that is to continue on,  
18 which would be Option 3, and bring the form piece back to  
19 us.

20           I agree with Ms. Buchanan. I don't want to be  
21 onerous on the school districts. On the other hand, I want  
22 to make sure that we're accountable as well and sometimes  
23 that data can be very important. So I would make the motion  
24 that we go with Option 3 and have the other piece of it come  
25 back to us.

1 MS. KAPLAN: Madam Chair, briefly just a point of  
2 clarification. It was briefly brought up for Option 3 to  
3 also add in the language of like/like on the 60 percent. So  
4 I don't know if that was -- if that would be considered  
5 because somebody had brought up that in their last  
6 testimony, and I'm sorry. I forgot. Somebody said that  
7 sounded like a good idea.

8 So I want to make sure that if that's what you  
9 intended as well either you include that or not.

10 ASSEMBLY MEMBER BROWNLEY: I'm sorry. I wasn't  
11 here for that discussion. So I -- in terms of the maker of  
12 the motion, I can't make that clarification one way or the  
13 other.

14 MS. LUTSUK: If I may real quick, if we do bring  
15 the form back, then we can address that at that point as  
16 well.

17 MS. KAPLAN: Okay. Perfect.

18 CHAIRPERSON BRYANT: Okay. And is there a second  
19 on Ms. Brownley's motion?

20 ASSEMBLY MEMBER FULLER: I'll second it.

21 CHAIRPERSON BRYANT: It's been moved and seconded.  
22 Can you call the roll. Oh, we do have additional public  
23 comment. Did you need to add anything to this? It's  
24 something new and enlightening. We have a motion out here.

25 MR. GONZALEZ: I have something to add.

1           CHAIRPERSON BRYANT: Okay.

2           MR. GONZALEZ: Richard Gonzalez of Richard  
3 Gonzalez & Associates. I've got to share that I'm -- as a  
4 practitioner assisting school districts with these forms,  
5 I'm confused of what is required of us.

6           I just heard Masha indicate that the worksheet is  
7 required for both the 3 percent and the 60 percent of  
8 proposals. My staff is hearing from one staff of OPSC that  
9 the 3 percent does not require the reports and at an  
10 Implementation Committee, we were told for both  
11 like-for-like and any other project that asks for the  
12 3 percent, we don't need to do a formal report through DSA.

13           I'm confused. Which do we do?

14           ASSEMBLY MEMBER BROWNLEY: I don't think we know  
15 either. That's what part of the motion at this point is to  
16 come back and address that.

17           CHAIRPERSON BRYANT: Yes. To come back on the  
18 forms question. Did you have -- you already spoke. Did you  
19 want to add something?

20           MS. SCOTT: Yes. Lynn Scott. I just wanted to  
21 actually address Ms. Brownley's question on what my  
22 testimony had been on the like-for-like. If Option 3 is  
23 adopted today, then like-for-like projects which do not  
24 include any of the imbedded costs in their ADA worksheets  
25 that are in the buildings, they only address the additional

1 costs that are required by DSA.

2 They will be excluded from choosing the  
3 60 percent. So if you go forward with that, I would request  
4 that this come back at next meeting because districts are  
5 holding up their applications. It's a huge amount of money  
6 to them for expenses that they have to incur.

7 So I have a small district with less than a  
8 hundred grants. This is a \$200,000 issue to them. So it's  
9 very critical that this get addressed. Thank you.

10 ASSEMBLY MEMBER BROWNLEY: Thank you very much.

11 CHAIRPERSON BRYANT: Okay. So we have a motion  
12 and a second. You want to call the roll.

13 ASSEMBLY MEMBER BROWNLEY: Just a clarification on  
14 the motion is that this issue for like-to-like, it will come  
15 back to us at the next meeting.

16 CHAIRPERSON BRYANT: Comes back --

17 ASSEMBLY MEMBER BROWNLEY: Can we say it comes  
18 back to us at the next meeting so that we --

19 CHAIRPERSON BRYANT: Do you think you can do it by  
20 the next meeting?

21 ASSEMBLY MEMBER BROWNLEY: -- resolve it?

22 MS. SILVERMAN: Well, I think we need to have time  
23 to bring it back as far as a worksheet to the Implementation  
24 Committee. Is that what the discussion wanted to go? Or  
25 we're just going to bring it back with the worksheet for

1 discussion. Yeah, we can do that.

2 ASSEMBLY MEMBER BROWNLEY: Well, you know, I  
3 thought that if we were going to talk about the worksheets,  
4 we were -- concurrently we would be talking about the  
5 like-to-like projects and as was just testified, small  
6 districts have this -- you know, this means a lot to them  
7 and they've got projects waiting, so in terms of taking that  
8 as a sense of urgency that we resolve this one way or the  
9 other.

10 But I think right now what we don't want to --  
11 what we want to do is continue having the choice. That's --  
12 right now we want to continue the choice and then we want to  
13 deliberate on the other issue hopefully as soon as  
14 possible -- at the next meeting preferably. Does that make  
15 sense?

16 MS. SILVERMAN: We can do that. Right.

17 CHAIRPERSON BRYANT: You can do that?

18 MS. SILVERMAN: We can do that.

19 CHAIRPERSON BRYANT: Did we get -- this item was  
20 on the agenda last month. Were these -- and I apologize if  
21 I had them, but were these comments sent to us that we heard  
22 today or was that brought to our attention last month?

23 MS. KAPLAN: The comments from San Diego County  
24 Office of Education were included that I gave to the Board  
25 last month, but it was not brought up for discussion.

1           CHAIRPERSON BRYANT: I apologize. I probably just  
2 missed it. Okay. Call the roll, please.

3           MS. GENERA: Senator Lowenthal.

4           SENATOR LOWENTHAL: Aye.

5           MS. GENERA: Senator Hancock.

6           SENATOR HANCOCK: Aye.

7           MS. GENERA: Senator Huff.

8           SENATOR HUFF: Aye.

9           MS. GENERA: Assembly Member Fuller.

10          ASSEMBLY MEMBER FULLER: Aye.

11          MS. GENERA: Assembly Member Brownley.

12          ASSEMBLY MEMBER BROWNLEY: Aye.

13          MS. GENERA: Assembly Member Buchanan.

14          ASSEMBLY MEMBER BUCHANAN: Aye.

15          MS. GENERA: Ron Diedrick.

16          MR. DIEDRICK: Aye.

17          MS. GENERA: Kathleen Moore.

18          MS. MOORE: Aye.

19          MS. GENERA: Lyn Greene.

20          MS. GREENE: Aye.

21          MS. GENERA: Cynthia Bryant.

22          CHAIRPERSON BRYANT: Aye.

23          MS. GENERA: It carries.

24          MS. LUTSUK: Thank you.

25          CHAIRPERSON BRYANT: Okay. Next is item under

1 Tab 12, **implementation of SB592.**

2 MS. SILVERMAN: With that I'd like to introduce  
3 Barbara Kampmientert. She's the Project Management  
4 Supervisor for the Charter School Program.

5 CHAIRPERSON BRYANT: Thank you.

6 MS. KAMPMIENERT: Good afternoon. Before you  
7 under Tab 12 are proposed regulations necessary to implement  
8 Senate Bill 592 which was chaptered recently on  
9 October 11th, 2009.

10 And what this bill does is it makes changes to  
11 some of the provisions of the Charter School Facilities  
12 Program. And just a brief history of the Charter School  
13 Facilities Program, it does fall under the School Facilities  
14 Program and it provides charter schools with the ability to  
15 come in independent of school districts to request funds for  
16 the new construction of facilities or the rehabilitation of  
17 existing school district facilities.

18 Prior to the passage of SB592, if a charter school  
19 used the charter school facility funds to construct a  
20 facility, the title was required to be held by the school  
21 district in which the project was physically located and the  
22 issue of who held title became a stumbling block to getting  
23 the projects constructed and both school districts and  
24 charter schools expressed concerns with this piece of the  
25 program.

1 SB592 provides more options for who can hold title  
2 including local governmental entities or charter schools  
3 themselves with certain conditions placed on the property  
4 and the chain of title.

5 And if the charter school was to hold title, it  
6 also must send a request letter which justifies why the  
7 title is not to be held by a school district or a local  
8 governmental entity.

9 The State Allocation Board makes a finding whether  
10 or not the charter school meets the necessary requirements  
11 for holding title.

12 In the cases where a charter school does hold  
13 title, a lien is placed on the property in favor of the  
14 State Allocation Board and the chain of title includes a  
15 restrictive covenant stating that the facility shall only be  
16 used for public school purposes, a remainder interest to the  
17 school district where the project is physically located and  
18 also if the remainder interest is disclaimed by that school  
19 district, then the interest is transferred to the State  
20 Allocation Board for purposes of disposal.

21 And if a local governmental entity holds title,  
22 similar conditions are placed in the chain of title with the  
23 addition that the local governmental entity may not exercise  
24 any control over the operation of the school.

25 The bill also makes a minor modification to the

1 facility use priorities that are currently in place in the  
2 program and what happens now if a charter school stops using  
3 the facility for charter school purposes, then -- if it's  
4 for reasons of a charter petition revocation, they are able  
5 to remain in the facility until they exhaust their appeal  
6 options.

7           If they exhaust those options or if that's not the  
8 reason why they're leaving the facility, then the facility  
9 is first offered up to a successor charter school that can  
10 take over the balance of the loan payments. In this  
11 program, charter schools can take out their local matching  
12 share through a loan from the state.

13           So a successor charter school would then take over  
14 the facility and if there's no successor charter school,  
15 then the district has the choice to take that facility for  
16 district purposes. If they choose to do so, then they pay  
17 the balance of the loan, but they're not required to take  
18 over that facility.

19           And as it currently stands, the district would  
20 dispose of the facility if they did not need it or didn't  
21 want it.

22           What 592 does is it adds a provision that if title  
23 is held by the charter school itself or by a local  
24 governmental entity, the school district has the option to  
25 dispose of the facilities at this point, but they also can

1 disclaim that interest and when they do that, then the Board  
2 would dispose of the facilities using school district  
3 surplus property laws.

4           This bill also has a provision that allows for the  
5 transfer of title from the district to the charter school.  
6 If the charter school agreements which outline the  
7 responsibilities between the district and the charter school  
8 were entered into prior to January 1st, 2010, and if that  
9 option is exercised, then the district and the charter  
10 school mutually agree to the terms of the transfer and in  
11 that instance, the State Allocation Board does not need to  
12 make a funding.

13           So in order to implement these provisions, we have  
14 added Regulation Section 1859.172 and that regulation  
15 outlines the documentation required and the steps necessary  
16 for each type of title situation and then there have been  
17 some minor clarifications to Regulation Section 1859.171 and  
18 1859.162.3 and those are just to clarify the language due to  
19 this bill.

20           Also in addition to the regulatory changes, there  
21 will be revisions that are necessary to the charter school  
22 agreements and the charter school agreements are the  
23 documents -- it's a memorandum of understanding and a  
24 funding agreement.

25           The Board in the past has approved templates for

1 the programs, so the California School Finance Authority is  
2 charged with being the lead agency through these agreements.  
3 We're currently working with them and we anticipate bringing  
4 those documents before the Board in the next meeting or two  
5 when they're ready.

6 They first have to go to the California School  
7 Finance Authority and then they come here. So the terms  
8 will be incorporated into those documents as well.

9 And then also we did go to the Implementation  
10 Committee on February 4th and to a separate charter school  
11 stakeholders meeting on February 1st with the proposed  
12 regulations that you have before you and those regulations  
13 do incorporate one suggestion that came out of those  
14 meetings which was to add a certification statement when the  
15 charter school's making the request that says I certify that  
16 the information is true and correct.

17 But other than that, the regulations were well  
18 received at both meetings. So with that, staff requests  
19 that you approve the regulations and authorize us to file  
20 them with LAO and I would be happy to answer any questions.

21 CHAIRPERSON BRYANT: Are there any questions from  
22 the Board members? Anything from the public?

23 MR. DUFFY: Thank you, Barbara. Tom Duffy for  
24 C.A.S.H. I just wanted to say how much we appreciate this  
25 work. This is a complicated bill. We worked with Senator

1 Romero to address a number of issues that were there, but --  
2 and frequently we bring issues to you when we're not happy  
3 with certain -- this was wonderful staff work and I wanted  
4 to make sure we complimented OPSC on this.

5           And we will work with the implementation of this.  
6 Charters and school districts have had difficulties. That's  
7 the reason for this bill, so our commitment is to make sure  
8 that this gets implemented effectively and we want to thank  
9 your staff.

10           Thank you very much.

11           CHAIRPERSON BRYANT: Thank you.

12           MS. WOLTERS: Tanya Wolters, California Charter  
13 Schools Association. We're here in support of the  
14 regulations and we wanted to thank SAB and OPSC staff for  
15 working with us and involving the community -- the charter  
16 school community as we went forward.

17           We have a couple clarifications that we'd like to  
18 see as the proposed regs move forward, but we look forward  
19 to working through that and glad to see them move forward.  
20 Thank you.

21           CHAIRPERSON BRYANT: Thank you.

22           ASSEMBLY MEMBER BROWNLEY: I'll move the staff  
23 recommendation.

24           CHAIRPERSON BRYANT: Is there a second?

25           MR. DIEDRICK: Second.

1 CHAIRPERSON BRYANT: Call the roll.  
2 MS. GENERA: Senator Lowenthal.  
3 SENATOR LOWENTHAL: Aye.  
4 MS. GENERA: Senator Huff.  
5 SENATOR HUFF: Aye.  
6 MS. GENERA: Assembly Member Fuller.  
7 ASSEMBLY MEMBER FULLER: Aye.  
8 MS. GENERA: Assembly Member Brownley.  
9 ASSEMBLY MEMBER BROWNLEY: Aye.  
10 MS. GENERA: Assembly Member Buchanan.  
11 ASSEMBLY MEMBER BUCHANAN: Aye.  
12 MS. GENERA: Ron Diedrick.  
13 MR. DIEDRICK: Aye.  
14 MS. GENERA: Kathleen Moore.  
15 MS. MOORE: Aye.  
16 MS. GENERA: Lyn Greene.  
17 MS. GREENE: Aye.  
18 MS. GENERA: Cynthia Bryant.  
19 CHAIRPERSON BRYANT: Aye.  
20 MS. GENERA: Motion carries.  
21 CHAIRPERSON BRYANT: Thank you. Thank you,  
22 Barbara. That was excellent. All right. Item 13, **Tab 13,**  
23 **report on the High Performance Program.**  
24 MS. SILVERMAN: With that, I'd like to introduce  
25 Mr. Brian LaPask who's the Project Supervisor of the High

1 Performance Program.

2 MR. LaPASK: Thank you. Good afternoon. Tab 13  
3 is the High Performance Program report.

4 As you may know, we have \$100 million set aside in  
5 Prop. 1D for high performance projects, and currently we  
6 have \$80 billion remaining. And we've had some difficulty  
7 getting participation in the modernization grants.

8 The idea of this report is to kind of give you an  
9 overview of where we're at in the program and what we plan  
10 on doing.

11 Today we've apportioned \$18.5 million for 76  
12 projects. Only one of those has been a modernization  
13 project. However, we do have 34 grant requests in house and  
14 7 of those are for modernization projects. So we're seeing  
15 an increase, but it has been very difficult to get the  
16 participation that we want out of the modernization portion.

17 Last month, the Board requested that we give a  
18 report on the reason why we think that there's been a lack  
19 and we've had a few meetings thus far with some of the  
20 stakeholders in this program. We had an ad-hoc group meet  
21 down in Pasadena at the Green Schools Summit and it  
22 basically boils down to about three things we think at this  
23 time.

24 We think that executive sponsorship is very  
25 important, meaning that we need to have school boards and

1 the executive level people in school districts buy into this  
2 idea of building green.

3 And for achieving certain criteria rating levels  
4 and either the CHPS or the United States Green Building  
5 Council's LEED Certified Schools Program, something to that  
6 effect.

7 Also we feel that because modernization projects  
8 often have such a narrow scope compared with new  
9 construction projects that the grants don't result in an  
10 incentive, making it worth it for districts to pursue the  
11 HPI grants for modernization projects.

12 So to address these issues, we've formed a work  
13 group. We sent an invite out. We're having a meeting in  
14 about a week and we anticipate on having one more meeting  
15 prior to presenting proposed regulations to the  
16 Implementation Committee and to the SAB in April.

17 We also understand that we have DSA's full support  
18 and we thank them for that and with that, we hope that  
19 you'll accept our report.

20 CHAIRPERSON BRYANT: Are there any questions or  
21 comments? Senator Hancock.

22 SENATOR HANCOCK: Thank you very much, Ms. Bryant.  
23 Yeah. I have talked to the staff about this and I think  
24 that we're in agreement. I have a proposal that I'd like to  
25 put forward. I'd sent it to most of you. It was developed

1 with some of the stakeholders over time -- to change the way  
2 that we do this so that we do incentive funding up front  
3 from the reimbursements and checklists and the cumbersome --  
4 some of the things that have made it difficult to get this  
5 money out the door.

6           And I think you've seen copies of it. It would  
7 basically say that we provide high performance incentive  
8 funding of up to 250,000 per school site for new school or  
9 major modernization that includes the whole building  
10 approach and is third-party reviewed by the Division of  
11 State Architect or an approved third-party reviewing body  
12 such as the California CHPS organization for major  
13 modernizations.

14           And that we use the -- up to 250,000 would be for  
15 modernization project that uses the systems approach for one  
16 or more of the four building systems specified in the CHPS  
17 criteria, HVAC, lighting, interior finishes, and envelope.  
18 And the incentive would be for no more than 50 percent of  
19 the total high performance system costs up to \$100,000 for  
20 the first system and 75,000 for each additional system to a  
21 maximum of 250,000.

22           We believe that we can do this by regulation and  
23 that this will speed up getting that money out the door.  
24 It's been sitting around for a number of years as  
25 construction costs increase and we are at a place right now

1 where we really -- the state needs the jobs. The  
2 communities want the schools. We can really have a win-win  
3 and I would just ask that this language be included in the  
4 deliberations of the two working group meetings, the  
5 implement group meeting, and that we do in fact have an  
6 action proposal back with whatever you all come up with in  
7 April.

8 MR. LaPASK: Yes. We have received that proposal  
9 and we will be considering it along with all the other  
10 suggestions that we've had in our work groups.

11 SENATOR HANCOCK: Okay.

12 CHAIRPERSON BRYANT: Senator Lowenthal.

13 SENATOR LOWENTHAL: I just wonder if our staffs  
14 can also be a part of the working group too.

15 CHAIRPERSON BRYANT: I don't see -- I think the  
16 more the merrier is kind of my guess on this from the --  
17 especially because obviously this is a huge priority for  
18 everyone to get this -- to get these funds out, so whatever  
19 we could do.

20 Any other comments?

21 ASSEMBLY MEMBER BROWNLEY: So do we need to --  
22 direction is fine. We don't need a motion to make --

23 CHAIRPERSON BRYANT: I don't think we need a --

24 MS. SILVERMAN: No.

25 CHAIRPERSON BRYANT: It wasn't --

1 MS. SILVERMAN: We're moving forward with an  
2 implementation group -- meetings -- sorry -- and some  
3 working groups. So we're working on scheduling those  
4 meetings, so --

5 SENATOR HANCOCK: Yeah. But I think if we could  
6 just -- why don't we make a motion to approve the staff  
7 report, include this language that I think everybody's seen  
8 as the basis for a discussion, recognizing that it is a  
9 little different than what we've done in the past and  
10 specifying that it will come back for action in April.

11 ASSEMBLY MEMBER BROWNLEY: I would second that.

12 CHAIRPERSON BRYANT: And I don't think -- I think  
13 actually just technically we have -- we'll have our rules  
14 discussion in a few minutes, but we don't have this on the  
15 agenda as an action item. So we'll just take what you said  
16 and that will just be our direction to you. We don't  
17 really -- we don't need to do a vote on it.

18 SENATOR HANCOCK: Okay.

19 CHAIRPERSON BRYANT: Did you have comments on this  
20 item that were -- you wanted to make? Okay. I think we  
21 have direction here. If you can add to it, that'd be great.

22 MR. ORR: I'm Bill Orr, the Executive Director for  
23 the Collaborative for High Performance Schools and I  
24 definitely support the approach that Senator Hancock just  
25 described.

1           Just real briefly, with that kind of approach and  
2 the amount of money that's still out there, we have the  
3 potential to have up to 300 high performance schools, given  
4 the amount of high performance incentive funding that's out  
5 there. So we have a handful now. We could look back in two  
6 years and have 300. I think it's worth the effort. Thank  
7 you.

8           MR. SAVIDGE: Bill Savidge, West Contra Costa  
9 Unified School District and C.A.S.H. Chair and our district  
10 is heavily engaged in modernization. That's all that we do  
11 and we have a -- our board has passed a CHPS resolution. We  
12 do -- all of our schools now participate in the HPI -- the  
13 incentive grant program.

14           And we're strong in support of going ahead with  
15 the working group and I think the proposal that Senator  
16 Hancock made is effectively a start to talk about delinking  
17 the incentive grant from the base per pupil grant because  
18 with modernization, the per pupil grant is so low that when  
19 you give a percentage increase of a grant that this low in  
20 comparison to new construction, even if you're doing the  
21 same work that someone is doing in new construction, you are  
22 penalized significantly or unincentivized --  
23 disincentivized. I think that's the word.

24           And so we strongly support working with the staff,  
25 and Brian and the team at OPSC have been great to work with

1 and clearly identifying the issues here. So we're very  
2 supportive of the approach. Thank you.

3 CHAIRPERSON BRYANT: Thank you. Okay. Moving on  
4 Tab 15 which the status of **Emergency Repair Program funding**.

5 MS. KAPLAN: Tab 14.

6 CHAIRPERSON BRYANT: I meant 14. Whatever I said,  
7 I take it back.

8 MS. SILVERMAN: This should be quick. I'm  
9 introducing Masha Lutsuk again to address the emergency  
10 repair item, Tab 14.

11 MS. LUTSUK: Thank you. Tab 13, page 331. This  
12 is just to facilitate the discussions on the updates that  
13 are available regarding emergency repair funding. We as  
14 staff will continue to process projects and place them on  
15 the unfunded list for Emergency Repair Program.

16 CHAIRPERSON BRYANT: Thank you. Any questions  
17 from staff? Okay. We'll move on then to Tab 15, which is  
18 presentation from the **State Treasurer**, but as Blake's coming  
19 up here and we're adjusting, I want to go ahead and finish  
20 the vote on the Minutes. We didn't have a quorum when we  
21 started that. So if you could call the roll on the Minutes.

22 MS. GENERA: Senator Lowenthal.

23 SENATOR LOWENTHAL: Aye.

24 MS. GENERA: Senator Hancock.

25 SENATOR HANCOCK: Aye.

1 MS. GENERA: Assembly Member Fuller.

2 And Assembly Member Brownley.

3 ASSEMBLY MEMBER BROWNLEY: Aye.

4 MS. GENERA: It carries.

5 CHAIRPERSON BRYANT: Okay. Thank you. So Tab 15.

6 Mr. Fowler, you can go ahead.

7 MR. FOWLER: Good afternoon. Hi, I'm Blake Fowler  
8 with the Public Finance Division of the State Treasurer's  
9 Office. Thank you for having me here today to give you an  
10 update on our General Obligation Bond Program.

11 I thought it made sense for me first to go through  
12 the roles of the various state offices in the General  
13 Obligation Bond Program.

14 Department of Finance prioritizes projects and  
15 determines which one will get funded from bond sale  
16 proceeds. The State Treasurer's Office markets and sells  
17 bonds and makes sure everything passes muster from the tax  
18 law standpoint.

19 Departments administer the bond program and  
20 approve disbursement of bond funds. The State Controller's  
21 Office processes expenditures and ensures proper accounting  
22 treatment of bond funds. And while it's not listed here,  
23 the Legislature certainly has a major role as well. For  
24 many of the bond acts, the Legislature has to provide an  
25 appropriation and has ultimate oversight.

1           This slide shows you the ratings on our various  
2 types of debt and how our ratings on our GO Bond Program  
3 stack up against the other nine most populous states. You  
4 can see we're at the bottom, which is not surprising since  
5 California's General Obligation Bonds are the lowest of any  
6 state in the country.

7           Our most recent credit rating downgrade was in  
8 January of this year when Standard & Poor's downgraded us to  
9 A-.

10           The next few slides that I'm going to show you  
11 give you an indication of how much our credit -- how much  
12 our low credit rating costs the state. This slide shows the  
13 credit spreads on our tax-exempt bonds. Credit spread  
14 simply means the difference in yield between different  
15 securities due to different credit quality.

16           As you can see, our credit spread compared to  
17 Triple A rated municipal bonds has widened very dramatically  
18 over the last year and we've reached all time highs for both  
19 our 10- and our 30-year bonds in 2009.

20           For our 30-year bonds, the current credit spread  
21 based upon secondary market trades is 162 basis points or  
22 1.62 percent compared to the average since 1999 of just 33  
23 basis points.

24           This slide shows how that differential translates  
25 into dollars. For every billion dollars of bonds we sell,

1 we'll have to pay an additional 360 million for interest  
2 over 30 years compared to what we pay if our bonds are rated  
3 Triple A and if you applied that number to the \$47.5 billion  
4 of authorized but unissued GO bonds, the additional interest  
5 caused by our low credit rating would total about  
6 \$17 billion.

7           Since the state also sells taxable bonds,  
8 primarily the new Build America Bonds that were authorized  
9 by Congress last year, we thought it would be interesting to  
10 show you how our credit spreads compare to some similarly  
11 rated and even some lower rated foreign countries.

12           This chart shows the difference between the  
13 interest we pay on our 25- and 30-year taxable bonds and the  
14 interest on U.S. Treasuries and you can see our credit  
15 spread is the widest of any of these countries shown here.  
16 The closest to us is Indonesia which is still 82 basis  
17 points lower.

18           The state currently has \$82.7 billion of  
19 outstanding long-term debt. That consists of General  
20 Obligation Bonds, Lease Revenue Bonds, Economic Recovery  
21 Bonds, and the Prop. 1A Securitization Bonds.

22           While the rating agencies don't have a lot of  
23 positive things to say about the state, one aspect of our  
24 financial management they do like is the composition of our  
25 debt portfolio.

1           As shown here, it's comprised largely of  
2 fixed-rate bonds. We don't have a lot of variable-rate debt  
3 and we don't have any interest rate swaps.

4           This chart looks out 20 years to show how much the  
5 general fund will pay annually for the bonds that we have  
6 already issued. The payments start at about 6 billion this  
7 year. They peak in 2013 at about 7.5 billion as we pay off  
8 the Prop. 1A securitization bonds and they sit below  
9 6 billion after 2016.

10           I'd note that this chart does not show the debt  
11 service on our Economic Recovery Bonds which is paid out of  
12 the dedicated sales tax fund.

13           ASSEMBLY MEMBER BROWNLEY: Why do we have the bump  
14 in 2020?

15           MR. FOWLER: That just happens to be the profile  
16 of the debt we've issued. Over time, we try to smooth it  
17 out so it's level debt, but each individual bond issue may  
18 be structured to take advantaged of market conditions.

19           This slides shows what happens to our annual debt  
20 service. If you add in those \$47.5 billion of bonds that  
21 have been approved by voters that haven't been sold yet plus  
22 the \$10 billion of Lease Revenue Bonds that have been  
23 authorized by the Legislature, so instead of peaking at  
24 about 7.5 billion, the payments based upon this projection,  
25 which obviously has a variety of assumptions in it, would

1 peak at about \$10 billion.

2           In 2009, the state sold a record amount of debt.  
3 We sold 36.6 billion of short and long-term bonds in the  
4 public capital markets. That included almost \$20 billion of  
5 General Obligation Bonds which I'm going to go into a little  
6 bit more detail in just a minute -- \$8.8 billion of  
7 short-term Revenue Anticipation Notes, \$3.4 billion of  
8 Economic Recovery Bonds which were issued to refinance  
9 existing bonds that did not -- that wasn't any new  
10 financing, and we sold the almost 1.9 billion of Prop. 1A  
11 bonds to make local governments whole for the borrowing of  
12 their property tax revenues.

13           The two tables on the right show the result of  
14 that large amount of debt issuance. If you exclude debt  
15 issued by banks and other financial institutions under the  
16 Federal Temporary Liquidity Guarantee Program, the State of  
17 California would be ranked as the largest issuer of debt in  
18 the United States and that's for both corporations and  
19 municipalities and that's just counting our General  
20 Obligation Bonds.

21           So looking at our General Obligation Bonds in a  
22 little bit more detail, we issued a total of 20.48 billion  
23 including 19.74 billion that was publicly issued and another  
24 736 million that was purchased by local government agencies.  
25 8 of the 24 billion was issued as Build America Bonds which

1 I mentioned. They are taxable bonds that the state can  
2 issue for projects that otherwise for eligible for  
3 tax-exempt financing and the Federal Government in turn  
4 provides the state with a 35 percent interest rate  
5 subsidies. So this is very helpful to us last year.

6 The graph at the bottom of the page breaks down  
7 how the proceeds were applied to major categories of  
8 infrastructure projects. The top four are education and I'd  
9 like to point out that education includes both K through 12  
10 and higher ed projects -- transportation, environment,  
11 natural resources, and housing.

12 You'll see on the left that the largest share of  
13 the proceeds, 5.6 billion, went to repayment of construction  
14 loan advances and that's the bond proceeds that were used to  
15 repay commercial paper notes and loans from the Pooled Money  
16 Investment Account that provided short-term funding for  
17 projects in advance of bond sales.

18 So if you subtract the 5.6 billion that was used  
19 to repay interim financing and the approximately 600 million  
20 that we issued to refund existing debt, our 2009 bond sales  
21 provided 14.2 billion in new money for infrastructure  
22 projects.

23 So looking at what has been issued for the Office  
24 of Public School Construction, in 2009, OPSC received more  
25 funding from our publicly offered bonds than any other

1 department that received GO bond funds. 2.6 billion of that  
2 was upfront funding and we also provided an additional  
3 75 million of commercial paper proceeds. 1.4 billion was  
4 used to pay off OPSC's outstanding PMIA loans and pay down  
5 commercial paper and we also refunded \$196 million of  
6 variable rate bonds that had been issued for OPSC projects.

7           Looking back over a longer period, K through 12  
8 bonds represent 34 percent of the GO Bonds authorized over  
9 the last two decades, but represent 43.9 percent of all GO  
10 Bonds issued during that period and also when you look at  
11 the large infrastructure package that was approved in 2006,  
12 the 42.7 billion, K through 12 bonds comprised 17.1 percent  
13 of that amount, but they've accounted so far for  
14 21.9 percent of bonds that we have issued.

15           So even after this extraordinary amount of  
16 issuance we had in 2009, there's still about 47 and a half  
17 billion dollars of bonds that voters have approved that we  
18 still have not issued yet. There's also about \$10 billion  
19 of Lease Revenue Bonds that have been authorized by the  
20 Legislature that have yet to be issued.

21           Then this chart shows the categories of  
22 projects -- of General Obligation Bond projects that haven't  
23 been issued yet. As you can see, the largest amount is in  
24 the transportation area followed by resources and  
25 environment and then education which includes both K through

1 12 and higher ed.

2           So finally I wanted to briefly talk about our  
3 preliminary issuance plans for 2010. At this point, we  
4 expect to issue between 4- and \$7 billion during the first  
5 six months of 2007 -- sorry -- 2010. Our first sale will be  
6 about \$2 billion of tax-exempt bonds. As you may have heard  
7 yesterday, we postponed the sale. We have been planning it  
8 for next week, but we are waiting until the Legislature  
9 passes a bill that will provide the state with greater  
10 ability to manage our cash shortages.

11           We're hoping that that bill will pass by the  
12 beginning of next week and we can enter the market the  
13 following week.

14           After the \$2 billion tax-exempt sale, our plans  
15 are to follow that very quickly with a \$2 billion -- about  
16 \$2 billion of taxable or Build America Bonds that I talked  
17 about and we may have additional sales in April and/or in  
18 June.

19           Tentative plans for this fall call for up to  
20 \$7 billion of additional issuance of General Obligation  
21 Bonds.

22           And finally I wanted to just mention that there  
23 are certain periods of time during the year when we are  
24 unable to issue bonds and they center around events with the  
25 budget. The first period begins in December and ends when

1 the Governor's budget -- proposed budget is released in  
2 January. The second period begins at the beginning of May  
3 through May 14th when the May revision is released and the  
4 third period starts at the beginning of July and goes  
5 through the date whenever a final budget is enacted if it's  
6 not enacted by June 30th.

7 And the reason we can't sell during those periods  
8 are that we're not able to provide the necessary disclosure  
9 to the market.

10 So that was the end of my slides and I'm happy to  
11 answer any questions that you might have.

12 CHAIRPERSON BRYANT: Are there any questions for  
13 Mr. Fowler?

14 ASSEMBLY MEMBER BUCHANAN: I just have a quick  
15 question.

16 CHAIRPERSON BRYANT: Assembly Member Buchanan.

17 ASSEMBLY MEMBER BUCHANAN: Yes. Under what  
18 circumstances does OPSC borrow from the Pooled Money  
19 Investment Account or sell commercial paper? Is that just  
20 to be able to accelerate grants?

21 MR. FOWLER: In the past, funding had -- for most  
22 all GO Bond programs had been provided from loans from the  
23 Pooled Money Investment Account and we have switched from  
24 that process to funding projects directly with bond  
25 proceeds.

1           As an alternative, we can also issue commercial  
2 paper which is a short-term type of financing in advance of  
3 bond proceeds. So we make that decision in conjunction with  
4 our bond sales.

5           ASSEMBLY MEMBER BUCHANAN: And are there any  
6 implications with that type of financing mechanism versus  
7 the other in terms of the interest that either -- that's  
8 charged the general fund or does OPSC have to take any  
9 interest charges off that in terms of the net proceeds we  
10 have available?

11           MR. FOWLER: The impact to OPSC -- the financial  
12 impact to OPSC of not having Pooled Money Investment Account  
13 loans is that it doesn't have to pay any interest on those  
14 loans, so it does provide more proceeds for projects without  
15 that interim process. However, they can't fund projects  
16 until bond proceeds are available.

17           ASSEMBLY MEMBER BROWNLEY: So how accurate is when  
18 you say that the Treasurer expects to issue 4- to \$7 billion  
19 in GO Bonds in the first six months of 2010, is that just  
20 based on what the market will bear and that's just for the  
21 first six months, but any for schools, it looks, based on  
22 the chart we have approximately \$8.7 billion of remaining  
23 capacity and you're saying that you're going to sell 4- to  
24 7- in the first six months. So do you have any idea about  
25 what that mean relative to school bond --

1           MR. FOWLER: I don't at this point. The  
2 Department of Finance is responsible for determining the  
3 allocation of the proceeds of the bond funds.

4           ASSEMBLY MEMBER BROWNLEY: Uh-huh.

5           MR. FOWLER: So I know they are working on that  
6 now and as we get closer to selling, they will be giving us  
7 some direction on that.

8           ASSEMBLY MEMBER BROWNLEY: Do you know what they  
9 consider when they make that decision?

10          MR. FOWLER: That would probably be best to be  
11 answered by Department of Finance.

12          ASSEMBLY MEMBER BROWNLEY: And the other -- here's  
13 the other follow-up question that I had too. Do you have --  
14 I don't know whether your office does this or not, but I'm  
15 wondering do you capture -- so all school districts go, you  
16 know, to their own communities to pass bonds for school  
17 construction, modernization, so that they have the  
18 appropriate matching funds.

19                 Do you have any idea -- I mean do you try -- do  
20 you capture what the overall bond capacity based on what  
21 individual communities and school districts have passed and  
22 how much bond capacity is out there from local initiatives?

23          MR. FOWLER: That might be something that the Debt  
24 and Investment Advisory Commission in our office tracks.  
25 I'm personally not aware of it, however.

1 ASSEMBLY MEMBER BROWNLEY: Thank you.

2 SENATOR HUFF: I have a question.

3 CHAIRPERSON BRYANT: Yes, Senator Huff.

4 SENATOR HUFF: Just a quick question. How do  
5 you -- you know, this almost 50 billion in unsold bonds and  
6 yet you have a much smaller amount being proposed to sell.  
7 How do you determine how much you're selling again?

8 MR. FOWLER: It's -- there's a variety of factors  
9 that go into that. Certainly what is included in the budget  
10 is part of it. It's also determined by project needs and  
11 also what we think the market will bear. So it's a variety  
12 of those factors.

13 SENATOR HUFF: Any -- I don't think I heard a  
14 definitive answer out of you. If I understand right,  
15 Department of Finance -- you sell whatever you think the  
16 market will bear and all the other stuff and Department of  
17 Finance is the one that figures out whether it's going to  
18 transportation or education?

19 MR. FOWLER: That's correct.

20 SENATOR HUFF: Okay. Thank you.

21 CHAIRPERSON BRYANT: I think Mr. Ferguson's here  
22 from Department of Finance.

23 MR. FERGUSON: Correct. Chris Ferguson,  
24 Department of Finance. What I can say is OPSC has  
25 communicated the list of unfunded approvals. We know what

1 bond sources they need. We have those amounts in-house,  
2 what projects would be funded.

3 In terms of the determination between the various  
4 programs, a variety of factors are taken into account.  
5 However, I can't speak to exactly what those allocations  
6 would be or what the determinations will be at this time.

7 ASSEMBLY MEMBER BROWNLEY: But is it primarily  
8 financial decisions or is it programmatic decisions that  
9 you're making? This is more -- larger priority for the  
10 state than, you know, X over Y.

11 MR. FOWLER: It can be both financial and  
12 programmatic. So there -- as I stated earlier, there's just  
13 a variety of factors. It can be things such as leveraging.  
14 It can be whether it is a transportation project or an  
15 education project depending on the need or the area. So  
16 there's just a variety of factors that are all taken into  
17 account.

18 ASSEMBLY MEMBER BROWNLEY: Thank you.

19 CHAIRPERSON BRYANT: Ms. Moore.

20 MS. MOORE: It probably would be a good time to  
21 just discuss an action that the Board requested of Assembly  
22 Member Torlakson and me. At the November Board meeting, the  
23 Board appointed Assembly Member Torlakson and me to meet  
24 with the Treasurer's Office and the Department of Finance  
25 concerning a more predictable stream of cash for this

1 program that would allow districts to plan better for  
2 bidding and for their projects and creation of jobs.

3           And you've heard from the Treasurer's Office and I  
4 think the Treasurer also responded to us in writing and  
5 every Board member should have received a copy of that  
6 letter and report. I think it was sometime in December that  
7 that was disseminated, and if not, I have one and I'd be  
8 happy to share it with others.

9           On February 11th, Assembly Member Torlakson's  
10 staff and I met with the new Director of Finance,  
11 Ms. Matosantos, to discuss this issue. She advised that the  
12 Department of Finance is working on an infrastructure  
13 finance plan and understands our concerns and the one that  
14 we were representing was, you know, if we could tranche out  
15 the facilities funding over time and districts could kind of  
16 see where they may -- where the funding may fall and gear  
17 that from the list, we could perhaps have a better stream of  
18 bidding of projects over time as opposed to it comes all out  
19 in one lump sum or we don't know what the prediction is and  
20 we're not able to gear up for those bidding.

21           They understood that. Ms. Bryant was also in the  
22 meeting. She did -- the Director of Finance did ask the  
23 Board to think about the issue of the outstanding funds that  
24 have not yet been claimed by districts and also how can we  
25 prioritize projects for future cash flow given the

1 environment that we're in.

2           So those were the comments I think of the Director  
3 of Finance, very open to the discussion that we had. I  
4 think we need to have a continuing ongoing one and it's in  
5 the context of how do we finance infrastructure globally in  
6 California with these outstanding bond measures and where  
7 does education fall within that.

8           CHAIRPERSON BRYANT: Let me just add to that,  
9 that, you know, we really are -- I mean the Board, the  
10 stakeholders, the Department, the Treasurer's Office, the  
11 Legislature, we're all in uncharted territory. We've  
12 depended on the system of the PMIA and have in a way that  
13 once the Legislature made the preparation, we were able to  
14 kind of fund things on an ongoing basis and clearly in this  
15 interim period, we're in a place where it's difficult for  
16 anyone to plan and the Department is very sensitive to that  
17 and I think, you know, Director Matosantos was very frank  
18 with the committee that came to visit her, you know, a  
19 little of -- it's a frustrating thing because we're -- like  
20 I said, we're in uncharted territory and as I told the  
21 C.A.S.H. members this morning when I spoke to them, I've  
22 become the biggest -- I've become a very large advocate for  
23 our -- for the unfunded approval list, making sure that  
24 everyone understands what's on the list, how important it  
25 is, what the jobs are, and, you know -- and it's all the

1 information is there.

2 But there's a lot of unfunded needs across all the  
3 silos as you all know. So -- any other comments or  
4 questions?

5 ASSEMBLY MEMBER BROWNLEY: Well, I just want to  
6 say that, you know, I really agree with Ms. Moore's comments  
7 and I think, you know, not only for the bonding that we  
8 currently have for education, but even, you know, looking  
9 further and that was one of the questions, you know, asking  
10 the Treasurer about what is the, you know, bonding capacity  
11 that we know of that's been passed on the local level  
12 because we all know sitting here -- and I say all of this in  
13 the context and couched with the state needs to be  
14 responsible about its bond indebtedness ratio.

15 But I do think that as we're looking forward, we  
16 know that schools have tremendous needs. There are projects  
17 in the pipeline that we know we're not going to be able to  
18 fund. It's the -- the 2010 election year is coming up and  
19 whether -- you know, what's going to happen with bonding for  
20 schools I think is an imminent question that we're going to  
21 have to answer and I think having -- and so where is  
22 education going fall in that and having sort of a portfolio  
23 I think of so that the state's not put in a position of  
24 making priorities over -- you know, one priority over the  
25 other, whether it's, you know, water bonds are going to go

1 on the ballot, you know, levee issues, high speed rail,  
2 schools, these are all important issues for the state, but  
3 yet we don't -- for me personally I'm very concerned about  
4 California running out of bond capacity which is potentially  
5 could happen June and July of this year and then not being  
6 able to have any more capacity for school districts who have  
7 already gone out to their communities, passed bonds, but yet  
8 the state's not going to be in a position to support those  
9 projects.

10           So in the spirit of everything that we're talking  
11 about up here in Sacramento with regards to jobs, we know  
12 that there are plenty of -- there's lots and lots of schools  
13 who are ready to go to work and ready to put people to work.

14           At the same time, we have this -- you know, we  
15 need to be responsible. We can't -- you know, we have a  
16 bond indebtedness ratio that is perhaps more conservative  
17 than other states and that's a good thing, but, you know,  
18 we're going to have these competing demands and where do we  
19 go from here and how do we figure that out and I worry -- I  
20 want to move forward to try to figure that out as well so  
21 that we can move forward with some kind of school bond so  
22 that we have a continual bucket after -- you know, after we  
23 run out in a few more months and it's just how to, you know,  
24 wrestle with that, how to figure that out and also being  
25 responsible too as a state, so -- I just wanted to put that

1 out there.

2           And I am also the author of the bill -- the bond  
3 bill in the Assembly this year and at this particular moment  
4 in time, we've taken that piece out of the bill because the  
5 powers to be would believe it would be irresponsible for us  
6 to be moving forward with a school bond at this time, but I  
7 think that there's a way in which we can figure this out,  
8 but we just have to get everybody's heads together on it to  
9 figure it out.

10           CHAIRPERSON BRYANT: Any other questions or  
11 comments from the Board? Mr. Duffy.

12           MR. DUFFY: Tom Duffy for Coalition of Adequate  
13 School Housing. We sent a letter to you last week on the  
14 topic that I think Ms. Moore was referencing and that was  
15 the \$531 million in apportioned projects, so it's part of  
16 that \$2.4 billion that was sold last year that, as I've  
17 heard, districts aren't accessing.

18           What we tried to do in the letter is to identify  
19 that half of those apportionments are for career technical  
20 education projects that have a different process of approval  
21 than other projects in that you apportioned -- after a  
22 competitive process at CDE and going to OPSC, you  
23 apportioned those projects. Thereafter they go to DSA which  
24 is not the normal course. And after DSA, they go back to  
25 OPSC, so there are state agencies that are processing these.

1           So our concern is that there is a proposal to  
2 change the way that districts that are unfunded would be  
3 able to be funded by some of those dollars. We believe that  
4 statute really prohibits that because districts are  
5 guaranteed 18 months from the time of the apportionment.

6           I'm bringing it to your attention now because I am  
7 hopeful that especially within the Department of Finance  
8 that there isn't a reluctance to support a bond sale for  
9 school bonds because of the 531 million. What that  
10 represents is 20 percent of the 2.4 billion that was sold  
11 last year.

12           So between June and now, districts have put 80  
13 percent of that money on the street in jobs and so the other  
14 amount -- certainly it's a significant amount of  
15 apportionments there for important projects, but I wouldn't  
16 want to have the Department of Finance or any other  
17 department influenced because of those dollars being there.

18           We need districts to be able to access those in  
19 timely manner. We've suggested to your staff and talked to  
20 DSA and we've said let's get together so we can know which  
21 projects are CTE projects so that we can sort through them.

22           When we talked to DSA a week or two ago, DSA  
23 indicated that they did not know -- they couldn't  
24 discriminate a CTE project from anything else, but I wanted  
25 to bring that to your attention because it's an emergent

1 issue. Thank you very much.

2 CHAIRPERSON BRYANT: Thank you. Anything else on  
3 this? Thank you very much, Mr. Fowler. He was here all --  
4 Senator Lowenthal.

5 SENATOR LOWENTHAL: Yeah. As I understand, so  
6 what we're saying is that, you know, the Finance decides  
7 from the -- how much funding goes to the various competing  
8 interests, whether it's infrastructure, transportation,  
9 education when bonds are actually -- when they're issued,  
10 they will -- and OPSC provides to them a list of the  
11 projects that are proposed to be funded; is that -- that's  
12 it? Have we seen that list? Do we know on the Board what  
13 that list is?

14 CHAIRPERSON BRYANT: I think we have it in our  
15 binder every month; correct?

16 SENATOR LOWENTHAL: Do we have that in our binder  
17 every month?

18 CHAIRPERSON BRYANT: It's the entire -- you give  
19 an entire unfunded approval list; correct?

20 MS. SILVERMAN: Yeah. That's correct. That's in  
21 the binder every month.

22 CHAIRPERSON BRYANT: Thank you, Mr. Fowler. I  
23 appreciate it. We all appreciate it. Should we move on or  
24 do you want to -- okay. Let's move onto Tabs -- do you want  
25 to take up 16 and 17 at the same time, Ms. Silverman?

1 MS. SILVERMAN: Sure. Do you want to do the  
2 financial reports or do we want to go back to the Consent  
3 or --

4 CHAIRPERSON BRYANT: Just go ahead and do 16 and  
5 17 and then we'll go back to 4.

6 MS. SILVERMAN: Okay. I draw your attention to  
7 Tab 16 which is **status of fund release report**. As you know,  
8 we've shared in the past, we had sales from the March  
9 General Obligation Bonds and that allocation was  
10 specifically for Proposition 1D in which this program  
11 received \$548 million in proceeds and to date 99 percent of  
12 those funds have been released which reflects \$547 million.

13 There's a small reservation of funds specifically  
14 for career tech projects.

15 In the April sale, this program received, like  
16 shared earlier, part of the Build American Bond proceeds in  
17 which this program received \$1.4 billion for the program and  
18 it covered Proposition 1D, Proposition 55, and  
19 Proposition 47.

20 To date, the funds released in that category  
21 represent \$1.2 billion. What's on the table today is still  
22 \$192.1 million.

23 So there's 87 percent of those bonds been released  
24 and so we still have monies in that particular category.

25 And the last table I wanted to share is the

1 proceeds as Blake mentioned in the sales in October and a  
2 commercial note paper we received for the program in  
3 November. This program received \$528.9 million and we  
4 released \$87.1 million of those funds and so on the balance  
5 on the books currently is \$441 million and we released  
6 16 percent of those funds.

7 I ask you to turn over to the following page. And  
8 there's a slight error there. We need to correct that item,  
9 but the chart reflects last month we only disbursed  
10 \$20.7 million and those disbursements came from the October  
11 bond proceeds sale. So in essence the money that's sitting  
12 there in the April category isn't moving.

13 So we wanted to highlight that item to the Board.  
14 Last month, we shared -- we had put \$123 million out on the  
15 street, but this month's activity's on 20.7. With that,  
16 I'll open it up for questions.

17 CHAIRPERSON BRYANT: Any questions?

18 ASSEMBLY MEMBER BROWNLEY: Yeah. Just do we know  
19 why?

20 MS. SILVERMAN: Districts have 18 months to come  
21 in for the proceeds and we activated those projects --

22 ASSEMBLY MEMBER BROWNLEY: I see.

23 MS. SILVERMAN: -- in November.

24 CHAIRPERSON BRYANT: It was the holidays. Maybe  
25 next week.

1 MS. SILVERMAN: Well, I think, you know, with the  
2 reactivation of the projects, districts will have some time  
3 to get their contracts in order and so we're hoping -- we're  
4 thinking positive that those proceeds will be moving  
5 quickly.

6 MS. KAPLAN: And just as a general FYI, when  
7 districts get notification of funding, generally with  
8 contracts and getting everything up to speed, it takes  
9 anywhere from six to eight weeks to actually get things  
10 moving so they come in. That's where it ties in Ms. Moore's  
11 comment in regards to if a district knows ahead of time that  
12 funding's come down, they can get it up and going and get --  
13 hit the ground running.

14 CHAIRPERSON BRYANT: Okay. Any other questions?  
15 Tab 17.

16 MS. SILVERMAN: Yes. Please. Tab 17, **status of**  
17 **funds report**. And this is basically a financial report that  
18 we present every month showing the allocations we received  
19 in the program for Proposition 1D which is your top chart.  
20 Most of us have to navigate our book sideways.

21 To date on unfunded approvals in that particular  
22 category, we reflect that there's \$1.17 billion of unfunded  
23 approvals accumulated in Proposition 1D. But what we're  
24 bringing forward in the Consent Agenda is \$18.3 billion in  
25 unfunded approvals for new construction, \$49 million in

1 modernization projects, unfunded approvals, and a minor  
2 adjustment in overcrowding relief grant there.

3           And so in Proposition 1D, we're bringing forward  
4 \$62.9 million dollars of unfunded approvals this month.

5           If I draw your attention to the center chart is  
6 Proposition 55. This program initially had \$10 billion of  
7 authorizations. In the unfunded approval categories to  
8 date, we have \$344.2 million dollars of unfunded approvals.  
9 This month we're bringing forward \$28 and a half million in  
10 new construction unfunded approvals.

11           In the lower chart, Proposition 47, initial  
12 authorization for this program is 11.4 billion. We've  
13 accumulated nearly \$7.94 million of unfunded approvals in  
14 Proposition 47. We've had very little activity in  
15 Proposition 47 and provided only \$1.4 million of new  
16 construction unfunded approval.

17           So this month's activity of unfunded approvals, if  
18 you follow the chart all the way down, it's \$92.8 million of  
19 unfunded approvals processed this month for the School  
20 Facilities Program.

21           If I can turn your attention to page 344, in the  
22 center chart, we're reflecting activity for the Emergency  
23 Repair Program. Year to date as far as unfunded approvals  
24 is \$52.4 million of unfunded approvals as of January 2010.

25           This month we're bringing forward \$6.2 million of

1 unfunded approvals for the Emergency Repair Program.

2 And with that, I'll open it up for questions .

3 CHAIRPERSON BRYANT: Any questions on Tab 17?

4 Okay. Hearing none, we'll return to Tab 4, the **Consent**  
5 **Calendar -- Consent Agenda.** Are there any comments or is  
6 there -- oh, I should point out that the consent items  
7 include the January action to adjust the January 2010  
8 unfunded approvals to the current CCI. Approving consent  
9 will reaffirm the action the Board took in January and  
10 that's pages 36 through 181.

11 Is there a motion?

12 ASSEMBLY MEMBER BROWNLEY: I -- before we put a  
13 motion in, I -- you know, on this unfunded approvals, I met  
14 with some staff in my office earlier today and we were  
15 wondering about this list whether this is the complete list  
16 of all of the January and February lists? Do we know?

17 MR. MIRELES: It just includes the January list.  
18 The difference is that that list includes the total project  
19 costs. The prior list included only the state  
20 apportionment. That's where the numbers are higher than  
21 last month's.

22 But on stamped page 36 and actually 37 through 39  
23 includes just the January projects.

24 ASSEMBLY MEMBER BROWNLEY: Okay. Okay. So, you  
25 know, it's a little concerning to me on this when I look at

1 this chart and see the number of different projects here  
2 that are -- go back sort of way back. I mean some are in --  
3 at least one's in 2005 and one is in 2008 and a lot of these  
4 projects, at least on the first page anyway, a preponderance  
5 of them are in April and May and -- which I guess the point  
6 that I'm trying to make is that it is a long period of time  
7 before these projects got in for approval and then this  
8 whole CCI thing is applying to them.

9           And I know we had a large discussion about this at  
10 the last meeting and after that meeting, I had thought a lot  
11 about the meeting and felt as though there was, you know,  
12 some confusion and so forth and not only our approval of the  
13 CCI but also of the developer fee issue and I was wondering  
14 if we could actually address this issue that I'm raising  
15 with the CCI and the schools and how long the projects have  
16 taken to get through our process and also to look at -- to  
17 ask for reconsideration on our vote on the CCI and the  
18 developer fee.

19           For me personally, after the meeting where we had  
20 a lot of discussion about what the legal issues were and  
21 there was some disagreement around that and whether -- you  
22 know, whether we were looking at the Western States and  
23 cuing off on those various benchmarks and when I walked away  
24 from the meeting, it didn't feel right to me to make the CCI  
25 reduction and hold developers, you know, to the same fee

1 that they had previously been.

2 And I know that this reduction is a difficult one,  
3 but then to have developers not have any sort of role and  
4 responsibility in terms of helping with the development of  
5 these projects didn't -- it just didn't seem right to me.

6 I know we got sort of caught up in the -- on some  
7 of the legal issues and others. And so with that, I would  
8 ask for some reconsideration on that issue and this whole  
9 issue too about, you know, when the projects -- you know,  
10 what is that magical cutoff date in terms of where this CCI  
11 applies and when it doesn't.

12 So I'd like to have kind of another discussion  
13 around that.

14 CHAIRPERSON BRYANT: Any other questions or  
15 comments on that?

16 SENATOR LOWENTHAL: Is that a motion for now?

17 ASSEMBLY MEMBER BROWNLEY: Pardon me?

18 SENATOR LOWENTHAL: Is that a motion --

19 ASSEMBLY MEMBER BROWNLEY: Yes. Well, I'm asking,  
20 yeah, to --

21 CHAIRPERSON BRYANT: I think maybe what we could  
22 do is approve the consent calendar -- I'm sorry -- remove  
23 pages 36 through 181 from the consent calendar, approve the  
24 rest of it, and leave the unfunded approval question out?  
25 Is that what you're suggesting?

1 ASSEMBLY MEMBER BROWNLEY: Yeah. Well, I think  
2 the first step, yes, is to pull that -- you know, that  
3 particular item and we could have a separate discussion  
4 about that and we can have that discussion at this meeting.

5 I'm asking for reconsideration of the discussion  
6 and decision that we made at the previous meeting on the CCI  
7 and the developer fee. For me, the concern is less about  
8 the decision we made on the CCI but more about the decision  
9 that we made on the developer fee side of it.

10 And so I'm asking for reconsideration of that  
11 decision.

12 CHAIRPERSON BRYANT: Of the entire -- well, there  
13 were two separate decisions last month, one on the CCI, one  
14 on the developer fees.

15 ASSEMBLY MEMBER BROWNLEY: Were they two separate  
16 items?

17 MS. KAPLAN: Yes, they were two separate items.

18 CHAIRPERSON BRYANT: Yeah.

19 ASSEMBLY MEMBER BROWNLEY: Yeah. Okay. Well,  
20 then it would be just the item then on the developer fee.

21 CHAIRPERSON BRYANT: Can I ask a dumb question.

22 ASSEMBLY MEMBER BROWNLEY: Yeah.

23 CHAIRPERSON BRYANT: Where do you see the dates on  
24 this chart that you're saying --

25 ASSEMBLY MEMBER BROWNLEY: Yeah. It's -- yeah.

1 It's the one, two, three, fourth column from the right.

2 CHAIRPERSON BRYANT: And what page?

3 ASSEMBLY MEMBER BROWNLEY: Well, on page 37.

4 Where --

5 SENATOR HANCOCK: Application number.

6 ASSEMBLY MEMBER BROWNLEY: It's on page 37 and --  
7 if you start from the left where it says county, district,  
8 school site, application number, received date.

9 CHAIRPERSON BRYANT: Oh, you know what, I can't --  
10 my problem is is they're all looking like 9s to me.

11 ASSEMBLY MEMBER BROWNLEY: I know. And they --

12 CHAIRPERSON BRYANT: Now that I really focus --

13 ASSEMBLY MEMBER BROWNLEY: And when I first looked  
14 at it, it was the same.

15 CHAIRPERSON BRYANT: Gotcha'. I'm sorry.

16 ASSEMBLY MEMBER BROWNLEY: But then if you look at  
17 it more closely.

18 CHAIRPERSON BRYANT: They all look like 9s to me.

19 ASSEMBLY MEMBER BROWNLEY: Yeah, there's a 2005  
20 and there's a 2008.

21 CHAIRPERSON BRYANT: My eyes are playing tricks on  
22 me. Okay.

23 ASSEMBLY MEMBER BROWNLEY: And there's probably --  
24 those probably -- you know, there's probably some story  
25 behind those that makes sense, but I think the larger issue

1 is if you look at this, there are projects in January,  
2 February, March, April, May and when you go from that point  
3 May and all the way till January, that's an awful long time  
4 for projects to get into this approval process where the CCI  
5 applies.

6           And so I'm wondering if we should be looking at,  
7 you know, some other way in terms of evaluating these  
8 projects and when the application of a CCI would apply.

9           CHAIRPERSON BRYANT: Assembly Member Buchanan.

10           ASSEMBLY MEMBER BUCHANAN: Could I ask a  
11 clarifying question. Since I -- is your concern that  
12 because we didn't have meetings, when, in November and  
13 December that we have projects that would have been approved  
14 and funded at the higher rate and we don't want to penalize  
15 those schools? Is that the --

16           ASSEMBLY MEMBER BROWNLEY: Yeah. That is and, you  
17 know, we had some discussion about we missed the -- we made  
18 a decision to --

19           ASSEMBLY MEMBER BUCHANAN: The decision we made  
20 was to fund those projects approved for funding prior to  
21 January 1 at the higher rate and to fund those projects  
22 approved for funding after January 1 at the lower rate.

23           ASSEMBLY MEMBER BROWNLEY: And I'm saying that I  
24 want to come back and reconsider how projects would be  
25 evaluated as opposed to having this arbitrary line because

1 it seems as though there were a lot of projects -- if you  
2 start looking at this list --

3 ASSEMBLY MEMBER BUCHANAN: Right. That's what I'm  
4 trying to clarify.

5 ASSEMBLY MEMBER BROWNLEY: It is that, you know,  
6 OPSC -- you know, there's a certain amount of time generally  
7 that we try to service our school districts in terms of  
8 moving projects through and it just seems as though this is  
9 a longer period of time when you look at April or May.

10 ASSEMBLY MEMBER BUCHANAN: So is it -- expressly  
11 communicated to me and it was said by one of our witnesses  
12 last week that we had some projects that would have been  
13 approved in November or December, but we didn't have  
14 meetings.

15 ASSEMBLY MEMBER BROWNLEY: Right.

16 ASSEMBLY MEMBER BUCHANAN: And so from their  
17 perspective --

18 ASSEMBLY MEMBER BROWNLEY: Right.

19 ASSEMBLY MEMBER BUCHANAN: -- to penalize them is  
20 not fair. Okay?

21 ASSEMBLY MEMBER BROWNLEY: Right.

22 ASSEMBLY MEMBER BUCHANAN: So it seems like you  
23 got to have some criteria. Now, I don't think you want to  
24 end up with a situation where a year from now you have a  
25 2006 project that just got held up because of information

1 and we continue to go back.

2 ASSEMBLY MEMBER BROWNLEY: Right. And I'm not  
3 saying --

4 ASSEMBLY MEMBER BUCHANAN: So --

5 ASSEMBLY MEMBER BROWNLEY: I'm not saying --

6 ASSEMBLY MEMBER BUCHANAN: Right. So --

7 ASSEMBLY MEMBER BROWNLEY: -- you know, how we  
8 should apply it. I'm just saying --

9 ASSEMBLY MEMBER BUCHANAN: You're asking us or  
10 staff to come up with other criteria for us to consider? I  
11 mean we need --

12 CHAIRPERSON BRYANT: I think -- Ms. Silverman, can  
13 you just walk through how the process works getting onto the  
14 list, forgetting for a moment this November/December thing,  
15 just to refresh our recollection.

16 MS. SILVERMAN: Yeah. I'll share that microphone  
17 with Juan Mireles.

18 MR. MIRELES: We process projects based on date  
19 received. Depending on when a project is received, we then  
20 schedule a projected SAB and I say projected because we have  
21 to set internal timelines to send out our letters, which are  
22 15-day, 4-day letters so that we can keep the process moving  
23 along.

24 We set the projected Board timelines based on our  
25 workload. We take a look at our workload not just on the

1 projects that you see on the list, which is, you know,  
2 mostly new construction and modernization. We take a look  
3 at career tech. We take a look at ERP. We take a look at  
4 our whole workload and then evaluate what kind of a capacity  
5 we have and we set these timelines.

6           So we determine based on our receive date what  
7 project to SAB that project is supposed to -- or should go  
8 to.

9           Now, we always are careful about these projected  
10 SAB dates because we don't commit to any of them because we  
11 know that things change through the processing. There's a  
12 lot of things that could happen when we go through and  
13 review projects.

14           So we don't commit to certain Board dates. We  
15 estimate, but we don't have anything because things could  
16 change.

17           ASSEMBLY MEMBER BROWNLEY: Yeah. And I understand  
18 that. I'm just -- I know that I have a document that was  
19 given to me too about what -- what the general timeline or  
20 at least the goals are, you know. And so, you know, stated  
21 that the goals are around 80 days or so to kind of complete  
22 a project.

23           So I'm just saying that there are projects here  
24 that were received in April and May and it would not take --  
25 I mean it should not take that long and I know that there

1 are some exceptions and I'm not saying that we -- I'm not  
2 trying to debate what is the -- kind of the right parameters  
3 at this particular point in time.

4 I'm just questioning the fact that a lot of  
5 projects that I see on this list took a really long time to  
6 get through the system and now are being potentially  
7 penalized because of this -- of our decision at the last  
8 meeting on the CCI.

9 And so I'm just sort of saying that we talked  
10 about we missed a December date and so forth and gave some  
11 justification for that at the last meeting, but as I thought  
12 about it after the meeting and now seeing these lists, I'm  
13 wondering is that really the kind of appropriate formula for  
14 lack of a better description to apply for this because there  
15 are a lot of projects here that took a really, really long  
16 time to get there and I do think that probably the 2005 and  
17 2008 is the exception to the rule and there's probably some  
18 story there. I don't want to get into that.

19 But it just -- when I saw this, it sort of drove  
20 that issue for me and I was concerned about it.

21 So maybe just by pulling this issue -- I guess  
22 we're having the discussion as we speak now, but --

23 CHAIRPERSON BRYANT: Senator Hancock.

24 SENATOR HANCOCK: Yeah. It would make sense to me  
25 to move the consent agenda but to take out pages 36 to 181.

1 SENATOR HUFF: Second that motion.

2 CHAIRPERSON BRYANT: Can you call the roll on that  
3 motion.

4 ASSEMBLY MEMBER BROWNLEY: So we're going to --  
5 oh, I see. We're calling the roll on the motion.

6 CHAIRPERSON BRYANT: This is just a --

7 SENATOR HANCOCK: Yeah. So then we can decide  
8 when we want to have this other discussion.

9 MS. MOORE: But if I may comment on the motion.  
10 What that motion does me is that those projects that we are  
11 approving for the unfunded list for February would contain  
12 the decrease that the Board adopted last meeting; is that  
13 correct?

14 MR. MIRELES: That's correct.

15 MS. SILVERMAN: That's correct.

16 ASSEMBLY MEMBER BROWNLEY: Well -- no. I thought  
17 what --

18 SENATOR LOWENTHAL: It depends on when they  
19 were --

20 CHAIRPERSON BRYANT: You know what then. I  
21 just -- I apologize. I think I've got this mixed -- do we  
22 have this mixed up? We want to pull -- is it the amended  
23 unfunded approvals we want to take off this --

24 MS. KAPLAN: It's the January.

25 CHAIRPERSON BRYANT: I apologize. What are those

1 page numbers? I think. Is that -- we're talking --

2 MS. SILVERMAN: You had it right. You had it  
3 right.

4 ASSEMBLY MEMBER BROWNLEY: No. But I -- you know,  
5 so maybe I'm making things more confusing here --

6 MS. KAPLAN: What Ms. Moore is also talking --

7 ASSEMBLY MEMBER BROWNLEY: -- too, but it was my  
8 understanding that if we pull this off, we're going to  
9 separate that out from the consent agenda that we're going  
10 to -- everybody I think probably is okay with the rest of  
11 the consent agenda and then discuss this piece as a separate  
12 item.

13 MS. KAPLAN: Actually -- to clarify what Ms. Moore  
14 brought up. On your agenda, pages 36 through 181 are the  
15 January projects that would be subject to the negative CCI.

16 On pages 182 to 240 is what Ms. Moore is talking  
17 about. Those are on the list for the February projects and  
18 if you move consent calendar with them, the negative CCI.

19 ASSEMBLY MEMBER BROWNLEY: I see. So then we  
20 would have to do both.

21 MS. KAPLAN: Yes.

22 ASSEMBLY MEMBER BROWNLEY: So I mean -- so then it  
23 would be my preference that we would -- so then what will we  
24 have to pull to discuss this separately?

25 SENATOR HANCOCK: To 240.

1 MS. KAPLAN: It would be a motion to approve the  
2 consent calendar minus the amended unfunded approvals and  
3 unfunded approvals.

4 CHAIRPERSON BRYANT: Both items.

5 SENATOR HANCOCK: Okay. I would change my  
6 motion --

7 SENATOR HUFF: And I'll change the second.

8 SENATOR LOWENTHAL: Move it up to what, 240?

9 SENATOR HANCOCK: Yes.

10 MS. KAPLAN: Yes.

11 SENATOR HANCOCK: Take up those two items.

12 ASSEMBLY MEMBER BROWNLEY: Kathleen, I was told --  
13 I thought I was told earlier that this list incorporated  
14 both the January and February lists.

15 MS. MOORE: Both the January and February are in  
16 our agenda, but unless you extend it to the February ones as  
17 well and then I think what I'm understanding you're  
18 requesting and if the Board votes on what the request is, is  
19 to look at the list and to look at it within the guidelines  
20 of -- there has been a fairly longstanding -- it was never  
21 in regulation, but it was an objective I think and a goal at  
22 OPSC that projects would be approved within a 90 to 120-day  
23 time frame.

24 I think that's a longstanding thing, but never in  
25 regulation and it was always at the best efforts of the

1 Office of Public School Construction.

2 And I think that probably the furloughs and other  
3 things have impacted that time frame, but if you really want  
4 to get at the heart of the issue that I think we're talking  
5 about and the only reason we're talking about is because  
6 there's potentially a decrease for districts. If it  
7 increased, we wouldn't even be having this discussion.

8 ASSEMBLY MEMBER BROWNLEY: Right. Absolutely.

9 MS. MOORE: But you would say -- and we didn't  
10 meet in November or December of last year. Really we didn't  
11 meet one meeting last year per our normal meeting schedule  
12 in the past.

13 If we looked at that, it would be what projects  
14 maybe were 120 days out that would have met a December Board  
15 time frame that we might want to include in this 2009  
16 exclusion from the decrease.

17 And I think we could -- you can ask staff to do  
18 that by this motion. Correct?

19 MS. SILVERMAN: But I think the problem is -- go  
20 ahead.

21 MR. MIRELES: Just to clarify. The 90 to 120-day  
22 timeline was something that we had some time ago when we had  
23 fewer programs that we -- and we had less of a workload for  
24 us to process.

25 We still want to process projects as quickly as we

1 can, but given all the programs -- all the new programs that  
2 we have now, it is more difficult to meet those timelines.

3 So we're doing -- still doing the best that we  
4 can, but the 90 to 120-day timelines were prior to all the  
5 new programs that we have in place.

6 ASSEMBLY MEMBER BROWNLEY: But it's my  
7 understanding from our discussion in the office here -- our  
8 discussion in my office today was that you said that there  
9 was a slight decline --

10 MR. MIRELES: Um-hmm.

11 ASSEMBLY MEMBER BROWNLEY: -- in the number of  
12 projects being processed. So -- and I understand the  
13 furlough and I want to be sympathetic to the furlough.

14 But with the decline in projects being processed,  
15 then, you know, the workload is not as heavy and -- or  
16 potentially not as heavy and also, you know, there was --  
17 you were -- also said too to me that you had taken some time  
18 from processing because of less demand on the -- sorry --  
19 because there was -- the amount of projects coming in for  
20 processing were less and less demand on the people who were  
21 doing the processing that you were taking some time -- kind  
22 of a timeout to figure out how we could better service,  
23 which is --

24 MR. MIRELES: Um-hmm.

25 ASSEMBLY MEMBER BROWNLEY: -- we all want to be

1 better at what we're doing and particularly servicing our  
2 districts.

3           So -- and again as Ms. Moore said, this is not --  
4 you know, we're not in statute. We're not talking about  
5 hard and fast turnaround times here, but generally as a rule  
6 of thumb and how we've been operating in the past that we  
7 should -- I think that we should kind of look again and --  
8 you know, with the help of staff to see if there is a better  
9 way in which we could select these projects to go for the  
10 older rate versus the newer reduced rate and obviously the  
11 other objective is to be fair as to the degree that we are  
12 able to.

13           And I'm just not sure that based on the discussion  
14 we had the last time if we had really, you know, pushed the  
15 edges in terms of being fair.

16           CHAIRPERSON BRYANT: Assembly Member Fuller.

17           ASSEMBLY MEMBER FULLER: I want to agree with  
18 Assemblywoman Brownley in that for me, when I saw this list,  
19 I realized that our action was causing us to be very  
20 retroactive and you're reaching way back into fourth month  
21 and I felt that wasn't really what the intent of what I was  
22 trying to accomplish. At the time, didn't want to change  
23 the rate, but felt it was necessary, but I wanted to -- I  
24 was thinking that we were kind of at the place where it was  
25 like for the new year and that people would have plenty of

1 notice that the rate that was changing would apply to them  
2 for them to do their planning.

3 In this case, when I saw the actual consequences,  
4 I thought they were maybe not as anticipated in terms of the  
5 retroactive response.

6 So I'm not exactly sure how we get to the intent  
7 of what I think the Board's decision-making process  
8 included, but I would join Ms. Brownley in that whatever  
9 action it is to get us to that place where we are not  
10 putting districts in a place that they are, you know, after  
11 months and months and months of planning, suddenly finding  
12 that something retroactively happened to them, more or less.

13 SENATOR HUFF: I'd like to call for the question.  
14 Procedurally I think we have a motion and a second. We  
15 pulled out the stuff we're supposed to be discussing, then  
16 we've been discussing it.

17 ASSEMBLY MEMBER BUCHANAN: Yeah. I agree.

18 ASSEMBLY MEMBER BROWNLEY: Yeah. Right. Yeah.

19 SENATOR HUFF: So if we could just like get that  
20 off the table and then discuss, I'd feel a lot better.

21 CHAIRPERSON BRYANT: That's what I'm going to do.  
22 Call the roll on the motion and the second.

23 ASSEMBLY MEMBER BROWNLEY: You want to follow the  
24 rules?

25 MS. SILVERMAN: May I for one second real quick.

1 You know, it's difficult to plan, you know, workload  
2 projections and part of the issue is before we start  
3 processing unfunded approvals, you know, we had -- the Board  
4 had to decide what they were going to do.

5 So obviously there was a potential, you know, jam.  
6 Projects weren't moving as fast because we weren't sure what  
7 direction we were going.

8 So I mean in all fairness I mean we also have, you  
9 know, not only the furloughs, but we also got vacancies we  
10 can't fill. I mean that could be some of your timing of the  
11 workload issue.

12 ASSEMBLY MEMBER BROWNLEY: I think we want to move  
13 the motion and then have this discussion.

14 CHAIRPERSON BRYANT: Let's have the -- let's take  
15 the roll. Go ahead and call the roll on just the consent  
16 calendar absent the amended unfunded approvals and unfunded  
17 approvals.

18 MS. GENERA: Senator Lowenthal.

19 SENATOR LOWENTHAL: Aye.

20 MS. GENERA: Senator Huff.

21 SENATOR HUFF: Aye.

22 MS. GENERA: Assembly Member Fuller.

23 ASSEMBLY MEMBER FULLER: Aye.

24 MS. GENERA: Assembly Member Brownley.

25 ASSEMBLY MEMBER BROWNLEY: Aye.

1 MS. GENERA: Assembly Member Buchanan.

2 ASSEMBLY MEMBER BUCHANAN: Aye.

3 MS. GENERA: Ron Diedrick.

4 MR. DIEDRICK: Aye.

5 MS. GENERA: Kathleen Moore.

6 MS. MOORE: Aye.

7 MS. GENERA: Lyn Greene.

8 MS. GREENE: Aye.

9 MS. GENERA: Cynthia Bryant.

10 CHAIRPERSON BRYANT: Aye.

11 MS. GENERA: Carries.

12 CHAIRPERSON BRYANT: Okay. Now on these -- on the  
13 other two items, further discussion that. Assembly Member  
14 Buchanan.

15 ASSEMBLY MEMBER BUCHANAN: Yeah. I'm just going  
16 to throw out the suggestion. If you want to go back to the  
17 120 days, that's September 1. Okay? We're now 120 days  
18 plus another 60 days past or 180 days.

19 If you take a look at the January list -- I  
20 believe the last unfunded date that's on here with a date is  
21 August 6th. If you take a look at our February list, the  
22 last received date that we have is September 16th.

23 So I mean going back 120 days from January 1 is  
24 September 1st. The problem that I see for OPSC is they have  
25 to -- there has to be some cutoff date because we can't

1 cherry pick each month.

2           So I would say given the fact that September 1st  
3 is the going back 120 days and there are dates on this month  
4 that precede dates that we approved last month that if we  
5 want to make a change, we fund those approved through today  
6 on today's list, January and February, at the higher rate  
7 but have a cutoff date certain going forward so those going  
8 forward next month, which now you're talking about they  
9 would be technically 210 days, we fund at the lower rate  
10 because I just don't see how you can go on month after month  
11 trying to determine what's right. I mean because the only  
12 other option is just not to have the lower rate.

13           ASSEMBLY MEMBER BROWNLEY: Well, you know, and I'd  
14 certainly like to hear from others on this issue because I  
15 think that trying to figure this out on the dais right now  
16 might be a dangerous way to approach this.

17           CHAIRPERSON BRYANT: I think no matter what we're  
18 in the territory of coming back with this next month, but I  
19 think having the conversation will help us -- help the staff  
20 figure out what to do.

21           ASSEMBLY MEMBER BUCHANAN: I don't want to hold up  
22 though the approvals for this month, even if we approve them  
23 at the lower rate and then fund -- you know, agree upon them  
24 next month at a higher rate because I -- you know, that  
25 leaves those projects in limbo as well and takes that much

1 longer to get out the bids and everything for these  
2 projects.

3 ASSEMBLY MEMBER BROWNLEY: I'm not sure --

4 CHAIRPERSON BRYANT: We haven't gotten to that  
5 item yet. And I think that the apportionment part which is  
6 in whatever, Tab 7, is not impacted by any of this rate  
7 discussion because that was clearly in the old -- at the old  
8 level, I think.

9 ASSEMBLY MEMBER BROWNLEY: And I just want to say  
10 I do agree with Ms. Buchanan that I think that, you know,  
11 there is going to be -- there's got be -- there's going to  
12 be a cutoff point at someplace in time. I mean there's no  
13 question about that and -- but I think that we -- you know,  
14 relooking at the process I think is prudent.

15 CHAIRPERSON BRYANT: Okay. Let's hear from  
16 Department of Finance.

17 MR. FERGUSON: Chris Ferguson, Department of  
18 Finance. In addressing the issue that's been brought up  
19 here, we'd just like to note that on the workload it's an  
20 ebb and a flow. So if you were to take this action, you  
21 would look back also and say, well, as of December 2008  
22 there were certain projects that benefited from being at the  
23 2009 level.

24 So we're just saying to consider the ebb and the  
25 flow, that some districts were advantaged in the past and in

1 this case, some districts are at the new level and we'd just  
2 like to state that for the record.

3 ASSEMBLY MEMBER BROWNLEY: And I think that we  
4 have to weigh all of that. I just think that it's prudent  
5 for us to take another look and to see if we can come up  
6 with a system that we believe is equitable and fair and it's  
7 going to be painful nonetheless because a line is going to  
8 have to be drawn.

9 So the pain's not going to go away. It's just a  
10 matter of whether we can be more consistent and have more I  
11 think stable rationale.

12 CHAIRPERSON BRYANT: MR. Diedrick.

13 MR. DIEDRICK: I agree that there needs to be a  
14 date certain, but I'm also concerned about there being some  
15 finality to the Board's actions. I mean I wasn't here at  
16 the last one, so I can't speak to that, but I am concerned  
17 that depending upon, you know, how you see equities on a  
18 month-to-month basis, the same issues keep getting raised  
19 over and over again.

20 I assume that last month you had a reasoned  
21 discussion and came to a conclusion that some of you may  
22 subsequently regret or wish to change, but I am concerned  
23 that there is some finality so that there'll be some  
24 consistency and ability to move forward.

25 CHAIRPERSON BRYANT: Other public witnesses?

1           MR. GONZALEZ: My name's Richard Gonzalez, Richard  
2 Gonzalez & Associates. I'm here representing both Sierra  
3 Sands Unified School District and East Side Union High  
4 School District.

5           Specifically their point relates to timing and  
6 processing within OPSC. In both those districts, projects  
7 cases that were on the January Board for apportionment, they  
8 responded affirmatively to all of the requirements of the  
9 15-day letter back in July and August of 2009.

10           It was not until January that their action was  
11 presented to the Board. That is a concern for the school  
12 district.

13           In response to Department of Finance, you talk  
14 about how we have ebb and flow and how December '08, we need  
15 to have considered what happened there versus December 2009.

16           I submit to you that in December 2008 that as a  
17 general rule, staff was very good about bringing projects  
18 forward to the State Allocation Board within a reasonable  
19 time after the completion of the 15-day letter, anywhere  
20 from two to four weeks from that point and you know where  
21 the cutoff was.

22           But that has not happened in this December 2009  
23 flow. There's been, because of probably furloughs, probably  
24 because of other workload requirements and other  
25 assignments, there has been delays.

1           CHAIRPERSON BRYANT: I think -- I just really -- I  
2 think there's another distinction that needs to be made too  
3 is that in 2008 we were working on apportionments and not on  
4 this unfunded approval list and I think that this unfunded  
5 approval list has created -- not good or bad, it's just  
6 created a lot of questions and what the meaning of it is and  
7 we're -- as I've said before, we're kind of in uncharted  
8 territory and which rules apply, which -- is it the  
9 apportionments rolls, is it the unfunded approval list --  
10 unfunded approval list from years' past where we were  
11 waiting for a new bond to be passed or is it a new unfunded  
12 approval list.

13           And so I think it's really important that we  
14 distinguish this wrestling that we're kind of going through  
15 based on which lists we are talking about. I think it  
16 makes -- I don't -- I'm not saying it necessarily makes a  
17 difference, but I think we have to -- it's a little -- we  
18 can't compare the old -- what happened in 2008 to what  
19 happened in 2009 and what's happening right now, at least in  
20 my view.

21           MR. GONZALEZ: Well, again it's a case of I think  
22 that the projects that have been presented by staff, once  
23 the 15-day letters were completed --

24           CHAIRPERSON BRYANT: Right.

25           MR. GONZALEZ: -- the district had good feelings

1 about it being at the next available State Allocation Board  
2 meeting.

3 MR. MIRELES: I'm sorry. Again that's never a  
4 commitment from our office. We don't commit that because  
5 you got a 15-day letter this month that the project is  
6 scheduled to the next Board.

7 MR. GONZALEZ: But we did have good feelings about  
8 it and we knew that either that month or the following month  
9 we were on the Board.

10 CHAIRPERSON BRYANT: And that's -- okay.

11 MR. GONZALEZ: And that was fairly consistent.

12 CHAIRPERSON BRYANT: Thank you.

13 MR. GONZALEZ: Back to the East Side and Sierra  
14 Sands, their concern is that it took six months -- five to  
15 six months from the date of a complete acceptance, if you  
16 will, a consent between the staff and the district to  
17 actually get to a State Allocation Board.

18 Had we had a December meeting, I honestly believe  
19 that that would have been on that agenda and therefore they  
20 would have received a higher per pupil grant allowance.

21 MS. LeBLANC: Good afternoon. My name is Lisa  
22 LeBlanc and I'm the Executive Director from Fresno  
23 Unified -- Facilities Management Planning for Fresno Unified  
24 and I wanted to give you our perspective from being on the  
25 ground and actually having projects on the list and we have

1 two projects that are on the February list.

2 Both of those projects are from -- for one of our  
3 high schools that has significant needs.

4 And we submitted that project in July of last  
5 year, got to our 15-day letter process with no additional  
6 issue.

7 So because of the need at the high school, we went  
8 ahead and we put that project out to bid. We have the  
9 project under construction. So what we are looking at today  
10 is if in fact we do get the decrease in funding, there's a  
11 significant drop in the funding available for us.

12 And so your consideration today of looking at both  
13 a January and February list is definitely appreciated by our  
14 school district that has the projects under construction and  
15 are trying to adjust the need at the school.

16 MS. BECKER: Christina Becker, Santee Schools.  
17 I'm sorry I created such a mess sometimes when I bring up  
18 things, but what I want to say is that I always tried to  
19 work with my OPSC staff, so I called them the day after last  
20 month's meeting. I said what happened, would I have been on  
21 the December Board, can you tell me, and I don't know if you  
22 can come to a decision today.

23 I know that when I look at the funding, I knew  
24 about that 120-day rule, but I also with this new program  
25 have always tried to say that's a goal and with all the hard

1 work that we do with OPSC I kind of set up, it should happen  
2 within six months.

3           So then when it took eight months or longer, I was  
4 just so frustrated. I kept coming up trying to wait for it  
5 to happen in November and then for it to happen in December.

6           I knew I was behind. I can't tell you what day to  
7 pick on the thing. I think that this discussion is now  
8 being very fair and I would recommend that we work with  
9 either the level of staff and they come back and say what  
10 they think is fair or what they know, you know, based on  
11 their caseload and workload and it would be greatly  
12 appreciated by our school district if our projects that were  
13 in January and in February, despite how long the list, were  
14 with the old CCI. Thank you.

15           CHAIRPERSON BRYANT: I think our legal counsel had  
16 something to add to the discussion.

17           MS. BORON-IRWIN: Thank you. I just wanted to  
18 caution the Board on the -- on their motion to maybe  
19 reconsider this action.

20           Basically the action that was taken at the January  
21 meeting was a final action and absent some sort of specific  
22 authority, administrative agency or a board doesn't, as a  
23 general rule, have authority to either grant a hearing or  
24 reconsider an item that they've made a final action on.

25           CHAIRPERSON BRYANT: It's not a question of

1 whether or not -- I thought it was a question of whether or  
2 not they were expressly prohibited to reconsider.

3 MS. BORON-IRWIN: No.

4 CHAIRPERSON BRYANT: Can a -- a board cannot bring  
5 the same item back and put it back on the agenda again and  
6 change their -- change a previous decision?

7 MS. BORON-IRWIN: If there was a final decision,  
8 no, they cannot do that absent some specific authority.

9 CHAIRPERSON BRYANT: Okay.

10 ASSEMBLY MEMBER BROWNLEY: It's my understanding  
11 that the prevailing -- you know, the prevailing side, if  
12 there is additional information that would persuade a  
13 decision differently, the prevailer can bring back a motion  
14 for reconsideration.

15 MS. BORON-IRWIN: That may be at the same meeting,  
16 but --

17 CHAIRPERSON BRYANT: Would that mean that any  
18 decision an administrative body makes, then they'd have to  
19 go back to the Legislature and get a statutory change? Is  
20 that how it would work?

21 MS. BORON-IRWIN: Well, yeah, and I would also  
22 say -- I think I just misstated myself. But I think that --  
23 let's just say you had Robert's Rules of Order and they  
24 permitted that type of motion to be brought by a prevailing  
25 party on something that either failed or passed in -- you

1 know, a previous action, if you didn't have the statutory  
2 authority, I don't think you'd get it from Robert's.

3 CHAIRPERSON BRYANT: Can I ask staff a question.  
4 So on this -- if -- what is -- if we take these two -- the  
5 two categories of list, the unfunded approvals and the  
6 amended unfunded approvals, that stand not acted on as of  
7 this moment and we set them aside and we bring it back next  
8 month, what is that -- what is the impact of that on the  
9 districts and what is the impact of that on the lists?

10 ASSEMBLY MEMBER BROWNLEY: Madam Chair, I think  
11 what we would be doing is not really a reconsideration on  
12 this. We would be deliberating on an additional decision in  
13 terms of parameters.

14 So we set one parameter and we could have another  
15 discussion on looking I think at another parameter.

16 I think I was also requesting reconsideration on  
17 an entirely different issue relative to this and the  
18 reconsideration that I was requesting was with regards to  
19 the developer fee issue.

20 But I don't want to complicate that right now for  
21 the moment on this issue, but I think I was probably  
22 confusing -- I was creating some of the confusion initially.

23 MS. SILVERMAN: Point of clarification, I mean  
24 we're setting timelines to reevaluate these projects based  
25 on 120-day rule. So I mean that moving forward, are we just

1 saying that we're just performing that review for those two  
2 months? Because potentially it --

3 ASSEMBLY MEMBER BROWNLEY: I don't think we're  
4 saying anything about 120-day rule. We're just saying that  
5 we want to go back and look at it again.

6 MS. SILVERMAN: No. Yeah, I understand that.

7 CHAIRPERSON BRYANT: Yeah, I think what I'm asking  
8 is if we take -- if we don't -- because right now by our  
9 action this means that the amended unfunded approvals that  
10 we did last time at the higher rate are out there somewhere.  
11 We're not adding these new -- these February unfunded  
12 approvals to the list.

13 I'm just asking does this -- other than the fact  
14 that it's -- there's major disappointment that they're  
15 waiting another month to actually be on our unfunded  
16 approval list. I think we heard from the Treasurer that the  
17 amount of bond sales is going to not go through our entire  
18 unfunded approval list even that we have now based on what  
19 they're selling between now and our next meeting.

20 I'm just trying to figure out if we create -- put  
21 these projects in jeopardy if we wait because I would  
22 like -- what I'd also like to suggest is that I think that  
23 this question of the Board being able to reconsider its  
24 previous actions -- mind you, I'm really of the mind that we  
25 need to start making decision like, you know, the Director

1 of General Services said, make a decision, stick to it, and  
2 move on, at the same time, if we don't have the ability to  
3 reconsider a decision, there's something wrong with that  
4 picture and I think there's a difference of opinion of  
5 certainly my lawyer has kind of a different view of that. I  
6 think we could talk to the Attorney General and kind of work  
7 out some of that and it relates to our rules committee  
8 decision.

9 I just want to make sure that by waiting a month  
10 on these two lists that we don't harm the districts.

11 MR. MIRELES: The impact to the January list, it's  
12 my understanding and this might be a legal question that  
13 because -- if the Board hasn't taken action to change those  
14 grants, they're going to keep the grant amounts that were  
15 approved in January.

16 Now for the projects that are scheduled to be  
17 approved for February, if the Board doesn't approve those  
18 projects for February and they go to the March, then the  
19 question of which Board date do those projects receive may  
20 come into question.

21 Right now because we're processing things based on  
22 Board approval -- however, the Board could take an action in  
23 March to say that these projects should get the February  
24 date.

25 The list right now is based on Board dates, so if

1 the February projects don't get a --

2 CHAIRPERSON BRYANT: Well, if we take no -- if we  
3 don't approve anything today, then we have a gap in our list  
4 from January to March; right? Is that what the effect would  
5 be?

6 MR. MIRELES: Yes. Yes.

7 MS. KAPLAN: Well, just to clarify what Juan said  
8 is, is there isn't in effect because the unfunded list and  
9 because the Treasurer said that the bond sales are not going  
10 to cover the entire unfunded list, if no action is taken,  
11 the ones that are on the February list, if we figure out  
12 which date and time the 120 or however objectively the Board  
13 decides to determine what doesn't get attached to the  
14 negative CCI, the Board can also at the same time say these  
15 projects are separate subject to the February Board date and  
16 then you have your March projects.

17 What I think is how you clearly define it is  
18 what's the date, the cutoff date -- not the Board date but  
19 what's the cutoff date so for the negative CCI to apply.

20 CHAIRPERSON BRYANT: Ms. Moore.

21 MS. MOORE: If I may, it doesn't really matter in  
22 the larger scheme of things because no one is disadvantaged.  
23 They're in a class of their own and they are -- if they are  
24 not approved in January -- I mean excuse me -- in February  
25 and we take action in March, all of them are going to have a

1 March date and it's -- the list simply then goes from  
2 January to March and there's really effectively no  
3 consequence. Is that correct?

4 MR. MIRELES: Yeah. Actually -- and thinking more  
5 about it, the list for March would be prioritized in date  
6 received, so they should be ahead of the March items.

7 CHAIRPERSON BRYANT: Okay.

8 ASSEMBLY MEMBER BUCHANAN: I'm sorry. I -- I try  
9 to get all this straight because we're saying we've approved  
10 the January list; right?

11 MR. MIRELES: Um-hmm.

12 ASSEMBLY MEMBER BUCHANAN: At the lower rate and  
13 if we want to be sure that the February list is not at the  
14 lower rate, we need to hold it off till the next meeting.  
15 Is that what you're saying? And then change the rate at the  
16 same time, which if you're not going back and changing  
17 January, then you have January funded at a lower rate than  
18 February that makes no sense.

19 MS. KAPLAN: Well --

20 ASSEMBLY MEMBER BUCHANAN: So -- let me just  
21 finish and see if I can try and make some logic out of all  
22 of this.

23 I still believe very strongly that these districts  
24 on the February list are entitled to know whether or not  
25 they're going to be funded and the real decision that

1 these -- and the second decision that we have to make is do  
2 we want to change the date at which the lower rate kicks in  
3 and what the criteria is for that.

4 Now, I would still argue that it's got to be based  
5 on one of our agendas and I would still argue it would going  
6 through March 4th -- or March 4 would be because that gives  
7 you 180 days by which an item should have been on our agenda  
8 and it then would remove any penalty for projects that would  
9 have been on here in December.

10 But I could live with having some other criteria,  
11 but I do think we have to be clear on it because if not, we  
12 will be discussing this meeting after meeting and cherry  
13 picking and see another project that came up from 2008 or  
14 January 2009 or whatever. So there's got to be some kind of  
15 clarity that we give to staff.

16 But I do think that it makes no sense not to let  
17 the schools know that they can go forward with -- the  
18 schools on the February list that they can go forward with  
19 their projects.

20 CHAIRPERSON BRYANT: So what's in front of us is  
21 the February list at the lower rate.

22 ASSEMBLY MEMBER BUCHANAN: Yeah. What my -- if we  
23 need a separate action item and it has to be put on the  
24 agenda, my recommendation would be that we approve them and  
25 if we have to retroactively change the date by which the new

1 rate applies that we do it that way, if that's how -- you  
2 know, we're able to accomplish that.

3 SENATOR LOWENTHAL: I agree with that. I'm just  
4 not sure how that conflicts with our legal opinion though.

5 MS. BORON-IRWIN: Well, it does conflict with it.

6 SENATOR LOWENTHAL: Yeah. So --

7 MS. BORON-IRWIN: Yes, it does conflict with my  
8 opinion.

9 ASSEMBLY MEMBER BROWNLEY: Help us to understand  
10 why.

11 MS. BORON-IRWIN: Well, because the action that  
12 you took in January was to, first of all, it was a consent  
13 item and the unfunded approvals for January were on that  
14 item and you approved that.

15 SENATOR LOWENTHAL: Right.

16 MS. BORON-IRWIN: The second action that you took  
17 was to approve the new CCI Index for 2010, but not have that  
18 not -- have that apply from those unfunded approvals from  
19 January 2010 going forward and those that were on the  
20 unfunded list for '09 were going to receive the last year's  
21 rate.

22 So what you're proposing now is to not only change  
23 the unfunded approval from -- the January unfunded approval  
24 list from the 2010 index, but you're proposing to have that  
25 2010 index not apply to February or March but going forward.

1           So those three months basically are contrary to  
2 what your opinion was in January.

3           ASSEMBLY MEMBER BUCHANAN: My proposal would be  
4 that it applies with the March --

5           MS. KAPLAN: Well, and just quickly as I'm reading  
6 the Attorney General's opinion that you've relied on, it  
7 further states that the rule would not apply where the  
8 agency's decision exceeded its authority or was made without  
9 sufficient evidence.

10           I think there's question as to whether the Board  
11 had authority to do what it did. So it could be argued both  
12 ways and I think it's not something for us to decide  
13 tonight. I think we need to have actually ask the AG  
14 because, you know, Madam Chair, I hear that you've got  
15 conflicting advice from your attorney that I would -- I  
16 would hope that we'd make the right decision and we actually  
17 see what proper authority we have instead of deciding it  
18 tonight because I am actually in a different opinion than  
19 our legal counsel as well.

20           ASSEMBLY MEMBER BROWNLEY: And I think --  
21 Ms. Buchanan just reminded me too. I think the -- on  
22 another important element here is that there in some sense  
23 by seeing this list, there's new evidence and so, you know,  
24 we should be able to make good decisions, you know, and if  
25 we've not made a good decision, we should be able to, you

1 know, right a wrong in some sense. It just doesn't make  
2 sense.

3 MS. BORON-IRWIN: There are some exceptions to  
4 that and one of them is that you acted without authority,  
5 but new evidence by itself would not necessarily fall within  
6 that exception.

7 But I'm happy to have you get more than one legal  
8 opinion on this matter.

9 CHAIRPERSON BRYANT: I just think it's -- this is  
10 sort of my view about the list. I mean I find it  
11 difficult -- and I've had this conversation with many of you  
12 when you come to my office -- of what would have happened,  
13 what could have happened, what might have happened.

14 You know, if we had had a meeting, if we hadn't  
15 had a meeting, to me I'd really like to have us have rules  
16 that everybody understands, rules that we can all apply,  
17 rules that we understand and we have motions -- we have  
18 decisions by the Board that are uniformly applied.

19 But it's really critical that, you know, as we  
20 move forward that we have confidence that -- in our lists  
21 and in what's there. And so I'd really -- that's why I'm --  
22 I'm more inclined to want to -- I want to make sure. I  
23 don't want any district to be harmed by not taking an action  
24 on either one of these pots this month.

25 I just -- I feel like making darn sure that we

1 have the right -- the legal part's correct, that we have the  
2 policy down correct, and I don't -- I struggled with this  
3 all day today personally and I'm not a hundred percent -- I  
4 don't know where -- I'm not positive and I don't want to  
5 take an action and have my lawyer telling me you can't fix  
6 it and I don't -- and I want to -- I was just thinking we  
7 might have more flexibility if we do all of this in March if  
8 we don't harm the districts. That's why I was asking.

9 MS. SILVERMAN: And I think we can move forward  
10 and like Juan mentioned earlier, we can have -- order the  
11 projects by the received date.

12 MS. KAPLAN: And Assembly Member Buchanan, I  
13 understand because basically when -- what boards rely on is  
14 when they get approved, they kind of either decide whether  
15 if they have their own bond funding to move forward or  
16 whatnot.

17 But here's also just something to think about.  
18 The Board decided not to have a December meeting. Those  
19 that would have been heard in December were put on the  
20 January, so they had to wait till January to move forward.

21 I think a month at this point it would be -- the  
22 districts would probably say don't take action if it means  
23 you can't review it and not have the negative CCI apply.

24 ASSEMBLY MEMBER BUCHANAN: Yeah. I can accept  
25 that. I just -- based on what I'm hearing from Counsel

1    though, the decision regarding when the increase comes into  
2    effect will not affect whether or not we're approved this  
3    month or next month.

4                I mean if I'm hearing you correctly, what you're  
5    saying is that we can't take an action to change the fee  
6    back, so if that's the case --

7                MS. BORON-IRWIN: That's my opinion.

8                ASSEMBLY MEMBER BUCHANAN: When we approve it, it  
9    would have no bearing on whether or not they got funded at  
10   the higher rate because if you were able to make the  
11   decision to change the date of the rate, then it would apply  
12   equally, but I can live with bringing it back if  
13   districts -- you know.

14               ASSEMBLY MEMBER BROWNLEY: So for me, I would --  
15   if Mr. Duffy wouldn't mind, give us -- at least assure us  
16   that if we delayed any decision that there wouldn't be any  
17   impact on school districts. That's the first element I  
18   think that, you know, I would like to have answered and  
19   then -- well, let's get an answer.

20               MR. DUFFY: Thank you. Again Tom Duffy for  
21   C.A.S.H. What seems to me to be the issue, Madam Chair, and  
22   members, Ms. Brownley, is that if there isn't an action  
23   taken today, then as I think Juan was referencing, the  
24   February approvals would be lumped in with the March  
25   approvals.

1           It may be that you have the ability to indicate in  
2 some manner that these are segregated from March if you  
3 delay and that it would be your will through whatever action  
4 that OPSC would treat them as if they had a February date  
5 because they were on this agenda and therefore separate them  
6 from March because of the question of how many bonds are  
7 sold and how far does it go. So they wouldn't be harmed in  
8 terms of their date.

9           So that may be one way to address that.

10          And just -- and I'm -- if I may. I'm -- I'm  
11 sorry.

12          CHAIRPERSON BRYANT: Senator Huff wanted to say  
13 something.

14          MR. DUFFY: Sorry.

15          SENATOR HUFF: Well, Madam Chair, I'm just going  
16 to make a motion. I agree we didn't have sufficient  
17 evidence last time. I believe it's changed things, but we  
18 have a legal opinion that says we're not entitled to do  
19 that.

20          So I think fundamentally we have to table this  
21 until next month, get a legal opinion that allows us to --  
22 that knows our parameters of what we could do, and then we  
23 can work forward.

24          ASSEMBLY MEMBER BROWNLEY: I --

25          SENATOR HUFF: Just let me make the motion. And

1 so I would move that we do table it, that we direct staff to  
2 separate the agendized stuff from this and say that  
3 qualifies for being on this month's agenda until we can get  
4 that taken care of and then we can intelligently move  
5 forward and hopefully undo what we did and if not, at least  
6 we know what we can do. That would be my motion.

7 CHAIRPERSON BRYANT: Is there a second?

8 MR. DIEDRICK: I second.

9 CHAIRPERSON BRYANT: Call the roll on that.

10 ASSEMBLY MEMBER BROWNLEY: So when are we going to  
11 get a different legal opinion to know how we could proceed  
12 at the next meeting?

13 SENATOR HUFF: Hopefully by next month. That's --

14 ASSEMBLY MEMBER BROWNLEY: Well --

15 CHAIRPERSON BRYANT: Definitely.

16 ASSEMBLY MEMBER BROWNLEY: So -- okay. So that  
17 doesn't have to be part of the motion then. I just want to  
18 be clear. If we don't -- if it doesn't have --

19 SENATOR HUFF: I would amend the motion to include  
20 that without putting too much pressure on the legal minds  
21 around here.

22 ASSEMBLY MEMBER BROWNLEY: Okay.

23 MR. DIEDRICK: I second the amendment.

24 CHAIRPERSON BRYANT: Okay. Can you call the roll  
25 on that.

1 SENATOR LOWENTHAL: What are we voting on now?

2 CHAIRPERSON BRYANT: We're voting on tabling it  
3 till next month and segregating these February projects with  
4 whatever comes up in March.

5 SENATOR HUFF: And figuring our legal --

6 CHAIRPERSON BRYANT: Figuring out our legal angle.

7 SENATOR LOWENTHAL: Got it.

8 MS. GENERA: Senator Lowenthal.

9 SENATOR LOWENTHAL: Aye.

10 MS. GENERA: Senator Huff.

11 SENATOR HUFF: Aye.

12 MS. GENERA: Assembly Member Fuller.

13 ASSEMBLY MEMBER FULLER: Aye.

14 MS. GENERA: Assembly Member Brownley.

15 ASSEMBLY MEMBER BROWNLEY: Aye.

16 MS. GENERA: Assembly Member Buchanan.

17 ASSEMBLY MEMBER BUCHANAN: Aye.

18 MS. GENERA: Ron Diedrick.

19 MR. DIEDRICK: Aye.

20 MS. GENERA: Kathleen Moore.

21 MS. MOORE: Aye.

22 MS. GENERA: Lyn Greene.

23 MS. GREENE: Aye.

24 MS. GENERA: Cynthia Bryant.

25 CHAIRPERSON BRYANT: Aye.

1 MS. GENERA: Carries.

2 CHAIRPERSON BRYANT: Okay.

3 MR. MIRELES: Madam Chair, can I just seek  
4 clarification for the March projects. Should they be  
5 calculated using a 2010 CCI or 2009?

6 CHAIRPERSON BRYANT: I think we -- I think that  
7 we're going to have to have -- have it come back probably  
8 with presenting options because I think that you heard that  
9 we have date issues and I think we can kind of work through  
10 that. Don't you think? I mean --

11 MR. MIRELES: Okay. For part of the consent item,  
12 the projects --

13 CHAIRPERSON BRYANT: I think you heard the -- we  
14 can look at this 120-day question and we can -- you know,  
15 let's just see -- provide options to the Board.

16 SENATOR LOWENTHAL: I think that's --

17 CHAIRPERSON BRYANT: And it will be also couched  
18 in what we find -- you know, what the recommended final  
19 legal determination is.

20 ASSEMBLY MEMBER BROWNLEY: And I just -- you know,  
21 I don't want to add insult to injury here, but I, you know,  
22 originally wanted to ask for reconsideration of the issue of  
23 the developer fees in terms of that decision.

24 Now, I would imagine that the same legal  
25 opinion -- the legal opinion is the same for this issue as

1 that.

2 MS. BORON-IRWIN: It would be, and, you know, I  
3 will go out of my way to try to, you know, find some  
4 authority to support whatever this Board does. I didn't  
5 have a lot of time to think about this issue, but, you know,  
6 I feel that my job here is to assist you and support the  
7 actions this Board wants to take.

8 ASSEMBLY MEMBER BROWNLEY: So -- and again it  
9 might be that the Board doesn't want to reconsider, but  
10 from -- in my opinion when I walked away from this meeting  
11 that we decreased the grants -- the student grants to  
12 schools and we -- and the developer fee stayed the same.

13 So it just -- it feels to me as though if we're  
14 going to reduce the fee and put a larger burden on the  
15 schools and that the proposed developer fee increase was  
16 pennies, I mean it just wasn't very much at all, that  
17 developer fees -- the developer could participate, you know,  
18 in helping to construct the schools in very difficult  
19 economic times.

20 So I'm just asking for reconsideration and again I  
21 think it needs to be couched based on whether there are --  
22 there's a legal opinion to support that if the Board so  
23 chooses.

24 CHAIRPERSON BRYANT: Can I just make -- can I make  
25 a suggestion on that. Can we table that for the time being

1 and do that in March when we have a definite how we can do  
2 it. Let's clarify the legal issues. I'll work with, when  
3 we get to it, our Rules Committee Chair on that and bring it  
4 back clean next month.

5 ASSEMBLY MEMBER BROWNLEY: Yes. Thank you, Madam  
6 Chair.

7 CHAIRPERSON BRYANT: Okay. Thanks.

8 ASSEMBLY MEMBER BUCHANAN: Can I just have one --  
9 weren't both developer fees lower and we decided -- made the  
10 choice to keep them the same.

11 CHAIRPERSON BRYANT: It was like a penny I  
12 thought. That's what I kind of remember.

13 ASSEMBLY MEMBER BUCHANAN: That was -- my motion  
14 that failed would have reduced it by a penny. I thought the  
15 other -- the other index was to increase it? I thought they  
16 were both lower and we kept it the same.

17 CHAIRPERSON BRYANT: Yeah. I think it was a penny  
18 if I recall.

19 ASSEMBLY MEMBER BUCHANAN: A penny lower. Right.  
20 And we kept it the same.

21 CHAIRPERSON BRYANT: I might be crazy, but I  
22 thought it was a penny.

23 ASSEMBLY MEMBER BROWNLEY: It's really the  
24 principle of the thing --

25 CHAIRPERSON BRYANT: Okay. So moving on to the

1 **Consent Specials**, Tabs 5 and 6, is there any questions or  
2 comments from the Board on the Consent Special items?

3 Any public comment? Is there a motion on --

4 MS. MOORE: I'll move the specials under Tab 5 and  
5 6.

6 SENATOR HUFF: Second.

7 CHAIRPERSON BRYANT: Can you call the roll.

8 MS. GENERA: Senator Lowenthal.

9 SENATOR LOWENTHAL: Aye.

10 MS. GENERA: Senator Huff.

11 SENATOR HUFF: Aye.

12 MS. GENERA: Assembly Member Fuller.

13 ASSEMBLY MEMBER FULLER: Aye.

14 MS. GENERA: Assembly Member Brownley.

15 ASSEMBLY MEMBER BROWNLEY: I'm sorry. Are we  
16 voting on the Consent Agenda?

17 CHAIRPERSON BRYANT: Yeah. 5 and 6.

18 ASSEMBLY MEMBER BROWNLEY: Aye.

19 MS. GENERA: Assembly Member Buchanan.

20 ASSEMBLY MEMBER BUCHANAN: Aye.

21 MS. GENERA: Ron Diedrick.

22 MR. DIEDRICK: Aye.

23 MS. GENERA: Kathleen Moore.

24 MS. MOORE: Aye.

25 MS. GENERA: Lyn Greene.

1 MS. GREENE: Aye.

2 MS. GENERA: Cynthia Bryant.

3 CHAIRPERSON BRYANT: Aye.

4 MS. GENERA: Carries.

5 CHAIRPERSON BRYANT: Okay. Tab 7, Ms. Silverman,  
6 did you want to present on that?

7 MS. SILVERMAN: Sure. Tab 7, draw your attention  
8 to page 263. This item is to make recommendation that the  
9 **Board provide state apportionments for the School Facility**  
10 **Program projects that previously received unfunded approvals**  
11 **by this Board.**

12 Since December 2008, the Board has been unable to  
13 provide apportionments to school districts for the School  
14 Facilities Program. In March 2009, this Board began an  
15 unfunded approval list pursuant to School Facilities Program  
16 Regulation 1859.95 which states the Board has no funds to  
17 apportion and the Board will also accept and process  
18 applications for apportionment for purposes of developing an  
19 unfunded list based on the date of application is ready for  
20 apportionment.

21 The School Facility Program regulations defines  
22 ready for apportionment as approved applications where the  
23 OPSC has completed its final review and determined that it  
24 meets all requirements of law for an apportionment and the  
25 OPSC will recommend approval to the Board.

1           Staff has reconciled all the funds currently  
2 remain in School Facility Program funds that was part of the  
3 October and November bond sale. Bond proceeds must be  
4 allocated in accordance to the restrictions placed on those  
5 funds.

6           Further apportionments must be from the same fund  
7 which provides -- that's also matched up with the projects  
8 on the unfunded approval list.

9           Currently there's \$136.2 million that is available  
10 to provide apportionments to projects previously on the  
11 unfunded list and those allocations are \$83.6 million in  
12 Proposition 1D. In Proposition 47, \$52.6 million, and that's  
13 on page 264.

14           The projects listed on Attachment A are eligible  
15 for apportionments based on the Board's unfunded approval  
16 date and date order received. Attachments B and D highlight  
17 the limitations of the funds in which each bond fund in  
18 which -- the funds -- we could fund a project in that order.

19           Attachment E is the master list of the unfunded  
20 approvals without the January 10 unfunded approval items.

21           In the past, the Board has only provided  
22 apportionments to projects when the project received on the  
23 same date may be funded at once just for the equity issues.  
24 And due to the special circumstances of the fiscal crisis,  
25 staff is recommending partial dates be funded because of the

1 limitation of cash available with each bond fund, limitation  
2 of cash available that we'll not be able to fund an date;  
3 however, the cash available can provide full funding to some  
4 projects within that date.

5           We cannot fund on Attachment B all projects that  
6 received a March 25th date from Proposition 1D and based on  
7 the date of the applications received, we can only fund half  
8 of the projects listed in that item for Fresno Unified.

9           And they have selected accordingly the projects  
10 they would choose to fund first. This funding is consistent  
11 with past practices and by providing apportionments at this  
12 time offers following advantages. School districts can move  
13 forward with their projects with the certainty that funds are  
14 available for immediate release.

15           School districts will also have 18 months to  
16 request the fund release. Otherwise these funds will be  
17 rescinded and made available to the next project.

18           This approach takes into consideration the fiscal  
19 crisis and provides funding for as many projects as possible.

20           It should be noted that staff recommendation on  
21 number two is that the apportions be contingent upon staff  
22 review of the financial hardship re-review in accordance to  
23 1859.81.

24           We have indentified projects that would have to  
25 require a re-review and those are the projects listed there.

1 Excuse me -- school districts listed there. Regulations  
2 require a re-review of a district's funds for those projects  
3 that are on the unfunded approval list for more than 180  
4 days.

5           Additionally staff recommendation on number three  
6 is these projects would be held open and not full and final  
7 until the Board has made a recommendation on AB127 adjustment  
8 pursuant to Education Code 17072.11(b).

9           With that, we're recommending to approve the motion  
10 -- fund the projects.

11           CHAIRPERSON BRYANT: Okay. I just want to make --  
12 just mention that I have had a request that we consider the  
13 apportionment for Lammersville separately, so if we have a  
14 motion, please exclude Lammersville. We can vote on that one  
15 separately.

16           MR. DIEDRICK: I so move.

17           ASSEMBLY MEMBER BROWNLEY: Second.

18           CHAIRPERSON BRYANT: And do we have public comment  
19 on this item?

20           MR. GONZALEZ: Madam Chair and Board members,  
21 Richard Gonzalez of Richard Gonzalez & Associates. I'd like  
22 to speak to the point on financial hardship reevaluations.

23           I've kind of drew some notes from my own research  
24 and sequence of events and related regulations that I was  
25 able to look up. And it seems to me that one of the main

1 issues that financial hardship districts are looking at,  
2 especially ones on this particular list, is the fact that  
3 they did not receive an apportionment because the state chose  
4 not to sell voter approved bonds. It was not because the  
5 state ran out of funding authority.

6           So should the financial hardships be reevaluated? I  
7 suggest that they should not have to be subject to the  
8 reevaluation.

9           One of the things that I noted in my research was  
10 the Chair back in March clearly indicated that although the  
11 Board had the authority to make apportionments, that decision  
12 was not being made at that time, but they wanted to continue  
13 to approve projects because it would be keeping districts out  
14 of jeopardy as it relates to clock-sensitive issues as  
15 financial hardships have that close-sensitive issue about  
16 being reevaluated.

17           By having done so, the Board has allowed the staff  
18 to continue process applications and have provided some  
19 assurance to the school districts about whether their  
20 projects would or would not be approvable at the end of the  
21 day subject to when the money would come out.

22           Staff does mention A(1) section of the regulations  
23 which provides that the projects that are financial hardship,  
24 that if they're on the unfunded list for 180 days, then they  
25 be subject to another review.

1           However, in Section 95 of your regulations, that  
2 specifically defines an unfunded project to be one in which  
3 the SAB has no funds available. The reality is the State  
4 Allocation Board did have money available by voter approved  
5 bonds. It was just not apportioned to these projects.

6           MS. BORON-IRWIN: Excuse me, Madam Chair. I think  
7 Mr. Gonzalez is speaking on a matter that isn't in front of  
8 the motion.

9           CHAIRPERSON BRYANT: Oh, good point.

10          MR. GONZALEZ: I'm sorry. I thought I was speaking  
11 to Item No. 2 on the motion there.

12          CHAIRPERSON BRYANT: Oh, that's true. I mean can  
13 we move to -- it is part of the staff recommendation. He  
14 moved approved of the staff recommendation.

15          ASSEMBLY MEMBER BUCHANAN: I think he's looking at  
16 the next page.

17          CHAIRPERSON BRYANT: Item 2 on the staff  
18 recommendations is this financial hardship question. Is that  
19 right? Okay.

20          MR. GONZALEZ: If I'm premature, I'm sorry.

21          ASSEMBLY MEMBER BROWNLEY: I think the speaker is  
22 just raising a fundamental policy issue on interpretation of  
23 it and I think it's appropriate.

24          CHAIRPERSON BRYANT: Although the motion that's on  
25 the table does not discuss this financial hardship motion.

1 ASSEMBLY MEMBER BROWNLEY: Oh, the motion on the  
2 table was to --

3 CHAIRPERSON BRYANT: To approve the list as is  
4 and -- except for with Lammersville.

5 ASSEMBLY MEMBER BROWNLEY: Oh. Well, I want to  
6 withdraw my second.

7 CHAIRPERSON BRYANT: Okay.

8 MR. GONZALEZ: Should I continue, Madam Chair?

9 CHAIRPERSON BRYANT: Yeah.

10 MR. GONZALEZ: The financial hardship projects  
11 approval should be provided a retroactive date because they  
12 would have received an apportionment on that date seeing that  
13 the money was actually available to the State Allocation  
14 Board in the form of voter approved bonds.

15 I think the SAB had originally requested OPSC to  
16 provide some emergency regulations that would minimize impact  
17 of the entire budget crisis situation on all school districts  
18 in the State of California and I think that also included the  
19 financial hardship districts.

20 However, when the regulations came forward, they  
21 did not address financial hardship districts, but they did  
22 address other time clocks that were available by creating the  
23 inactive apportionment regulations.

24 Districts that are financial hardships that are on  
25 this list weren't informed of the potential negative impact

1 and therefore there was no opportunity to vet or to discuss  
2 this issue either at the Implementation Committee or to  
3 consider it in front of the Board.

4 So at the -- I'm going to conclude with that at  
5 this point and that is there is some concern here.

6 CHAIRPERSON BRYANT: Next. Did you want to say  
7 something, Ms. Silverman?

8 MS. SILVERMAN: Yeah. I'll share the floor with  
9 Jason Hernandez who can speak to the hardship regulations  
10 item.

11 MR. HERNANDEZ: Good evening. Again my name is  
12 Jason Hernandez and I'm the Audit Supervisor for the  
13 Financial Hardship Program and I've been working with the  
14 Financial Hardship Program in one way, shape, or form since  
15 2000, so basically for the last ten years.

16 Just to provide a little more further clarification  
17 on what was just testified and further testimony that I'll  
18 sure you'll hear after I have a chance to speak.

19 Basically one of the first most important things to  
20 remember one the underlying principles of the Financial  
21 Hardship Program since the beginning and it's also listed in  
22 the Ed Code is that a district is making all reasonable  
23 attempt to fund their local matching share of their projects.

24 If they cannot do that, then they try to enter into  
25 the Financial Hardship Program, to meet the qualifying

1 criteria, and have a review done to see what funding they  
2 have available and that's the way that they show that they  
3 have made all reasonable effort.

4           The financial hardship review -- a regular review  
5 is 180 days status. Once you're approved, your approval is  
6 basically we've looked at your finances, we saw that you  
7 qualified for hardship, we determined amount either a portion  
8 or no contribution that should be applied to your financial  
9 hardship projects, and that's basically frozen for 180 days.

10           When they did the original unfunded list back in  
11 2001, it was the same principle they applied, the same basic  
12 principle of the Ed Code and the basic principle of hardship  
13 that regardless of the reason for the creation of the  
14 unfunded list that your financial hardship approval is frozen  
15 for 180 days. We will not look at it again. We will not  
16 change any of your contribution.

17           If you've been sitting on there like the regulation  
18 states for 180 days, we do not change and look at your  
19 eligibility for those projects. Those projects still qualify  
20 for hardship. You will not be taken off the list -- the  
21 unfunded list for anything that we do in that financial  
22 hardship review.

23           We do not look at your qualifying criteria again.  
24 All we do is a modified review to make sure you're still  
25 following the basic principles of the program and the Ed

1 Code, that you're making all reasonable effort to fund your  
2 projects.

3           And how do they do that? We do that by looking at  
4 your available funds and if there's any additional available  
5 funds, we make the adjustment according.

6           Another important aspect of that is to remember  
7 that zero dollars come back to the state. Sometimes that a  
8 mount of confusion.

9           But no matter what we find on financial hardship  
10 review or an unfunded review, zero dollars come back to the  
11 state. All that means is there's a decrease in the amount of  
12 the financial hardship apportionment and a district has to  
13 contribute some of their own funds, their own capital  
14 facility funding to their own capital facility project and  
15 that way they're making their own -- every reasonable attempt  
16 to fund their projects.

17           And in turn that means that another project further  
18 down the list will now have the opportunity to receive  
19 financial hardship dollars that wouldn't have otherwise. And  
20 that's an important distinction.

21           Again as Lisa had mentioned, this Ed Code 1859.81,  
22 which was approved by the Board -- these regulations were  
23 changed. The item was brought to the Board in June 2001.

24           Before that, it was vetted over several  
25 Implementation Committee meetings before it was brought to

1 the Board. It went through its 45-day public comment period  
2 and there was -- and based on that public comment, there were  
3 some adjustments that were made and it was brought back to  
4 the Board December 12th, 2001, and it was finally enacted  
5 into regulation on December 21st, 2001.

6 And you'll hear a lot of testimony again about  
7 different circumstances between 2001 and the unfunded list  
8 because we ran out of bonding authority and that's why the  
9 unfunded list was created and here in 2010, we had to create  
10 an unfunded list because of the state's inability to sell  
11 treasurer bonds.

12 Well, the regulation does not stipulate the reason.  
13 That's only the cause. That's not the intent. That's just  
14 the cause, what caused this particular unfunded list. There  
15 maybe another unfunded list in the future that's caused by  
16 another reason.

17 Still your financial hardship is frozen for that  
18 amount of time. We will not look at your unfunded -- your  
19 finances again for 180 days, but if it changed and you can  
20 contribute to your projects, the basic premise is you're  
21 supposed to contribute. That's what the law says. That's  
22 what the regulation says, that you should contribute and in  
23 essence that frees up dollars for other projects.

24 But -- finally that basic concept -- because if we  
25 did not do these unfunded reviews, we did not verify that

1 you're meeting this requirement, we're basically not -- we  
2 would lose our ability to have bond accountability and I know  
3 the basic thing that we want out there, especially with all  
4 concerns in the public for future bonds, their main concern  
5 is bond accountability and without these financial hardship  
6 reviews, we cannot have accountability.

7           These do not harm the districts. It's only saying  
8 that if you have dollars, you can contribute them to your  
9 project. We do not change your eligibility and no matter  
10 what, these projects will still stay on the unfunded list.

11           And I will answer any questions that you have.

12           CHAIRPERSON BRYANT: Are there any questions?

13           SENATOR HUFF: I got a question.

14           CHAIRPERSON BRYANT: Senator Huff.

15           SENATOR HUFF: How detailed in this review? How  
16 much time does it take? How much resources?

17           MR. HERNANDEZ: Basically when we've gone to these  
18 unfunded in the past, we allocate all our resources to do  
19 these. We make these unfunded reviews our top priority.  
20 We're willing to offer to go into the field to reduce the  
21 amount of time because typically what causes a lot of the  
22 delay is the back and forth between mailing the packages to  
23 the office, if we need additional documentation.

24           If we go into the field, you know, a typical audit  
25 review, you may be in a couple weeks. We can probably go in

1 the field in a couple days, get all the documentation that we  
2 need, ensure that we have all the documentation, come back to  
3 the office, and we anticipate weeks instead of months to  
4 complete these financial hardship review because they will  
5 definitely be our top priority before anything else.

6 CHAIRPERSON BRYANT: Ms. Moore.

7 MS. MOORE: I understand what you presented. If I  
8 may, there has been a circumstance change between when the  
9 regulation went into place and where we are today and that  
10 circumstance is that through no fault of their own school  
11 districts have been placed on an unfunded list when they  
12 would have normally moved forward in the process.

13 And one of the items that I know we considered in  
14 2009 when this happened was how can we ensure that school  
15 districts are not harmed because of that action and we took a  
16 number of regulations forward to the -- that the Board  
17 adopted all with the intent that we did not want to harm  
18 school districts.

19 So we suspended the 18-month time clock. We  
20 suspended a number of points. What I'm hearing from the  
21 first speaker is that we're not affording the same  
22 opportunity to this situation.

23 MR. HERNANDEZ: And I thank you. Those are good  
24 points. But I just wanted to repeat again that these reviews  
25 are not harming them. What would harm them is if based on

1 this review they were pushed off the unfunded list, they no  
2 longer qualify for the funding, but that's not going to be  
3 case.

4           No matter what we find, that just means additional  
5 contribution. You're not going to lose your place in line.  
6 You would still have your place on the unfunded list. We're  
7 not going to harm you in any way.

8           Those 18-month substantial progress and some of  
9 those other things, those could potentially cause your  
10 project to be rescinded, to reduce costs incurred, and  
11 those -- that definitely would have caused harm and that's  
12 why we looked into some of those things to either freeze  
13 those regulations or to extend the time period for them.

14           This is not taking the project out of line. This  
15 is not changing the overall amount the project will receive.  
16 The project can be made up of three things: obviously state  
17 funding, financial hardship apportionment, and district  
18 contribution, and those three together equal a total project  
19 cost.

20           And so that total project cost is not going to  
21 change. It is just going to be the ratio. So if you budget  
22 a project based on a certain amount of money, say it's  
23 \$10 million, that's still going to be \$10 million no matter  
24 what we find. It's just -- we're just saying now you have  
25 additional dollars that you contribute so your ratio

1 increases.

2           So maybe now instead of 100 percent funding, you're  
3 getting 95 percent funding on your project or you're getting  
4 92 percent. But the 100 percent that you budgeted for is  
5 still the same amount, so you're not being harmed.

6           MS. MOORE: I'd appreciate just hearing from each  
7 of the -- those that are going to testify, the school  
8 districts that may be impacted by this issue, whether or not  
9 they believe that there is a harm and whether or not there --  
10 because of the unprecedented situation of having an unfunded  
11 list and not being able to apportion the projects when we  
12 have bond authorization outstanding whether it has an impact  
13 and are in that same category.

14           So if they can address that when they come forward,  
15 I would appreciate that.

16           CHAIRPERSON BRYANT: Ms. Greene.

17           MS. GREENE: A point of clarification. When you  
18 determine hardship, do you only look at revenue and not any  
19 encumbrances.

20           MR. HERNANDEZ: No. We consider encumbrances and  
21 revenue. Once you're in the Financial Hardship Program, if  
22 you look over that .81 -- 1859.81 section, we look at all  
23 your available capital facility accounts, weigh any  
24 encumbrances you have against that revenue stream that you  
25 have in there and those encumbrances are approved in your

1 initial review, we continue to look at.

2 If you entered into --

3 MS. GREENE: But you don't in this review.

4 MR. HERNANDEZ: No, we do. We do. Basically all  
5 the financial portions of the review, the funds that we look  
6 at, all your related funds and encumbrances, any new  
7 developer fees, redevelopment funds, those type of things is  
8 what we're looking at and it's the same thing that we look at  
9 in the regular financial hardship review.

10 MS. GREENE: Thank you for the clarification.

11 CHAIRPERSON BRYANT: Sir.

12 MR. PETTLER: Good evening, members of the Board,  
13 Matt Pettler with School Facility Consultants. Thank you for  
14 the opportunity to speak with you.

15 I wanted to make a couple points, one on the  
16 unfunded list and unfunded approvals that Jason spoke about.  
17 I have a little bit of a different opinion on those. The  
18 unfunded list and the regulation, as Jason said, was created  
19 in 2001 and it was created for the distinct purpose because  
20 the State Allocation Board was out of modernization bond  
21 funds. There was no authority left and so there was a  
22 regulation created in order to maintain a list of those  
23 projects.

24 When the funding freeze hit in December of 2008, it  
25 threw everybody into chaos and at that time, the State

1 Allocation Board looked at various ways that they could make  
2 sure the school districts were held harmless because of the  
3 funding freeze.

4           One of the processes that school districts wanted  
5 to continue was their application process. They wanted to  
6 make sure that applications were still being processed and in  
7 March of 2009, the Board adopted the process of making  
8 unfunded approvals.

9           And in that action, the recommendation from OPSC  
10 was that unfunded approvals will be made in order for  
11 districts to have some certainty in terms of their projects  
12 moving forward and acknowledgement that they have met all the  
13 regulations and that at a later date, there would be  
14 consideration of an unfunded list when the state runs out of  
15 bounding authority.

16           So I think that there is a clear distinction  
17 between those two and on Ms. Moore's point, that the context  
18 of all of that was the hold school districts harmless and  
19 make sure that regulations were addressed so that school  
20 districts weren't harmed by the funding freeze and I think  
21 that school district folk can speak more directly to the  
22 question of how they're harmed, but I just wanted to point  
23 that that was the intent of that set of regulations.

24           I think that on the point of the revenue versus  
25 encumbrances that Ms. Greene brought up, I think that that is

1 a challenging issue.

2 I think that what Jason is accurate in that the  
3 OPSC does review your encumbrances when you first come into  
4 the hardship program. That -- as Jason said he's been, you  
5 know, doing this program for almost ten years. If a hardship  
6 district became a hardship district in 1998 when the program  
7 stated, that would be encumbrances as of 1998.

8 We're now ten years down the road and school  
9 districts, especially now trying to scramble through this  
10 fiscal crisis, have taken in revenue, encumbered those funds,  
11 and if those were initially encumbered back when they first  
12 entered into hardship, then OPSC does not recognize those  
13 encumbrances.

14 So I just wanted to make a few points on the  
15 unfunded approvals and the encumbrances and then I know other  
16 folks can talk about the specifics of their district  
17 situation. Thank you.

18 MS. STEWART: I'm Susan Stewart representing the  
19 Alisal School District, and there are eight projects on this  
20 list and this district became a facility and financial  
21 hardship when they had severe black mold problems through  
22 several of their schools due to faulty architectural design.

23 And they had to -- actually were forced to go to  
24 CDE to get a special waiver to bond to 167 percent of their  
25 bonding capacity so they could immediately get the kids out

1 of these classrooms and get new classrooms in there and they  
2 have a whole series of projects planned where if one of these  
3 falls out, the multipurpose room doesn't get fixed and these  
4 kids are still eating out in the rain.

5           So the district counts on these lists which are  
6 very transparent and they count on the dates, they count on  
7 the amounts, and they count on them for their sale of their  
8 bonds, for completing the mitigation, for master planning,  
9 and for every other facilities purpose.

10           To require financial hardship projects now to go  
11 through another audit, this could delay the projects again  
12 and it also could change the amounts because of the amounts  
13 of bond sales change kind of on a weekly/monthly/yearly  
14 basis.

15           And this would result in a major blow to their  
16 facilities project and would result in this district not  
17 being able to complete their mitigation projects.

18           So during the discussions of the financial hardship  
19 process during the Implementation Committee, we were talking  
20 about this bubble of projects and this list we were going to  
21 create. We were trying to figure out what to call it.

22           At some point, there were many suggestions that  
23 were not unfunded list and we're all wondering if it was  
24 named something else, would this -- would we be here today.  
25 Would it be possible for this Board to rename this list? Is

1 it because it's named the same thing? They're two different  
2 animals.

3           Maybe we could just rename the list and look at it  
4 a different way, but whatever the solution is, we really  
5 encourage you to hold these projects harmless as was the  
6 intent of the negotiations during the process. Thank you.

7           MR. ANDERSON: Good evening. My name is Scott  
8 Anderson and I'm the Chief Business Official at Brentwood  
9 Union School District in Contra Costa County.

10           I'm here to express a concern also with the Item B  
11 in the staff recommendation regarding financial hardship  
12 districts and a reevaluation of their financial status.

13           Brentwood Union School District is directly  
14 involved in this item and I'll just take just a brief couple  
15 of minutes to describe the background of our situation to  
16 you.

17           We -- Brentwood Union School District submitted a  
18 complete financial hardship application to OPSC on May 17th,  
19 2007. This was two years and nine months ago.

20           BUSD was granted financial hardship status on  
21 March 6th, 2008, after a ten-month staff review of our  
22 application. BUSD submitted a Form 5004 for the construction  
23 of Sand Creek Elementary School on August 12th, 2008, within  
24 the allowed six-month financial hardship window that's been  
25 mentioned earlier tonight.

1           BUSD's six-month financial hardship window for  
2 submitting 5004s closed on September 6th of 2008 and was not  
3 (coughing).

4           Our Sand Creek Elementary School construction grant  
5 was approved by the SAB on December 10th of 2008 just prior  
6 to the freeze that occurred on December 17th of 2008. The  
7 construction grant amount approved by the SAB on  
8 December 10th, 2008, was \$3.795 million short as a result of  
9 an error by OPSC during the processing of our application.

10           We appreciate the fact that errors can happen and  
11 that this error was corrected by OPSC and the balance of our  
12 construction grant of \$3.795 million was approved by the SAB  
13 on April 22nd of 2009.

14           However, because of this error, the balance of our  
15 funding has been on the unfunded approval list since  
16 April 22nd of 2009.

17           We further appreciate that our project was moved up  
18 on the unfunded approval list at the January SAB meeting  
19 recognizing that this is the next best thing to receiving the  
20 funding that we should really already have.

21           So our specific concern related to Item 7 on your  
22 agenda tonight regarding Item B of the staff recommendation  
23 that states find that the apportionments for the following  
24 application numbers may be adjusted and is contingent on the  
25 staff's review of the district's available contribution to

1 the SFP regulation 1859.81. We understand that this section  
2 of the regulation indicates that if a project is on the  
3 unfunded list for more than 180 calendar days, a review of  
4 the district's financials is in order.

5           However, we request that our school district,  
6 Brentwood Union School District, not be subjected to Item B  
7 of the staff recommendation for the following extraordinary  
8 reasons.

9           This last piece of our project funding would not be  
10 on the unfunded approval list at all except for the error  
11 made by OPSC in processing our construction application. The  
12 majority of the funding for this project has already been  
13 released to BUSD.

14           Our Sand Creek Elementary School is in construction  
15 right now, employing contractors, engineers, inspectors, and  
16 architects that -- and we need the complete balance of this  
17 funding to finish the school and deliver the classrooms.

18           We believe subjecting our school district to a  
19 financial review covering a period of almost three years from  
20 the time of our original completed financial hardship  
21 application is an unreasonable impact on our staff and would  
22 no doubt result in additional and unpredictable delays in  
23 receiving our funding.

24           Just speaking frankly, I can assure you that our  
25 school district -- Brentwood Union School District has

1 received revenues over the past three years that were not  
2 known of or included in our financial hardship application we  
3 submitted in 2007 when our financial condition was frozen and  
4 evaluated by OPSC and that we have done everything in our  
5 power as a school district to defer spending, contain costs  
6 of all kinds in an effort to conserve precious cash.

7 I mean school districts are in trouble out there  
8 and, you know, we've been preserving every dollar within our  
9 school district.

10 I can also assure you that our school district  
11 needs every one of these dollars to try and survive this  
12 ongoing fiscal nightmare we're all having to go through for  
13 the next few years.

14 So again just BUSD would not be subjected to this  
15 item if our application would have been processed correctly  
16 the first time, so we request that we be exempted from Item B  
17 of the staff recommendation.

18 CHAIRPERSON BRYANT: Ms. Moore.

19 MS. MOORE: Just a quick question of staff. Where  
20 is Brentwood on this list?

21 MS. SILVERMAN: They're not on the list anymore.  
22 They don't require a --

23 MR. HERNANDEZ: Yeah. Just to provide some  
24 clarification. And just like a district stated and he  
25 absolutely stated it correctly. They received an actual

1 apportionment before the fund freeze, so they never received  
2 an unfunded approval and they received that fund release I  
3 believe -- you can correct me -- I think in June of '09.

4 MR. ANDERSON: That's correct.

5 MR. HERNANDEZ: So they were never placed on the  
6 unfunded list. All that was placed on the unfunded list was  
7 the errors and omission -- like he stated correctly, there  
8 was not a portion left off by staff. So those particular  
9 projects since their full construction has already been  
10 released to the district do not require unfunded review and  
11 if you look at the item, they're not -- I think they may be  
12 listed at the bottom, but those are ones that are errors and  
13 omissions that have already received their construction  
14 dollars, will not have an unfunded review.

15 MS. MOORE: Can you just tell me where on the list  
16 Brentwood is so I can see it.

17 ASSEMBLY MEMBER BUCHANAN: They're on the list to  
18 be funded if I read this correctly.

19 MR. HERNANDEZ: Correct.

20 MS. SILVERMAN: Yeah, they are.

21 ASSEMBLY MEMBER BUCHANAN: So they will be funded  
22 today.

23 MS. SILVERMAN: Yeah.

24 MR. ANDERSON: I'm sorry. The item that I reviewed  
25 this morning at 6:00 a.m. included Brentwood and six or seven

1 other districts that would be subjected to a re-review of  
2 financial hardship status. So I made --

3 ASSEMBLY MEMBER BUCHANAN: That's right. The  
4 revised A List I have, Ms. Silverman --

5 MS. SILVERMAN: Yes.

6 ASSEMBLY MEMBER BUCHANAN: -- correct me if I'm  
7 wrong -- has Brentwood on the list here to be funded today.

8 MS. SILVERMAN: Correct. And they would require  
9 immediate -- unfortunately when we did our revisions, our  
10 Website didn't post correctly, so there is a revision and  
11 wouldn't require --

12 CHAIRPERSON BRYANT: So they -- because -- they're  
13 not going to be subject to this review -- re-review.

14 MS. SILVERMAN: To a re-review; correct. They will  
15 not be subject to a re-review.

16 CHAIRPERSON BRYANT: So we could have, just, Staff,  
17 I would -- we could have saved this gentleman a very lengthy  
18 testimony, saved our audience a lengthy testimony, so next  
19 time feel free to interrupt our witness who's already won his  
20 point. We do appreciate --

21 ASSEMBLY MEMBER BUCHANAN: It's nice to see a smile  
22 on your face.

23 MR. ANDERSON: Thank you.

24 MS. MOORE: It's good to be sure.

25 MR. PEUKERT: Good evening, Madam Chair and Board.

1 My name is John Peukert. I'm the Assistant Superintendent  
2 for San Bernardino Unified School District. Hopefully I can  
3 bring a little clarity to this evening.

4 Early in '09, January and March SAB meetings, there  
5 was an extreme discussion over the suspension of the PMI  
6 funds and the effect that would take place on the school  
7 districts.

8 The Chair, Board, Executive Officer were searching  
9 for a solution that would not put districts in jeopardy or  
10 harm them. There were comments that you can find in the  
11 transcripts about unplugging the clock, unfunded approvals  
12 that would not trigger any requirement that were made.

13 A list seemed to be the answer that evening and  
14 unfortunately the list ended up being called an unfunded  
15 list. And what I'm really seeking tonight is clarification  
16 because I think this really ended up being a verbiage issue  
17 rather than a statutory one.

18 Clearly the intention of the Chair, the Board, and  
19 Executive Officer that evening was to help and I still  
20 believe that and if it was not for this verbiage, again  
21 things would be fine.

22 So I'm suggesting that this list be changed from  
23 unfunded list which would -- you know, really retains to the  
24 bond money that would be remaining -- to change it to a  
25 reserve list of unfunded approvals so that we can get this

1 clarification.

2 I do want to share with you my bit of information  
3 that the ship has already sailed on these projects. If you  
4 want to talk about harm to a district, we have started  
5 executing contracts. We have purchased over 240 properties  
6 in the City of San Bernardino. We've already moved 200  
7 families out of their homes and we are demolishing homes and  
8 we are abating properties.

9 We are very much as shovel ready. We're digging  
10 and this -- what we're looking at is we're -- this is putting  
11 us in a very, very uncertain environment and by all means, it  
12 would harm the district and the community.

13 And to give a perspective about what's going on in  
14 a school district, ours had to cut \$60 million out of their  
15 general fund last year and this year it will be an additional  
16 30 million.

17 CHAIRPERSON BRYANT: Next.

18 MS. FERRERA: Good evening, Ana Ferrera with the  
19 County School Facilities Consortium. We have submitted a  
20 letter to the Board prior to this on the broader issue of the  
21 application of this regulation. We really do believe that  
22 it's being applied now in a very different way than it was  
23 originally intended and through no fault of their own and you  
24 can hear how this will be impacting districts and county  
25 offices who are often in financial hardship also could be in

1 this situation very soon.

2           And the idea that because you're a hundred percent  
3 funding means that, you know, you need to scrutinized more  
4 than they already are under financial hardship really doesn't  
5 resonate with our members. Thank you very much.

6           CHAIRPERSON BRYANT: Any other public testimony,  
7 people who haven't spoken on this item?

8           MR. TAO: I'm Terry Tao. I'm legal counsel for  
9 Alisal and San Bernardino. The reason I'm here is a couple  
10 of points of clarification that I believe are important to  
11 recognize.

12           The unfunded list is actually something defined  
13 under 1859.95. That regulation states when the Board has no  
14 funds to apportion, the Board will accept and process  
15 applications for apportionment for purposes of developing an  
16 unfunded list.

17           That regulation was created in the priority point  
18 system back in 2001 and this unfunded list was specifically  
19 created when the act of not having any money left on the  
20 bonds occurs.

21           It appears that this unfunded definition is  
22 different than the unfunded definition associated with the  
23 PMI freeze.

24           Secondly, I think it's important to look at the  
25 definition under 1859.81 for hardship for two reasons. One

1 is the unfunded list that's mentioned there is the unfunded  
2 list that is referenced in 1859.95. So it's specifically for  
3 that purpose.

4 I believe that it's important to recognize that an  
5 unfunded -- when the money runs out also triggers level three  
6 school fees, triggers a lot of different things that occur  
7 with regard to the funding that school districts will get and  
8 a hardship district will receive level three school fees  
9 which is obviously something that you would want to consider  
10 when the program starts back up again through the passage of  
11 another bond.

12 That is one of the reasons I believe that this  
13 reconsideration after 180 days on an unfunded list occurs.

14 Secondly, I think it's important to also look at  
15 what 1859.81 actually says with regard to encumbrances. I  
16 would beg to differ with Mr. Hernandez here, but the regs say  
17 after the initial request for financial hardship status is  
18 granted, no further encumbrances will be approved by OPSC,  
19 which means that from the date of the application, that's  
20 when the encumbrances are locked in.

21 What's being asked for now is a review of  
22 essentially the accounts receivable which means that there's  
23 going to be a great disparity with the amount of time that  
24 has passed between when encumbrances are evaluated and when  
25 the accounts receivables of a school district that is

1 hardship is evaluated.

2           There's going to be some very significant  
3 discrepancies.

4           CHAIRPERSON BRYANT: What regulation were you  
5 reading again? The last one?

6           MR. TAO: 1859.81.

7           CHAIRPERSON BRYANT: 185 --

8           MR. TAO: It's a very long regulation.

9           CHAIRPERSON BRYANT: I'm sorry.

10          MR. TAO: 1859.81. It's about -- end of the first  
11 paragraph, subsection A.

12          I do want to draw a distinction with regards to the  
13 San Bernardino project for Middle College. This project is a  
14 project that was actually submitted in July of 2008 and  
15 because of a number of irregularities and issues, it ended up  
16 not getting approved in December when it should have been  
17 approved and it came before this Board and this Board  
18 ultimately decided that this project should have been  
19 approved at that time.

20          What we were told was because the list of projects  
21 that were going to receive what's called inactive  
22 apportionments was already sent to the Department of Finance,  
23 the Middle College could not be included and therefore we  
24 would be put on an unfunded list. This project should not be  
25 there at all.

1           So I think it's also critical to recognize that  
2 this project would not be an unfunded project in the first  
3 place. Thank you.

4           CHAIRPERSON BRYANT: Yes.

5           MR. DUFFY: Madam Chair, members, Tom Duffy again  
6 for C.A.S.H. When this crisis began in December 2008, we  
7 went to Rob Cook then Executive Officer and Ms. Valentine,  
8 the Assistant Executive Officer, and proposed that they  
9 unplug the clocks by coming to you and asking you to adopt  
10 emergency regulations.

11           We proposed that because we didn't want panic  
12 within the program and we said be proactive, get this out  
13 there, and we can start talking to districts about doing  
14 that.

15           One of the things we proposed at that time was that  
16 the financial hardship item that is being discussed right now  
17 also have an unplugged clock so 180 days didn't continue to  
18 run and create issues later.

19           And that was the only recommendation that we made  
20 that they did not accept. They accepted everything else and  
21 we worked through that and I'm glad we were able to do it.

22           The issue to me seems to be one of basic fairness.  
23 The state program isn't functioning the way that it should be  
24 functioning and yet -- so the state makes the rules and now  
25 the rules will apply to the district but not apply to the

1 state.

2           And that's -- it just doesn't feel right to us  
3 because of that. You have to keep your part of this bargain  
4 but we're not because of our circumstances because we're not  
5 selling bonds.

6           And Terry Tao mentioned developer fees. One of the  
7 issues of course is developer fees come in. 180 days later,  
8 how much is there because developer fees should be part of  
9 the match and we have no problem with that. We think the  
10 districts that receive any income should contribute that  
11 under normal circumstances.

12           But in talking to the development community -- and  
13 there were two of us here talking to you last month, Richard  
14 Lyon from CBIA and me talking about developer fees. They're  
15 saying that there's really no building going on and so  
16 there's very little fees out there.

17           So going to the issue, Senator, that you brought  
18 up, how much effort and what kind of materials, what kind of  
19 resources. This is the worst time ever -- I've been in  
20 public schools for 40 years. I've never seen anything like  
21 what's being experienced at the local level today.

22           So what I would ask is that you consider that and  
23 not make additional work when it's not necessary. And thank  
24 you very much again for your patience.

25           CHAIRPERSON BRYANT: Any questions or comments from

1 the Board? We have a motion on the table.

2 ASSEMBLY MEMBER BROWNLEY: What is the motion?

3 MS. KAPLAN: What is the motion?

4 CHAIRPERSON BRYANT: I was going to restate it to  
5 the best of my ability: to approve the staff recommendation  
6 minus at the moment Lammersville which we'll vote on  
7 separately without any other conditions --

8 ASSEMBLY MEMBER BROWNLEY: And I rescinded my  
9 second.

10 CHAIRPERSON BRYANT: And you rescinded your second.  
11 Right. We only have a motion. Do we have a second? Okay.  
12 Well, do we have another motion then?

13 MS. MOORE: If I may I'll attempt. I move that we  
14 move staff recommendation 1 and 3 and that we ask staff to  
15 come back at a future Board on this hardship issue in the  
16 same spirit that we approached the other unplugging of the  
17 clock, so to speak, for school districts for further  
18 discussion by the Board, but at this Board that we move  
19 Items 1 and 3 for approval.

20 SENATOR LOWENTHAL: I --

21 ASSEMBLY MEMBER BROWNLEY: I'll second. Senator  
22 Lowenthal seconds.

23 SENATOR LOWENTHAL: That's fine. Mr. Diedrick?

24 MR. DIEDRICK: I have some concerns with that.

25 Currently you have a regulation, so you first have to figure

1 out a way to get around your regulation before you can change  
2 Item 2 and then in the meantime, now you've got these people  
3 also hanging out in limbo when we could move them forward at  
4 this point in time.

5 MS. KAPLAN: It could be that the Board, although  
6 there's -- you know, it could be legally parsed that the  
7 Board finds that this regulation does not apply in this  
8 instance. That it is not an unfunded list as currently  
9 defined.

10 MS. SILVERMAN: But we've adopted it as an unfunded  
11 list in regulation.

12 MS. BORON-IRWIN: And I don't know what authority  
13 the Board would have to do that. There is a definition of  
14 unfunded list in the regulations and I think it's pretty  
15 clear that it would apply to these unfunded approvals and  
16 not -- not a list where there's no bond authority, so --

17 SENATOR HUFF: Could I just say something?

18 CHAIRPERSON BRYANT: Yes, Senator.

19 SENATOR HUFF: In discussion on the motion, I agree  
20 that these poor guys haven't done anything wrong. They've  
21 followed the rules. We have dropped the ball and it's  
22 costing them money. It's going to cost us more money to go  
23 back and do this.

24 I don't know the legal mechanism. I agree with  
25 you, but it's like we're in a conundrum and I don't know if

1 staff can, you know, buy us a vowel here. We need a clue on  
2 how to get around this, but it seems like this is not fair to  
3 the local school districts. They followed all the rules and  
4 if there is a path that we can accommodate them and get them  
5 off this list, I think we ought to do it.

6 ASSEMBLY MEMBER BROWNLEY: I agree and I think -- I  
7 mean for me the -- you know, I mean the question is, is --  
8 you know, before us is really if -- you know, does this rule  
9 apply under extenuating circumstances which was, you know,  
10 the economy dropped out, we're not selling bonds.

11 You know, I think the -- again I think the original  
12 interpretation was with regards to if we ran out of bond  
13 money and a holdover for when there was approval of a new  
14 bond.

15 But these are extenuating circumstances and there's  
16 nothing that the district has done under these circumstances.

17

18 CHAIRPERSON BRYANT: Mr. Diedrick.

19 MR. DIEDRICK: I don't disagree that there's  
20 extenuating circumstances, but the regulation is what the  
21 regulation is and if there's no provisions in the regulation  
22 to address these circumstances and we need the bond  
23 accountability for the review, then I don't see where we have  
24 too much option unless we go back and change the regulation  
25 to provide for those kinds of extenuating circumstances, but

1 the in the meantime, we still have people hanging out there  
2 while we're waiting for the 180 days.

3 In other words, if we got a rule or a regulation or  
4 a statute, we can't just I don't think slap on our own  
5 extenuating circumstances without going through the  
6 appropriate process.

7 ASSEMBLY MEMBER BROWNLEY: So you think the  
8 interpretation of the regulation is ironclad from your  
9 perspective.

10 MR. DIEDRICK: I think the rules are what the rules  
11 are and that they should be enforced uniformly and fairly  
12 throughout and then when circumstances change, if we want to  
13 make an exception for those circumstances, then we should do  
14 it in the appropriate way just not by caveat in a particular  
15 meeting.

16 MS. KAPLAN: I think in context of applying and  
17 looking, the Board has the authority to look at and interpret  
18 regulations of itself as you're a Board and implying context  
19 that last year when this was discussed and the Board approved  
20 the March '09 with the unfunded list, it was specifically  
21 stated by the Executive Officer that this really wasn't an  
22 unfunded list. It was called but not an unfunded list.

23 So therefore the Board can find that this is  
24 currently, while called an unfunded list, is technically  
25 not -- does not meet the definition of the regulations as it

1 was set up because unfunded means having no funds to  
2 apportion.

3           The Board has the ability and bonding capacity. It  
4 is the state that is not allowing the Board to apportion. So  
5 you can as a Board interpret that these circumstances do not  
6 apply to the regulations as defined.

7           MS. SILVERMAN: But the regulation does define  
8 unfunded list and this Board adopted that regulation and  
9 further that -- that point is in August of 2009, we did  
10 provide a report to the Board to stipulate all the issues  
11 provided on the unfunded status report.

12           Although I understand this item wasn't presented,  
13 but it was very clear that a financial hardship would require  
14 a re-review. And we also stipulate also on the unfunded  
15 approvals there is the regulation that require it is in the  
16 item that says this is going to be conditioned to a  
17 re-review. And it is on the consent items.

18           CHAIRPERSON BRYANT: When did -- have you -- did  
19 you send notices to -- back when 180 days started clicking,  
20 did you start notifying districts they needed to fix their  
21 list -- I mean update their status?

22           MR. HERNANDEZ: Well, the one thing we do that  
23 every single financial hardship approval letter that goes out  
24 and I see every single project -- probably the only person in  
25 the State of California that sees every single financial

1 hardship project.

2           Every letter states that you sit on an unfunded  
3 list more than 180 day, your project for whatever reason,  
4 whatever caused that is not moving forward, then we will have  
5 to do the re-review and again that project will still qualify  
6 for hardship. It's just now a matter of what amount of  
7 contribution.

8           Another thing that wasn't mentioned earlier too is  
9 that I think it was -- I believe it was Mr. Duffy that  
10 mentioned that there was no development -- there's no permits  
11 being pulled. There's no developer fees. In that case,  
12 there will be no additional contribution applied to the  
13 project.

14           I imagine when we go out and look that 90 something  
15 percent of these projects are not going to change whatsoever,  
16 but I'm not -- unfortunately I'm not bound by circumstance or  
17 feeling -- I have to -- I'm bound by the law and the law  
18 states that I have to do these reviews and if nothing  
19 changes, nothing changes, and they'll get their 100 percent  
20 funding.

21           But overall nothing will change. The 100 percent  
22 of the project that was approved by the Board will still be  
23 the 100 percent. It's just the mixture of the ratio of that  
24 funding that may change. And so that's what we're bound by  
25 is by that law.

1           CHAIRPERSON BRYANT: And do we have any -- is  
2 there -- forgetting for a moment Section 1859.95 and the  
3 section related to this financial hardship review when you  
4 haven't -- you have to do it every 180 days, is there any  
5 ability for the Board to waive it there?

6           MR. HERNANDEZ: It's my understanding that the  
7 regulations that were set in place by the Board at a previous  
8 date is what we have to follow.

9           CHAIRPERSON BRYANT: Can you point me to the  
10 section that's financial hardship since I'm --

11           MR. HERNANDEZ: It's the next -- I believe it's the  
12 next to last paragraph of the .81 section. If you go to  
13 .81(d) and follow it to the next to last paragraph.

14           ASSEMBLY MEMBER BROWNLEY: What page is it on in  
15 the agenda?

16           CHAIRPERSON BRYANT: Yes, Ms. Silverman.

17           MS. SILVERMAN: Well, another point of notification  
18 is when the fiscal crisis was raised and a point of  
19 clarification is we understand there was hardship districts  
20 that had apportionments and they wanted to move forward with  
21 their projects and obviously we conditioned that moving  
22 forward with the bridge financing letter that was issued in  
23 January 2009 that provided an opportunity for districts to go  
24 out and borrow temporarily so they could fund a project and  
25 move the project forward.

1           So we notified them that they would hold harmless  
2 if they went out and borrowed funds to move their project  
3 forward. So in turn we have provided some notification. We  
4 are following the regulations and again we're not going to  
5 disadvantaged a district if they're borrowing funds and  
6 obviously waiting for state grants to come in to backfill  
7 that money. They wouldn't be harmed in that situation.

8           CHAIRPERSON BRYANT: Any other questions or  
9 comments?

10           MS. MOORE: Just one comment. I very much  
11 appreciate the input on that.

12           My point having sat through all of this time period  
13 where we have been in this unprecedented time was the actions  
14 that we took last -- a year ago, you know, I think it was in  
15 January, February, and March, what we tried to do as a Board  
16 is say that we would not hold the list -- we would hold the  
17 list harmless.

18           And we took a number of regulations forward. I did  
19 not make a conscious decision as a Board member to not  
20 include hardship in that. I think we've been -- we've  
21 identified that hardship has a problem in that same vein.

22           So if we need to revisit the regulation and keep in  
23 the spirit of holding hardship harmless as well as all the  
24 other districts that we took actions to try and hold harmless  
25 on the list, I for one would revisit -- would relook at that

1 issue.

2 CHAIRPERSON BRYANT: I just want to -- I mean I --  
3 this is making me upset and disturbed because I've met  
4 with -- I think I've met with almost every single district on  
5 here and you all have very compelling stories and I'm  
6 somewhat persuaded by the fact that this the state's fault,  
7 blah de de blah blah, but at the same time, I'm sitting here  
8 reading the regulation. I've been reading it over and over  
9 again as we sit here. I don't see how this unfunded list is  
10 any different than what was anticipated under this  
11 regulation.

12 I appreciate the fact that the Board -- and I want  
13 to respect what the Board thought they did on the one hand.  
14 On the other hand, we didn't take the action. Even though  
15 there was a memo in the August agenda, even though it wasn't  
16 brought up, by the way, like in the rules committee, to say  
17 that we're going to adopt reports every time so we have on  
18 the record that it's been read by the Board, but I just  
19 feel -- you know, I hate saying this, but I feel like, you  
20 know, our regulations are clear and this project's clear and  
21 this -- what we do here is clear and that from this point  
22 forward, we're disadvantaging other people who are looking  
23 for hardship money.

24 And that's what we do is we reevaluate it and I  
25 think for the purposes of transparency and accountability, I

1 can't support exempting these projects from a second  
2 financial hardship review if the 180 days is tolled.

3 Now if the dates were different or there was -- you  
4 know, or we could exempt them from the -- you know, from the  
5 hardship rules, you know, I'd be willing to consider it, but  
6 just to say they don't have to do it, I don't see the  
7 authority in the regulations as it currently stands. With  
8 all due respect to you, sir. I'm reading it differently.

9 ASSEMBLY MEMBER BROWNLEY: I'd like to hear from  
10 this gentleman.

11 MR. TAO: Terry Tao again. One thing that this  
12 program is fundamentally based on is consistency. There is a  
13 set of regulations that school districts rely upon for the  
14 purposes of doing their fiscal and financial planning in  
15 order to build what it is that they need to build.

16 A school district, when they submitted an  
17 application to you for hardship funding, never had a  
18 contemplation that they would be placed on an unfunded list  
19 nor had a contemplation they would be re-reviewed.

20 So as a matter of fundamental fairness, there is an  
21 issue with regard to having this issue come up unbeknownst to  
22 them with no ability to plan at all. Certainly there was no  
23 reason for a school district to believe that their funds  
24 would be held up because there were no funds available  
25 because there was plenty of money in the bond that was left.

1 The reports are given every month as to how much money is  
2 left in the bond.

3           Again I will go back to 1859.95, states when the  
4 Board has no funds to apportion. No funds to apportion means  
5 no money from the bond is left.

6           I also have the quote from Mr. Cook when this  
7 unfunded list was approved and I'll read it to you. It says  
8 that's how it's been done in the past and that's an  
9 apportionment. That is you now as Henry indicated trigger  
10 all requirements under that. An unfunded approval does not  
11 trigger any requirements. It merely is a statement that the  
12 project has met all our regulations otherwise and statute and  
13 regulations in the state have not made a dollar commitment to  
14 it.

15           This is from the transcript of the January 14th,  
16 2009, State Allocation Board meeting at page 74, lines 10  
17 through 17.

18           At the time, one of the things that was being  
19 discussed was that school districts should not be harmed and  
20 there was a list of regulations that were considered for the  
21 purposes of ensuring that school districts weren't harmed.

22           This happened to be one that should have been  
23 considered, 1859.81, but was not and now OPSC is taking the  
24 position that everything needs to be re-reviewed despite the  
25 fact that there's no ability to plan for this circumstance.

1           So I would again reiterate. 1859.95 is when there  
2 are no funds because the bond money has run out and that ties  
3 into level three school fees.

4           CHAIRPERSON BRYANT: But it doesn't say that. It  
5 doesn't say -- it just says when funds are not available to  
6 the Board, when the Board has no funds to apportion. We  
7 haven't had funds to apportion until today.

8           MR. TAO: The regulations also state that once you  
9 file your 5005 form that the apportionments are made and that  
10 the school districts are paid immediately thereafter. If I  
11 remember correctly, I think it's 30 days.

12           So there's a very well-oiled system with regards to  
13 how an apportionment is made and how fund releases are done  
14 and it's automatic. It's assuming that the bond funds are  
15 here and unfortunately the state has developed this lending  
16 system with regard to the PMIA where funds are essentially  
17 borrowed from the PMIA in order to keep the system flowing.

18           But there's no tie between bond funds and this  
19 particular situation where there are no funds available.

20           ASSEMBLY MEMBER BROWNLEY: I think I personally am  
21 compelled that there is -- could be two interpretations of  
22 this and I think there is enough discussion here that compels  
23 me and I think we should just -- there's been a motion and a  
24 second. I think we should just move forward.

25           CHAIRPERSON BRYANT: Want to call the roll.

1 SENATOR LOWENTHAL: Yes. Which motion?

2 CHAIRPERSON BRYANT: Ms. Moore, do you want to  
3 restate your motion.

4 SENATOR LOWENTHAL: 1 and 3?

5 MS. MOORE: My motion was move recommendations 1  
6 and 3 and ask staff to revisit the issue concerning financial  
7 hardship and holding them harmless. That was my motion.  
8 Like we held harmless all other projects in this situation.

9 ASSEMBLY MEMBER BROWNLEY: And that was the motion  
10 I seconded.

11 MS. MOORE: That was my motion.

12 CHAIRPERSON BRYANT: Does that include  
13 Lammersville?

14 MS. MOORE: It includes Lammersville.

15 CHAIRPERSON BRYANT: Okay.

16 MR. DIEDRICK: I have a problem with Lammersville.  
17 I thought we pulled that off the consent to start out with,  
18 to go back at that separately.

19 MS. MOORE: There was a motion made on that, but I  
20 think it failed for lack of a second.

21 ASSEMBLY MEMBER BROWNLEY: I removed my second.

22 MR. DIEDRICK: No. The motion was to vote the  
23 whole -- everything here after Lammersville had already been  
24 pulled off consent.

25 CHAIRPERSON BRYANT: There's no second for that

1 motion.

2 ASSEMBLY MEMBER BROWNLEY: There was no second.

3 You have to have a second.

4 MR. DIEDRICK: Okay.

5 SENATOR LOWENTHAL: There was no second.

6 MR. DIEDRICK: All right. I'd like to amend the  
7 motion to pull Lammersville off and vote on it separately.

8 MS. MOORE: I don't accept that amendment.

9 CHAIRPERSON BRYANT: Okay. Call the roll.

10 MS. GENERA: Senator Lowenthal.

11 SENATOR LOWENTHAL: This is on the motion made  
12 by -- aye.

13 MS. GENERA: Senator Huff.

14 SENATOR HUFF: Aye.

15 MS. GENERA: Assembly Member Fuller.

16 ASSEMBLY MEMBER FULLER: Aye.

17 MS. GENERA: Assembly Member Brownley.

18 ASSEMBLY MEMBER BROWNLEY: Aye.

19 MS. GENERA: Assembly Member Buchanan.

20 ASSEMBLY MEMBER BUCHANAN: Aye.

21 MS. GENERA: Ron Diedrick.

22 MR. DIEDRICK: No.

23 MS. GENERA: Kathleen Moore.

24 MS. MOORE: Aye.

25 MS. GENERA: Lyn Greene.

1 MS. GREENE: No.

2 MS. GENERA: Cynthia Bryant.

3 CHAIRPERSON BRYANT: No.

4 MS. GENERA: It carries.

5 CHAIRPERSON BRYANT: Okay. Thank you, everybody. I  
6 think we have -- we have Tab 8, the **Audit Subcommittee Report**  
7 which is a discussion item.

8 Is it Ms. Silverman or Senator Lowenthal who's  
9 going to take the lead on this item.

10 MS. SILVERMAN: Well, I believe you're going to  
11 present, but I'm going to also waive motion to be heard as  
12 well, so --

13 CHAIRPERSON BRYANT: Okay. Senator.

14 SENATOR LOWENTHAL: Thank you. February -- this is  
15 Tab 8. The February 2009 SAB meeting, the Board unanimously  
16 established an Audit Subcommittee in response to the  
17 Department of Finance audit report to study the scope of OPSC  
18 auditing authority and to bring recommendations to the SAB  
19 defining that authority.

20 The Board asked that the recommendation seek to  
21 find a balance between the state's fiduciary responsibilities  
22 for bond accountability and the best use of state and local  
23 resources in conducting audits.

24 The Audit Subcommittee met twice last year,  
25 August 11th and December 14th. The Committee heard detailed

1 reports from the State Auditor, OPSC audit staff, and  
2 district representatives.

3 At our December meeting, we received presentations  
4 from legislative staff involved in the school facility bond  
5 program development, since the lease purchase program, a  
6 school facility attorney, OPSC, and school district  
7 representatives.

8 One of the outcomes of the December Subcommittee  
9 meeting was a request for legal opinions regarding whether  
10 audit procedures fall under the Administrative Procedures Act  
11 as other Board actions must.

12 The Attorney General's Office legal opinion states  
13 that if audit procedures are applied mechanically,  
14 invariably, and inflexibly in every case, such processes  
15 would be considered void as underground regulations not  
16 formally adopted in accordance with the provisions of the  
17 Administrative Procedures Act.

18 Frankly we don't know at this point whether audit  
19 procedures are applied this way. We've heard from districts  
20 that audit guidelines which are not currently reviewed by the  
21 Board are sometimes used as a citation for audit findings.

22 The Subcommittee will need to conduct further  
23 analysis to determine if audit guidelines and procedures  
24 should be subject to the APA.

25 The Attorney General's opinion also clarifies that

1 Education Code Section 17076.10 provides that the SAB may  
2 require an expenditure audit of a school district school  
3 facility -- may require an expenditure audit of school  
4 district's school facility project funds.

5           The SAB has delegated that expenditure audit  
6 authority to OPSC through Regulations 1859.106.

7           Subcommittee is clear that audits are a necessary  
8 component of an accountable and transparent program. Good  
9 and consistent communication is also critical to  
10 accountability and transparency.

11           A recurring theme throughout our hearings was that  
12 communication is lacking in the audit process. Whether  
13 subject to the APA or not, audit communications must be  
14 improved between the Board and OPSC and between OPSC and  
15 school districts.

16           We also heard repeatedly from fiscal experts and  
17 school districts that there is a need to coordinate the State  
18 Allocation Board audit requirements with other state mandated  
19 school district audits.

20           In this time of fiscal strain for state agencies  
21 and school districts, we must coordinate efforts and make the  
22 most of limited resources.

23           To address these significant issues, the  
24 Subcommittee would like to establish an audit working group  
25 that could work with the Subcommittee staff, which is Lisa

1 Kaplan, to develop audit guidelines that would be reviewed by  
2 the Subcommittee and then sent to this Board for approval.

3 The working group would be modeled after an audit  
4 group currently working with the Department of Education for  
5 other state-required school district audits. We anticipate  
6 the working group would be made up of representatives from  
7 state agencies, school district business offices, and  
8 facility managers.

9 The Subcommittee is asking for the full Board  
10 support of the establishment of this working group.

11 CHAIRPERSON BRYANT: Ms. Silverman.

12 MS. SILVERMAN: I think Mr. Diedrick -- did you  
13 want to comment?

14 MR. DIEDRICK: No.

15 MS. SILVERMAN: In addressing your concerns, we  
16 understand and appreciate the feedback that we're receiving,  
17 but as you mentioned earlier, the State Allocation Board  
18 adopted a resolution back in 1999 and that resolution was to  
19 allow OPSC staff to perform that audit function.

20 That prior function was provided by the  
21 Controller's Office in the prior program. But as government  
22 audits should follow is government auditing standards and  
23 what is referred to as the Yellow Book and these are  
24 Generally Accepted Auditing Standards as adopted by the  
25 United States Controller Office which is also -- those

1 procedures are adopted throughout the United States and  
2 government entities, also many numerous state agencies and  
3 also your local education agencies as well.

4           Those standards are the standards that this office  
5 is trying to achieve and with that requires the issue of  
6 independence from management oversight, organizations and the  
7 auditor entity because it would comprise of the -- the  
8 integrity of the audit.

9           So government agencies face some barriers to  
10 independence such as external impairments. Audit  
11 organizations must be free from external interference or  
12 influence that could improperly limit or modify the scope of  
13 an audit or threaten to do so.

14           External interference with the selection of the  
15 application of audit procedures would violate the Yellow Book  
16 standards.

17           Discussion of the State Allocation Board's Audit  
18 Subcommittee meetings included a proposal of a working group.  
19 This suggestion goes against the standards of the  
20 independence by allowing again external agencies and  
21 individuals to influences selection of the audit scope and  
22 procedures.

23           The client should not drive the audit procedures.  
24 In addition, canned audit procedures do not follow Yellow  
25 Book standards in which in fact this program does not follow

1 canned audit procedures.

2           Although understanding getting feedback from the  
3 work group is important, with vested interest in the clients,  
4 meaning our school districts, this creates either actual or  
5 perceived impairment in accordance to Yellow Book standards.  
6 And in -- that cross ties to the auditor's independence.

7           Although for years we've operated this program,  
8 we've provided numerous guidelines as far as how do we adopt  
9 our audit procedures. We've had this audit program handbook  
10 which probably provides a lot of guidance as far as the  
11 procedures, the documentation that a district should maintain  
12 in order to have a successful audit.

13           I think what exists right now is our program  
14 aggressively have gone out on the outreach event and we  
15 actually went out February 17th to the Santa Clara County  
16 Office of Education. It was a great opportunity to go out  
17 there to share -- to have what type of documents are required  
18 to have a successful audit and we've gotten feedback from  
19 that group.

20           We answered a lot of tough questions, but I think  
21 the outcome of it was it's not -- I know there's a lot of  
22 tension as far as a gotcha' and that was not the perceived  
23 practice, but part of what the program was missing was  
24 actually verifying source information, you know, tracing the  
25 documents and expenditures to the accounting -- to the County

1 source general ledgers.

2           And that's all we're doing. I mean we're going out  
3 in the field. It's obviously a change from the normal desk  
4 procedures that were performed in the past.

5           Should OPSC adopt its audit procedures or audit  
6 guides as regulations, obviously staff would say no. OPSC  
7 has obtained two legal opinions that state that the OPSC  
8 should not adopt its audit procedures or audit guide as  
9 regulations.

10           In one opinion, the Attorney General's Office  
11 states that legal precedent has established that audit  
12 guidelines do not have to be adopted as regulations unless  
13 they are strict and routine.

14           In accordance with Government Accepted Auditing  
15 Standards, OPSC audits retain discretion as how to perform an  
16 individual audit. OPSC's audit guides consider a flexible  
17 tool to perform those audits rather than rule book.

18           And in the second legal opinion we received from  
19 our State Allocation Board legal counsel, she found that  
20 establish of a new audit process or a change in the audit  
21 process does not require OPSC to go through the  
22 Administrative Procedures Act.

23           Further Government Code Section 11340.9(e),  
24 adopting these procedures as regulations could potentially  
25 enable a law violator to avoid detection, facility disregard

1 of requirements, and given an improper advantage.

2           And to address the question of whether or not our  
3 audits are redundant, OPSC reviews performed by other  
4 external agencies to avoid unnecessary duplication of any of  
5 those audit objectives. Proposition 1D ballot language  
6 requires a project-by-project audit. No audit organization  
7 audits the School Facility Programs.

8           Again our audits are performed to trace a project  
9 expenditures to the accounting documents. We verify  
10 certifications. We validate whether or not they've built the  
11 project.

12           So those are all good objectives of the program.  
13 So OPSC as far as addressing what audit requirements have  
14 changed, although the audit method has changed from desk  
15 review to field review, audit requirements have not changed.

16           OPSC continues to verify the same  
17 self-certifications, compliance with the laws and regulations  
18 as it always has done in the past. The only quality -- the  
19 only change is the quality and the depth of examination of  
20 the source documents, meaning the general ledgers, the  
21 original invoices, that's the change.

22           OPSC must be accountable for the School Facilities  
23 Program bonds as administered for Proposition 47, 55, and 1D  
24 and it specifically calls out for an audit and that audit  
25 again provides transparency of the program and also provides

1 transparency in the ballot measures that we pass to our  
2 voters.

3           And the Governor Arnold Schwarzenegger  
4 administration, he adopt the Executive Order which  
5 specifically directs government agencies that spend bond  
6 funds to institute a three-part accountability structure  
7 which includes a front-end accountability which is an  
8 adoption of more or less a project monitoring and an  
9 in-progress audit again have better outcomes and follow-up  
10 accountability which is your close-out audit.

11           Again I urge you to allow us to go out and continue  
12 our outreach program and meet with our districts and get  
13 input. Again that would be the recommendation.

14           SENATOR LOWENTHAL: I'm not sure what you're  
15 saying. You say we should not have a working group? Is that  
16 what you're saying?

17           MS. SILVERMAN: No. I think we should allow staff  
18 to go out and do outreach events and continue to get  
19 feedback --

20           SENATOR LOWENTHAL: I'm asking now for the approval  
21 of the Board to do a working group. Are you disagreeing with  
22 that?

23           MS. SILVERMAN: What I'm asking is allow us to go  
24 and educate our group -- educate our stakeholders and get  
25 feedback independently.

1           We are going out in the field and getting feedback  
2 from the stakeholders, so I mean allow us to continue to work  
3 with our customers and get feedback.

4           SENATOR LOWENTHAL: We're not saying -- we're just  
5 saying we want to look at the procedures. We want to have a  
6 working group and I'm not hearing you saying we presented and  
7 I could through who I think should be on the working group.  
8 I'm asking your help hearing two meetings, this is what our  
9 recommendation is. I'm not saying what you shouldn't be  
10 doing or doing. We're just saying are you saying that you're  
11 opposing having a working group to look at these audits.

12           MS. SILVERMAN: I think that would apply --  
13 actually some challenges there. I mean we're open to hearing  
14 some feedback, but I mean are you asking them to weigh in on  
15 the procedures itself?

16           SENATOR LOWENTHAL: Well, we're asking to ask for  
17 the -- you know, for the significant issues that we've  
18 raised, you know, that I've gone through already. We want  
19 the working group to make recommendations just back to this  
20 Board. That's all we're asking for.

21           That's why we were set up as an Audit Committee.  
22 This is what we've done so far. These are, you know, what we  
23 found. These are some of the issues we've identified. We  
24 want to continue by bringing other people to help us make  
25 recommendations back to this Board. That's all we're saying.

1 CHAIRPERSON BRYANT: Mr. Diedrick.

2 MS. SILVERMAN: Can I ask --

3 CHAIRPERSON BRYANT: Did you -- I thought --

4 ASSEMBLY MEMBER BROWNLEY: Does it require a  
5 motion?

6 SENATOR LOWENTHAL: Well, I --

7 ASSEMBLY MEMBER BROWNLEY: Because if it does, I  
8 would make the motion to create this working group.

9 SENATOR LOWENTHAL: I haven't seen any -- I mean I  
10 don't know if we need it. We're just continuing on what the  
11 Board has asked us to do.

12 CHAIRPERSON BRYANT: I think it's -- I mean I  
13 think -- well, we have public hearing on it. I think -- I --

14 MS. SILVERMAN: These are my staff members. Sorry.

15

16 CHAIRPERSON BRYANT: Oh, they are. Oh, I --

17 MS. SILVERMAN: Yeah.

18 CHAIRPERSON BRYANT: Did you have something to add?

19

20 MR. INMAN: Yes. My name is Steve Inman and I'm an  
21 Audit Supervisor with the Office of Public School  
22 Construction and I'm here today with Rudy Del Real, a  
23 colleague also in the Audit Section, and we're going to  
24 follow up on Lisa's comments.

25 And I want to begin with the subject of

1 independence. Government Code 13885 states the Legislature  
2 finds and declares the following. Recent corporate scandals  
3 and federal legislation such as the Sarbanes-Oxley Act of  
4 2002 focused attention on the importance of internal audit  
5 activity public accountability and governments.

6 Ensuring the independence of internal auditors of  
7 state agencies and that their findings are reported to the  
8 appropriate levels of government is critical to safeguarding  
9 public funds -- public trust.

10 SENATOR LOWENTHAL: I think it's the Board that  
11 says this. I don't understand what they want.

12 CHAIRPERSON BRYANT: I think --

13 MR. INMAN: I'd like to share with you an  
14 experience -- my experience with the OPSC.

15 MS. SILVERMAN: Did you want to say something,  
16 Cynthia?

17 CHAIRPERSON BRYANT: I was just going to say I  
18 think what -- I think that just to get to the bottom line  
19 here, I think staff is concerned -- if I'm hearing what  
20 you're saying right -- that having the very people that  
21 they're going to go out and audit setting audit guidelines  
22 and parameters is what's giving them pause.

23 SENATOR LOWENTHAL: We're just making -- having  
24 input and making recommendations to the Board. This is not  
25 what we're asking to do. They're not coming up with -- it is

1 the responsibility of the Audit Committee just to have a  
2 working group and then make recommendations back to the  
3 Board. That's all we're doing.

4 CHAIRPERSON BRYANT: Yes.

5 SENATOR LOWENTHAL: And I think the statute says  
6 it's the Board's responsibility to do the audit. It is the  
7 Board's responsibility.

8 MR. INMAN: Well -- okay. Well --

9 MS. SILVERMAN: Can we get a point of  
10 clarification. We have the Attorney General who issued an  
11 opinion and I would like for him to speak on that matter.

12 MR. PATTON: Good evening. Tom Patton, Deputy  
13 Attorney General and yes, I wrote the opinion that Senator  
14 Lowenthal was referring to.

15 And I understand the debate. I will speak to the  
16 last comment where you just indicated that your belief is  
17 that the statute directs that the SAB would be responsible  
18 for the performance of the audit. Am I misstating you,  
19 Senator?

20 SENATOR LOWENTHAL: No. I didn't say -- I don't  
21 think I said the --

22 MR. PATTON: Anyway, that's what I thought I heard.  
23 Here's what I want to say.

24 SENATOR LOWENTHAL: What?

25 MR. PATTON: The statute 17107.20 I believe says

1 that -- actually it's under program accountability,  
2 17076.10(a) says that the Board may require an audit and then  
3 what my opinion goes on to discuss is that the OPSC is the  
4 administrative end of this operation per the statute that  
5 directs the DGS Director to administer the Leroy Greene Act.

6           So my opinion says that the conduct of audits  
7 should be handled by OPSC acting on behalf of the DGS  
8 Director and that the SAB shouldn't go on -- you know,  
9 shouldn't undertake to engage auditors on its own. DGS/OPSC  
10 has that authority already and they're doing that on behalf  
11 of SAB.

12           The only other comment I would make is that I made  
13 it clear in the opinion that if an audit process were to be a  
14 paint-by-numbers -- painted into a box, this is how every  
15 audit's going to be done, with account A, B, C, and D, and  
16 expenditure E, F, G, and H, end of audit, you then have a  
17 very inflexible, regimented system that would have to be  
18 adopted by regulations.

19           My understanding is that's not what you have at the  
20 moment. You have a more general Federal Regulation 1859.106  
21 that says OPSC shall conduct an audit of expenditures  
22 including site acquisition and the -- and there's not greater  
23 guidance given than that, which makes some sense.

24           I could see a directive to apply Yellow Book  
25 standards or Generally Accepted, you know, Government

1 Auditing Standards, but to go into greater detail,  
2 particularly if you start to go in the direction of an audit  
3 painted by numbers would then create potential an inflexible  
4 audit system and --

5 SENATOR LOWENTHAL: I don't think that's what we're  
6 intending -- I don't think that's what we're trying to do.

7 MR. PATTON: I'm sorry?

8 SENATOR LOWENTHAL: I don't believe that's what  
9 we're trying to do.

10 MR. PATTON: And I'll just sit here in case --

11 MS. SILVERMAN: That's -- Rudy.

12 ASSEMBLY MEMBER BROWNLEY: But again -- I mean I --  
13 from my perspective too, we're -- what we're asking is a  
14 working group to make some recommendations. That's all and  
15 at that point in time, I think it would be duly appropriate  
16 for staff to give a recommendation, give their opinion, have  
17 the AG give their opinion so that we're not going -- you  
18 know, going in a direction that we would cross over the line  
19 in terms of, as you say, you know, paint by numbers of the  
20 audit and start specifying exactly what we want, but we're  
21 just looking for recommendations. That's all.

22 And I think that OPSC has done what they're  
23 supposed to do, which is what you're saying. They shall, you  
24 know, do an audit and I think the Board -- but I think the  
25 Board can have a discussion about that, can they not?

1           MR. PATTON: It's actually my opinion that both  
2 entities have the authority to weigh in as to what sort of  
3 processes ought to be followed because the statute doesn't  
4 specify that one or the other has the exclusive authority to  
5 decide the process.

6           And so it makes sense in my mind for both agencies  
7 to weigh in and certainly the stakeholders to have the  
8 opportunity. I've heard Ms. Silverman indicate she, you  
9 know, is interested in hearing their voice through meetings.

10           I guess maybe the concern is that -- is -- what I'm  
11 hearing is that there may be a concern that they do get  
12 painted into a paint-by-numbers audit box and my counsel  
13 would be to avoid going there because if you were to so  
14 regiment the system, you then create a little problem where  
15 anything that's arguably done outside that box then becomes  
16 subject to --

17           SENATOR LOWENTHAL: And I think the working group  
18 can do that. I mean I -- you know, we're not going to do a  
19 paint by numbers or come out with a list you must do this.

20           I think what we're trying to do is have clear and  
21 consistent -- you know, understand what it is and have  
22 transparency. That's really what we want to do and I think  
23 that's the role of this Board to be -- to ask for that.

24           CHAIRPERSON BRYANT: Ms. Moore.

25           MS. MOORE: If I may just for -- maybe help in

1 bringing this together understanding all the different  
2 perspectives. It's not reflected in the report, but there  
3 was testimony at one of the Subcommittee hearings from our  
4 Audits person at the Department of Education and there is at  
5 the Department of Education a process by which there's a  
6 prescribed process annually that stakeholders do have input  
7 into the annual audit guide that is then promulgated for that  
8 year.

9           And I'm not expert in that. I don't know all the  
10 specifics of that and certainly can be, but if this is  
11 modeled off that it's providing the opportunity to have input  
12 into that audit guide, wouldn't that be good for all of us  
13 because the end user of the audit -- you know, of the audit  
14 guide and the end recipient of the audit, we want them to be  
15 well educated on what the expectations are and what the  
16 requirements are and that they're meeting it so that there  
17 aren't audit exceptions, so that we have -- that the process  
18 flows well.

19           So the Department does have that structure and  
20 maybe we can assist with how that might work in a working  
21 group as well.

22           CHAIRPERSON BRYANT: Mr. Diedrick.

23           MR. DIEDRICK: If you could clarify something for  
24 me that you had said earlier. As I understood you to say  
25 it's the Board that requests the audit -- to boil it down,

1 it's the Board that requests the audit. It's OPSC who  
2 decides how the audit is done and to actually do it and as  
3 I'm understanding what the motion is, you want a working  
4 group to come with recommendations to make to DGS and OPSC as  
5 to what processes we may or may not choose to use?

6 SENATOR LOWENTHAL: No. We want the group to make  
7 recommendations back to this Board. That's what the motion  
8 was when we first set up this Audit Committee that we would  
9 come back to the Board about -- as an Audit Subcommittee.  
10 That's what the Board asked us to do.

11 And now we're saying is the next step is to bring  
12 some of the stakeholders together to have a working group and  
13 to come back to the Board with recommendations. We're not  
14 saying -- and that's really what we're asking. We were asked  
15 to do that and that's what we're trying to do.

16 MR. DIEDRICK: Okay. I guess what I'm asking is to  
17 what end are you making recommendations. Are you making your  
18 recommendations so that the OPSC and DGS can determine what  
19 processes to use in the audits or are you making  
20 recommendations for some other purpose. That's what I'm  
21 trying to find out.

22 SENATOR HUFF: It might be helpful to those of us  
23 that are new here -- it's my second meeting. I think it's  
24 your second meeting. It's Ms. Buchanan's second meeting.  
25 What was the purpose of forming this? I'm not having a

1 problem with what you're saying. I just -- what was the  
2 original driving purpose.

3 CHAIRPERSON BRYANT: I think there was --

4 SENATOR LOWENTHAL: I can read it to you. I just  
5 got to -- it just said the Board unanimously established at  
6 the February 2009 State Allocation Board, which was  
7 unanimous, that we have an Audit Subcommittee in response to  
8 the Department of Finance audit report to study the scope of  
9 the OPSC auditing authority and to bring recommendations to  
10 the SAB defining that authority.

11 The Board asks that the recommendations seek to  
12 find a balance between the state's fiduciary responsibilities  
13 for bond accountability and the best use of state and local  
14 resources in conducting audits. That's what we were asked to  
15 do.

16 CHAIRPERSON BRYANT: And I think -- if I recall, I  
17 think I saw in something that that audit report was -- that  
18 was from the OSAE, the Office of State Evaluations -- however  
19 it goes -- sorry. They're my people, but -- I apologize.  
20 I'm tired.

21 But I believe that that audit was very critical of  
22 our program in terms that we were not doing extensive enough  
23 audits and that we were -- that we were not doing field  
24 audits and that we were not following the bond accountability  
25 set out in the Governor's Executive Order.

1           And so in some way, there's -- I think there's  
2 this -- I sort of see a little bit of where the staff is  
3 really concerned that somehow or another this is a move by  
4 the Board to say that all of these audits are bad. I think  
5 this effort started from the standpoint that they were  
6 concerned about the OSAE audit and this is the path that the  
7 Audit Subcommittee's recommending to us to have a working  
8 group to come back and in some ways, it'd be like your group  
9 that you're going out and meeting with, they can meet and  
10 come back and inform the Board.

11           But just from where I sit, I would -- it would be  
12 very difficult for me to ever support -- I mean I would never  
13 support putting audit guidelines into regulations, having the  
14 auditees be the people that write the rules for the audits.  
15 It's just not -- but I don't think anyone sitting here is  
16 proposing that.

17           SENATOR LOWENTHAL: We're not -- we don't want to  
18 do that.

19           CHAIRPERSON BRYANT: I think we're looking for more  
20 information and --

21           SENATOR LOWENTHAL: That's right.

22           CHAIRPERSON BRYANT: -- and some collaboration.

23 And I think you've laid out very well with counsel and  
24 what -- exactly what you're doing and I don't think anyone's  
25 telling you to stop or telling -- or saying that what you're

1 doing is wrong. In fact I think what you're doing is -- you  
2 know, it looks to me like over the last year you've gone  
3 significantly far.

4           We know you're an auditor at heart and I think that  
5 -- you know, that we have the beginnings of an excellent  
6 program that protects the investment made by the voters of  
7 California and I think the Board wants a chance to have other  
8 input just to kind of -- to verify that that's the case.

9           And, you know, I'm going to take -- I mean if you  
10 want to speak, you can, but I'm going to take everyone at  
11 their word that they're not interested in stopping audits,  
12 that they're not interested in hiding thoughts, they're not  
13 interested in anything but transparency, accountability, and  
14 understanding what the playing rules are.

15           And you know, I'm thinking that -- especially if  
16 you're willing to -- if we have the State Controller's staff  
17 on there, we have people from OSAE on your working group, we  
18 talk to the Inspector General, and we talk to Elaine Howle  
19 and her staff and we made sure that the audit professionals  
20 in state government participate in the working group.

21           MS. SILVERMAN: And I would ask that we have the  
22 fair participation of these other state audit agencies be  
23 participants and also even to add to another member somebody  
24 who's obviously who has expertise in school district  
25 finances, is -- fiscal crisis management assistance team. I

1 think they're a great resource. I think they would be  
2 another good participant in this program.

3 SENATOR LOWENTHAL: That'd be fine. Again we would  
4 like as much input so we can bring back to the Board.

5 ASSEMBLY MEMBER BROWNLEY: I'd just like to say  
6 too, I mean audits -- as the Chair said, you know, audits can  
7 be a very positive thing. They don't need to be perceived as  
8 a negative thing. They can be a very positive thing and I  
9 think if -- the gentleman representing the Attorney General's  
10 Office, it would be fair to say that the State Allocation  
11 Board can't say the audit will do X.

12 But we could say we would like to see X, but that  
13 the OPSC would still have, you know, broad authority to, you  
14 know, audit a lot. But if we were going to say we want you  
15 to do X and that's all we want you to do, we don't want you  
16 to do anything else, we just want you to look at this one  
17 thing, then we would -- you know, overstepped our authority  
18 and I agree on that.

19 MR. PATTON: If I could quickly comment. Senator  
20 Lowenthal pointed out which I appreciated hearing for Senator  
21 Huff that in February of '09, the directive was to form a  
22 subcommittee to look at audit scope.

23 SENATOR LOWENTHAL: Right.

24 MR. PATTON: And that word scope I think is pretty  
25 key and it goes to what you're talking about right now which

1 is that looking at the scope in general terms is one thing.  
2 To get down then to a micro-regulatory view and then wanting  
3 to start to direct OPSC and DGS as to every nuance becomes  
4 very, very problematic not only for the practical reasons  
5 that have been articulated, but in a legal sense also. I  
6 think it starts to then usurp the authority of DGS to carry  
7 out its administrative statutory mandate.

8           SENATOR LOWENTHAL: I need to come back to find out  
9 do I need a -- do we need a vote.

10           CHAIRPERSON BRYANT: I don't think we need -- I  
11 mean I think --

12           MS. KAPLAN: No. I think the Board can direct --  
13 basically the Board -- if the Board in agreement directs  
14 Senator Lowenthal to establish a working group within that --

15           CHAIRPERSON BRYANT: I don't hear any objections to  
16 having a working committee.

17           MS. MOORE: May I just suggest one piece before we  
18 close, that in that group that there be someone from the  
19 Department of Education that deals with the audits, the  
20 general audits of school districts as well.

21           MS. KAPLAN: Absolutely.

22           MS. MOORE: Of course I'm volunteering some other  
23 director's staff, but I will check in with them if they can  
24 assist with this as well.

25           MS. KAPLAN: Here's what I'll do is I'll come up

1 with a list, comprise what everybody thinks should include,  
2 send it out to you to get your okay or not or if you suggest  
3 other people be added and then go forward from that.

4 MS. SILVERMAN: But may I add just one thing. You  
5 know, again part of being independent is also the inference  
6 of having some influence. You know, we definitely want to  
7 hear back from the school district community and as far as,  
8 you know, what we can do to have better outreach, but again  
9 to have -- you know, if the motion is -- I mean is it driving  
10 to create procedures, then obviously then we may not see eye  
11 to eye on that.

12 SENATOR HUFF: The procedures might be more  
13 expensive than what you're doing now --

14 MS. SILVERMAN: Oh, yeah.

15 SENATOR HUFF: -- to protect the fiduciary  
16 responsibility and if that's the direction --

17 MS. SILVERMAN: And I'm open to that. Right.

18 SENATOR HUFF: -- then I think you would be open to  
19 that.

20 MS. SILVERMAN: Yeah.

21 CHAIRPERSON BRYANT: Mr. Duffy, did you have a  
22 quick point?

23 MR. DUFFY: Two comments. Tom Duffy again for  
24 C.A.S.H. and thank you again for your patience with us. We  
25 sent a letter to you on this matter supporting Senator

1 Lowenthal's recommendation to form a working group.

2           Having worked in public education as a  
3 superintendent, if I ever looked defensive in front of the  
4 public, the public would think I was doing something that  
5 they wouldn't like.

6           There's been a great deal of defensiveness over  
7 this issue of audits since last May when we met with OPSC, a  
8 group from C.A.S.H., and we learned some things that were  
9 being done differently and we said can we meet with you and  
10 we met.

11           And there was a good deal of defensiveness at the  
12 meeting and I'm not being mean and I'm not criticizing OPSC  
13 staff. I'm just giving you the sense that we had and it  
14 wasn't just me.

15           So the question is what's wrong with talking to  
16 school districts about what OPSC is going to be doing. When  
17 we did audits at the local level and it happened every year,  
18 typically ASB -- and you know what ASB is -- ASB, Associated  
19 Student Body funds always had an issue and what did I do, I  
20 said we're going to set up training programs for the people  
21 that were responsible for those.

22           So the auditors came in and trained them about what  
23 they were going to look for. So I don't understand what the  
24 issue is -- pardon?

25           ASSEMBLY MEMBER BROWNLEY: Three years later, you

1 had the same finding.

2 MR. DUFFY: Yeah, of course. The people changed,  
3 but I never gave up. We kept it up. But the -- so the  
4 question I guess I have is what is wrong with letting school  
5 districts know what it is that OPSC is going to be looking  
6 for and training them about that and what's wrong with  
7 hearing from the constituents that are being served?

8 Something was changed. Something significant was  
9 changed in what OPSC was asking for in the audits and we went  
10 and said tell us and they did. We met with Mr. Inman and  
11 Lisa Silverman and others. And we then began to share with  
12 school districts be prepared for this. We've done workshops  
13 on this. Did one in January.

14 So I think it's good to be talking about it. I  
15 understand that there may be some hesitancy on the part of  
16 OPSC to say well, we don't want to give you clues about what  
17 we're going to do because you may try to hide something.

18 Well, I think we need some clues. I think there  
19 needs to be -- the terms I keep hearing are accountability  
20 and transparency.

21 Well, from our perspective, it goes -- it's a  
22 two-way street. From the state and from the local level and  
23 we offer our assistance. We've got good people that are  
24 knowledgeable and so not criticizing your staff but saying  
25 we'd like to work with you, but really this question of this

1 I hocus-pocus, it's got to be behind the scenes, that's not  
2 the public process. So thank you.

3 CHAIRPERSON BRYANT: Thank you. I think we -- I  
4 think we're done on this item. I think we should move onto  
5 Tab No. 9 which is the **SAB rules and operating procedures**.  
6 Juan, did you want to --

7 MR. MIRELES: Realize it's getting kind of late so  
8 I'll make this very brief. Back in March 2009, the Board  
9 created a Subcommittee to establish rules and procedures for  
10 the Board. Although the Subcommittee never met, there was a  
11 set of rules that was introduced to the Board back in  
12 November.

13 Since then, there have been several different  
14 changes and suggested edits to those rules. Now because we  
15 have some new members, we just wanted to clarify some things  
16 from the Board.

17 First we wanted to make sure that the Board still  
18 wants to adopt rules and procedures other than Robert's Rules  
19 and then we also want to seek the Board's direction whether  
20 the Board wants to convene the rules and procedures  
21 subcommittee.

22 Now as some of you know, the prior chair of the  
23 subcommittee is no longer serving on the Board, so the Board  
24 could elect a new chair and reconvene the meeting.

25 So with that, we're seeking the Board's direction

1 on this issue.

2 CHAIRPERSON BRYANT: Okay. I for one really favor  
3 the idea of just having the -- you know, the rules enacted  
4 and we had a draft document that was prepared by staff and  
5 that was another draft prepared by the AEO and I was looking  
6 at them trying to, you know, help figure it out and I just --  
7 it was too much. I didn't think a decision was appropriate  
8 for me to just make unilaterally and I think we do need to  
9 have a subcommittee.

10 We need to decide a lot of these issues like when  
11 can we bring an item back, you know, when -- how do we deal  
12 with staff appeals, how do we deal with a reconsideration.  
13 What are -- exactly are the rules and write them out and I  
14 was hoping that we could do that and we had Senator Wyland  
15 originally as the Chair of that committee. It never met.

16 I believe --

17 SENATOR LOWENTHAL: Senator Hancock.

18 CHAIRPERSON BRYANT: -- Senator Hancock --

19 SENATOR LOWENTHAL: Ms. Hancock has offered --  
20 Senator Hancock -- to not only serve on the committee, but to  
21 chair the committee if we would wish. I know Assembly Member  
22 Brownley has also -- is a member of that committee I believe.  
23 Is that not so?

24 ASSEMBLY MEMBER BROWNLEY: I think so.

25 SENATOR LOWENTHAL: I think so. Shake your head

1 yes.

2 CHAIRPERSON BRYANT: And I think the other member  
3 was Mr. Harvey.

4 SENATOR LOWENTHAL: It was Mr. Harvey.

5 ASSEMBLY MEMBER BROWNLEY: Yes.

6 MS. KAPLAN: And Assemblywoman Fuller has agreed to  
7 also serve --

8 SENATOR LOWENTHAL: Right. Assemblywoman Fuller  
9 said she wanted to be on it. So I think we should move  
10 forward with this subcommittee.

11 CHAIRPERSON BRYANT: Okay. And I really would -- I  
12 really -- and I have -- I'll go and talk to Senator Hancock.  
13 I'd like them to really get together rapidly because I think  
14 a lot of these issues can be resolved by just us all having  
15 an agreement amongst ourselves.

16 Like I've said to all of you set a table where we  
17 can at least understand the manner rules to have the fight  
18 that you expect me to have.

19 ASSEMBLY MEMBER BROWNLEY: Yeah. So I just want  
20 to -- you know, based -- we've had a long meeting, I know.  
21 But we've had some interesting discussions and we've had some  
22 interesting questions about the rules through this meeting.

23 So I'm just wondering what rules we do follow  
24 currently before this committee makes some recommendations  
25 for the rules. What are the current rules of which we

1 follow?

2 MS. BORON-IRWIN: You know, I'm under the  
3 impression that we aren't operating under any set of rules.  
4 You know, and --

5 MS. KAPLAN: Historically speaking, as it was set  
6 up, Senator Leroy Greene had the committee follow Senate  
7 rules. Nothing formally was adopted procedure-wise, but  
8 everybody knew when he was chair that they followed Senate  
9 rules.

10 There has been no other formal adoption under  
11 Robert's Rules, but generally when a board has not adopted  
12 anything, Robert's Rules generally apply.

13 ASSEMBLY MEMBER BROWNLEY: So I guess the question  
14 is should we agendize so that we can take a vote and fully  
15 notice the public that we operate under Robert's Rules until  
16 we have some recommendations and we may agree --

17 SENATOR LOWENTHAL: With some modifications?

18 ASSEMBLY MEMBER BROWNLEY: -- or we may change, but  
19 at least so that we have a body of rules of which we're clear  
20 we're operating under because I think part of the sort of  
21 unclarity -- or lack of clarity is a function of just not  
22 knowing what rules indeed we're operating under.

23 CHAIRPERSON BRYANT: We could do that.

24 MS. MOORE: Can we take that action tonight? I  
25 mean --

1 MS. KAPLAN: Yeah. We can actually take that  
2 action tonight because it is a noticed action item. So if  
3 the Board chooses to make a motion to convene --

4 ASSEMBLY MEMBER BROWNLEY: But it's not noticed as  
5 an action item.

6 MS. MOORE: Is it an action item?

7 MS. KAPLAN: It is an action item. This is.

8 MS. MOORE: Do we -- I think in the interim that we  
9 are very clear that it's Robert's Rules of Order until such  
10 time as this committee has the opportunity to meet and make a  
11 recommendation to support --

12 ASSEMBLY MEMBER BROWNLEY: I'm so worried about the  
13 rules. You know, what are the rules because as a school  
14 board member, you know, we're so clear about an item whether  
15 it's an action item or not an action item and so, you know,  
16 whether it really is an action item or not, I -- you know,  
17 I'm not completely clear.

18 SENATOR LOWENTHAL: We do not have any rules and  
19 OPSC has all the rules.

20 CHAIRPERSON BRYANT: Okay. So do we have -- is  
21 that your motion?

22 MS. MOORE: Yes. I would move that.

23 SENATOR HUFF: I'll second that.

24 CHAIRPERSON BRYANT: All those in favor.

25 ASSEMBLY MEMBER BROWNLEY: Okay. So we're okay?

1 From OPS -- okay. So -- all right. So there's agreement  
2 then. We've --

3 CHAIRPERSON BRYANT: All in favor say aye.

4 (Ayes)

5 CHAIRPERSON BRYANT: Okay. We're under Robert's  
6 Rules of Order and the subcommittee will meet shortly.

7 ASSEMBLY MEMBER BUCHANAN: Can I make one  
8 suggestion. Could we ask the subcommittee at the next  
9 meeting, if I'm going to be here, but could they come back  
10 with an agenda for us of when -- either when they're going to  
11 meet or what they expect to come back to us with some kind  
12 of --

13 SENATOR LOWENTHAL: Speaking for Senator Hancock,  
14 she'd love to do that.

15 MS. BORON-IRWIN: They would have to notice it  
16 because it's under the Open Meeting Act.

17 CHAIRPERSON BRYANT: All right. So Tab 10, this  
18 is our last item. Back to the **frequency of SAB meetings**.  
19 Juan, I think this is yours.

20 MR. MIRELES: This item has been before the Board  
21 before. Basically we wanted -- we had proposed that the  
22 Board consider going every other month meetings so that staff  
23 can prepare the items given the fact that we're using several  
24 days a month due to furloughs.

25 At the last meeting, we were asked to bring back

1 some suggestions -- some options instead of just going to the  
2 every other month and to perhaps bring back a projected  
3 workload for the next three months so that the Board could  
4 take a look at it and see what items are being contemplated  
5 to bring to the Board.

6           So we have done that. We have several different  
7 options for the Board along with on Attachment A our  
8 projected workload for the next three months.

9           What I do want to point out is that the workload  
10 just deals with policy, specialized regulations. It doesn't  
11 include all of the other projects that we review that are  
12 generally part of the content. So this is just for the board  
13 to review in terms of what we have projected for the next  
14 months.

15           So the options are -- Option 1 is to conduct  
16 monthly meeting for consent items only and a bimonthly  
17 meeting for consent specials, for special appeals,  
18 regulations, and policy items.

19           Option 2 is to go full monthly meetings every other  
20 month. Option 3 is to go full meetings every month and  
21 redirect existing program staff to manage the workload for  
22 policy and special discussion items.

23           And then Option 4 is to have full meetings every  
24 month and limit the amount of special items that we have in  
25 each month. Those are the new options that we have before

1 you. Before I conclude the presentation, I also want to  
2 mention that we had a request too to also include to the  
3 discussion of the frequency of the Implementation Committee  
4 meetings are part of this item.

5           Currently they're set at every other month between  
6 now and end of the fiscal year. We do have a special meeting  
7 set in March. We have a regularly scheduled meeting in  
8 April. We don't have currently a meeting scheduled in May,  
9 although we anticipate having one to discuss the high  
10 performance regulations. And then we have another one  
11 scheduled in June as a regularly scheduled meeting.

12           So there's two discussion items before you today.  
13 One is on the frequency of the Board meetings and another one  
14 is on the frequency of the Implementation Committee meetings.

15           So with that, I'd be happy to answer any questions.

16           CHAIRPERSON BRYANT: Are there any questions or  
17 comments?

18           ASSEMBLY MEMBER BROWNLEY: Ms. Buchanan told me  
19 that our spring recess is April 1st -- starts on April 1st,  
20 so I don't know what that means for legislators.

21           MS. KAPLAN: That's just the Implementation. It's  
22 the Committee I chair with stakeholders.

23           ASSEMBLY MEMBER BROWNLEY: Oh. I see. Okay.

24           ASSEMBLY MEMBER BUCHANAN: It says regularly  
25 scheduled.

1           CHAIRPERSON BRYANT: Yeah. It's just for the --  
2 that's for the -- when's the next --

3           ASSEMBLY MEMBER BROWNLEY: Oh, I see. These are  
4 all --

5           CHAIRPERSON BRYANT: -- SAB is March 24th I think.

6           MS. SILVERMAN: Correct.

7           CHAIRPERSON BRYANT: Mr. Diedrick.

8           MR. DIEDRICK: I'm a little confused. Sorry. You  
9 want us to give you direction on how often the Imp. should  
10 meet for the rest of its fiscal year, but then you just tell  
11 us they're meeting every month anyway?

12           MR. MIRELES: The Board asked us to have this  
13 discussion as part of this item. So that's why we included  
14 it.

15           CHAIRPERSON BRYANT: Do we have -- did you have a  
16 comment on this item or are you just stretching?

17           MR. SMOOT: I'm trying to stay awake but -- thank  
18 you. Lyle Smoot representing Los Angeles Unified School  
19 District. And I just want to point something pretty obvious.

20           You've spent an amazing amount of time tonight  
21 talking about the unintended consequences of cancelling the  
22 December meeting.

23           SENATOR LOWENTHAL: Right.

24           MR. SMOOT: I think you can see if you start  
25 cancelling meetings and stuff, you're just going to have that

1 over and over again. So I think I would just ask you to --  
2 understanding workload and all that -- I worked there for 102  
3 years I think. I understand all those issues.

4 This is not a new issue. Furloughs are the  
5 equivalent if you will -- have taken place in the past.  
6 Hiring freezes that took the staff from -- I'm not going to  
7 try to say the numbers, but I think it was from 66 staff  
8 members to 14. There was no change at that point in time.

9 So I just want to tell you that for Los Angeles we  
10 would vote that in your deliberations you'll consider the  
11 untended consequences of not having a regular monthly meeting  
12 and of course the Implementation Committee just goes along  
13 with that. If you don't have regular meetings, the  
14 Implementation Committee -- well, everything gets held back.

15 And, you know, these meetings -- it's 8:00 o'clock  
16 now; right. And I think if you -- one last statement. If  
17 you have --

18 MR. YOUNG: You missed your flight.

19 MR. SMOOT: He's hoping I'll even catch that plane.  
20 I think you just have longer -- you know, you're not going  
21 to save any time. You're just going to have longer meetings  
22 on some other schedule. Thank you very much.

23 CHAIRPERSON BRYANT: Thank you.

24 MR. DUFFY: Madam Chair, members, again Tom Duffy  
25 for C.A.S.H. In times of crisis, public agencies meet more.

1 I was hearing today from Steven Amos about what's happening  
2 within General Services because of the demand for time and so  
3 I would argue that we need to be conversations on a monthly  
4 basis.

5           If there is some need for Lisa to diminish what she  
6 brings to you because they have difficulty getting to some  
7 policy issue and they defer that, then maybe give her license  
8 to do that.

9           So I think that would be important. We have a  
10 letter to you on this as well.

11           And so --

12           CHAIRPERSON BRYANT: Which of the staff options do  
13 you --

14           MR. DUFFY: I believe it's important to meet every  
15 month.

16           SENATOR LOWENTHAL: 3.

17           MR. DUFFY: Yeah. Basically.

18           SENATOR LOWENTHAL: Or 4 if what you're saying -- I  
19 hear you saying that your first preference would be 3. If we  
20 need to do 4, you could handle 4, but you'd prefer that --

21           MR. DUFFY: But I would say don't do anything hard  
22 and fast. I would say basically stay the course that you're  
23 on and give some discretion to your staff.

24           But I think it's important to continue the dialogue  
25 and just one final thing.

1           We have to compliment the Chair because this is the  
2 first time in a really long time we've gotten through every  
3 item on the agenda without a deferral, so --

4           CHAIRPERSON BRYANT: It was the protein I had  
5 before --

6           MR. DUFFY: Well, thank you.

7           CHAIRPERSON BRYANT: Thank you. Any other  
8 comments?

9           ASSEMBLY MEMBER BROWNLEY: Yeah. I would just, you  
10 know, concur with the comments that were made and I think  
11 that for us to be able to service the districts well, we need  
12 to meet as frequently as we're able to, at least once a  
13 month. I think it's important that we address -- we have so  
14 many issues and outstanding issues that we haven't been able  
15 to get to and it would be very helpful for me to have a list  
16 of the pending items that we have either postponed to another  
17 meeting and even tonight we've made some requests for things  
18 to come back to the meeting for decision and approval and I  
19 think, you know, it would be helpful if we're going to meet  
20 just once a month that we find some way to catch up on all of  
21 the sort of outstanding things that we have delayed.

22           Now -- and maybe I perceive that there are more  
23 items that we have delayed than there actually area. I'm not  
24 sure, but I just feel like we should -- it's necessary for us  
25 to sort of catch up and again each item takes more time

1 because we're in these unusual set of circumstances.

2 And so the decisions become more difficult and in  
3 these trying times, I agree with Mr. Duffy. It's --

4 SENATOR LOWENTHAL: And you're moving Option No. 3  
5 then?

6 ASSEMBLY MEMBER BROWNLEY: Yes.

7 SENATOR LOWENTHAL: Okay.

8 ASSEMBLY MEMBER BUCHANAN: Right. I second it.

9 SENATOR LOWENTHAL: Okay.

10 MR. MIRELES: Madam Chair.

11 MR. DIEDRICK: Could I?

12 CHAIRPERSON BRYANT: Yes, Mr. Diedrick.

13 MR. MIRELES: If I may. Option 3 will -- just so  
14 the Board is aware -- will redirect existing program staff so  
15 that may create additional delays in processing applications  
16 to focus on the policy and specials item. So I want to make  
17 the Board aware that that may be a consequence.

18 ASSEMBLY MEMBER BROWNLEY: And I just believe the  
19 item -- the items that we have postponed that you are already  
20 prepared for is not going to require additional staff time to  
21 prepare and if we could just kind of catch up on those  
22 without impinging on your time and again I understand the  
23 furlough situation and so forth.

24 So I really want to be sympathetic to that, but I  
25 think, you know, there are items that we can move forward on.

1           CHAIRPERSON BRYANT: Ms. Buchanan.

2           ASSEMBLY MEMBER BUCHANAN: I need clarification  
3 because Item 3 reading it made the most sense to me, but  
4 because I think if you have projects that's the most critical  
5 for us to move forward. Because not only does it help school  
6 districts move forward with their planning, it's good for the  
7 economy because we're bidding projects and we're getting  
8 people back to work.

9           So the way I looked at 3 when I first read it was  
10 to assume that -- you know, that -- in terms of processing  
11 applications and approvals, that would continue, but  
12 something like maybe your audit committee, you know, that --  
13 you might say, well, we're not going to do that this month,  
14 we'll do it next month. I mean so I would -- that's the way  
15 I interpret it. I mean I would assume then that the Chair  
16 would be working with staff to see what's reasonable, but at  
17 a minimum we'd be moving programs.

18           But I thought I heard you said that Item 3 meant  
19 that it would close the approvals for --

20           MR. MIRELES: The program staff that work on the  
21 special items also process applications. We do have a  
22 specialized team because it does take our most seasoned  
23 analyst to prepare the items, to do the research, to write  
24 the items.

25           So to be able to meet with the demands of a monthly

1 meeting, we will have to pull people away from regular  
2 processing applications. We may have to do that.

3 CHAIRPERSON BRYANT: I think --

4 ASSEMBLY MEMBER BUCHANAN: But the way I read this  
5 is that we would redirect to manage the workload for policy  
6 and special discussions which the way I read it tells me that  
7 processing the applications is going to be the first  
8 priority. Am I not reading this.

9 ASSEMBLY MEMBER BROWNLEY: Well, I hope it will be.

10 CHAIRPERSON BRYANT: I think that -- can I just say  
11 I think that the way -- and part of this is because I had  
12 these conversations with these guys. I think that Option 4  
13 is kind of what today's meeting was. I mean I really did  
14 want to get through the binder was my goal and I really tried  
15 to -- you know, we had this -- you know, Senator Lowenthal  
16 last time asked about the fiscal conditions of the State  
17 Allocation -- of the various funders into our program.

18 The Department of General Services asked for more  
19 time to complete that item. You know, I just gave Senator  
20 Lowenthal a call and we agreed to put it over.

21 So there's things like -- we kind of did that. We  
22 manage -- we try to manage the workload and I think that if  
23 the Board is interested in monthly meetings, which -- you  
24 know, and I think the -- you know, the -- I think the staff  
25 even came to that conclusion since their preference is

1 Item 1, is that knowing that we want to continually put --  
2 keep our list up to date and keep the projects funding thing  
3 going, you know, we're at a monthly meeting point.

4 I think that Option 4 is a better place for us to  
5 be, that we're going to try to limit our items on the agenda.  
6 The staff did it. If you look at Attachment A on page 297,  
7 they did a sample of kind of a workload of things that we're  
8 going to get to.

9 And I think if we can go with an Option 4, you  
10 know, the staff can help, you know, manage the meetings  
11 better. You'll see the items are coming up. You'll know  
12 that the staff is not hiding the ball or leaving stuff off  
13 the agenda in a way to avoid something, that we're really --  
14 that it's -- you know, that we have a workload.

15 Everybody understands. The stakeholders know when  
16 they need to get ready. They can get their letters in. They  
17 can -- you know, they can set -- you know, we don't have a  
18 situation like we had today where, you know, we're dealing  
19 with an issue at the table without plenty of time to work  
20 them up.

21 That's -- so if we're going -- I mean I'd recommend  
22 if we could doing Option 4.

23 SENATOR HUFF: Madam Chair.

24 CHAIRPERSON BRYANT: Senator Huff.

25 SENATOR HUFF: Can I recommend Option 5, which is

1 continue doing what we're doing and you direct staff as  
2 necessary to keep us running if there's something --

3 CHAIRPERSON BRYANT: Option 5 is great with me.

4 SENATOR HUFF: I mean because we're meeting every  
5 month. That's -- we're trying to -- we got a lot of balls in  
6 the air that we're trying to juggle. I think one of the  
7 speakers talked about trying to give staff flexibility and so  
8 there's some months when trying to force them through some  
9 hard and fast thing we've come up with doesn't work real  
10 well. We're actually seeing that played out with the school  
11 districts that are having a rough time living with the hard  
12 and fast rules and we've sort of made exceptions for that  
13 tonight.

14 So I think that would -- I mean for me. I  
15 certainly --

16 ASSEMBLY MEMBER BROWNLEY: Yeah. I concur with  
17 that too.

18 ASSEMBLY MEMBER BUCHANAN: That's the way I --

19 ASSEMBLY MEMBER BROWNLEY: I just want to make sure  
20 that we're addressing the issues that we need to address for  
21 school districts to move forward and there are some policy  
22 issues that we haven't wrestled with because we never have  
23 time and some of those policy decisions I think are really  
24 important for districts in terms of their own planning and  
25 what they're going to do and when they're just left out

1 hanging and not knowing really what's going to happen, that's  
2 problematic.

3 So as long as we're doing our due diligence around  
4 having agendas that are going to support the efforts and what  
5 the districts need from us, I'm --

6 CHAIRPERSON BRYANT: I think -- and I just -- one  
7 last thing -- I'll say one last thing on this point.

8 ASSEMBLY MEMBER BROWNLEY: Have complete faith in  
9 the Chair.

10 CHAIRPERSON BRYANT: That I really appreciate, you  
11 know, hearing, you know, from, you know, Tom and all the --  
12 all you key stakeholders what issues you think that the Board  
13 should be getting to that you haven't seen us do so that we  
14 can kind of just on a going-forward basis make sure that we  
15 get to everything and try to get it in a structured way where  
16 we don't kill our poor wonderful OPSC staff.

17 Is there any public comment on any other item we  
18 didn't get to? Is there any objection to adjourn.

19 SENATOR HUFF: Well, it needs a motion, doesn't it?

20

21 CHAIRPERSON BRYANT: Yeah, I need a motion --  
22 Option 5.

23 MS. MOORE: Option 5?

24 SENATOR HUFF: I just moved to table a motion.

25 ASSEMBLY MEMBER BROWNLEY: Robert's Rules don't

1 apply until the next meeting.

2 MR. DIEDRICK: You make the motion, you second it,  
3 and we walk out and ignore it.

4 ASSEMBLY MEMBER BROWNLEY: Okay.

5 MS. KAPLAN: Well, we can have --

6 ASSEMBLY MEMBER BROWNLEY: I'll rescind my motion.

7 MS. KAPLAN: What you can do is, Kathleen, you can  
8 restate changing it and you can second it again, so if you  
9 want to move to Option 5.

10 MS. MOORE: I didn't make the motion.

11 MS. JONES: No. Senator Huff did. Senator Huff.

12 MS. KAPLAN: You can make -- yeah.

13 SENATOR HUFF: My motion is I don't really think it  
14 needs a motion, but, you know, that we meet monthly and we  
15 give the Chair direction to work with staff to move it along,  
16 to focus on the issues as we've all discussed.

17 CHAIRPERSON BRYANT: Do we have a second on Senator  
18 Huff's motion?

19 ASSEMBLY MEMBER BUCHANAN: We don't need a motion.

20 SENATOR HUFF: Yeah. Lowenthal seconds it.

21 SENATOR LOWENTHAL: I second it.

22 CHAIRPERSON BRYANT: All right. All those in favor  
23 aye.

24 (Ayes)

25 CHAIRPERSON BRYANT: Any public comment on an item

1 that we didn't -- that was not on the agenda.

2 All right. This meeting's adjourned.

3 (Whereupon, at 8:38 p.m. the proceedings were recessed.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )  ss.  
COUNTY OF SACRAMENTO        )

I, Mary C. Clark, a Certified Electronic Court Reporter and Transcriber, Certified by the American Association of Electronic Reporters and Transcribers, Inc. (AAERT, Inc.), do hereby certify:

That the proceedings herein of the California State Allocation Board, Public Meeting, were duly reported and transcribed by me;

That the foregoing transcript is a true record of the proceedings as recorded;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on March 17, 2010.

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Mary C. Clark  
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