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CALIFORNIA STATE ALLOCATION BOARD
PUBLIC MEETING

CALIFORNIA DEPARTMENT OF EDUCATION
1430 N STREET, ROOM 1101
SACRAMENTO, CALIFORNIA 95814

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

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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

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

ASSEMBLY MEMBER JEAN FULLER

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER TOM TORLAKSON

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:

HENRY NANJO, Staff Counsel

P R O C E E D I N G S

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CHAIRPERSON BRYANT: All right. I want to call this meeting of the State Allocation Board to order. Can you call the roll.

MS. GENERA: Senator Lowenthal.

SENATOR LOWENTHAL: Here.

MS. GENERA: Senator Hancock.

Senator Huff.

Assembly Member Fuller.

ASSEMBLY MEMBER FULLER: Here.

MS. GENERA: Assembly Member Brownley.

Assembly Member Torlakson.

Scott Harvey.

MR. HARVEY: Present.

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. I feel like you are all so far away. We -- if there's no objections on all of our items that have votes, I want to hold them open until

1 our members can come. Everyone should be here at some point
2 except for Senator Huff who's not going to make it today.
3 If that's all right with everyone.

4 Do we have -- we have a presentation, but I don't
5 see either one of our presentees here, so should we pass
6 that item. Okay.

7 I just wanted to note a couple of changes to the
8 agenda today. I've asked staff to present the report that's
9 in Tab 20 which is a description of the process they used to
10 create the list prior to Item 11. Items 9, 10, and 15 have
11 been pulled to allow more time to develop those items.

12 SENATOR LOWENTHAL: Which ones? 9, 10, and 15?

13 CHAIRPERSON BRYANT: Yeah. They are already
14 crossed off your agenda.

15 SENATOR LOWENTHAL: Okay.

16 CHAIRPERSON BRYANT: Item -- I also would like to
17 pull Item 21 in the reports on the financial hardship
18 regulations. The Board directed staff at the last meeting
19 to come back to a future Board meeting on the hardship issue
20 in the same spirit that we approached the other unplugging
21 of the clock, so to speak, for the school districts impacted
22 by the bond sale PMIA for further discussion by the Board.

23 The item in our binders doesn't do that and I
24 intend to over the next month work with staff to develop an
25 item and options that will help the Board set policy in this

1 area as decided and directed in February. My understanding
2 is there are number of stakeholders here in the audience
3 with an interest in this item. I want to encourage those of
4 you who haven't written comments to send them to us as soon
5 as possible.

6 Just as I was walking out of my office, I got two
7 very thoughtful letters that had lots of information in them
8 which I really appreciate, although I have to admit I didn't
9 have time to read them.

10 I'll also be happy to meet with anyone if you
11 would like to between now and the next meeting. In
12 addition, we also have a public comment section at the end
13 of the agenda which would be approximately the same time as
14 we would have reached Item 21 anyway. So if you would like
15 to make public comments then or you can hold them for when
16 we return with the item hopefully at the next meeting.

17 If there aren't any objections from the Board
18 members, that would be the agenda for the day.

19 MS. MOORE: If I may --

20 CHAIRPERSON BRYANT: Ms. Moore.

21 MS. MOORE: -- is just reiterate support of what
22 you are indicating. I think that the direction to staff was
23 very clear last month and that we did approve Options 1 and
24 3 of that agenda and that we definitely wanted the hardship
25 projects to be treated in the same manner as all other

1 projects during this time of crisis.

2 And I appreciate your taking leadership on that.

3 CHAIRPERSON BRYANT: Thank you. Next item is Tab
4 2, the **Minutes**. I personally have not had time to read the
5 Minutes and if it's not a problem with everyone, can we put
6 them over and approve them next time?

7 SENATOR LOWENTHAL: Um-hmm.

8 CHAIRPERSON BRYANT: Because I actually usually
9 like to read them. And Tab 3, our **Executive Officer's**
10 **Statement** from Lisa Silverman.

11 MS. SILVERMAN: Good afternoon. What I'd like to
12 share with the Board today is a few items, one of them being
13 an update on the bond sale. At the March 11th meeting, we
14 were notified that this program will be receiving
15 376 million in Proposition 1D. So that's great news.

16 Additionally, we understand that there is -- the
17 Treasurer's office is conducting a sale this week in taxable
18 bonds and so we're hopeful that this will result in
19 additional funds for the program. We are working closing
20 with the Treasurer's office to expedite certification for
21 the goal provided apportionments at a future meeting.

22 An update on the townhalls: Together with DSA,
23 both Office of Public School Construction had three townhall
24 meetings in March, specifically on March 5th on a furlough
25 Friday at Butte County Office of Education; March 12th at

1 Merced County Office of Education; and March 19th at the
2 Orange County Office of Education.

3 The OPSC staff presented workshops and expedited
4 application processing for career tech applications and
5 audit processing tips for navigating through an audit
6 successfully.

7 Additionally, some news we'd like to share with
8 you. Our office will be relocating to the Department of
9 General Services in West Sacramento and that move will be --
10 our move will take place and we will be setting up shop by
11 March 29th, which is Monday.

12 We also wanted to provide you an update on seismic
13 mitigation program projects. In this agenda, we'll be
14 presenting a project for Piedmont Unified School District,
15 request for an unfunded approval for the School Facility
16 Program, facility hardship rehabilitation project that will
17 provide seismic strengthening to the Piedmont High School.
18 This represents the third seismic mitigation program project
19 and second for Piedmont Unified School District.

20 Last item is we wanted to share with you an
21 updated tentative work plan. For purposes of transparency
22 and workload management, staff has attached a tentative
23 workload for planning purposes for future State Allocation
24 Board meetings. And that concludes my statement.

25 CHAIRPERSON BRYANT: Okay. Any questions or

1 comments for Ms. Silverman?

2 CHAIRPERSON BRYANT: I just -- I was going to say
3 one quick thing. I did -- just right -- another thing right
4 when I was walking out the door, I saw a news article from
5 Bloomberg Press saying that the State Treasurer's 36 percent
6 ahead of himself on the bond sale that he's currently in the
7 middle of, so maybe we'll even have more good news in a week
8 or so about our program.

9 Senator Lowenthal.

10 SENATOR LOWENTHAL: Well, this is just to -- one
11 of the things about the Executive Officer -- you know,
12 Ms. Silverman. I just want to -- even though we didn't go
13 over the Minutes -- we're going to hold them off until next
14 week, I want to be clear that last week we had -- or last
15 meeting, we had a long discussion about the role of the
16 Audit Subcommittee.

17 And we said that part of the -- of what the Audit
18 Subcommittee does is to look over the scope of audits and
19 then Mr. Patton, our attorney, said to us that, well, it's
20 real clear I believe in -- he mentioned that both the State
21 Allocation Board and also OPSC have the authority to weigh
22 in on what sort of process, what is -- he did not want us in
23 this to micro-manage.

24 So I want to be real clear, even though we haven't
25 done -- gone through the Minutes, that our Audit

1 Subcommittee will be looking in general at the scope of the
2 audits and that's really what we're doing and I think that's
3 really what came out of the discussion. But we're not to
4 micro-manage and go through all -- but to lay out what the
5 processes are, what is generally expected of everyone in an
6 audit. That we can do and what the criteria are.

7 But we're not going to go through all the
8 specifics. And so -- but laying that out, that scope of the
9 kinds of things that would be needed in an audit or
10 required, is what that Audit Subcommittee -- and we -- and
11 that's what Mr. Patton also told us we can do last week.
12 Though he did not want us to micro-manage and go through all
13 the dots and to go through each specific audit.

14 And we agree that was not what we were going to be
15 doing. I just want to be clear.

16 CHAIRPERSON BRYANT: Mr. Harvey.

17 MR. HARVEY: Thank you very much. Senator, I know
18 you're dealing on this issue in good faith as am I and I
19 think over time we're going to be very, very mindful of the
20 kind of information that informs and enriches what we're
21 doing, but when it's all said and done, I do believe
22 Mr. Patton pointed out that the DGS Director controls the
23 division -- OPSC. It's a part of his department.

24 It's administratively his and very clearly in the
25 statute, OPSC is recognized as his. So when it's all said

1 and done, I'm hoping we can suggest to him things that might
2 inform and improve the audit process, but it really will be
3 his call.

4 SENATOR LOWENTHAL: But he did also say that it's
5 his opinion that both entities -- he's talking about OPSC
6 and the State Allocation Board -- have the authority to
7 weigh in on what sort of process ought to be followed
8 because the statute does not specify that one or the other
9 has the exclusive authority. Those are his own terms.

10 MR. HARVEY: Well, we read things a little
11 differently. All I'm saying is Ron Diedrich, our Director,
12 is a man of good faith as well. I'm sure he will enjoy
13 hearing from the Audit Subcommittee on things that he should
14 consider as he directs OPSC in this audit process, but when
15 it's all said and done, it will be his choice.

16 CHAIRPERSON BRYANT: Okay. Any other comments on
17 the Executive Officer's report? Okay. Tab 4. This is a
18 **Resolution**. Did you -- who's presenting on this? It looks
19 like I am. Is that what your intention was? This is a
20 **delegation of authority** to the Acting Executive Officer,
21 Lisa Silverman, that gives her the authority to submit
22 regulations on our behalf to the Office of Administrative
23 Law.

24 We ran into an issue with the regulations that we
25 adopted last meeting. They accepted them from her, but we

1 just need to formulize it with a resolution. So is there a
2 motion?

3 MR. HARVEY: So move.

4 CHAIRPERSON BRYANT: Second?

5 MS. GREENE: Second.

6 CHAIRPERSON BRYANT: Call the roll.

7 MS. GENERA: Senator Lowenthal.

8 SENATOR LOWENTHAL: Aye.

9 MS. GENERA: Assembly Member Fuller.

10 ASSEMBLY MEMBER FULLER: Aye.

11 MS. GENERA: Assembly Member Torlakson.

12 ASSEMBLY MEMBER TORLAKSON: Aye.

13 MS. GENERA: Scott Harvey.

14 MR. HARVEY: Aye.

15 MS. GENERA: Kathleen Moore.

16 MS. MOORE: Aye.

17 MS. GENERA: Lyn Greene.

18 MS. GREENE: Aye.

19 MS. GENERA: Cynthia Bryant.

20 CHAIRPERSON BRYANT: Aye.

21 MS. GENERA: Carries.

22 CHAIRPERSON BRYANT: And then you'll leave it open
23 for the other members. Thank you.

24 The next is the **Consent**, Tabs 5, 6, 7, and 8. Is
25 there any public comment on any of the Consent items? Is

1 there a motion on these?

2 ASSEMBLY MEMBER TORLAKSON: So move.

3 CHAIRPERSON BRYANT: Second?

4 MR. HARVEY: Second.

5 CHAIRPERSON BRYANT: Can you call the roll.

6 MS. GENERA: Senator Lowenthal.

7 SENATOR LOWENTHAL: Which one is this now? Tab 5?

8 CHAIRPERSON BRYANT: Consent 5, 6, 7, and 8.

9 SENATOR LOWENTHAL: Aye.

10 MS. GENERA: Assembly Member Fuller.

11 ASSEMBLY MEMBER FULLER: Aye.

12 MS. GENERA: Assembly Member Torlakson.

13 ASSEMBLY MEMBER TORLAKSON: Aye.

14 MS. GENERA: Scott Harvey.

15 MR. HARVEY: Aye.

16 MS. GENERA: Kathleen Moore.

17 MS. MOORE: Aye.

18 MS. GENERA: Lyn Greene.

19 MS. GREENE: Aye.

20 MS. GENERA: Cynthia Bryant.

21 CHAIRPERSON BRYANT: Aye.

22 MS. GENERA: That carries, but I'll hold it open.

23 CHAIRPERSON BRYANT: Thank you. Okay. The next

24 is the **report** from Tab 20 which we're going to hear before

25 we get to Tab 11. So Juan.

1 MR. MIRELES: Thank you, Madam Chair. The purpose
2 of this next item is to give the Board a general overview of
3 the process by which an **unfunded list** is determined, but
4 before we get into that discussion, I want to give the Board
5 an overview of just the process in general.

6 Basically the OPSC reviews and processes
7 applications on a first in, first out basis. We do have
8 some programs that are cycle driven, so they do have some
9 deadlines and applications have to be submitted by a certain
10 date to review and then process all of them and taken to a
11 certain Board. But for the most part, it's on a first in,
12 first out basis.

13 When an application is submitted to our office, we
14 do an initial check for completeness. What we do is we work
15 with districts to identify that all of the components are
16 submitted with the application. If there are certain things
17 that are missing, we work with districts to get those
18 different components submitted.

19 Once the application is deemed that it's complete,
20 we send districts a notification with a letter the
21 application's complete. We then move into our analysis part
22 of the review.

23 What we do is we take a look at the application
24 and identify any kind of information that we need. We
25 request -- we may request further justification for certain

1 grants. We also identify grants that the district may be
2 eligible for but they didn't request. This is where we get
3 into what we call our 50-day letter.

4 We identify these issues on a letter. We give
5 districts an opportunity to respond and provide additional
6 information.

7 Once a district submits their response, we then do
8 another analysis and then we get into what we call our
9 four-day letter. Basically the four-day letter at this
10 point most of the issues are resolved and it's a matter of
11 either concurring or withdrawing of the application.

12 In this review, we also ask whether projects have
13 a labor compliance program. One of the reasons why we ask
14 is because right now we have funds available under three
15 propositions. We have them available under Proposition 47,
16 Proposition 55, and Proposition 1D.

17 Proposition 47 and 55 has provisions that allow
18 for additional grant for labor compliance programs. So when
19 we ask a district if they have a labor compliance program,
20 we'll fund them out of Proposition 47 or 55. If not, then
21 we'll fund them out of Proposition 1D.

22 This is something that's come into question lately
23 because we have, you know, recently sold bonds on specified
24 bond sources. So generally speaking we assign bonds from
25 the older bond funds first, but right now because we do have

1 bonds from 47, 55, and 1D and knowing that we have a labor
2 compliance component out of Proposition 47 and 55, we'll
3 assign them out of Proposition 47 and 55 if they have a
4 labor compliance program. If not, they get assigned to
5 Proposition 1D fund source.

6 Once all of this is evaluated, we then present it
7 to the Board for an unfunded approval. Now most of you
8 know, we started to have this unfunded approval back in
9 March of 2009. The shell that we call is an item we present
10 to the Board. This funding shell was typically part of a
11 consent item. In there, we have the total project cost, we
12 have the assigned bond fund and all the relevant information
13 for a project.

14 Now, we assign projects on the unfunded list based
15 on receive date. There are a few exceptions to that, one of
16 which is that we put the facility hardship projects -- these
17 are the projects that are health and safety issues -- to the
18 top of the list.

19 And then other projects that may have received a
20 date change where the Board may have granted a change from
21 one month to another, they'll be placed on top of the list.
22 But for the most part, it's based on OPSC receive dates with
23 the exception of those projects again that are health and
24 safety issues or that had a date change by the Board.

25 So that's just the general overview of how we do

1 our processing and then how the projects are assigned to the
2 unfunded list. We have about \$2 billion worth of projects
3 on the unfunded list since March of 2009. So we thought
4 that we'd give the Board just a general overview of what
5 that unfunded list is before we get into the discussion of
6 the CCI adjustments.

7 So with that, I'll be happy to answer any
8 questions on the process.

9 CHAIRPERSON BRYANT: Are there any questions or
10 comments from the Board? Ms. Moore.

11 MS. MOORE: I have a question and a comment.
12 Mr. Mireles, is it -- I thought I heard you say and I just
13 wanted to confirm it, that facility hardship projects go to
14 the top-top-top of the list. Is that correct or -- is that
15 correct?

16 MR. MIRELES: It's to the top of the Board's -- of
17 each month approvals.

18 MS. MOORE: And that is how we've functioned? I
19 thought -- and that's why I was asking for clarification. I
20 thought that the facility hardship projects went to the top
21 of the list.

22 MR. MIRELES: No. It's at the top of each Board's
23 approvals. They go to the top of that month's list. So if
24 we have 20 projects that are presented for the March Board
25 and we have 2 facility hardships, they'll go to the top of

1 that Board's approval list.

2 MS. MOORE: So we could have a situation then as
3 we have funding become available that would be facility
4 hardship projects that have to wait in line for that funding
5 in the same manner. They'd simply be at the top of whatever
6 month they might have occurred at. Is that correct?

7 MR. MIRELES: Yes.

8 MS. MOORE: And is that by regulation that we do
9 that? And should -- and I'm just wondering if it is not by
10 regulation, is it something that we should maybe consider in
11 the future about are these truly our most needy projects
12 because they are a facility hardship and should they be
13 funded before others. I don't know, but I wonder that.

14 MR. MIRELES: To answer your first question, it's
15 not by regulation. It's a policy decision that the Board
16 can certainly make in terms of what constitutes a priority
17 to be placed on the unfunded list. This is the way that
18 we've been doing it since March of '09, but again it's not
19 written regulation in terms of the order.

20 MS. MOORE: I just wonder because of those
21 facility hardships are typically egregious situations and is
22 it -- and we find them based on health and safety. I think
23 you have qualify on that -- under that criteria and I for
24 one I think would like a discussion at the Board,
25 particularly not this Board, that perhaps we discuss it. It

1 may remain the same way that has been current practice, but
2 I think it should be discussed as we have limited funds to
3 work with, whether there is a top priority or not.

4 And then my second is a comment and that is of I
5 guess list integrity is what I would -- how I would list it.
6 And because of the situation that we are in with the crisis
7 of, you know, meting out funding over time, where we are
8 now, the list becomes very critical and crucial and I think
9 that districts, you know, watch it very closely.

10 And what I've seen is that now we have another
11 issue that districts don't control and that could actually
12 control when they get funded and that is what bond funds
13 they're assigned.

14 And that bond fund assignment I know in good faith
15 the staff does it to the betterment of the program. They're
16 giving 47 and 55 to those projects that may have a labor
17 compliance component and I think that was a good policy
18 decision when it was made.

19 But what it actually can have happen is that
20 because of that assignment, particularly now we only have 1D
21 funds that were done by this last bond sale, a project may
22 be skipped over purely because of its bond fund assignment.
23 And I think that we should come back and also provide
24 options about how we can solve that issue because it --
25 inherently I think it's not fair to the district that we

1 arbitrarily kind of assigned a bond fund and because that
2 they might not get -- another project gets funded earlier.

3 MS. SILVERMAN: I know we had background about
4 this issue. We know -- I mean it's very critical that there
5 are no pots of money, various funds that are missed from any
6 allocation, or, you know, the goal is to -- to get the money
7 out and I hear your question.

8 Specifically we are working closely together with
9 Department of Finance and trying to mitigate the issue.
10 We're hopeful that this week the bond sales identifying that
11 at the last sale -- it was just 1D exclusively. We're
12 hoping that the cash we give to the program will definitely
13 make it an even playing field.

14 So I mean we are working very close to -- with
15 this issue and definitely it does raise a concern for all of
16 us.

17 MS. MOORE: So that -- if I may, when we come back
18 with real funds to apportion in April, I hope that that is
19 the case, that we are moving down that list date by date so
20 that districts are receiving funding in the date order that
21 they are, and if we are not able to do that because of our
22 consideration -- because of our policy decision around bond
23 fund assignment, then I think that we should be brought back
24 a solution to that as well.

25 CHAIRPERSON BRYANT: And I'll commit to working

1 with staff on that too. I'm really -- I'm also sensitive to
2 this issue and I think what we might end up with is when we
3 come back -- and if we, knock on wood, we can come back by
4 April -- we still haven't been given the official green
5 light yet, but if we come back in April and we're only able
6 to do 1D and this new sale provides the fill-in for 47 and
7 55, maybe we can lay it out to show the Board so that the
8 Board feels comfortable that by the time we finish
9 apportioning these two rounds of bond sales that we're
10 pretty much even at the bottom.

11 I think that's my goal. I know it's staff's goal
12 and the Department -- my Department is working to try to
13 make sure that the -- but we may end up with, you know,
14 glitches like we did last time. We'll just -- we'll make
15 sure that the Board understands those and that the -- that
16 we explain it and we can fix it if we can. Mr. --

17 MS. KAPLAN: Can I seek clarification because I'm
18 wanting to make sure that I also have clear direction and
19 understanding things. Ms. Moore, are you asking for staff
20 to internally work this out and come out with a report on
21 suggestions or work with Department of Finance? Are you
22 actually asking for it to come back and to be a policy
23 discussion in regards to financial hardship and their
24 placement on the unfunded list and then too a discussion on
25 the list integrity and what it should look like so that

1 there are policy changes and discussions at the Board.

2 MS. MOORE: I -- on financial hardship, I think
3 that there should be a discussion at the Board, yes. That
4 was the one --

5 MS. KAPLAN: Are you asking for a policy
6 discussion or just a report?

7 MS. MOORE: I think a policy discussion. It's a
8 policy issue that -- it's a policy issue. Is there a
9 priority of projects. Our financial -- facility hardship.
10 Thank you.

11 Our facility hardship projects by virtue of health
12 and safety, should they be at the top of the list? I'm not
13 saying I have the answer for that or -- but I think that we
14 should have a discussion about it as we mete out funds for
15 projects.

16 MS. KAPLAN: So you're asking for it to be an
17 action item potentially.

18 MS. MOORE: I would think if we want to make a
19 policy change, we'd have to have an action item, so yes.

20 MS. KAPLAN: Okay.

21 MS. MOORE: The second piece is I think the Chair
22 has said we'll work to ensure that issue. If we don't have
23 a solution to that issue and we come back in April and it
24 does look like we are hopping over projects to fund other
25 ones because of this bond fund assignment, I would want

1 solutions to that, and, you know, I can think of is it
2 possible to have the assignment be able to come out of any
3 bond source.

4 Now I know that then that's difficult to track
5 them over time, but we have a cumulative tracking that we're
6 doing on these bonds, 47, 55, and 1D. You know, is it the
7 cumulative track that we do. But I think it's an important
8 enough issue that for the integrity of that list and that
9 everybody that watches it quite closely that they see that
10 they're funded as they were in line.

11 CHAIRPERSON BRYANT: Mr. Harvey.

12 MR. HARVEY: Thank you. I got a couple questions
13 myself and I too appreciate what Member Moore has said about
14 the policy discussion because I think it is timely to take a
15 look at whether or not we should rearrange who we fund and
16 how we fund because we've got apportionments available, but
17 they're sitting.

18 We said before there was 300 and something that
19 just got allocated. We have 600 million that was approved
20 and authorized before and I think we continue to talk about
21 getting the money out, creating jobs, making schools safer
22 and there's got to be a way of preserving integrity of that
23 list so somebody's not quite ready to go yet, they can still
24 stay in place, but somebody who may be shovel ready, for
25 example, or hardship ready would move up on that list.

1 So my request would be that if we're looking at
2 potentially changing the way in which we prioritize our
3 projects that we look at those that create jobs, those that
4 are shovel ready as well as the category you're looking at.
5 I'd like some different options to look at.

6 CHAIRPERSON BRYANT: As I'm sitting here, I think
7 I have a suggestion. I think maybe if it's okay that we
8 create some sort of a subcommittee a little bit to work with
9 staff on this issue, so besides just me that they -- like
10 thinking of you for one -- is if -- so that we can make sure
11 because I think all of us want to do this apportionment in
12 April if we get the go-ahead from the State Treasurer and
13 all of us want to do it again in May if we can. And I think
14 staff is going to want to have good policy and it's
15 complicated for them to sort the list and make changes. And
16 I think if we could, you know --

17 MS. MOORE: I'd be happy to work with you.

18 CHAIRPERSON BRYANT: Yeah. And maybe even -- and
19 maybe -- and Mr. Harvey too. Not to just do all the -- as
20 wonky types, but maybe it would be easier for all if all of
21 us wonky types did it and just really made sure that what
22 staff brings back is -- gets this notion throughout the
23 system, if that's okay with everyone. We can -- the three
24 of us can work on it.

25 MS. KAPLAN: And just to make sure that we're

1 abundantly clear, so the subcommittee, is that discussing
2 just the list or is also facility hardship included in that
3 discussion or --

4 CHAIRPERSON BRYANT: I'm just talking about the
5 list for the moment.

6 MS. KAPLAN: List for the moment --

7 CHAIRPERSON BRYANT: Yeah.

8 MS. KAPLAN: -- and then facility hardship --

9 CHAIRPERSON BRYANT: And facility hardship -- I
10 don't see why that facility hardship can't be brought back
11 when we redo Item 21. It seems to lend itself to that
12 discussion.

13 MS. KAPLAN: So we should expect it as a
14 discussion next month along with the same --

15 MS. MOORE: I -- Cynthia, I would disagree that
16 facility hardship and Item 21 are the same. I think they're
17 very different items, but as I heard the facility -- that's
18 financial hardship.

19 CHAIRPERSON BRYANT: I keep calling it
20 financial --

21 MS. MOORE: That's financial hardship.

22 CHAIRPERSON BRYANT: Facility hardship.

23 MS. MOORE: Facility hardship is I've had to
24 abandon my facility because it's in a dangerous situation
25 and therefore I'm seeking facility hardship funding. It's a

1 health and safety issue and I just ask the policy -- I just
2 ask of us to ask the policy question of ourselves are those
3 our top priority. They may not be and we may not have any
4 ability to change that, but I thought it was a timely
5 decision to make because of health and safety.

6 MR. HARVEY: If I may go on.

7 MS. KAPLAN: So then it would come back as an
8 action item to discuss facility hardship and where it's
9 priority is on the unfunded list based on what we could do
10 within statute and regulations.

11 MR. HARVEY: And also shovel ready.

12 MS. KAPLAN: And then separately shovel ready and
13 are you --

14 MR. HARVEY: Or any other recommendations that you
15 may come up with.

16 MS. KAPLAN: And that's the subcommittee that the
17 Chair has requested set up. Are we looking to have the
18 discussion come back in April on that?

19 MR. HARVEY: Can I raise that point? I'd like to
20 get both of your reactions, Ms. Kaplan and Ms. Silverman.
21 We have had an extraordinary request to move you all in a
22 two-week period and we're going to get it done, but I don't
23 know what this does to your preparation for an April agenda
24 other than perhaps apportioning the dollars. I think we
25 should meet and apportion, but I want to make sure I'm

1 sensitive to the disruption you are all going to face in
2 this alleged box move which is quite, quite difficult and we
3 appreciate your understanding and patience, but tell me can
4 you do more than apportion in April and do it well.

5 MS. SILVERMAN: Right. Well, obviously we're
6 going to be, like you said, moving this weekend, and so
7 obviously our IT system is going to be one of the first
8 items to be moving over. That is going to be very delicate.
9 Unfortunately we have an old system.

10 So there will potentially be challenges. We're
11 hopeful that we will have a green light and it wakes up when
12 it should wake up. So I agree, we're going to have some
13 limitations potentially because we do have processing cutoff
14 timelines and the goal would be to come back and provide
15 apportionments. In the spirit of that, I think we can meet
16 that obligation.

17 MS. KAPLAN: And just for an example, you know,
18 I'm a one-man show. What we did move because of the move
19 and because of the work on OPSC staff, the Implementation
20 Committee which is supposed to be April 1st, next Thursday,
21 to the 8th because we are supposed to be finishing preparing
22 the items this week, but of course we're moving of which we
23 eight days' notice.

24 Do I do know the staff at OPSC has for
25 Implementation Committee is pushed back which also pushes it

1 back to when we're developing Board agenda items at the same
2 time.

3 MR. HARVEY: I just want to be sensitive, and I'm
4 sure you all will work it out. Can I ask -- you talked
5 about working with Finance and the Treasurer to make sure
6 this next allocation is more balanced. Would a letter from
7 the Board help you in that advocacy or not? Because if you
8 think it would help, I would perhaps suggest that we give
9 you that to gird up the argument for fairness.

10 MS. SILVERMAN: I mean anything would help I'm
11 sure at this point in time, but we definitely work closely
12 with Cynthia's staff at the Department of Finance and the
13 Treasurer's office, so I mean any support I'm sure would be
14 great support for -- to having a good solution for our
15 program.

16 CHAIRPERSON BRYANT: We could do it -- Mr. --

17 MR. HARVEY: I will leave that to you. One more
18 comment.

19 CHAIRPERSON BRYANT: Oh, sorry.

20 MR. HARVEY: The staff at this point have a
21 recommendation. This looks like it's an action item and you
22 say Option 1 or 2. Are we being asked --

23 CHAIRPERSON BRYANT: We haven't gone to -- so
24 we're on Item --

25 MS. SILVERMAN: Tab 20.

1 CHAIRPERSON BRYANT: We're on Tab 20.

2 SENATOR LOWENTHAL: We're on Tab 20.

3 MR. HARVEY: We're on Tab 20.

4 MS. MOORE: We're just on a report.

5 MR. HARVEY: No action on a report. I'm done.

6 CHAIRPERSON BRYANT: Mr. Duffy, did you have a
7 comment on a nonaction item?

8 MR. DUFFY: I do and really it's a suggestion to
9 assist with this. The OPSC has a document. It's a 5004
10 document and there's a check-the-box do you run a labor
11 compliance program, yes or no. The suggestion to
12 Ms. Silverman would be to recontact those districts that
13 checked yes to determine, one, if they actually are running
14 a program or if they thought they had to check yes there.
15 The other would be that if they would accept Proposition 1D
16 funds that do not come -- that do not carry with them labor
17 compliance funds to pay for the program.

18 In essence, a district that would accept 1D
19 dollars, although they are running a labor compliance
20 program and wouldn't be compensated for that and finding out
21 whether or not that would be acceptable for them. The first
22 comment was to basically review whether or not districts
23 really properly check the boxes there.

24 And we suggest that, Lisa, because of two
25 conversations with people that work with a lot of school

1 districts, one last week and one just today, that basically
2 said that these kinds of issues may be getting in the way.
3 So just trying to help. That would allow you to do one of
4 two things, either put 47 and 55 funds on the street or more
5 1D dollars on the street, and that's my only comment. Thank
6 you.

7 MR. SMOOT: Good afternoon. Lyle Smoot
8 representing Los Angeles Unified School District. While
9 you're discussing these other issues, I'd like to bring up
10 an additional issue and that is the concept of date order of
11 a complete application. For Los Angeles, that causes us
12 concern because quite frankly quite often we will drop off
13 200 applications in one day and sometimes it takes as long
14 as a year to get through all of the back and forth things
15 that go on to get those applications actually through the
16 process and to the Board.

17 So for us we're already taking one hit, if you
18 don't mind my using that term, by the fact that it takes a
19 long time to get all those applications aboard, and then
20 secondly we're going to take a second hit because the date
21 of the complete application for all of those projects may be
22 substantially later than it would be if, for instance, we
23 could drop off one a day for 200 days.

24 So we're just asking for that consideration.
25 We're a little bit concerned that it showed up here in a

1 report because we went back and tried to do research to
2 determine if the Board had ever said, you know, date of a
3 complete application was a good way to do an unfunded list.
4 We can't find that. That doesn't mean it doesn't exist.
5 I'm just saying we can't find it. We'd like it to be part
6 of this discussion.

7 CHAIRPERSON BRYANT: I think your point's well
8 taken. That's really why I wanted to have this item because
9 I don't think -- I think staff did -- I think -- I just
10 don't think that the Board and everyone had a complete
11 understanding of how the list was developed and it struck me
12 as something really important particularly when there's
13 three of us that are new, although Senator Huff's not here
14 today. But that we really all had a shared understanding of
15 it so we could make adjustments if we want to.

16 MR. SMOOT: Great. Thank you.

17 CHAIRPERSON BRYANT: So -- thank you. All right.
18 Anything else on that? Okay. Move to Tab 11. Now Tab 11.
19 Mr. Harvey, Tab 11. Masha Lutsuk presenting this item.

20 MS. LUTSUK: Good afternoon. This is on Tab 11
21 for those of you that have the tabbed binder and page 157 --
22 stamped page 157. Here's a discussion item with a goal to
23 provide options for the Board for application of the **annual**
24 **grant adjustment** that was adopted at the January meeting.

25 We've heard a lot of concerns about the action in

1 January and both in February. So we went back and also in
2 the spirit of trying to resolve this issue, determined that
3 we will not be bringing any funding applications forward to
4 the Board for approval this month, but we will bring
5 applications forward hopefully in the future months and we
6 will make sure that we present them in appropriate groups to
7 delineate between January projects, February projects, and
8 what would have been March projects, so we do not penalize
9 districts. I just wanted to make that little note before I
10 go into the discussion.

11 The discussion on the CCI adjustment which is the
12 Construction Cost Index I believe needs a little bit of
13 background, so I'll just -- I'll quickly go through that.
14 The majority of the funding provided by the Board for new
15 construction modernization is based on the per pupil grant
16 and the law requires us to annually adjust that for changes
17 in the Construction Cost Index for Class B construction and
18 then we have further regulations that ask the Board to adopt
19 that index each January.

20 We are in uncharted territory for a couple of
21 reasons. First, the index adjustment since 1999 which
22 would -- has always been positive. And it's been past
23 practice for us since the applications don't immediately go
24 to the Board once they arrive to our office, but
25 applications received late in the calendar year would be

1 presented to the State Allocation Board in January or
2 February of the following calendar year and having the
3 benefit of the positive adjustments.

4 When the adjustment is negative, there's of course
5 a concern about the processing dates and could have the
6 project been presented earlier as well as projects not
7 receiving advanced notice on the negative adjustment and
8 like I said already, this is the first time that the
9 adjustment is negative.

10 The second challenge on the issue and we believe
11 it's the most important one is the uncertain status of the
12 approvals that we have been making. In the past, there were
13 a couple programs, for example, modernization program --
14 very popular program, quickly got oversubscribed. With
15 prior bonds, we quickly exhausted bond authority and moved
16 to what we call an unfunded list.

17 This is a provision in regulations not in statute
18 and it directs the Board to establish an information list of
19 projects when funds are not available.

20 Again just to recite past history, once funds
21 become available, such as with a new bond sale, we present
22 the applications to the Board for an actual apportionment
23 and they again receive a benefit of the CCI changes, always
24 positive in the past, and they receive the apportionment at
25 the level of the current grant amounts. And that is

1 consistent with what we believe the intent of the program
2 was is to review applications for projects that are ready to
3 be built and provide them with a grant level that is based
4 on the measure of inflation at that point, the best one that
5 we have available.

6 Again we are in uncharted territory here because
7 our unfunded approvals do not -- currently that we're making
8 are being provided to districts partly to allow them to move
9 forward. Even when they have a paper approval from the
10 state to move forward and obtain maybe local financing and
11 move forward with the project, yet we may not be able to
12 recognize them as actual apportionments under the current
13 regulations.

14 So we believe that -- and respecting all the
15 concerns that were brought in the prior meetings, we believe
16 that the main issue is the status of these approvals that
17 we're making. And again to remind you we've also -- back
18 last year when we did provide -- initiate unfunded approvals
19 did make a delineation that these are different than the
20 unfunded approvals that the Board have done in the past.

21 So with that say, we are focusing this item
22 discussion on that issue. We're presenting two options.
23 The first one is spelled out on stamped page 159 on the
24 bottom and that is basically an option to apply the CCI
25 adjustment to unfunded approvals following the adoption of

1 the index adjustment.

2 And we think there is flexibility in the
3 regulations to do this. The Board is -- the regulations
4 tell the Board to adopt the index in January and the
5 adjustments to the grants must be annual, but we think that
6 there's flexibility there to determine that the adjustments
7 to the actual approvals can happen the following month.

8 We're still making an annual adjustment, but we
9 are addressing the issue of giving districts advance notice.
10 So this recommendation would basically state that any
11 unfunded approvals presented in April -- those ones that we
12 were planning to present in April would be receiving the new
13 2010 grant levels based on the index adjustment of minus
14 6.74 percent.

15 We are spelling the actions that would be needed
16 and this is mostly for our benefit and those of stakeholders
17 to know clearly what our actions would be after this. And
18 simply put, it would mean that we would freeze all the
19 unfunded approvals at the level that they are approved at at
20 the time of unfunded approval.

21 This is something that we feel could be
22 established as policy and then also formulated into
23 regulations that we could bring forward to you and hopefully
24 maybe even be able to move them on emergency regulations to
25 the Office of Administrative Law after we do that research.

1 So -- but we believe it would be best because
2 we're really potentially dealing with a type of approval
3 that we have not done before. It's neither an apportionment
4 nor unfunded approval.

5 From -- by freezing though the 2009 projects, we
6 would also, to be consistent, be freezing any 2010 unfunded
7 approvals with 2010 adjustments at their level. The con to
8 that for those school districts is that if there is a
9 positive CCI change next year and if for some reason there
10 is still not an apportionment provided, those districts
11 would not be able to get the benefit of any positive
12 increases later.

13 So folks -- projects being frozen the unfunded
14 list works both ways and has pros and cons if you think
15 about adjustments being positive and negative, but again the
16 goal for us is to stay consistent and have, you know,
17 expectations written out so folks can know what will happen
18 to their projects.

19 And then Option 2 is a counter-option to that
20 which would be to -- with that option, we would not need any
21 regulatory change. We would be deeming the unfunded
22 approvals provided by the Board as true unfunded approvals
23 and the CCI adjustments for those projects would happen at
24 the time of apportionment.

25 So, for example, any projects that receive an

1 unfunded approval in 2009, let's say in August 2009,
2 presented for an actual apportionment let's say in June 2010
3 would receive the lower allocation based on the new CCI.

4 Either way we would still be meeting the
5 requirements on the law to adopt an index and apply it
6 annually to projects. We just have to figure out which
7 projects, unfunded approvals or apportionments.

8 And with that, I'd be able to answer any questions
9 on this issue.

10 CHAIRPERSON BRYANT: Are there any questions?

11 SENATOR LOWENTHAL: I'll wait till Scott --

12 MR. HARVEY: I want to make sure I am interpreting
13 that phrase you used accurately. You said an unfunded list
14 is when funds are not available. We've got bonds, so there
15 are funds theoretically available, but we can't get to them
16 because of the market.

17 So can we legally have an unfunded list if the
18 definition of that list is the funds are not available.

19 MS. LUTSUK: Please allow me a correction. I'll
20 just quote directly from the regulations so we're clear.
21 The regulation it's -- for those that are interested,
22 1859.95, and we're also providing it in here in your item
23 too specifically reads, When the Board has no funds to
24 apportion, the Board will continue to accept and process
25 applications, et cetera, et cetera, and for purposes of

1 developing an unfunded list. An unfunded list is further
2 defined as an information list of projects.

3 So it's when the Board has no funds to apportion.

4 MR. HARVEY: Makes me a little -- feel a little
5 bit better. I wouldn't want us to create something that we
6 really shouldn't be creating if the definition is
7 universally held that an unfunded list means funds are not
8 available. Thank you for that clarification.

9 Let me also ask -- there's another word in your
10 report on page 157 where it talks about this annual
11 adjustment and I'm looking under the authority, the third
12 paragraph, and the phrase it as set forth in the statewide
13 cost index.

14 Is CCI statewide or is it broader than that?
15 What -- how are we using the definition statewide?

16 MS. LUTSUK: There are various entities that --
17 that develop cost indices, so the one that we've used
18 historically in the SFP is Marshall & Swift and the CCI is
19 just a term that refers to multiple indices, Construction
20 Cost Index, and the law though specifically directs us to
21 use a statewide Class B. And Class B is defined as steel
22 and concrete and excludes wood frame. So it's just a -- you
23 know, zooms in on specific types of construction.

24 MR. HARVEY: I just wanted to seek clarity because
25 I know one of our choices was to use the Eight Cities in

1 California. That clearly is a statewide. That's California
2 cities. I didn't know if the one we selected went more
3 regionally, that is out of the state.

4 CHAIRPERSON BRYANT: Oh, we did Eight Cities.

5 MS. LUTSUK: We did Eight Cities in January 2010,
6 but in the past, the majority of the years during the SFP,
7 there was the Ten Western States selection which also covers
8 California but not exclusively California.

9 MR. HARVEY: Okay. So again I feel better. We
10 chose what we did in our January action as the Eight Cities
11 in California. That would indeed be statewide.

12 I kind of like Option 1 -- I'll put myself out
13 there on that -- only because of your very first bullet
14 under the pro on page 160 where it talks about how you're
15 kind of freezing these things, protecting these things,
16 but -- anyway, I like number 1 for the reasons you stated.

17 CHAIRPERSON BRYANT: Senator Lowenthal.

18 SENATOR LOWENTHAL: Yeah. I'm not sure I
19 understand all the issues and when I went through the
20 recommendations, I didn't quite understand everything. So
21 I'm just going to state what I'd like to see and you tell
22 me. I think it's mostly in Option 1.

23 Basically that we use the 2009 CCI for all
24 projects that have been added to the unfunded list to date.
25 So we're going to use the 2009, so they're not going to be

1 subject to the change.

2 Beginning in April, we're going to apply the 2010
3 CCI I think to all of the new 2010 unfunded. What I don't
4 understand is then where do we go.

5 In 2011, the Board is going to decide in January
6 the flexibility that we're going to be needing. We're going
7 to go through another CCI -- right -- adjustment. The
8 question is do we have the -- if there are dramatic changes,
9 can we say that we're locking in through regulation I
10 thought. Could we not lock that in and just give us the
11 flexibility in 2011 to make another decision based upon if
12 we have rapid inflation, for example, that takes place.

13 We have now funded these at a lower level in 2010.
14 In January of 2011, let's say we have dramatic inflation,
15 which I'm not saying we will. Hopefully we won't.
16 Shouldn't we have the flexibility then to set where that CCI
17 is for all those coming in in 2011 because we're really
18 going to -- all those that have -- if they still have not
19 been approved -- I mean apportioned yet, all those that are
20 in that we're apportioning now could we, just as we're --
21 could we look those over again in 2011, is what I'm -- since
22 we haven't funded.

23 Do we have that ability? That's the issue that
24 I'm raising. Could we have that flexibility?

25 CHAIRPERSON BRYANT: Well, there's one thing I've

1 learned in all of this discussion about what the effect of
2 all of our actions are is that we can always redo our
3 regulations. That one I understand for sure, that we can --

4 SENATOR LOWENTHAL: So -- because I just want to
5 make sure if we go that we have that flexibility that all
6 those that we're locking --

7 CHAIRPERSON BRYANT: That we have --

8 SENATOR LOWENTHAL: -- in at a drop, if we now
9 find that we still haven't apportioned by 2011 and costs are
10 way up that we have not locked that in. That would scare
11 me.

12 CHAIRPERSON BRYANT: There's also the AB127
13 adjustment that the Board has the discretion to make as
14 well, but the other 6 percent, there's the other one --
15 another one, so -- that you also have -- we will also have
16 that flexibility to address --

17 SENATOR LOWENTHAL: So you're saying we will have
18 all this flex -- no matter what we do by -- we will have
19 that flexibility in 2011 to look at all those that we've
20 given in 2010.

21 MS. KAPLAN: Senator, it's based on your motion.
22 Since it's a policy consideration -- as OPSC said is
23 suggesting an Option 1 to lock in the 2010 to the CCI
24 apportionment there. It is a policy decision, so therefore
25 if the Board wishes to unlock or not lock, that is a policy

1 decision that either they can make as a motion tonight or
2 have staff come back to you and propose a regulation.

3 SENATOR LOWENTHAL: Because I just want to have as
4 much flexibility in 2011 as possible really -- when we come
5 to that.

6 CHAIRPERSON BRYANT: I also -- I appreciate that
7 we want to maintain flexibility. At the same time, part
8 of -- as I was working a little bit with the staff on this
9 item, I wanted to also provide some kind of certainty to the
10 list as well, not to just leave it in flux and I think this
11 Board's been really clear that we're very sympathetic on all
12 of these issues and --

13 SENATOR LOWENTHAL: Right.

14 CHAIRPERSON BRYANT: -- obviously we would make --
15 I think we would -- if there was super inflation or there
16 was an extreme cost of construction -- they know they can
17 come back us, but at the same time, I don't want anyone to
18 be fooled in to thinking that there's -- that it's just
19 going to keep constantly changing.

20 We do -- we would have under Option 1 the
21 flexibility to make adjustments in January 2011 --

22 SENATOR LOWENTHAL: To those that already -- we've
23 apportioned.

24 CHAIRPERSON BRYANT: -- by changing our
25 regulations.

1 SENATOR LOWENTHAL: We can --

2 CHAIRPERSON BRYANT: Oh, those we've already
3 appORTIONED?

4 SENATOR LOWENTHAL: Well, not appORTIONED. That
5 are unfunded appROVALS.

6 CHAIRPERSON BRYANT: Those that are on the
7 unfunded -- if we've appORTIONED -- if anyone gets
8 appORTIONED --

9 SENATOR LOWENTHAL: No. If they're appORTIONED,
10 no. I'm just talking about all those that come in --

11 CHAIRPERSON BRYANT: Knock on wood, maybe the
12 Treasurer will have a really good sales now and in the fall
13 and we'll be done with this.

14 SENATOR LOWENTHAL: And then we won't have all
15 these unfunded. We won't have all these unfunded.

16 CHAIRPERSON BRYANT: Right.

17 SENATOR LOWENTHAL: But if we do, I just want to
18 say that I want that flexibility to understand in -- just
19 like we're doing now about all those that came in now and so
20 we're saying if you're on the list up until now, you get the
21 2009, which was the higher number.

22 I'm just saying if by any chance we need to
23 increase that, I just want to make sure that we have that
24 flexibility to do that.

25 CHAIRPERSON BRYANT: That and we have the

1 flexibility to change regulations and also you have the
2 AB127.

3 SENATOR LOWENTHAL: I also would like to think --

4 MS. KAPLAN: Can I clarify, Madam Chair, with
5 OPSC. Our regulations currently set -- because I thought
6 you said we would need regulations to set that with that
7 freeze and setting it. So are the regulations in place now,
8 are those the regulations you're proposing in Option 1 to
9 create?

10 MS. LUTSUK: Option 1 would need clarifying
11 regulations to --

12 SENATOR LOWENTHAL: Oh, so we need to create the
13 regulations.

14 MS. LUTSUK: -- reflect the Board's policy.

15 CHAIRPERSON BRYANT: Just to make clear that our
16 intent to move those January and February into the 2009 pot.

17 MS. KAPLAN: But the regulations would be
18 created --

19 SENATOR LOWENTHAL: But also the one about -- the
20 2010 that's starting next year, we're just -- that -- we're
21 going to make regulations now that freeze those in at 2010
22 level.

23 MS. KAPLAN: That is the OPSC recommendation,
24 Senator.

25 SENATOR LOWENTHAL: Right. That is, but if I

1 didn't really want us to -- if I just wanted us to say until
2 2011, if they're still not apportioned that we would then
3 look at that CCI in 2011 to make a determination, what would
4 I need to do? Make a substitute motion?

5 MS. KAPLAN: You would have to make a modified
6 Option 1 or make an Option 3 -- make it your own.

7 SENATOR LOWENTHAL: Got it. And the only other
8 point -- and I would like to do that because we are reducing
9 and I really -- the other point is, I'm not sure there are
10 other options, not so much for this year, but to really look
11 at maybe the Implementation Committee. We now use --
12 following up on what Scott Harvey mentioned before about
13 what is statewide, what is regional, what base -- we're
14 using the Eight Cities in it.

15 There are other options that we could be doing.
16 For example, we could be I think there's -- I'm not sure
17 what the Lee Saylor one. I've seen that in print, but
18 that -- should we be sending to the Implementation Committee
19 just for them to consider for 2011 if they want to make some
20 changes in that and get back to us?

21 I'm just not aware of what the differences are --
22 all the differences between these different models and I'd
23 like to hear something come back in the future. Not to use
24 now but to use in the future too.

25 CHAIRPERSON BRYANT: Right. I don't think that's

1 a bad idea. I think they've had the discussion in the past
2 there, and -- but it certainly is always worth having a
3 discussion --

4 SENATOR LOWENTHAL: Okay.

5 CHAIRPERSON BRYANT: -- to make sure we're doing
6 the right thing.

7 SENATOR LOWENTHAL: Okay.

8 CHAIRPERSON BRYANT: Senator Hancock.

9 SENATOR LOWENTHAL: But I still think that I --
10 what I'm saying is all those -- I think the differences
11 between what I'd like to see in number 1 is the fact that
12 we're not going to create regulations now that all of these
13 come 2011 are locked in. What I would like to see if that
14 they're -- that we do this through 2010 and if we make
15 regulation or when we go through the same CCI in 2011 that
16 we be given the flexibility to -- since they have not
17 apportioned to make those changes because we -- what you're
18 saying is we would have to adopt regulations today and then
19 change those regulations in January of 2011 if we go this
20 way.

21 I'd rather give us the flexibility now to make
22 those changes in 2011. That's just what I would like to do.

23 CHAIRPERSON BRYANT: Senator Hancock.

24 SENATOR HANCOCK: Yeah. I agree with a lot of the
25 import of what Senator Lowenthal said. I was going to try

1 to make a motion --

2 SENATOR LOWENTHAL: Sure.

3 SENATOR HANCOCK: -- out of it because I have to
4 say as I looked into the business of what index we use, I
5 think that we had a little catch-22 happening here because
6 as it turns out the Eight Cities index is not -- doesn't
7 factor in prevailing wage which is fact law requires
8 districts to use and that could lead to a reduction that
9 just sort of lowers their whole grant.

10 And it seems to me that we would want to direct
11 the Implementation Committee to look at all the indexes that
12 are out there so we get an accurate reflection of what we
13 really are requiring our districts to do.

14 So if I could try this. I would move Option 1
15 adding to it that we ask the staff and Implementation
16 Committee to review all the available indexes for 2011 to
17 find what most accurately reflects the conditions under
18 which our districts will be building their schools and to
19 also make clear that what we're doing today will be subject
20 to 127 grant adjustments should districts find out that the
21 2009 CCI, which will be about 6 and a half percent less
22 money --

23 SENATOR LOWENTHAL: No, no. The 2009 is higher.
24 2010.

25 SENATOR HANCOCK: Oh -- yeah. 2010 --

1 SENATOR LOWENTHAL: Right.

2 SENATOR HANCOCK: -- those districts find that
3 they can't complete their construction under that formula.

4 But I think as the Chair pointed out we do have
5 AB127 grant adjustments available to us to make. We just
6 want to clarify that that is definitely part of what we're
7 doing.

8 MS. KAPLAN: Before the motion is moved, Senator
9 Hancock, what you're asking is actually a little bit
10 different than what Senator Lowenthal was wanting. Option 1
11 does not have the flexibility nor does it clarify what is
12 included for the '09. Is it including February or does it
13 include all the March which are not on the list here but
14 which OPSC has.

15 SENATOR HANCOCK: Oh, okay. My assumption was
16 that we were going to keep the 2009 CCI for projects that
17 got unfunded approval in 2009 or in January, February, and
18 March of 2010 when those funds become available.

19 SENATOR LOWENTHAL: And that in 2010, from April
20 on, we would use the new CCI --

21 SENATOR HANCOCK: Right. With the opportunity to
22 have --

23 SENATOR LOWENTHAL: But I'm just concerned about
24 what happens in 2011.

25 SENATOR HANCOCK: With the flexibility of possible

1 127 adjustments and that for 2011, we're going to look at
2 all the different indexes.

3 CHAIRPERSON BRYANT: Just to be clear, there
4 aren't any March projects. Is there a March list somewhere
5 we -- we have no items on our agenda for March approval. So
6 there -- so we had January items and we had February items.
7 We won't have any more items again till April.

8 MS. KAPLAN: And it's kind of a policy discussion.
9 If the SAB wishes, OPSC has kept tabs of what would have
10 been on the March agenda.

11 CHAIRPERSON BRYANT: Okay. This is -- let me just
12 be really, really clear about my position on this. This
13 would've and could've is what's making this really
14 difficult to manage. It's like that was the whole
15 conversation in January.

16 Well, if we would've had a meeting in December --
17 that's why when we did this agenda was why I felt very
18 strongly to have this discussion about CCI and have this
19 discussion about the list was to have no projects on this so
20 that we were clear on a going forward basis.

21 SENATOR HANCOCK: Okay. So I'll take March out.

22 CHAIRPERSON BRYANT: Yeah. That would be
23 delightful.

24 SENATOR HANCOCK: January and February. Okay.

25 CHAIRPERSON BRYANT: And just so you know --

1 SENATOR HANCOCK: Yeah.

2 CHAIRPERSON BRYANT: -- the February, remember,
3 Ms. Moore's motion in February, we took all the February
4 projects off, both those from -- there were some January
5 ones and some February ones. So we will have to vote on
6 those again because they've never been approved by us, in
7 April, but we'll do those at the 2009 level. And then the
8 new -- if we add new ones in April -- we may not because we
9 have apportionments to do and I think that's our priority,
10 put the cash out, but at that time, then those would be the
11 2010 level. Does that make sense?

12 MS. MOORE: Can I just clarify.

13 CHAIRPERSON BRYANT: Yeah.

14 MS. MOORE: So you're saying the January's were
15 already approved, but it's January, they remain status quo.
16 The February, we didn't take an action on it, but it's a
17 known list. So we are including the --

18 CHAIRPERSON BRYANT: But it was in the agenda.

19 MS. MOORE: -- January and the February known list
20 at the 2009 CCI and all projects in 2009 prior as well.

21 SENATOR LOWENTHAL: Right.

22 MS. MOORE: And then --

23 CHAIRPERSON BRYANT: And then there'll be a --
24 there'll be a new list in April. I think we -- I don't know
25 your staff work, if you have -- if the apportionment people

1 are the same ones as the unfunded list people, can they do
2 both or if we focus on apportionments, will we not have any
3 added to unfunded.

4 MS. LUTSUK: It would be easier for us to do the
5 apportionments if -- depending on if the Board chooses
6 Option 1, we don't have to recalculate those unfunded
7 approvals. We could bring them as a list to the Board. So
8 that would -- we could accommodate that.

9 It would be a little bit more challenging since we
10 have to readdress January and February people to do the --
11 to address unfunded approvals. So maybe we can bring the
12 old ones for correction to you and bring truly new ones --
13 we're planning to bring more unfunded approvals, new ones,
14 in April, but with this move, we may not be able to do that.
15 Our cutoff date lines are severely backed up.

16 MS. MOORE: We're off of Option 1 though. I --
17 this -- the Board has moved beyond Option 1 and -- because
18 it's -- it is --

19 CHAIRPERSON BRYANT: I think she -- I don't mean
20 to speak for her, but I think she means Option 1 in terms of
21 having -- of splitting a list, not in terms -- Option 2 is
22 just doing it at the time of apportionment. We're not
23 talking about regulations; right? Are you just talking
24 about January and February dates -- I believe.

25 MS. LUTSUK: Okay. Let's --

1 CHAIRPERSON BRYANT: So restate it because I think
2 you guys are talking across each other.

3 MS. MOORE: Why don't we restate the motion.

4 SENATOR LOWENTHAL: Right. What is the --

5 MS. MOORE: And then staff can say how that
6 impacts I think. Because I'm understanding the motion to be
7 very different than Option 1.

8 ASSEMBLY MEMBER FULLER: I am too and I'm getting
9 really concerned about this discussion because I think that
10 we almost have consensus around Option 1 and that we just
11 needed to clarify that at any given time, the way this is
12 currently written, we always have the opportunity to review
13 it in January. We're always going to have the opportunity
14 to review it in January and at that time, we can also open
15 the CCI or not open the CCI.

16 I think the issue is -- for us tonight, starts out
17 to be the difference between at apportionment or on the
18 list. So if we move to Option 1 and we take Option 2
19 completely off, we'd be -- we don't want to do Option 2 and
20 we clarify it so that we basically are just saying --
21 basically what it comes down to is we just to let those guys
22 who were like floating around out there that we know are on
23 a list now have what we intended for them to have back --

24 SENATOR LOWENTHAL: Before -- back then.

25 ASSEMBLY MEMBER FULLER: -- and that maybe it was

1 an unanticipated consequence for the way it came out that
2 those people that are like January and February approvals
3 didn't get the 2009 because we don't -- we didn't want to
4 harm the people who were already in line and who had already
5 been there.

6 Now we've moved so far away from that that I'm
7 afraid that our motion is going to be clouded up for those
8 people by all of the things that we may, should, might do in
9 the future that we have the right to do anyway.

10 So if we do it, I say at least do it in two
11 motions. Like let's do the motion that basically says that
12 we are going to do Option 1 and that we're going to let like
13 up to whatever we decide about March --

14 SENATOR HANCOCK: So March is off the table.
15 March did not exist. We just figured that out.

16 ASSEMBLY MEMBER FULLER: Okay. So it's January
17 and February and we're not setting any -- we're not changing
18 any of the regs that say we have to make an annual
19 adjustment. We have to make an annual adjustment -- we have
20 to. Next January, we have to make an annual adjustment and
21 the precedent that we're setting is, is that -- and that the
22 regs say evidently is that up to one month after that --
23 like if we make the annual adjustment in December, up to one
24 month after that in January, we can put all those guys in
25 whatever's the better funding formula that we have decided

1 upon for them.

2 And it's only the people who are apportioned who
3 actually get their money that can't be changed. And I
4 suppose given the fact that this Board seems to be able to
5 change anything they want to change, they probably could
6 change that too if we all got together on that.

7 ASSEMBLY MEMBER TORLAKSON: Is that a motion?

8 MR. HARVEY: Is that a motion?

9 ASSEMBLY MEMBER FULLER: Yeah. Okay. Yes.

10 ASSEMBLY MEMBER TORLAKSON: Second.

11 ASSEMBLY MEMBER FULLER: That's a motion.

12 MS. MOORE: I'm sorry, but it is confusing because
13 Option 1 says apply the CCI adjustment to SFP unfunded
14 approvals following the adoption of the annual grant
15 adjustments by the State Allocation Board.

16 Okay. The State -- I think that they wanted
17 clarity, but the State Allocation Board did adjust in
18 January the CCI down 6.74 percent; correct? So the next
19 statement says projects presented for unfunded approval
20 after March 24th will receive grants based on the negative
21 CCI for 2010.

22 Okay. So we have the January projects that are
23 not apportioned after March, but we have the February
24 projects that will be apportioned after March that are not
25 included and I heard the Board say they want to include

1 January and February.

2 SENATOR LOWENTHAL: And February --

3 MS. MOORE: That's why I'm saying that Option 1
4 didn't seem to do what the Board --

5 CHAIRPERSON BRYANT: I think when you look at the
6 four bullet points below the steps to take to implement the
7 action, it would leave the January 27th in place. We
8 would --

9 SENATOR LOWENTHAL: Right.

10 CHAIRPERSON BRYANT: -- recalculate the February
11 ones and present those revised at the April 28th with the
12 old reg, direct staff to use the SFP grants 2010 for the new
13 unfunded approvals. The only bullet point -- this fourth
14 bullet point directs staff to prepare emergency regs is off
15 the table. I mean --

16 MS. KAPLAN: And the only other thing is -- to
17 clarify is just delete the when apportioned these projects
18 will retain the 2010 level of funding and not be subject to
19 further any adjustments.

20 CHAIRPERSON BRYANT: Right. Good point.

21 MS. KAPLAN: And take that off --

22 SENATOR LOWENTHAL: Take that off too.

23 MS. KAPLAN: Yeah. And then just add in that
24 you're directing me to go to Implementation Committee to
25 have an indices discussion.

1 ASSEMBLY MEMBER TORLAKSON: I'll second her motion
2 to do all that. Jeannie's motion.

3 CHAIRPERSON BRYANT: Okay. Now, Ms. Kaplan,
4 that's the motion.

5 SENATOR LOWENTHAL: That's the -- with the
6 clarifying --

7 ASSEMBLY MEMBER FULLER: Great.

8 SENATOR HANCOCK: Okay. I'd like to have the
9 motion read. I think we've got it, but let's make sure.

10 CHAIRPERSON BRYANT: Okay. I'll do it. I think
11 the motion is to apply the CCI adjustment to SFP unfunded
12 approvals following adoption of the annual grant adjustments
13 by the State Allocation Board. Projects presented for
14 unfunded approval after March 24th, 2010, will receive
15 grants based on a negative 6.74 percent CCI for 2010.

16 The actions needed are declare the January 27th
17 SAB unfunded approvals to be valid and effective as
18 presented at the January 27th meeting; direct staff to
19 recalculate unfunded approvals presented at the February
20 24th, 2010, meeting with 2009 grant levels; present the
21 revised project approvals to the SAB at the April 28th,
22 2010, meeting; direct staff to use the SFP grants at the
23 2010 levels for any new unfunded approvals beginning with
24 April 2010; and direct the Implementation Committee to
25 consider the various index options that are out there.

1 MS. KAPLAN: Correct.

2 CHAIRPERSON BRYANT: All right. That was the
3 motion. Can we have a roll call. Oh, wait. I forgot to
4 ask for public comment.

5 SENATOR HANCOCK: Madam Chair, if I -- and we
6 also -- there was talk about clarifying that AB127
7 adjustments are still available. We're not doing any more
8 CCI calculations, but those adjustments -- but people get --
9 okay. We don't need it because it's under the --

10 SENATOR LOWENTHAL: No. Because that's already --

11 CHAIRPERSON BRYANT: We just know it.

12 MR. HARVEY: We do that anyway.

13 CHAIRPERSON BRYANT: Mr. Duffy.

14 MR. DUFFY: Thank you, Madam Chair. Members, Tom
15 Duffy again for CASH. I just wanted to point out that the
16 bottom bullet, Madam Chair, that you're right about the
17 bottom bullet that's there dealing with emergency
18 regulations.

19 Item 21 that you removed from the agenda, there's
20 an implication for that and I just wanted to point that out.
21 It's noted above.

22 And so not troubling with this motion at all.
23 Just wanted to indicate to you that we had submitted a
24 letter on the CCI question and we talked about the Lee
25 Saylor Index reflecting what Senator Hancock was talking

1 about earlier and that is reflecting labor costs at
2 prevailing wage level which we think is important.

3 And we don't want to undo what you've done.
4 You've done some wonderful things and it's been complicated,
5 but just for the record and on the side of fairness, the
6 6 percent increase that again Senator Hancock just mentioned
7 was not applied in 2009 and it has not been applied in 2010.
8 And the negative 6.74 would have a different effect had the
9 6 percent been applied last year in 2009.

10 So we just -- as we move forward with this -- and
11 this is -- I think the Executive Officer said, this is sort
12 of uncharted waters here, as we move forward, if we just
13 keep that before us and if we can get to that remembering
14 that it was for 2009 and there's been a lot of work and
15 study that was done by OPSC on that and I think it's
16 reflective of the increase in the overall, but also to
17 remember 2010 and the effect of 2010 review may be somewhat
18 on the negative, but at least we believe that it should be
19 done.

20 So again thank you. I appreciate the difficult
21 task you had in reviewing all this information.

22 CHAIRPERSON BRYANT: Anything else? Any other
23 comment? Can you call the roll.

24 MS. GENERA: Senator Lowenthal.

25 SENATOR LOWENTHAL: Aye.

1 MS. GENERA: Senator Hancock.

2 SENATOR HANCOCK: Aye.

3 MS. GENERA: Assembly Member Fuller.

4 ASSEMBLY MEMBER FULLER: Aye.

5 MS. GENERA: Assembly Member Torlakson.

6 ASSEMBLY MEMBER TORLAKSON: Aye.

7 MS. GENERA: Scott Harvey.

8 MR. HARVEY: Aye.

9 MS. GENERA: Kathleen Moore.

10 MS. MOORE: Aye.

11 MS. GENERA: Lyn Greene.

12 MS. GREENE: Aye.

13 MS. GENERA: Cynthia Bryant.

14 CHAIRPERSON BRYANT: Aye.

15 MS. GENERA: It carries.

16 CHAIRPERSON BRYANT: Thank you.

17 MS. KAPLAN: Did you want to keep it open? We may
18 have Assembly Member Brownley arriving.

19 CHAIRPERSON BRYANT: Yeah. Well, all the items
20 are kept open except for -- although I guess now -- we'll
21 give her time to catch her breath and we can go back and --

22 ASSEMBLY MEMBER BROWNLEY: Yeah. I don't know
23 what the motion is.

24 CHAIRPERSON BRYANT: Yeah.

25 ASSEMBLY MEMBER BROWNLEY: I don't want to vote on

1 what I don't know about.

2 CHAIRPERSON BRYANT: We'll leave it. Before we
3 move onto Tab 12, I wanted to go ahead and do our
4 presentation. Were you going to do that, Lisa? Or was I
5 doing that?

6 So we have -- the State Allocation Board has a
7 resolution for our former Executive Officer.

8 MS. SILVERMAN: We would like to formally present
9 Mr. Rob Cook a resolution for his service on the State
10 Allocation Board. Rob has spent two and a half years in the
11 program and with that, brought numerous policy issues for
12 discussion, also brought a lot of process efficiencies. So
13 on behalf of the State Allocation Board, we'd like to thank
14 you for your dedicated service on the State Allocation
15 Board. Rob has spent two and a half years in the program
16 and with that, brought numerous policy issues for
17 discussion, also brought a lot of process efficiencies. So
18 on behalf of the State Allocation Board, we'd like to thank
19 you for your dedicated service.

20 (Applause)

21 MR. COOK: If I might have a word or two, it was a
22 great pleasure to serve this Board for two and a half years
23 and if it's at all possible, it was an even more higher
24 honor to work with your great staff. I really -- you really
25 truly need to value these people. They work hard every day

1 and they try to do the right thing for the right reason
2 and -- anyway I couldn't ask for a finer group of people to
3 work for. Thank you.

4 (Applause)

5 CHAIRPERSON BRYANT: Okay. Item 12. Masha.

6 MS. LUTSUK: Okay. This item is presented to
7 address a concern at the February Board about the
8 corresponding adjustment for Construction Cost Index to the
9 developer fees.

10 And there are a couple of differences here that
11 need to be pointed out. One is this adjustment does not
12 affect our state funding piece of the projects, whether it
13 is an adjustment that impacts the developer fees that are --
14 that often compile the matching share -- local matching
15 share for school construction projects for the school
16 district.

17 In January -- and a second major difference with
18 the CCI is that statute that governs this adjustment clearly
19 calls for changes for increases only and inflationary
20 changes rather than just adjustments up or down as was the
21 case with the previous item.

22 So the index that the Board selected in January
23 did not have -- did not show inflation. It was a one cent
24 decrease and therefore by keeping the developer fee levels
25 unchanged, the Board acted appropriately and our

1 recommendation is to confirm the development fee rate that
2 was maintained at the 2008 level as the final Board
3 decision.

4 CHAIRPERSON BRYANT: Any questions for staff?

5 ASSEMBLY MEMBER BROWNLEY: Well, I guess, you
6 know, I was the member that I think raised this the last
7 time and I just -- and I still feel this way that we in
8 terms of, you know, reducing the index for the schools and
9 school people and then increasing -- you know, making it
10 more advantageous even though it's very slight for the
11 builders just doesn't -- you know, it doesn't seem right to
12 me.

13 But if there has been -- it sounds like there has
14 been three different opinions with our own attorneys opining
15 twice and then the AG -- is that -- was the AG --

16 CHAIRPERSON BRYANT: The AG's here if you want to
17 hear from him.

18 ASSEMBLY MEMBER BROWNLEY: Yes, I would like to
19 hear from him.

20 CHAIRPERSON BRYANT: I should say it's a Deputy
21 Attorney General. Attorney General Brown's not here.

22 ASSEMBLY MEMBER BROWNLEY: And this was a request
23 by the Board to -- for the AG to opine on this?

24 CHAIRPERSON BRYANT: Well, I think we talked about
25 getting a lot of -- having a lot of legal people look at it,

1 so we have -- had them -- I had our counsel look at it. DGS
2 counsel looked at it and on this one, they agree, so --
3 Mr. Patton.

4 MR. PATTON: Yeah. Tom Patton. Yeah. I was in
5 agreement with DGS legal. This I saw as a fairly simple
6 question on the developer fee action. What I looked at was
7 that there were a couple of -- there were two options
8 presented in terms of indexes. Six members voted relying on
9 the Marshall & Swift Index which showed a one cent drop.

10 And my reading of Government Code Section 65995
11 was that it only provided for adjustments upward unlike
12 other statutes that discuss making changes like Ed
13 Code 17072.10(b) which allows a change and you've had
14 adjustments as you just saw downward, this one on the
15 developer fee only talks in terms of increases and
16 inflation.

17 My conclusion was since the index that was relied
18 on showed a one cent decrease but there's no provision in
19 this section for decreasing fees that the Board's action to
20 leave the fees where they were was consistent with the
21 statutory mandate and therefore a legitimate and final
22 determination.

23 In fact I was asked should that be subject to
24 reconsideration and I said no, I don't see where there's a
25 basis to reopen that.

1 ASSEMBLY MEMBER BROWNLEY: Well, so there's kind
2 of two issues: one, your interpretation of the statutes,
3 and two, you weighted in on the way we deliberated and
4 therefore to reverse a decision, in your opinion, would not
5 be appropriate; is that correct?

6 MR. PATTON: Correct.

7 ASSEMBLY MEMBER BROWNLEY: Okay.

8 MR. PATTON: Yeah. And in fact as to the
9 interpretation, there had been a contrary conclusion reached
10 by DGS legal that they had concluded that under this
11 Government Code 65995 that an adjustment downward could be
12 made and I did not agree with that.

13 I read it as very clearly only providing for
14 increases according to the adjustment for inflation set
15 forth in the statewide index.

16 So I didn't see any room in the statute. It
17 was -- to me it was not a difficult conclusion that it only
18 allows for ratcheting up. It's a ratchet system and that my
19 further conclusion was that a majority relied on a
20 legitimate statewide index, found that there was no
21 inflation indicated in that index, decided then to leave it
22 at its level and I concluded that was --

23 ASSEMBLY MEMBER BROWNLEY: Okay. Do you mind if I
24 just have a follow-up question?

25 CHAIRPERSON BRYANT: No.

1 ASSEMBLY MEMBER BROWNLEY: I guess, you know --
2 and yet at this point, I think leaving the decision the way
3 it is and accepting your interpretation is okay with me, but
4 I guess I'm raising some issues on, you know, just for my
5 own inquiry really because one is if we have statute and
6 regulations that we're following here, I mean for me it
7 doesn't really make sense that the school district's going
8 to take the hit but the developer doesn't have to share in
9 that.

10 And I know that this is -- you know, we're in
11 unusual times because normally things would increase versus,
12 you know, having a reduction.

13 I guess the question is does the Board -- do we
14 have the ability if we wanted to -- and I'm not necessarily
15 proposing that, but if we wanted to change that -- in other
16 words, you're interpreting it the way -- you've made a legal
17 interpretation of the what the statute says. If we want to
18 change the statute, is that within our ability to do so?

19 MR. PATTON: If you wanted to change the statute?

20 ASSEMBLY MEMBER BROWNLEY: Correct.

21 Understanding --

22 MR. PATTON: Changing --

23 ASSEMBLY MEMBER BROWNLEY: Wait. Excuse me.

24 Understanding that there were three opinions on this. There
25 was two opinions that -- your opinion and the other attorney

1 that was here was the same and then the other attorney here
2 on the dais at one point had a differing opinion. So
3 there's been, you know, basically three opinions.

4 So I know you're looking at me like, you know, I
5 can barely speak English, but, you know, what my question
6 is -- I understand it's an interpretation and I could
7 probably go out and find somebody else to make a different
8 interpretation.

9 So if we wanted to make our intentions clear and I
10 interpret it differently than you, do we -- do I have the
11 opportunity to at least present to the Board to make a
12 change so that it reflects what our intention and desire was
13 if we happened to disagree? Well, there's that look again.

14 MS. KAPLAN: Well, let me answer just from what I
15 know, Assemblywoman Brownley. This is set up in statute.
16 The Board has authority to interpret regulations. That is
17 within their power as the State Allocation Board.

18 It is not within the power of the State Allocation
19 Board to subvert or ignore statute. So if we need --

20 ASSEMBLY MEMBER BROWNLEY: I understand.

21 MS. KAPLAN: -- clarification on what we want --

22 ASSEMBLY MEMBER BROWNLEY: So if we have different
23 legal opinions on what the statute says --

24 MS. KAPLAN: Um-hmm.

25 ASSEMBLY MEMBER BROWNLEY: -- then who gets to be

1 the person that decides to clarify that one way or the
2 other?

3 MS. KAPLAN: If there are two objective legal
4 opinions, it's within the Board's authority within the
5 intent of the background of looking at the legislation to
6 reasonably interpret what the meaning of the statute is.

7 ASSEMBLY MEMBER BROWNLEY: Okay. And that's the
8 answer I'm looking for. I'm not necessarily saying here
9 that I want to, you know, have a revolution or anything. I
10 just wanted an answer -- a clarification, you know, of that.

11 The second question that I have is you also are
12 opining on the fact that because we had a discussion that
13 was a six to one vote, that we had concluded our business
14 and it would not be appropriate to bring it back; is that
15 correct?

16 MR. PATTON: That's correct.

17 ASSEMBLY MEMBER BROWNLEY: Okay. So this is my
18 question. My question is I thought that at our last meeting
19 since we don't have any rules that we decided that we were
20 going to agree for the time being to Robert's Rules of
21 Order. I thought that we had made that agreement. Is that
22 correct? Okay.

23 So, you know, I'm not an expert on Robert's Rules
24 of Order and perhaps you are and that's your -- your opinion
25 is based on Robert's Rules; is that --

1 MR. PATTON: No.

2 ASSEMBLY MEMBER BROWNLEY: Okay.

3 MR. PATTON: No.

4 ASSEMBLY MEMBER BROWNLEY: So my -- you know, just
5 from my experience as a school board member for 12 years, I
6 thought in Robert's Rules if you were on the winning side of
7 a vote, you could bring it back to the Board, you know, for
8 reconsideration. That's what I thought Robert's Rules said.

9 I could be wrong. I don't know.

10 MR. PATTON: My opinion didn't have anything to do
11 with Robert's Rules. My opinion was based on the California
12 Supreme Court Decision in Heap (ph) and a long line of cases
13 that say unless an administrative agency is given a process
14 and the statutory authority to reopen and redecide matters,
15 it doesn't have -- Ms. Boron-Irwin's suggested this in
16 February at the meeting. She opined that the Board does not
17 have the power to reconsider its final decisions and that is
18 what Heap says.

19 Now it gets a little more detailed than that, but
20 in general, decisions on issues and cases -- a funding
21 decision for a district, once it's made final and unless it
22 suffers from a legal defect, it's final. And it works both
23 ways so that you can't reopen it to take the money back away
24 from the district and say, oh, we changed our mind and you
25 can't reopen it to decide, oh, we want to give you more

1 money.

2 And it's all premised on obtaining some finality
3 in administrative decisions. There is an exception when a
4 Board -- an administrative agency does something that is
5 beyond their jurisdiction to do. If they've committed a
6 legal error in making a decision, then they do have the
7 power to recognize that error and to say hey, we need to fix
8 that and they can.

9 And it's really not a reconsideration because
10 they're not redeciding something that they decided correctly
11 in the first place. That's why I say it's not a
12 reconsideration. What they're doing is they're fixing an
13 erroneous decision that a Court would have the authority to
14 intervene in in an action in mandamus to fix.

15 So that's the distinction. That's what the
16 California Supreme Court has said. My opinion had nothing
17 to do with Robert's Rules of Order.

18 MS. KAPLAN: And I do want to present a complete
19 picture. While I agree with Mr. Patton, there are
20 specifically just to state an AG opinion that was written in
21 1999 that looked into this authority, it states, in the
22 absence of specific authority, an administrative agency such
23 as the State Allocation Board as a general rule has no power
24 to grant a rehearing or otherwise reconsider a previous
25 final decision, however, in three exceptions or narrow

1 cases.

2 The first two he mentioned: if there's specific
3 legislative authorization that grants the ability of the
4 State Allocation Board to review its decision; two, if it
5 exceeded its authority in law. As you made a decision you
6 couldn't legally make a decision, you have the ability to go
7 back because that decision is null and void. And three, it
8 says the rule would not apply where the agency's decision
9 was made without sufficient evidence.

10 Now, there is not enough case law to specifically
11 explain without sufficient evidence or whatever that's
12 defined, but those are the three areas where the Board has
13 the ability to reconsider its decision.

14 ASSEMBLY MEMBER BROWNLEY: Okay. So if the Board
15 collectively decided that for whatever reason they made a
16 decision and upon reflection felt as though they did not
17 exercise their best judgment, there's no recourse is what
18 you're telling me.

19 MS. KAPLAN: Correct.

20 ASSEMBLY MEMBER BROWNLEY: Okay. Thank you.

21 MR. NANJO: One thing I'd like to add, a
22 distinction, Assembly Member Brownley, needs to be made
23 between procedure and legality. What AG -- Deputy AG Patton
24 is basing his decision on is what the Board can legally do.
25 What Robert's Rules controls is the procedure and process

1 by which we do it.

2 Unfortunately the legal method -- or legal
3 decision supersedes Robert's Rules of Order.

4 The other point I'd like to make to an earlier
5 point about how those kinds of distinctions between
6 positions, whether it's a Deputy Attorney General Patton's,
7 Ms. Boron's, or my opinions are ultimately decided, the
8 ultimate arbitrator of those kinds of difference in legal
9 opinions would be the Court's. And that's where a final
10 decision would be made.

11 CHAIRPERSON BRYANT: Okay. Any more questions on
12 that? So then we'll move on to Item 13. Juan Mireles.

13 MR. MIRELES: Next on the agenda is Tab 13.

14 MS. KAPLAN: Just to clarify, did the Board accept
15 the report so that we have it clear as it is an action item.

16 CHAIRPERSON BRYANT: Yes, we did.

17 SENATOR LOWENTHAL: Did we confirm?

18 MR. HARVEY: I don't think so. There's nothing
19 pending to vote on.

20 SENATOR LOWENTHAL: There's a recommendation to
21 confirm the SAB's -- what does that mean?

22 MR. NANJO: Based on Deputy Attorney General
23 Patton's decision, it's not necessary to confirm it. You
24 have a final decision, so you can move on, Madam Chair.

25 CHAIRPERSON BRYANT: Thank you.

1 SENATOR HANCOCK: Right. Unless someone wants to
2 suggest a change in statute which is what I think -- was
3 what Assembly Member Brownley was getting at. And if I may
4 just say, there -- I think there has been a good bit
5 confusion about what's reg, what's legislation, what's one
6 thing and another, so I appreciate the clarification so that
7 Board members know what their choices are.

8 CHAIRPERSON BRYANT: Okay. Item 13.

9 MR. MIRELES: The next item deals with **funds**
10 **remaining in the energy efficiency program** and the
11 possibility of transferring those funds to be used for high
12 performance incentive grants.

13 Proposition 47 set aside 20 million and
14 Proposition 55 set aside an additional 20 million for a
15 total of 40 million in the energy efficiency program. The
16 energy efficiency funds were exhausted back in 2006 and
17 since then we've had several projects that have reduced the
18 costs incurred resulting in the return of about \$800,000 to
19 the program.

20 Staff looked at the corresponding statutes and
21 concluded that there is no statutory authority to transfer
22 the available funds to the high performance incentive
23 grants.

24 However, the Board does have the ability to
25 declare that the funds are no longer needed and if they do

1 so, then the funds go back to the original pot of money they
2 came from, mainly new construction/modernization.

3 So what staff is proposing is that in order for
4 the Board to be able to make that finding to open up, notify
5 school districts that the funds are available for a period
6 of a year to see if districts come in and access these
7 additional funds.

8 If so, the funds are available. They'll be used
9 for those purposes. And if not, come back within a year to
10 update the Board on the status of the funds and what the
11 possibility is of the Board making a finding of the funds
12 are no longer needed.

13 So staff is recommending that the OPSC notify
14 districts that the funds are available, have that
15 availability for a year, and come back and report to the
16 board if the funds are no used within that year.

17 SENATOR HANCOCK: I would move that item.

18 MR. HARVEY: Second.

19 CHAIRPERSON BRYANT: Please call the roll -- I
20 should ask is there any public comment on this item?

21 MS. GENERA: Senator Lowenthal.

22 SENATOR LOWENTHAL: Aye.

23 MS. GENERA: Senator Hancock.

24 SENATOR HANCOCK: Aye.

25 MS. GENERA: Assembly Member Fuller.

1 ASSEMBLY MEMBER FULLER: Aye.

2 MS. GENERA: Assembly Member Brownley.

3 ASSEMBLY MEMBER BROWNLEY: Aye.

4 MS. GENERA: Assembly Member Torlakson.

5 ASSEMBLY MEMBER TORLAKSON: Aye.

6 MS. GENERA: Scott Harvey.

7 MR. HARVEY: Aye.

8 MS. GENERA: Kathleen Moore.

9 MS. MOORE: Aye.

10 MS. GENERA: Lyn Greene.

11 MS. GREENE: Aye.

12 MS. GENERA: Cynthia Bryant.

13 CHAIRPERSON BRYANT: Aye.

14 MS. GENERA: Carries.

15 CHAIRPERSON BRYANT: Okay. Item No. 14.

16 MS. SILVERMAN: The purpose of this report is to

17 request the approval to reserve the funds for administrative

18 costs for the program 2009-2010. Specifically there's a

19 list of descriptions of the various program costs that we

20 administer. The Proposition 1D, there's a large

21 apportionment allocated specifically for administrative

22 costs for the Office of Public School Construction, State

23 Controller's office for the fiscal oversight and processing

24 of the funds for districts; California School Finance

25 Authority for the financial soundness test for charter

1 schools; the Department of Education costs site -- excuse
2 me -- the site and educational plan reviews, so the amount
3 allocated for that particular program is \$16.865 million.

4 In addition, there's also additional
5 administrative costs that also come out of various pots of
6 money, specifically Proposition 55. There is a \$549,000
7 charge or encumbrance for the School Facilities Finance
8 Authority soundness test and that would be specifically for
9 Bond Act of 2004.

10 There's also other allocations specifically for
11 the state relocatable classroom fund of 264,000, the state
12 school deferred maintenance costs for 142,000, general fund
13 costs associated with processing emergency repair program.

14 Our recommendations in accordance with the
15 approval of 2009-2010 Governor's budget, the list of
16 administrative costs have been authorized and are provided
17 below.

18 We're requesting authorization to set aside
19 \$16.86 million specifically for the state school facilities
20 program, for Proposition 1D. Again let me restate that:
21 16,865,463 to cover the cost I explained earlier. Also
22 provide authorization for 549,000 to the 2004 state school
23 facilities fund for charges for the California School
24 Financial Authority -- Finance Authority services; authorize
25 264,000 for state relocatable classroom fund; and authorize

1 142,000 for the school deferred maintenance fund and
2 authorize 320,000 for the general fund.

3 CHAIRPERSON BRYANT: Are there any questions on
4 this item? Senator Lowenthal.

5 SENATOR LOWENTHAL: Yes. This I do believe, you
6 know, is the SAB statutory authority to determine the
7 overall. I think it's the amounts that the Board determines
8 that are necessary of the Department of General Services,
9 and while I really appreciate this one-year breakdown, I
10 can't make any sense out of it. I need it over a number of
11 years to see whether the increases or decreases and more --
12 so I have a number of -- I don't have to go through them
13 all.

14 But I would really like to see something that lays
15 it out over a three- or a five-year period so I can see
16 where there are increases, where there are not, where's
17 there's some explanation that show why there has been an
18 increase, or what's been -- because I have tried to go back
19 and look and there were tremendous changes over the last --
20 but I'm not provided that information to understand why
21 we're doing that or not.

22 I'm just given a number for this year as though --
23 and I find that very, very difficult. And not that I'm
24 disagreeing with it. I have no -- there's not one thing in
25 there that I'm saying may or may not be appropriate, but I

1 have not the slightest idea where this comes from and to me
2 it's not appropriate.

3 CHAIRPERSON BRYANT: Mr. Harvey.

4 MR. HARVEY: Senator, again I'm going to
5 acknowledge you're a person of good faith on these
6 questions, but I'm going to also suggest that the Governor
7 and the Department of Finance put together the Department of
8 General Services's budget on an annual basis.

9 SENATOR LOWENTHAL: Shall I read to you Education
10 Code 17070.65, any monies in any of the funds established
11 pursuant to Section 17070.40 as appropriate and approved by
12 this purpose in the Annual Budget Act, the Board -- this
13 is -- shall make available to the Director of General
14 Services the amounts that the Board determines necessary for
15 the Department of General Services to provide the assistance
16 pursuant to this chapter.

17 MR. HARVEY: I respectfully say that the forum for
18 this is the annual budget. If you want a discussion about
19 what we do on an annual basis, I think the Budget
20 Subcommittee --

21 SENATOR LOWENTHAL: Okay.

22 MR. HARVEY: -- is the appropriate place to do
23 that because this is an administrative action that
24 acknowledges what the Governor --

25 SENATOR LOWENTHAL: -- we just don't know.

1 MR. HARVEY: -- and Finance have done. It's
2 approved annually as part of the state's budget.

3 So I'm acknowledging your right to see whatever
4 you want. We're trying to be transparent. We should be
5 transparent, but the forum for putting our budget together
6 is part of the executive and legislative process.

7 SENATOR LOWENTHAL: And --

8 MR. HARVEY: It's not SAB's per se.

9 SENATOR LOWENTHAL: I'm -- and so you're saying I
10 cannot see that over time, the same form -- I'm not --

11 MR. HARVEY: I didn't say that.

12 SENATOR LOWENTHAL: What.

13 MR. HARVEY: You can see whatever you'd like to be
14 comfortable with how adjustments are being made --

15 SENATOR LOWENTHAL: Right.

16 MR. HARVEY: -- what the adjustments may be used
17 for. What I'm saying is that the Governor and the
18 Department of Finance put together the Department of General
19 Services's budget.

20 OPSC is a division within that Department. The
21 Director of General Services is charged with administering
22 his divisions. OPSC is one of them.

23 So we're very willing to show you whatever you
24 whatever you want to get a sense of how the Legislature and
25 the Governor have put our budget together, but I'm just

1 saying those questions I think are part of the budget
2 discussions and not here.

3 SENATOR LOWENTHAL: So what I'm authorizing
4 this -- all I'm asking for is you're asking me five
5 recommendations to authorize funding. I do not know where
6 those numbers came from or whether -- how they've changed
7 over time.

8 All I'm asking to see is -- you're asking us to
9 take action and I don't feel I have the information to take
10 that action.

11 CHAIRPERSON BRYANT: Senator Hancock --
12 Assemblywoman Fuller.

13 ASSEMBLY MEMBER FULLER: Since I'm trying to leave
14 a few minutes, I'll go ahead. I think first of all we need
15 to clarify the purpose of the report.

16 If it is within our purview as the Board to make
17 an approval of this, then obviously we need the figures that
18 we are requesting. If it is not within our purview to make
19 an approval of this report and it is somebody else's, the
20 Governor's -- then I suspect the motion should be that we
21 ask for additional information, you know, to clarify that it
22 doesn't necessarily pertain to this motion.

23 I'm a little confused since the discussion which
24 it is because it says to request approval -- that approval
25 ours and if it is, then generally even in school budgets,

1 whenever a budget is laid out, the percent change from one
2 year item to the next is included in the budget so that the
3 approving body -- it doesn't have to be three years, but
4 generally the percent change from last year's budget to this
5 year is listed.

6 So (A) are we actually taking some motion that
7 approves this, and if so, then, you know, I think we might
8 need the percentage change information. Or (B) is it a part
9 of the Governor's budget and is just suggested for our
10 knowledge so that we know.

11 MS. MOORE: I believe we are statutorily required
12 to approve the budget. Correct?

13 CHAIRPERSON BRYANT: Ms. Silverman.

14 MS. SILVERMAN: Yeah, I mean typically when we
15 presented this item, it's just been a ministerial act. Again
16 it's --

17 MS. MOORE: Doesn't the statute indicate that the
18 Board is required to approve the budget?

19 MS. SILVERMAN: The budget has been set in the
20 Budget Act and so I mean we can present you detailed
21 information, give you costs breakdown --

22 MS. MOORE: You're not answering my question. I
23 believe that the Board is statutorily required to approve
24 the budget. Is that correct or not correct?

25 MS. SILVERMAN: The statutory authority says that

1 the Board is approving program funds for DGS to administer
2 the program.

3 MS. KAPLAN: No. It says the amount DGS to
4 provide assistance pursuant to this chapter. I mean as I
5 read it --

6 MS. SILVERMAN: It's --

7 MS. KAPLAN: -- it says the Board shall make
8 available to DGS the amount the Board determines necessary
9 for DGS to provide assistance pursuant to this chapter. So
10 I think there may be confusion about the interpretation of
11 what this code section means and then pursuant to what this
12 code section means, what authority is actually given to the
13 State Allocation Board in the determining of -- the creation
14 of the budget and should the Board be creating the budget
15 and giving it to DGS or is it should DGS create the budget
16 and then the Board just takes action for approval.

17 So I think there is inherent base confusion on
18 this of who has -- who's on first and who's on second.

19 CHAIRPERSON BRYANT: Mr. Ferguson, can you shed
20 any light?

21 MR. FERGUSON: Yes. Chris Ferguson, Department of
22 Finance. With deference to what Senator Lowenthal was
23 requesting, the information is readily available in the
24 Governor's budget on a three-year period. We're more than
25 happy to work with the Office of Public School Construction

1 to provide that snapshot over time. The information again
2 is already publicly available.

3 So we will do that for you. In terms of the
4 statutory authority --

5 CHAIRPERSON BRYANT: I think -- can I just
6 interrupt you for a second. I think Senator Lowenthal asked
7 for five years, but would three years --

8 SENATOR LOWENTHAL: Well, I -- just three to five.
9 Just I need -- I'm not asking for -- just so I can
10 understand what these numbers mean, if you're asking me to
11 vote. How do I --

12 CHAIRPERSON BRYANT: Right. Okay. I just want to
13 make sure. Go ahead.

14 MR. FERGUSON: Correct. Even at the five-year
15 level, previous Budget Acts, we would be able to get that
16 information out of -- to provide the data requested.

17 In terms of statutory authority, the Budget Act
18 does provide statutory authority for the funds provided to
19 the Department of General Services, the California
20 Department of Education, the California School Finance
21 Authority. So there is some statutory authority to provide
22 for those administrative funds.

23 I think the question that you're providing today
24 is is this merely an administrative act or does the Board
25 also have to approve that administrative cost within the

1 amount that's set by the Annual Budget Act, if I'm
2 clarifying what you're requesting.

3 CHAIRPERSON BRYANT: Do we have an answer to that
4 question?

5 SENATOR LOWENTHAL: Do we have an answer to that?

6 ASSEMBLY MEMBER TORLAKSON: Henry.

7 MR. NANJO: Okay. Looking at the statute, it is
8 not well worded, but the Board is required to provide those
9 amounts that are necessary for the Department of General
10 Services to conduct its business for the Board.

11 Now that being said, the question is who
12 determines and how do you determine what is necessary. An
13 argument can be made -- and I -- you know, it's -- there's
14 some ambiguity here. An argument can be made that the
15 determination of what is necessary to conduct the business
16 of the Board has already been made through the budget
17 process and through that mechanism, if you will.

18 There is a phrase in here that Senator Lowenthal
19 rightly points out that says that the Board determines
20 necessary.

21 SENATOR LOWENTHAL: That's right.

22 MR. NANJO: So I think there is an opportunity
23 there that if the Board determines that some amount is not
24 necessary that they may be able to call into question that.
25 That runs in conflict with the fact that the budget process

1 presumably has determined that this is the necessary amount.

2 So I know that's not -- a nonanswer, but that's
3 the interpretation of the statute that exists.

4 CHAIRPERSON BRYANT: Senator Hancock.

5 SENATOR HANCOCK: Thank you. And that was
6 actually very clarifying of what the lack of clarity is and
7 I appreciate that very much, Henry.

8 MR. NANJO: I didn't write that, so I can only
9 interpret it.

10 SENATOR HANCOCK: I know. So you can do that.
11 But I have a number of questions about this information and
12 the way it's displayed and what the discretion of the Board
13 is.

14 For example, we're being asked to approve funds
15 reserved for administration for the 2009-2010 fiscal year.
16 While that year is now about three-quarters of the way
17 completed. Should we not, whenever the budget is completed,
18 and it isn't always completed on time as we know, have this
19 come to the next Board meeting or something when if in fact
20 we were going to have a discussion of what we determine is
21 necessary it would make a little bit more sense because this
22 is, as I understand it, money that comes out of the bond, so
23 it doesn't go to schools.

24 And I believe that as the Board we do have
25 fiduciary responsibility to try to get as much money out

1 into the community as we possibly can. So if -- I think we
2 need to look at the timing of a presentation like this.

3 And then secondly, from my information, I believe
4 that there's a number of places where it isn't DGS. The
5 State Controller's office, is that under DGS? Is the
6 California Department of Education which got \$2 million
7 under DGS? And how about the California School Finance
8 Authority, that's in the Treasurer's office.

9 So the Office of Public School Construction which
10 is under DGS gets 13 million. And I think that when this
11 gets -- and then there's these different funds.

12 When this is presented to us, it would really be
13 useful just to have the kind of thing that you generally get
14 in budgets which is what percentage of the bond is used for
15 administration by anybody. It could be a very small
16 percentage, given when I look at the numbers, but we don't
17 know.

18 And what percent is going to DGS and is that about
19 the same percentage as other Departments take when they take
20 money.

21 That would all be helpful to me and I would like
22 to know it because I do have -- as an aside here. It was a
23 little distressing to me to hear about the move. I think
24 that the Office of Public School Construction really does
25 interact with the Legislature and the Departments, the

1 Treasurer's office, the CDE, and whatnot and to be over in
2 West Sacramento essentially is going to be -- make it harder
3 to do our work.

4 So I wish there was a way that some of those
5 administrative decisions could also at least be presented to
6 the Board ahead of time for our comment.

7 MR. HARVEY: If I may respond to that directly.
8 That was a request from the Governor's office. We had two
9 weeks in which to comply. We did all the noticing we could.
10 It's what it is and if we are going to take a look at
11 administrative overhead, it's called in the budget, I'm
12 hoping we would do it for all of the other Departments
13 which -- because --

14 SENATOR HANCOCK: Yeah. So that would make total
15 sense rather than just kind of numbers and we don't know
16 who's where.

17 MR. HARVEY: But again I'm going to reiterate the
18 fact that I -- I'm under the impression and I choose to
19 interpret the code section as the attorney has said is a
20 reasonable interpretation which is you all get your bite of
21 the apple when the budget is being discussed and when the
22 monies are appropriated at that point, that is when it
23 happens and this is more like an administrative act, but we
24 certainly have the obligation to make sure you see trends in
25 expenditures over time.

1 CHAIRPERSON BRYANT: Senator Lowenthal.

2 SENATOR LOWENTHAL: Yeah. I'm not sure you
3 said -- I think you just laid out both alternatives and said
4 that it was poorly written. I don't think you said that you
5 agree that we don't get a bite of the apple.

6 MR. NANJO: I can't comment on that. What I can
7 comment on is the fact that the statute specifically refers
8 to the Budget Act process.

9 SENATOR LOWENTHAL: But it also refers to the role
10 right specifically of the Board too in terms of --

11 MR. NANJO: It's not entirely clear what that role
12 is. I will say this. It is a -- it would be, if the Board
13 chose to go that way, perfectly reasonable for them to --
14 for the Board to rely on the budget process and say that
15 that's the process by which it deems it reasonable, but --

16 SENATOR LOWENTHAL: But if we chose not to do
17 that, if we chose to have some say in terms of how that
18 money is allocated.

19 MR. NANJO: There's a little bit of a distinction
20 that needs to be made. It's not that the Board has any
21 say -- necessarily the say in how that money is distributed.

22 The Board has the responsibility to determine that
23 those funds are necessary. It's a different standard. It's
24 not a matter of choosing how funds are made. Where the
25 Board can intervene is if they make a determination that

1 certain funds are not necessary.

2 SENATOR LOWENTHAL: And if we do make that
3 determination that funds are not necessary?

4 MR. NANJO: Then that creates the issue with that
5 particular because --

6 SENATOR LOWENTHAL: Oh.

7 MR. NANJO: -- that runs contrary to the Budget
8 Act and that process. So again that is -- the statute
9 creates a way for the Board to get someplace where it's at
10 odds with the Budget Act which is why I said that it's not a
11 particularly well-written statute for that reason.

12 MS. KAPLAN: Or is it potentially saying that the
13 Board shall determine the amounts necessary and then work
14 with the Legislature before it's adopted in the Budget Act?

15 MR. NANJO: That's possible. That would be a
16 reasonable interpretation to, for lack of a better term,
17 harmonize those two concerns.

18 CHAIRPERSON BRYANT: What's the Board's pleasure
19 on this item? Clearly we need more information. We have a
20 minimum need, three years -- three-year look back and at a
21 minimum, we need to -- the percentage of admin cost as it
22 relates to the bond funds.

23 MS. SILVERMAN: Right. And we actually --
24 specifically percentage-wise, I believe the overall
25 administrative cost to the program is less than 1 percent.

1 I mean it's probably even a half percent.

2 So -- but I mean definitely we could provide you
3 more detail, but I don't know specifically if you're talking
4 about departmental overhead charges. I think that issue was
5 being raised earlier. I am not real clear, but we could
6 provide that level of detail if that's -- I mean definitely
7 we could provide you that level of --

8 CHAIRPERSON BRYANT: And I also think that we
9 should take into account what Senator Hancock -- but I was
10 wondering myself at our first meeting when this was
11 originally on our agenda why it was -- why are we doing it
12 six months after the Budget Act was enacted. It's seems to
13 me it's a contemporaneous or either before -- immediately
14 before or immediately after kind of thing, but we can work
15 on that next year.

16 MS. SILVERMAN: Right. We -- exactly. I think --

17 CHAIRPERSON BRYANT: By the time we approve it for
18 the 2009-2010, we'll be in '10-'11 because I'm positive the
19 Legislature will act promptly. Senator Lowenthal.

20 SENATOR LOWENTHAL: Could we -- as long as we --
21 and I think what I'm hearing is that we may lay this over
22 for a month or until we get -- maybe even longer because we
23 don't even know what our role is in this, but if there are
24 changes, I would like to see some explanation and why there
25 are some dramatic changes, if there are. I don't know if

1 there are changes or not.

2 And I also saw there was some general -- I just
3 don't understand when it says internal contracts, external
4 contracts. What does that all mean. And so I'd just like a
5 breakdown of that. Not saying -- just to understand what
6 they really are.

7 MR. HARVEY: And the other thing I hope we do is
8 show actual expenditures because those dollars are what were
9 appropriated and I know we're not spending anywhere near
10 those dollars.

11 MS. SILVERMAN: Correct. Those are just
12 encumbrances that we're not -- nowhere near the expenditure
13 amounts at all.

14 CHAIRPERSON BRYANT: Because you're presenting
15 more of a pro forma statement --

16 MS. SILVERMAN: It's just that we're just
17 presenting the item as overhead.

18 CHAIRPERSON BRYANT: So you just lifted it
19 straight out of the Budget Act.

20 MS. SILVERMAN: Exactly.

21 CHAIRPERSON BRYANT: Okay.

22 MS. SILVERMAN: Exactly.

23 MS. KAPLAN: Just as a point of clarification as
24 I've heard differing opinions on the State Allocation Board
25 that maybe we should seek kind of further clarification and

1 understanding what the roles and responsibility of the State
2 Allocation Board as defined in the Education Code and
3 specifically ask AG -- the AG's office to provide maybe
4 legal counsel or opinion.

5 Mr. Nanjo, no offense, but I would find it a bit
6 of a conflict of interest since you are a DGS employee and a
7 DGS attorney to make such a recommendation.

8 MR. NANJO: No offense taken.

9 MS. MOORE: I'm wondering also, Chair, if it's
10 appropriate to be discussing the current budget as opposed
11 to -- I mean during the current budget process as you
12 suggested. We're in that process right now. Should -- I
13 mean is it -- should it be at the same time that we are
14 reviewing something that actually is still actionable.

15 MR. HARVEY: I would say we better postpone that
16 until we get clarity on whose authority this is and again
17 I --

18 MS. MOORE: Okay.

19 MR. HARVEY: -- look forward to it because we are
20 part of the Governor's budget which the Legislature acts on
21 it. That's where the appropriations and they -- just like
22 they are for you.

23 CHAIRPERSON BRYANT: Senator Lowenthal.

24 SENATOR LOWENTHAL: Since this is statutory
25 authority that was -- and that we're questioning really what

1 that statutory -- I would like the Leg Counsel to also opine
2 on it. They're the ones that would know really what our
3 statutory authority is. So I think if we're going to get a
4 ruling, not just the AG, we need the Legislative Counsel.

5 CHAIRPERSON BRYANT: Okay.

6 MS. KAPLAN: I will happily work with our
7 Executive Officer to make sure that we ask the appropriate
8 questions and they're the same as given both.

9 CHAIRPERSON BRYANT: That sounds good. I don't
10 think that the -- I don't think OPSC can ask for a
11 Legislative Counsel opinion though, so -- can you? Do you
12 have Leg Counsel privileges? I do. I mean I can on behalf
13 of the Department -- my Department. Keep working on it.
14 Okay. We'll bring that item back.

15 It may not be till May. It depends on how long it
16 takes you to put this all together.

17 MS. SILVERMAN: Right. And so I want to be clear
18 that you want three years of budget level detail
19 specifically?

20 SENATOR LOWENTHAL: Yes. And some breakdown in
21 terms of when there's an increase and some of the items,
22 more of a breakdown such as the internal and contracts and
23 the external -- what does that mean. I have no idea and
24 maybe some of -- you know, we're talking -- what we talk --
25 there's a lot of -- amount of money to legal counsel. How

1 much is that and if you could break that down also.

2 MS. SILVERMAN: So are you specifically just
3 referring to the DGS line items on Tab 5 or are you talking
4 about other --

5 SENATOR LOWENTHAL: Also the Attorney General --

6 MS. SILVERMAN: -- administrative costs and other
7 programs.

8 CHAIRPERSON BRYANT: I would look at -- I mean to
9 me --

10 MS. SILVERMAN: I think we should look at --

11 CHAIRPERSON BRYANT: All of it. I mean it's --

12 MS. SILVERMAN: All of it, right.

13 CHAIRPERSON BRYANT: -- it's where our authority
14 over -- you know, if -- especially if as Counsel said it's
15 about whether they're necessary. We need to consider
16 whether they're necessary over all the places that our bond
17 funds go to, I would think.

18 SENATOR LOWENTHAL: Yes.

19 MR. HARVEY: I have to say the rhetorical
20 question, but --

21 CHAIRPERSON BRYANT: Excuse me. Assemblywoman
22 Brownley's been trying to ask a question for a while.

23 MR. HARVEY: I'm sorry.

24 ASSEMBLY MEMBER BROWNLEY: Well, I guess the other
25 question that I had or -- is that what we see here relative

1 to the budget, if we were over in the Legislature in a
2 Budget Subcommittee hearing and looking at this particular
3 budget, what would we see? We would see one line item in
4 great detail of this particular budget. Detail. Okay.

5 And then the other question too is, is there
6 authority and flexibility between these accounts. In other
7 words, you spend very little in one account. Do you get to
8 transfer that money to another line item for expenditure
9 there if needed?

10 MS. SILVERMAN: I think it's just to be designated
11 for a fund.

12 MS. MOORE: If I may, I believe our CDE is a one
13 line item in the budget. Am I correct, Chris? We're one
14 line -- so if you as a legislator were looking at our -- at
15 the budget that you got the detail of in here, you would
16 have seen the bottom dollar amount, the \$2.5 million --
17 well, it was changed over time before we took the cut like
18 everybody else, took it in personnel. We took it in other
19 areas.

20 ASSEMBLY MEMBER BROWNLEY: Right.

21 MS. MOORE: But that's what you would see, one
22 line item dollar amount.

23 ASSEMBLY MEMBER BROWNLEY: And this does look like
24 a little bit of money relative to, you know, the scale of a
25 bond, but when we're over in the Legislature talking about

1 budget, we're quibbling over a half million dollars and a
2 million dollars and two million dollars. I mean it's -- you
3 know, because, you know, there's so many -- we're looking at
4 so many cuts and deep cuts.

5 And -- so anyway I think we're certainly looking
6 at level of detail now -- more now than we have been.

7 CHAIRPERSON BRYANT: Mr. Ferguson, do you want
8 to --

9 MR. FERGUSON: No. I was just going to say the
10 line item for Department of Education is Item 61100016057
11 and it is one line item. I believe DGS's entry is three
12 line items. I don't have the specific numbers, but they're
13 in organization 1760. They are available. All of the
14 information being requested is publicly available. The
15 adjustments are publicly available. They're made through
16 either baseline adjustments or through budget change
17 proposals that are heard in I believe Budget Subcommittee 4,
18 which I believe Assembly Member Brownley is a member of.

19 ASSEMBLY MEMBER BROWNLEY: A brand new member.

20 MR. FERGUSON: Correct.

21 ASSEMBLY MEMBER BROWNLEY: So she will be hearing
22 those this year in the budget process. But that's all
23 publicly available information and we're more than willing
24 to share that with the Board.

25 CHAIRPERSON BRYANT: Okay. Did you want to say

1 something else? Mr. Harvey.

2 MR. HARVEY: I just want to make certain we seek
3 the legal counsel that is the most objective and clean
4 hands. Ms. Kaplan has raised a concern about Mr. Nanjo.
5 Even though I think he's our counsel, he is a DGS employee.

6 I'm wondering if there's not a potential conflict
7 for Leg Counsel to render an opinion given the fact that
8 this body is positioned with legislators. I mean what's
9 good for the goose is good for the gander. I would argue
10 that the AG should be that one voice. We shouldn't get
11 multiple opinions.

12 CHAIRPERSON BRYANT: I think it doesn't hurt to
13 have multiple opinions, but -- although it's sort of hurt us
14 to date because they're all over the map, so -- obviously --

15 MS. KAPLAN: I'm at the will and the pleasure of
16 whatever the Board directs me to do.

17 SENATOR LOWENTHAL: I think that Leg Counsel is
18 independent. It's not -- and it drafted the legislation and
19 I think that it would be appropriate to get their
20 interpretation. Not as the only one. You can have others,
21 but I think that'd be totally appropriate. I don't think
22 they're there to promote one side or the other.

23 They represent both parties and they're, of all
24 the attorneys, the most independent.

25 MR. HARVEY: Just the nexus issue. Just the

1 nexus.

2 CHAIRPERSON BRYANT: Okay. Well, I think we
3 decided -- I mean are we going to talk to both the AG and
4 Leg Counsel?

5 MS. SILVERMAN: And are we seeking DGS counsel as
6 well?

7 CHAIRPERSON BRYANT: Sure. Why not. We'll
8 have -- we can pick the best two out of three.

9 ASSEMBLY MEMBER BROWNLEY: So when we ask for an
10 AG opinion, do we pay for that or --

11 MS. SILVERMAN: We pay for it.

12 ASSEMBLY MEMBER BROWNLEY: We pay?

13 MS. SILVERMAN: Yes.

14 CHAIRPERSON BRYANT: I thought Tom was working for
15 free. Okay. All right. Moving on to Item -- Tab 16, Masha
16 Lutsuk again.

17 MS. LUTSUK: All right. Here we're going into our
18 **regulation section**, and Tab 16 deals with **career technical**
19 **education facilities program**.

20 It was set up within Assembly Bill 127,
21 Proposition 1D, and it was set up as a competitive program
22 with funding cycles. And we are entering our third funding
23 cycle with about \$90 million available off the projects. We
24 expect that we'll be oversubscribed for the money.

25 First step in the process is program approval by

1 the California Department of Education and their approvals
2 to date for these projects will excess our available bond
3 authority, so we expect this third cycle to be highly
4 competitive.

5 When they -- the law directs us to provide grants
6 for career tech facilities for costs uniquely related to
7 building, designing career tech facilities in various
8 industry sectors.

9 In developing the regulations with input from the
10 Implementation Committee, we presented and the Board
11 approved regulations that provide two options for applying
12 for the funds. One is construction ready projects with
13 projects fully designed and ready to be built after
14 apportionment and the second option which was referred to as
15 reservation of funds apportionment. Again set up through
16 regulations, not specifically contemplated in the statute,
17 and the reservation of funds apportionment was to
18 accommodate those districts that may be hesitant to commit
19 design funds and without having assurance of funding for
20 this brand new highly competitive program.

21 So that option was set up and in administering the
22 program and going through the first cycle and the second
23 cycle, we've identified an issue that I'll describe shortly.

24 Just to backtrack a little bit, for the
25 reservation of funds project to retain its approval for

1 funding, the district must go through the design process,
2 receive approval from the State Architect and Department of
3 Education and submit to us a complete application within 12
4 months of the reservation of funds.

5 That 12 months has recently been expanded to
6 accommodate for the issues surrounding fiscal crisis and
7 processing abilities and things like that, but for this
8 third funding cycle, that option is not available. So these
9 projects will, after they're apportioned -- truly
10 apportioned, will be coming back to our office with an
11 application approval within 12 months.

12 What comes with that too is the final cost
13 estimate. And the difference is is that a reservation of
14 funds apportionment is based on a preliminary cost estimate.
15 The project hasn't been fully designed; the costs are not
16 well known.

17 With a fully designed project, there is a final
18 cost estimate that we review and what happens is on
19 several -- many projects we recognized that the final
20 justified project cost are less than the reservation funds
21 apportionment. And we do not have a mechanism to adjust for
22 that.

23 That creates a couple of issues. That creates an
24 imbalance and an inequity with those applicants that are
25 applying and receiving an initial apportionment based on the

1 final cost estimate, those are the construction ready
2 projects and provides kind of an incentive to perhaps apply
3 for reservation of funds to allow for additional funding to
4 be used for any unexpected cost.

5 And the second issue is that any project savings
6 in this program does not allow for savings to be retained
7 unlike other SFP. The project savings do come back to the
8 program to fund additional projects but not until at the
9 time -- so this -- we're presenting a proposal which would
10 revise the process a little bit and we attempted to show it
11 to you visually on stamped page 178.

12 In the middle of the page, we are presenting the
13 proposed process for reservation of funds application and
14 this would require a small change in our regulations which
15 we're also presenting as part of this item.

16 And not changing the process for applying for
17 funds. Funding applications can be submitted to the office
18 with preliminary cost estimate and we'll present that to the
19 Board for reservation of funds. Project will get designed,
20 receive CDE and DSA approvals and come into our office with
21 the final cost estimate.

22 If -- and for many projects, that won't be an
23 issue because they're over the funding cap anyway. But if
24 in case the final cost estimate comes in and it's less than
25 what the Board reserved for the project, we will go back to

1 the Board and ask for that reservation to be reduced and
2 then fund the project based on the final cost estimate,
3 essentially make -- you know, making it an equal playing
4 field with those projects that have already received funding
5 based on the final cost estimate because they were
6 construction ready.

7 So the proposal has been initiated by our office
8 and it has been presented to the Implementation Committee
9 which is what we do with all the proposals for regulation
10 changes. There were numerous concerns and to address them,
11 we are also proposing that if we do move forward with
12 reducing reservation of funds apportionment, that would
13 provide all projects with a small allowance for unforeseen
14 circumstances in addition to typical allowances for
15 inflation of 5 percent, 2 and a half percent of which would
16 be the state's share, and that would apply again equally
17 across the board for those projects that are ready to build
18 and those projects that did not have their ready to build
19 plans until 12 months within the reservation of funds.

20 So the options are outlined on stamped page 179.
21 Our recommendation is to adopt Option 1 which would be to
22 move forward with this regulation revision and Option 2
23 would be to take no action. We could still proceed with the
24 funding cycle that we have currently pending. It's just we
25 would want to be able to recoup any funds for any future

1 funding cycles early and we would also be potentially
2 creating an -- you know, a -- an incentive for folks to
3 apply for reservation of funds option as it's a more safer
4 option against unforeseen costs. Thank you.

5 CHAIRPERSON BRYANT: Thank you. Are there any
6 questions or comments from the Board?

7 SENATOR HANCOCK: I do have a few comments. I
8 think this is an interesting policy discussion actually
9 about whether we want to recoup money that we gave out so
10 that we can reallocate if we think it's not going to be
11 needed because I think final close-out can take a very long
12 time, can't it, up to six years or something -- yeah.

13 So that you have a lot of money sitting around not
14 being used.

15 Do we prioritize shovel ready projects so that all
16 that -- all of the shovel ready projects will go out first?

17 MS. LUTSUK: Not in this program, no. There is an
18 equal chance for competing for the funds between those
19 projects that are, as you may say, shovel ready and those
20 that are applying for reservation of funds. It's simply
21 that the funds that we are reserving are reserved based on
22 two different principles: finalized costs -- costs on the
23 final cost estimate versus a preliminary idea for a project
24 that has not been designed.

25 SENATOR HANCOCK: Okay. And I don't actually

1 know. I'd have to think myself about the equity of doing
2 that if we're trying to get the money out the door, although
3 I realize there are people who may have a wonderful idea,
4 they don't have money for design.

5 But it would seem to me that we would want the
6 money to come back in. My other question would be who can
7 actually make this determination. Is this a legislative
8 determination or a simple change of regulation?

9 MS. LUTSUK: We believe that there is an ability
10 by the Board to adopt regulations as the Board did initially
11 with adopting regulations that allowed this reservation of
12 funds option in the first place.

13 So there is -- and there is ability to outline in
14 regulations how the reservation of funds apportionment is
15 finalized when the district submits the complete
16 application. So, yes, it's a regulatory --

17 SENATOR HANCOCK: Okay. Whereas the reason we
18 need legislation which I do have in SB1380 is because we
19 want to shift money that isn't being used in one bond
20 account to the CTE account which is depleted. Yeah. I --
21 okay.

22 I think that we really ought to consider trying to
23 prioritize the shovel ready projects in some way just
24 because we don't have enough money for all the schools that
25 are interested and we would want to get the money out into

1 the community as fast as possible.

2 However, if there's a policy reason why that isn't
3 a good idea, I'd like to know what it is.

4 MS. MOORE: If I may. I guess I'm -- I'm going to
5 come at this from a different direction in support of
6 Option 2 and that is not to take action and the reason I
7 believe that is on two fronts. One, from our
8 superintendent's perspective in terms of a very, very strong
9 support for career technical education and I think that the
10 people that put the career technical education into the bond
11 bill had a strong advocacy and support for that.

12 And districts were asked -- districts were capped
13 at the amount of money that they could use for this program
14 up to a million and a half -- up to a million and a half and
15 up to 3 million match by each of them.

16 And we -- so we capped them already in terms of
17 the career technical education and we know as you indicated
18 there are projects that are above that as well and that
19 districts are getting more to.

20 What this is asking is to recoup savings earlier
21 in the process and I think it's also kind of retroactive to
22 these districts that have been out there operating in this
23 system where they believe they have \$3 million and they
24 justified that in the first round. They went through 14-day
25 approval -- you know, 14-day letters, 4-day letters. They

1 had to justify that amount and they got either 3 million or
2 up to it, whatever they could justify.

3 I am not supportive of taking that amount now
4 earlier in the process because we don't know -- they aren't
5 bid yet. We want to see a quality career technical
6 education project built and that we -- they're saying here
7 there are some that fall in that category.

8 I don't think it's compelling enough to make a
9 policy change there that we're being asked to in regulation.
10 That's one piece of it.

11 Fully supporting career technical education,
12 wanting them to have enough money to do a quality project.
13 The second piece of it is we called this and they are
14 apportionments. Whether the term reserved apportionment is
15 before it or not, it is an apportionment and I believe that
16 it's full and final at the time that this Board made that
17 apportionment and it can be recaptured -- the savings can be
18 recaptured as all other apportionments are during the audit
19 process.

20 So I wouldn't support that we change in midstream
21 to capture money earlier. I think it's nickel and diming a
22 program that we haven't yet seen come to fruition.

23 CHAIRPERSON BRYANT: Any other comments from the
24 Board members?

25 ASSEMBLY MEMBER BROWNLEY: Well, I guess we didn't

1 answer Loni's question. You know, I'm not sure whether --
2 is there a way in which, you know, to prioritize shovel
3 ready projects or is that -- since there is such a long list
4 of apportionments that there is -- and some are ready and
5 some aren't, but we've already made the commitment -- that
6 there is no way in which to shift things around to
7 prioritize projects that are ready to go.

8 MS. KAPLAN: I think that's a larger policy
9 regulation change/discussion that while we had that
10 discussion at Implementation Committee and I gave you notes,
11 that maybe it's a -- OPSC and I need to look into it and
12 bring back to the Board so it's a comprehensive discussion.

13 Although CTE is part of the issue with what's out
14 there and what's been funded but not moving, I would hate
15 for us -- if there's direction to look into it and bring it
16 back, great. But these changes won't affect what's shovel
17 ready and getting out there faster.

18 CHAIRPERSON BRYANT: Mr. Harvey.

19 MR. HARVEY: I was leaning toward Option 1 for the
20 same reasons that Senator Hancock may be leaning that way
21 and in part I need to know a little bit more about your
22 phrase that you're getting the dollars back from
23 overestimated projects earlier on.

24 So it seems to me you've made a judgment call that
25 some projects you have perhaps a public policy reason to

1 bring back the money because they were overestimated.

2 Can you tell me what that means because it makes
3 it easier for me to support Option 1 if I'm not going to be
4 punishing in some how those who in good faith have got solid
5 and accurate and good estimate. Overestimate makes me want
6 to get the money back a little earlier so it can go to
7 someone else and good will come of it.

8 MS. LUTSUK: If I may respond to that. The
9 overestimating piece shouldn't be interpreted as anything
10 negative. I think it's just -- part of the business of
11 estimating is whenever the -- with the preliminary estimate
12 without having the plans laid out with full measurements,
13 it's natural to build in certain allowances for unknown.

14 So it's natural. It's not always. Sometimes
15 maybe the scope of the project goes above and beyond what
16 was originally envisioned, but it's natural for earlier
17 estimates to be higher than the final cost estimates once
18 the project is fully designed.

19 So it could go another way. Like I said, we could
20 have -- and we probably do have projects that, you know,
21 estimated that they needed to fit into the 3 million cap,
22 for example, that realized later on that they can't for
23 whatever reason.

24 But on a typical project that doesn't change in
25 scope too much, it's natural for a preliminary idea to be

1 greater than the final cost is just because you want to
2 protect yourself against any kind of, you know, adjustments.
3 And I think, you know, even most of the cost estimating
4 gurus would give you design contingencies on a cost estimate
5 for a project that is not fully designed, in other words,
6 like I say, a 10 percent, for example, design contingency.
7 That's natural.

8 And since I have the mic, I also wanted to address
9 the issue about the apportionments be equal and final.
10 There is an overriding -- older statute under this that
11 states that the total funding provided under this chapter
12 shall constitute the state's full and final contribution to
13 the -- for the project.

14 And it does specifically then refer to actually
15 new construction, but we've been -- that statute has been
16 applied overwhelmingly to SFP. Like I said again, the
17 reservation of funds option was built into the CTE
18 regulations at the discretion of the Board. It is not an
19 apportionment for two reasons. It is not based on a
20 complete application and again overriding SFP statute
21 requires the district to come in to the office with a
22 complete funding application outlining all the allowances
23 that they believe they're eligible for and including
24 approval from DSA and CDE. That's one.

25 And the second thing, an apportionment typically

1 represents a project that is ready to submit a fund release.
2 An apportionment is reservation of funds and the next step
3 for the district is to meet the requirement of fund release,
4 whatever they may be. For most of them, it's entering into
5 a contract for CTE that doesn't exist, which is another huge
6 incentive for CTE projects.

7 But these projects that receive reservation of
8 funds, they're not ready for fund release. The regulations
9 clearly require them to bring to our office the final
10 documents that make their application complete and only
11 after accepting those documents we provide a district a
12 letter that allows them to then submit a fund release.

13 So for those main two reasons, these reservation
14 of funds apportionments are not apportionments.

15 Hindsight, we believe we should have called them
16 something else, like just reservation of funds and not
17 include the word apportionment because that is now being
18 used to deem these reservations as full and final --
19 hindsight. But again I firmly believe just from reviewing
20 the prior notes that this particular scenario of a final
21 justification coming in at a lesser amount was not thought
22 through.

23 We identified that in our review and we thought it
24 was our responsibility to bring that forward to the Board to
25 address, like I said earlier, for the main two reasons: for

1 equity in the program and maximizing use of funds. Thank
2 you.

3 CHAIRPERSON BRYANT: Ms. Moore has a question. I
4 promise we're getting to you.

5 MS. MOORE: We are not though -- we are only
6 decreasing project cost; correct? So if I am district in
7 your proposal -- in proposal number -- Option 1, if I'm a
8 district that asks for 2.5 million, that's what I thought,
9 and lo' and behold, I need 3 million, we're not going to --
10 they can't come in with their final cost estimate justifying
11 3 million and increase their amount; am I correct?

12 MS. LUTSUK: That's correct. It could be
13 accommodated perhaps in future rounds of this program if we
14 set up some sort of reserve, but the initial -- at the
15 inception of the program, that wasn't set up. So there
16 wouldn't be any way to fund that increase in the current
17 structure of the program.

18 But, yeah, definitely thought of something, you
19 know, for purposes of equity in the future would be
20 something to be talked about as far as increases.

21 CHAIRPERSON BRYANT: Mr. Duffy.

22 MR. DUFFY: Thank you, Madam Chair and members.
23 Tom Duffy again for CASH. We disagree with -- respectively
24 so, with Ms. Lutsuk.

25 The -- this program is a very different program

1 and it was put together in a different way because of the
2 support by everyone across the board for career technical
3 education.

4 The apportionment that is made is an
5 apportionment. You heard Mr. Patton say to you earlier
6 tonight that once you make a decision, once you make an
7 apportionment, it can't be reversed. So there are districts
8 relying upon apportionments that you made for this program
9 that were real apportionments back in December 2010. I
10 think it was December the 10th -- or 2008, December the
11 10th.

12 The -- we don't know where this program will go.
13 It's -- not only is that different about the program, the
14 program -- and it was described for you to a degree. The
15 program is competitive process. It goes to CDE. It goes to
16 OPSC.

17 It comes to you, where the apportionment is made
18 and districts know they have funds that they can rely upon
19 and that they're not going to be taken back. So the
20 districts then begin to go through the planning process.
21 They go to CDE. They go to DSA and they've come back to
22 OPSC. They don't come to you again.

23 So the -- we disagree fundamentally that this is
24 not an apportionment.

25 There are other programs that OPSC administers and

1 that you grant funding through that have contemplated in
2 advance that you would provide a certain level of funding.
3 The critically overcrowded schools program is one. The
4 charter program is another where you give a preliminary
5 apportionment and it's preliminary in order to give them an
6 opportunity to rely on certain funds for a longer period of
7 time and then they come back to you for a final
8 apportionment and then they go through the process that
9 OPSC -- that Masha has just described.

10 So not to belabor this, we absolutely believe you
11 made apportionments and you don't have the authority based
12 upon what Mr. Patton said to go back and say we want to
13 winnow through those and take funds back.

14 I appreciate very much, Senator, what you were
15 saying about trying to put more projects out there because
16 this is certainly a popular program, but we haven't been
17 able to even determine what may be shovel ready. We called
18 a meeting last week of the three agencies that administer to
19 this program plus Ms. Kaplan at our offices. Unfortunately
20 two of the agencies weren't able to come to the meeting.

21 The importance of that meeting was to be able to
22 find out a way to track career technical education projects
23 so we could know what projects are at DSA, at OPSC, or may
24 be getting ready to go to the street. And again this
25 program is designed differently.

1 But these are apportionments and we believe that
2 your staff's recommendation to do something different is
3 really something that is not proper. Thank you very much.

4 CHAIRPERSON BRYANT: Ms. Greene.

5 MS. GREENE: Thank you. Is it true we're giving
6 an incentive to go through the reservation process because
7 if the apportionment is set, then when they come back with
8 their final cost estimate and it's lower, they have squeeze
9 room in their actual apportionment that the shovel ready do
10 not have in theirs.

11 MS. LUTSUK: That's correct. Just to qualify
12 that -- that is correct, but for projects that are very
13 large, CTE facilities that are very large that are going to
14 exceed the cap no matter what they are funded at, it
15 probably does not make a difference, but there are a lot of
16 projects in this program and we have yet to see what's come
17 in for this third cycle. But there are a lot of smaller
18 projects.

19 The program does allow for funding for equipment,
20 for example. This wouldn't apply to them, but there are a
21 lot of other small projects in the program.

22 So yes, for projects that fall under the cap, this
23 would provide an incentive to participate in the reservation
24 of funds option.

25 MS. GREENE: Thank you for the clarification.

1 CHAIRPERSON BRYANT: Did you have a comment, sir?

2 MR. PREGMON: I did. Ron Pregmon, WLC Architects.
3 I'd just like to mention that my reinforcement with --
4 Ms. Moore had to say.

5 Often principal and M&O director and teacher will
6 come up with a program and submit it and bless their hearts,
7 they do a good job and they get the grant. Believe it or
8 not, last week we just interviewed for a project that has to
9 be turned in to DSA on the 1st of December.

10 The architect was never contacted. So their
11 estimates aren't anywhere close to what probably the final
12 estimate's to be. And so if you're going to try and go in
13 and recoup the money even before the architect gets in
14 there -- and that's what we're talking about with a lot of
15 these projects, I think you're better off waiting until the
16 time when you go in and audit because I think you'll find
17 that the estimates given by the architect is a lot more
18 accurate than what some of the estimates are.

19 CHAIRPERSON BRYANT: Assemblyman Torlakson.

20 ASSEMBLY MEMBER TORLAKSON: Thanks. I want to
21 agree with the comment of the last gentleman and with
22 Ms. Moore. I just had a general concern. This program
23 actually I think was one of the major selling points of the
24 bond issue and how it's implemented and how smoothly it
25 rolls out or how fairly it appears to roll out I think is

1 very important for the next bond issue.

2 And also our career tech programs have been just
3 slammed hard, everything up and down because of the other
4 budget cuts, so the ability to get everything as tidy as you
5 might like or as clear I think is diminished by all the
6 other trauma that, you know, adult ed and career tech
7 programs are facing.

8 So I'm more in the line of let's sort of wait and
9 hold it and go along with Ms. Moore's comments.

10 CHAIRPERSON BRYANT: And I just -- I would like to
11 just add to that. First of all, I just really want to
12 compliment Ms. Lutsuk. I just -- I don't know if I had your
13 name quite right, but I just -- this item was really well
14 done. It had all the information that I needed and I
15 appreciate your presentation.

16 But I agree with Assemblyman Torlakson and with
17 Ms. Moore that this CTE right now is at a delicate spot. We
18 need to move forward with the program as it is, see how it
19 goes, and continue to watch it, but we have to get these
20 programs to thrive and I think that we're better off leaving
21 things the way they are than moving into something new,
22 so --

23 ASSEMBLY MEMBER BROWNLEY: So do we need a motion
24 to -- for that?

25 SENATOR LOWENTHAL: Option 2 is the option to take

1 no action.

2 CHAIRPERSON BRYANT: I don't think we really need
3 a motion.

4 SENATOR HANCOCK: We don't need to vote on taking
5 no action.

6 CHAIRPERSON BRYANT: Unless you --

7 SENATOR HANCOCK: No, no. I don't actually
8 because I think many of you know that I have been
9 championing CTE for a very long time as well and really
10 wanted it included in this bond and also want to see as many
11 examples out there as we possibly can have.

12 But I have been persuaded by the discussion.
13 That's why I said I want to hear the policy implications of
14 this before we do anything. And I'm -- since the money is
15 being spent at a fast clip -- right -- our problem is the
16 reason to even consider doing this was so we'd have a little
17 more money to put out in new projects.

18 Could we get a report from staff, when you can,
19 you know, because there's a lot going on right now, but
20 of what percentage were reserved apportionment, what
21 percentage were shovel ready, what kinds of projects were
22 they.

23 I'm very interested because we're also trying to
24 align our career technical education academies with what we
25 think are the sunrise industries in California and I -- so

1 I'd be very interested if you could just give us an idea of
2 where the grants went and which of these two categories they
3 fell into.

4 MS. LUTSUK: Yes, we definitely could do that.
5 And if I may just to alleviate concerns maybe from the field
6 and to crush my own glory -- and thank you for the
7 compliments.

8 We did leave something out here and that's because
9 of the many revisions that we went through. We didn't want
10 our proposal to (indiscernible) so I don't want to create
11 any scares out there in the field, but we were planning to
12 do something different than we already said we would.

13 So I just wanted to read that correction into the
14 record. Thank you.

15 CHAIRPERSON BRYANT: Okay.

16 SENATOR HANCOCK: And I would like to add also to
17 just the compliments -- the staff, we've been getting, it's
18 very helpful

19 MS. LUTSUK: Thank you.

20 CHAIRPERSON BRYANT: Ms. Moore, did you have a --

21 MS. MOORE: I just wanted to add we'd be happy to
22 provide the information. Department of Education had quite
23 a part in this around all the different industry types.

24 We have it by industry type. I know probably OPSC
25 does as well, but we'd be happy to do that. As they came

1 into our office, it was very interesting where the
2 concentration was and what types of projects people asked
3 for. I think the Board would find very valuable information
4 and we'd be happy to provide that as well.

5 SENATOR HANCOCK: That would be totally fabulous.
6 Like I -- because I'm interested in again how we really
7 align systems and I know at one point, the university said
8 they've had all these thousands and thousands of courses
9 approved for A to G, well, it -- which is fine, but it
10 raises issues really almost the majority of them are -- it
11 seemed like it -- were in photography.

12 Well, I'm sure it's a great career area, but
13 maybe, you know, biotechnology would be better. So I'd love
14 to see the actual list and --

15 MS. MOORE: You can see that. I mean there's the
16 15 pathways and you can see what the consultation of how --

17 SENATOR HANCOCK: Yeah. Fabulous.

18 MS. MOORE: -- how the projects fell out by
19 pathway and again I think we were very interested in the
20 information as well and we'd be happy to share it.

21 SENATOR HANCOCK: Oh, that's wonderful. I hope we
22 accept.

23 CHAIRPERSON BRYANT: Okay. Any other comments or
24 thoughts from the Board? Okay. Then we'll move onto
25 Tab 17.

1 MS. LUTSUK: It's me again.

2 CHAIRPERSON BRYANT: You again. Thank you. This
3 is a follow-up to last month's discussion for modernization
4 projects and this is -- this item addresses the grants that
5 we have for accessibility and fire code requirements for
6 whenever modernization is performed on the site. Code
7 compliance requirements kick in and they -- we refer to it
8 for simplicity as accessibility, but it captures both ADA
9 and fire code requirements.

10 At the last meeting, based on prior Board
11 direction, we presented this -- we wanted to confirm the one
12 or the other of the two options for funding of those grants.
13 The Board confirmed that they'd like to proceed with funding
14 both -- continue to fund both grants.

15 However, that left out a small population of
16 modernization projects that actually use mod money to
17 replace buildings. We refer to it as replacement in like
18 kind.

19 Under existing regulations which we're moving
20 forward with based on the Board's direction did not allow
21 those projects the option for funding. All they get is a
22 flat allowance. And that was based on an earlier
23 misunderstanding that if you're replacing a building, all
24 the code compliance costs are embedded in the design of the
25 new building.

1 Well, the stakeholders informed us that that's not
2 necessarily true. There could be code compliance items that
3 could be itemized that are located on the site, like ramps
4 or special parking lots, things like that, or there could be
5 other buildings in the project that are getting true
6 modernization and they also could come up with an itemized
7 list of costs and we could provide funding based on those
8 actual costs.

9 So the purpose of this item with the regulation
10 language on stamped page 183 is to truly provide full
11 funding options to all modernization projects. So that's
12 the first piece of the proposal.

13 And what we're doing on stamped page 183, we're
14 actually striking out text and that text reads that if
15 you're doing like-for-like replacement, you're only allowed
16 a 3 percent option. By striking that out, we are basically
17 providing an option to everybody. We're not excluding
18 anybody. So it's a strange thing that we're doing. We're
19 usually adding regs not deleting it.

20 But here by deleting the language, we are
21 expanding the options to all of the projects. So that's the
22 first issue and on that one we are asking for the Board to
23 approve our regulatory amendments.

24 On the second issue that's related to this item
25 is -- that's related to the documents required. As you've

1 heard earlier, our programs are very structured in the way
2 that ensures that applications that come into the door on
3 OPSC are complete and they're all competing on the same
4 basis.

5 Our forms that are used for applications also
6 outline the requirements for submittal, what documents must
7 be submitted with the application, such as DSA approval, for
8 example, and currently our forms which are presented in this
9 item as an attachment, they say that regardless whether you
10 choose a 5 percent allowance or funding based on actual or
11 estimated costs, we want a checklist, and the checklist is a
12 list of items that may include the ramps, widening doors,
13 drinking fountains, what may have you, for accessibility,
14 sprinklers, whatnot.

15 And that is a document that's required for all
16 projects. The purpose of that was to ensure that we have
17 the data needed to make the decision on how to best fund
18 this work.

19 Well, since the decision's been made to go forward
20 with both options, the question is is there still a need to
21 collect this data. As a pro, this data on all projects
22 would inform future decisions on accessibility funding. As
23 a con to that, there's an extra cost and time for school
24 districts, their architects, DSA to repair, review, and
25 approve these checklists.

1 So the weighing on that -- on weighing those --
2 the balance between those two options, we are asking the
3 Board for direction. So we're presenting two types of
4 options here: continue asking for a checklist for all mod
5 projects or only require districts that are asking for
6 funding based on the checklist to submit the checklist and
7 free everybody else from the need to do that.

8 So that is the options that we're presenting and
9 on that, we're simply asking for the Board's direction. And
10 if -- the last thing we're asking is to authorize the
11 Executive Officer to file the regulations and form changes
12 with the Office of Administrative Law. And I'd be happy to
13 answer any questions.

14 CHAIRPERSON BRYANT: Are there any questions or
15 comments?

16 SENATOR HANCOCK: So do you like Option 2?

17 MS. LUTSUK: Well --

18 SENATOR HANCOCK: Is that what it is? Because
19 then another recommendation is Attachment A.

20 MS. LUTSUK: On Attachment A is not related to the
21 options. On Attachment A --

22 SENATOR HANCOCK: I understand that. But that's
23 what I wondered about the -- I'm asking about the options
24 and I understand that Attachment A -- I'd be happy to move
25 Attachment A I think.

1 CHAIRPERSON BRYANT: We can do them separately or
2 we'll do it as one.

3 ASSEMBLY MEMBER TORLAKSON: Separately.

4 CHAIRPERSON BRYANT: Separately? Okay. Then go
5 ahead.

6 SENATOR HANCOCK: Well, I would move Option 2
7 which seems to simplify things for smaller projects and also
8 approve the regulatory amendments in Attachment A.

9 CHAIRPERSON BRYANT: Can I ask a quick question.
10 Wasn't the item we did at Tab 5, didn't that give the Acting
11 Executive Officer authority to submit all of our
12 regulations. So we don't need a separate action. We don't
13 have to reauthorize her every time, do we?

14 MR. NANJO: No. What you're doing is you're
15 approving her to submit these particular regulations.

16 CHAIRPERSON BRYANT: Okay. I was just picturing
17 it as a full -- okay. Thank you. I'm sorry. Ignore me.
18 Mr. Harvey.

19 MR. HARVEY: Just a point of clarification on the
20 motion. What I thought I heard you say was the Board
21 direction has been to allow both options and right now if
22 you collect the data, it is time consuming for districts and
23 time consuming for you and there are some costs.

24 Are you suggesting that it does make sense on the
25 60 percent or are you saying because of the time and the

1 cost and the fact we're doing both options anyway that you
2 don't need that checklist for either?

3 MS. LUTSUK: I think it would depend -- maybe my
4 personal opinion -- of whether we have -- on the short term,
5 with a short-term goal in mind of funding the project, it
6 does seem that it's unreasonable to ask districts to have to
7 compile a checklist.

8 However, for them to also even evaluate which
9 option gives them more money would need some kind of
10 analysis that equates to the checklist. And secondly, in
11 our program, we're constantly handicapped by the lack of
12 data. In the grant program that is set up on grants, it is
13 very difficult to respond to questions about, well, what
14 does it actually cost.

15 So collecting data -- continue to collect data
16 does have a long-term benefit to address that handicap. So
17 Option 1 right now would not require any change. Everyone
18 that's coming into modernization program asking for
19 accessibility funding, which I'm not sure why the -- most
20 projects will probably, nothing would change. They would
21 continue to submit the checklist.

22 Review part on our end is not laborious. It is
23 not a big part of what we -- of the review that we do on
24 modernization projects, but for districts, we have heard
25 concerns that architects will perhaps charge additional fees

1 to develop that checklist.

2 MR. HARVEY: So Option 1 gives you the data
3 collection going forward that would inform you and you're
4 saying there is some value in that.

5 MS. LUTSUK: Over the years, what's been shown to
6 us is any data that we can get on even estimated costs
7 brings a tremendous amount of value for any decision making
8 on grants, bonds, et cetera.

9 MR. HARVEY: Thank you.

10 CHAIRPERSON BRYANT: Is there any public comment
11 on this item?

12 MS. MOORE: I'll second the motion.

13 SENATOR LOWENTHAL: Which one is that? Option 1?

14 MS. MOORE: Option 2.

15 SENATOR LOWENTHAL: Oh, Option 2.

16 MR. DUFFY: It's just we prefer Option 2. Madam
17 Chair, members, thank you.

18 MS. MOORE: Pardon?

19 MR. DUFFY: We prefer Option 2. I think that's
20 where you're going.

21 MS. MOORE: Oh, thank you.

22 CHAIRPERSON BRYANT: Okay. I think we have a
23 motion and a second. Do you want to go ahead and call the
24 roll.

25 MS. GENERA: Senator Lowenthal.

1 SENATOR LOWENTHAL: Option 2 this is?
2 SENATOR HANCOCK: Yes.
3 SENATOR LOWENTHAL: Aye.
4 MS. GENERA: Senator Hancock.
5 SENATOR HANCOCK: Aye.
6 MS. GENERA: Assembly Member Brownley.
7 ASSEMBLY MEMBER BROWNLEY: Aye.
8 MS. GENERA: Assembly Member Torlakson.
9 ASSEMBLY MEMBER TORLAKSON: Aye.
10 MS. GENERA: Scott Harvey.
11 Kathleen Moore.
12 MS. MOORE: Aye.
13 MS. GENERA: Lyn Greene.
14 MS. GREENE: Aye.
15 MS. GENERA: Cynthia Bryant.
16 CHAIRPERSON BRYANT: Aye.
17 MS. GENERA: Carries.
18 ASSEMBLY MEMBER TORLAKSON: And then you need a
19 motion on the rest of it or does that cover everything?
20 CHAIRPERSON BRYANT: I think we covered -- her
21 motion had both parts in it.
22 ASSEMBLY MEMBER TORLAKSON: Covered it? You got
23 it. Great.
24 MR. NANJO: Just to clarify, that motion was for
25 Option 2 and it was also to authorize the Executive Officer

1 to submit Attachment A, regulatory amendments, and the form
2 changes. You covered everything I think you need to. Thank
3 you.

4 ASSEMBLY MEMBER TORLAKSON: Good.

5 CHAIRPERSON BRYANT: Hey, we're doing so well.
6 Now moving onto **reports**, Tab 18. I think -- I just want to
7 say one thing about reports really quick. I may have
8 mentioned this last time, but we had a situation in the past
9 where we haven't made it through the binder and the reports
10 have just been in there and so in order to kind of have a
11 more formalized process on reports, I was hoping that we
12 could get a vote on -- not a vote, but a motion on accepting
13 the report. It doesn't mean we approve. It doesn't mean we
14 agree with them. It just acknowledges that we have them.

15 That way in the future if we get to a place where
16 we don't finish the item, if we've never accepted it, then
17 it's not deemed as something that's ever been presented to
18 us. So we don't get into the argument about we had a report
19 or we didn't have a report.

20 Tonight we have time though to hear quickly on --
21 briefly on these reports and see if there's any questions
22 from members and I think we have -- what do we have, four of
23 them?

24 MS. SILVERMAN: Yes. Yes, there's four.

25 MS. MOORE: Ms. Bryant, I as one Board member

1 would be -- that would be problematic for me to accept
2 reports that we hadn't heard the item on.

3 SENATOR LOWENTHAL: Yeah.

4 MS. MOORE: Is that what you were suggesting?

5 CHAIRPERSON BRYANT: No, I'm not --

6 MS. MOORE: Okay. Then I misunderstood you.

7 CHAIRPERSON BRYANT: -- I'm suggesting that -- we
8 could get to -- there could be a report that we don't really
9 have to have a major discussion on and we just move on, but
10 what I'm -- and I think this is something too, Senator
11 Hancock, that we could work into the rules discussion.

12 But I think what I'd like to see us do is have
13 some sort of an action on the reports. That way no one in
14 the future can say you never ever --

15 MS. MOORE: Oh, absolutely.

16 MR. HARVEY: Once you've done it.

17 CHAIRPERSON BRYANT: -- you didn't listen to them.

18 MS. MOORE: Once we hear them individually.

19 CHAIRPERSON BRYANT: No one can come back to us
20 and say well, that was on, you know, the --

21 MS. MOORE: I support that.

22 CHAIRPERSON BRYANT: That was -- yeah. Okay.
23 That's what I'm trying to get to, but I'd like us to get
24 through them and I think we're going to finish the agenda
25 again today.

1 SENATOR LOWENTHAL: And to accept the report means
2 what?

3 CHAIRPERSON BRYANT: It just means that we heard
4 it.

5 SENATOR LOWENTHAL: It doesn't mean that you
6 approve the report? Because we've had issues in the past
7 about approving reports or not.

8 ASSEMBLY MEMBER BROWNLEY: Can we get a legal
9 opinion on --

10 MR. HARVEY: I want three.

11 CHAIRPERSON BRYANT: We can -- we don't have to do
12 it today.

13 SENATOR LOWENTHAL: It depends upon how much we
14 have to pay for that legal --

15 CHAIRPERSON BRYANT: I'm just suggesting it. I
16 just don't want -- what I -- I want to avoid the situation
17 that we've had where that was in a report and it was never
18 taken up or the Board just rushed through it at the end of
19 the meeting and so if we get to the report and we actually
20 consider it, I was hoping that we would end up with a
21 permanent record of an acknowledgement that we had heard it.

22 SENATOR LOWENTHAL: But what if you didn't
23 accept -- I understand to accept it, but what if you did not
24 approve it, you wanted to reject the report. How would that
25 fit in?

1 MR. HARVEY: We could reject it.

2 CHAIRPERSON BRYANT: I'm not --

3 SENATOR LOWENTHAL: I'm not saying we're going to
4 do that. I'm just --

5 CHAIRPERSON BRYANT: Then maybe -- well, maybe we
6 don't even have to do this and maybe I can defer this to
7 Senator Hancock's Rules Subcommittee. What I -- and when we
8 get to this point in the transcript, we had a discussion
9 about these reports, we know we've heard them.

10 MR. HARVEY: How about we receive the report.
11 That way we're not accepting it or denying it. Just we
12 received the report.

13 MS. MOORE: I will say, however, that reports do
14 come back as you indicate, you know, at times and they
15 are -- you know as part of future discussions. So I think
16 it's important that, as you suggest, that we take an action
17 on the report and if it's an acceptance, it's an acceptance.
18 If it's a nonacceptance, it's a nonacceptance.

19 CHAIRPERSON BRYANT: Or if it's just duly noted.

20 MR. HARVEY: To receive or receive.

21 MS. MOORE: Right. But there -- and there may be
22 a circumstance where a report is not accepted. There may be
23 other circumstances where they are. So I think it's good to
24 note that we did an action on them.

25 I -- just as you were talking generally about

1 reports, where my concern lies is when we're making policy
2 decision -- or policy decisions appear to be made and they
3 are presented as reports that are not actionable items.

4 I think that that is not appropriate and that
5 all -- that when that happens, I think we ought to say
6 that's a policy item and it needs to come forward as an
7 actionable item. Thank you.

8 ASSEMBLY MEMBER BROWNLEY: So is accept/nonaccept
9 equivalent to accept and reject?

10 CHAIRPERSON BRYANT: Why don't we -- I mean I'm --
11 I think tonight we should just go through the few reports we
12 have in front of us and we're going to have a record of it
13 in our transcript and so we've heard these. And it's really
14 a situation if when everyone's walking out the door and the
15 reports are the last four items on the agenda.

16 So if we can go through them really fast and
17 adjourn really quickly, that would be incredible.

18 MS. SILVERMAN: For purposes of perhaps speeding
19 this along, I'm -- a suggestion of whether or not we want to
20 go through the status of fund release reports or the status
21 of funds report because I know there's other critical
22 reports that we probably want to get to.

23 CHAIRPERSON BRYANT: Okay.

24 MS. SILVERMAN: Yeah. These are ongoing reports
25 that we provide information only, so -- if that's a

1 suggestion that we take --

2 CHAIRPERSON BRYANT: So are there any questions on
3 Tab 18 or Tab 19?

4 SENATOR LOWENTHAL: No.

5 CHAIRPERSON BRYANT: And we already did Tab 20.
6 Tab 21's removed from the agenda. 22.

7 MR. MIRELES: The next item deals with the seismic
8 mitigation program. This report really serves two purposes.
9 The first is to provide the Board with a quarterly report on
10 the seismic mitigation funding activity. If I could direct
11 you to the bottom of stamped page 214, we've listed the
12 three projects that the Board has approved so far under the
13 seismic mitigation program.

14 Those three projects total about 4.7 million.
15 That gives us a remaining balance of \$194 million in the
16 seismic mitigation program.

17 And it's our understanding that there are a couple
18 other projects that have gone through DSA and received
19 approvals that qualify under the current regulations. We
20 haven't seen those projects yet, but there's an additional
21 estimated cost of about 26 million for those three projects
22 that we expect to see in our office soon.

23 The other purpose of the report is to provide the
24 Board with an update on requests that the Board had made in
25 terms of getting a definition for imminent threat of

1 collapse. The Board had requested that DSA take a look at
2 this and provide a definition for imminent threat of
3 collapse. With us today, we have Ms. Kathy Hicks
4 representing Division of State Architect who's going to
5 provide an update on that analysis.

6 MS. HICKS: Good afternoon. Actually I thought I
7 was here just to answer questions for you, but I'm happy to
8 report that the imminent threat of collapse was a definition
9 that the Division of State Architect determined that we
10 could not come up with a definition because there's no
11 scientific basis for which we would base that, that it would
12 be too subjective.

13 For the most vulnerable buildings that we were
14 asked to look at, there was actually a U.S. -- I can't think
15 of -- but there was actually a scientific adoption of that
16 definition and we applied it in this case and then
17 adopted -- or recommended the types of buildings that would
18 fit with the amount of money that was made available through
19 Proposition 1D for seismic mitigation programs.

20 And also given the Board's direction that when we
21 look at that definition that we not change it in a way that
22 expanded the amount of money that had been made available,
23 changing the definition meant that we couldn't control the
24 number of buildings that may be eligible for funding under
25 the appropriation amount.

1 CHAIRPERSON BRYANT: Any questions? Senator
2 Hancock.

3 SENATOR HANCOCK: Okay. And the last I heard, you
4 had requested or indicated that if you got \$150,000 you
5 could do a study to get a methodology to talk about getting
6 a definition. Have you decided not to pursue that?

7 MS. HICKS: The money that was referenced in our
8 report to -- discussion at the Implementation Committee was
9 that what we could do to help out with where we were headed
10 was to rank those buildings that were in the category and
11 come up with a methodology for ranking all of the buildings
12 that we've identified as buildings that had various seismic
13 mitigation issues that we believe possible and that were in
14 areas with this lateral -- ground motion intensity that were
15 likely to have the most vulnerable -- that fit in that
16 category where we were to rank them and then if you were to
17 look at other criteria to figure out which ones we needed to
18 require to be funded first, we could do that or apply it in
19 future to use in terms of determining future bond funding
20 needs for seismic mitigation issues.

21 It wasn't going to address the definition at all.
22 We simply cannot come up with a definition for you.

23 SENATOR HANCOCK: Okay. Then I think we've got a
24 problem because this whole discussion came up around the
25 issue of a district that came in with an evaluation from an

1 engineer saying they were in imminent danger of collapse,
2 but they didn't fit the shaking and the building types that
3 have been adopted by the Division of the State Architect, so
4 they were excluded from applying.

5 And my interests have been how do we get the
6 definition expanded to include more types of schools since
7 we've only given three grants. I mean again we have people
8 out there that would like to do seismic retrofit on their
9 schools and they're being told they're not eligible under
10 our present guidelines, but we can't get a different
11 definition because there's no such thing.

12 We need something, everybody, and I'm open to
13 suggestion.

14 CHAIRPERSON BRYANT: Mr. Harvey.

15 MR. HARVEY: If I might, the real balancing act
16 here is when we ask districts what were the impediments, we
17 heard that it was indeed the shake zone wasn't quite broad
18 enough, so we expanded that a little bit. The building
19 types weren't broad enough, so we expanded that a little
20 bit. The issue of paying for the initial seismic analysis,
21 we've got a pool of money now they can draw down.

22 The remaining obstacle is this question of
23 portable housing. That is temporary housing. If you are
24 indeed wanting to retrofit something, where are you going to
25 put the students, and I have heard that we really have an

1 abundance of schools that meet our criteria, but the idea of
2 finding a place to put students is the major impediment.

3 So the more you spread the definition, you do run
4 the risk of expanding the capable dollars. We've got a
5 definition now that fits that 199 million. We didn't want
6 to go into an unfunded when there wasn't the dollars
7 available.

8 So it is a real quandary. I know the district
9 that you're alluding to could have come under the
10 modernization program and got that other correction handled.
11 So it's awfully hard sometimes to draft a well-intended
12 definition when there may be other ways of skinning the cat.

13 So I'm kind of comfortable at this point staying
14 with where we are because there are multiple avenues to get
15 other dollars and we have on more than one occasion been
16 told by multiple sources that our definitions now probably
17 suck the money up.

18 So I don't know if I want to expand it.

19 SENATOR HANCOCK: We'll probably suck the money
20 up. Because it isn't -- haven't yet.

21 MR. HARVEY: No. And the other conundrum is we're
22 not selling any bonds either. So I don't know. I mean --

23 MS. HICKS: We have -- I'll tell you an update by
24 the way. We did contact all the school districts that had
25 buildings that we believe to be eligible so that we're sure

1 that DSA has done its due diligence to notify them that this
2 money is available and that we believe that they have X
3 number of school buildings on their site so that we will get
4 more active feedback from the school districts that have
5 buildings that we believe on our records to be eligible for
6 the program so that they -- if they could tell us that they
7 already went through any of the modernization programs,
8 already made those seismic retrofits or upgrades necessary
9 that we could take them off the list and then clear off that
10 list to make room for other buildings to move up.

11 But otherwise we've identified a liability and
12 when you start jumping the line, now you've got those
13 sitting there that we said these were the most vulnerable.
14 We didn't do anything to fix them. We allowed them to stay
15 on the list and we expanded it to add more.

16 So we are working to identify where everybody is
17 on that list, let them know, then looking at other projects
18 that they have in DSA being reviewed because one of the
19 things that we heard was that they don't have their local
20 match.

21 So we're also going to be turning over this list
22 to the Office of Public School Construction to see how
23 they're using -- what eligibility they have and what other
24 projects they're working on and how they're proposing to
25 spend any local money that's available already so that we

1 can try and help them understand that they do have some
2 flexibility to deal with these building.

3 SENATOR HANCOCK: Okay. What I hear you saying is
4 there is a list of seismically at risk buildings that have
5 not come forward and requested money.

6 MS. HICKS: Yes.

7 SENATOR HANCOCK: And that it is our intention to
8 inform them that they can come and get money. So we'll also
9 find out if they've already fixed or torn the building down.

10 MS. HICKS: Right.

11 SENATOR HANCOCK: But we will definitely let them
12 know they've got a problem so they'll have liability; right?
13 And then are we going to do something to facilitate their
14 coming in and we think there are enough of those so that the
15 entire rest of the million nine will be gone.

16 MS. HICKS: My intention is to report back to this
17 Board to let them know those buildings -- we've sent them a
18 letter already so it's not going to. We've already
19 contacted each of those school districts and identified the
20 buildings.

21 We do have some clarification that they're going
22 to need to provide for us, for example, if the building type
23 was listed as mixed, we can't tell what structure that is
24 and what it applies to. So there's some -- if as you said,
25 they've already removed that building from their site, it's

1 no longer there, and these are old records that we're
2 looking to, so sometimes the school name is changed and
3 things and completely accurately identifying what's what.
4 We're trying to clarify all of that and we can report back
5 to the Board.

6 And before we come back, we also wanted to talk to
7 OPSC, share that list, and find out what other eligibility
8 they have for modernization or --

9 SENATOR HANCOCK: Okay. What's the time frame for
10 this?

11 MS. HICKS: Well, it depends on how quickly the
12 school districts and how well they cooperate with us --

13 SENATOR HANCOCK: So it could be --

14 MS. HICKS: -- in responding.

15 SENATOR HANCOCK: It would be years.

16 MS. HICKS: Well, I'm not that patient.

17 SENATOR HANCOCK: Would it be within two months? I
18 mean --

19 CHAIRPERSON BRYANT: When did you make this round
20 of contact to the school districts?

21 MS. HICKS: Within a couple days of attending the
22 Implementation Committee and giving a brief --

23 CHAIRPERSON BRYANT: So that was when? Like -- is
24 that since our last meeting?

25 MS. KAPLAN: March 4th.

1 CHAIRPERSON BRYANT: Pardon?

2 MS. KAPLAN: March 4th.

3 MS. SILVERMAN: March 4th.

4 ASSEMBLY MEMBER BROWNLEY: So it's just gone out.

5 CHAIRPERSON BRYANT: So it's really kind of just
6 gone out. So maybe -- I mean we should probably -- can we
7 kind of keep getting updated monthly even if the report
8 is -- we don't have any changes yet, just so that -- I think
9 we have at least two members here who are really concerned
10 about this and we need to come up with a strategy if it's
11 necessary if this isn't working.

12 Did you have a comment, Mr. Duffy?

13 MR. DUFFY: I did. Madam Chair, members, Tom
14 Duffy again for CASH. Ms. Hicks is reporting upon a recent
15 contact with school districts. David Thorman, the State
16 Architect, asked his staff months and months and months ago
17 to do a similar contact with school districts.

18 We had conversations with DSA representatives and
19 asking about those conversations and basically the way the
20 program is structured, districts are not encouraged to take
21 the risk to go to their boards and say we need to move out
22 of this building and by the way, we have interim housing and
23 we have a guarantee of getting these dollars to fix this
24 building or knock it down.

25 So the way the program is structured -- and I've

1 been saying this for a long time and so have others -- it's
2 not there to support districts to be able to say we've got
3 children in this building and we cannot repair it with the
4 children still in the building. Or we cannot knock it down
5 with children still in the building.

6 So interim housing costs are -- and Mr. Harvey and
7 I have discussed this before and I appreciate you bringing
8 it up this evening. I realize that it's one of those things
9 you're thinking, well, we're going to take money out of the
10 program that's not going to fix buildings, but you can't do
11 it.

12 The West Contra Costa District, Senator, is --
13 Bill Savage, the CASH Chair, told me last night that the
14 Portola School that they're finally believing that they have
15 DSA approval to basically knock down and change, he said we
16 have to spend \$3.5 million on interim housing for the
17 students of that school. It's a reality. You can't touch
18 the building without dealing with that cost.

19 SENATOR HANCOCK: That's an allowed cost, isn't
20 it?

21 MR. DUFFY: Pardon me?

22 SENATOR HANCOCK: Is that an allowed cost?

23 MR. DUFFY: No. That's why I'm mentioning this,
24 Senator. It's not an allowed cost. It is not within the
25 program.

1 And we have suggested in documents -- letters and
2 other documents that we've shared that if this program
3 allowed that, the engineering cost -- and I appreciate
4 reading what I read, Ms. Hicks, about the \$200,000 that
5 could be used for engineering cost may be administered
6 through DSA. That may be very helpful.

7 But that engineering cost and the cost of interim
8 housing and some assurance that the project will indeed
9 qualify -- because once you notify your board that the
10 building is a defective structure and you -- you have no
11 choice. You have to move children out of the facility.

12 Thank you.

13 MR. MIRELES: Madam Chair, may I clarify something
14 about the interim housing issue. The seismic mitigation
15 program falls under the facility hardship program. The
16 facility hardship program allows projects that have an
17 imminent health and safety issue to receive funding which is
18 similar to the seismic program.

19 Under that program, the interim housing is an
20 eligible allowance -- it's an eligible expenditure, but
21 there was not additional grant for it. So it's no different
22 with the seismic mitigation program. And unfortunately we
23 realize that, you know, these facilities have an imminent
24 threat -- health and safety threat, but since the inception
25 of the program in terms of facility hardships, we haven't

1 allowed -- the program doesn't grant an additional allowance
2 for interim housing for facility hardship projects.

3 So it's similar to seismic. Talking about interim
4 housing is not just a seismic discussion. It also gets into
5 the realm of the facility hardships projects.

6 MS. MOORE: If I may.

7 CHAIRPERSON BRYANT: Yes.

8 MS. MOORE: I would support also both the concerns
9 raised here about the program. I think we have an
10 identified list. We have people that have not accessed it.
11 They've raised issues of why that we've heard I think.

12 I remember meeting I think it was in 2009 down
13 south, we had this discussion -- or 2008 down south we had
14 this discussion. The same issues were raised at that time.

15 I would say that we can act on this because it's a
16 report, that -- however, that we really look at that interim
17 housing issue and if it's true for this program and I
18 appreciate Mr. Mireles talking about it as well for facility
19 hardship, these are extenuating circumstances for districts.

20 It's also incredibly extenuating times for school
21 districts and that in these two hyper, you know, safety
22 issues, we should be extending anything that we can possibly
23 to get these projects done and if that includes interim
24 housing, I for one Board member for like to entertain that.

25 So maybe it's time to do that again. If indeed we

1 have identified need, they're not accessing it, and if we
2 have identified need in facility hardship, I'd support that
3 as well.

4 SENATOR HANCOCK: Would it make sense to refer
5 this to the Implementation Committee to come back? I mean
6 I'm just concerned that we have money sitting there unspent.
7 We have needs getting identified and we don't seem to have a
8 way of moving forward on it.

9 ASSEMBLY MEMBER BROWNLEY: Well, it seems to me we
10 know -- if we have the data and if we actually do have a
11 list of schools and we actually have the data of what the
12 barriers are and if it is housing that is the barrier, then
13 it seems to me like that we take, you know, this money and
14 set -- and carve out a piece that says this is for
15 housing -- for interim housing while they do -- and see how
16 it goes.

17 I presume that it's not every single project is --
18 you know, housing is the barrier, but it sounds like that
19 maybe preponderance is and let's give it a go and see if it
20 works.

21 SENATOR HANCOCK: Yeah. That's what I'd like to
22 do too, but I thought if it went to the Implementation
23 Committee -- and this is thinking off the top of my head,
24 everybody. If it went to the Implementation Committee, all
25 the stakeholders would then talk about what they obviously

1 know better than we do which is what the barriers are and
2 we've -- I think one of them at least is interim housing.

3 Are there others? Could they come back to us in
4 one or two months? In the meantime, the contacting of the
5 schools could continue from the State Architect's office,
6 but --

7 MS. MOORE: I would support that as well.

8 SENATOR HANCOCK: -- could we have a
9 recommendation.

10 MS. MOORE: I'd support that.

11 SENATOR HANCOCK: Okay.

12 CHAIRPERSON BRYANT: Ms. Kaplan.

13 MS. KAPLAN: Just so we --

14 MS. SILVERMAN: If you don't mind.

15 MS. KAPLAN: Go ahead.

16 MS. SILVERMAN: I know we've provided some
17 regulation changes. That was just over the summer and
18 realize those regulations just went into effect in November
19 of '09. So, you know, I know it's only been a few months
20 and I know the program is moving slowing, but I mean it
21 would be probably to our best interests to come back maybe
22 after we have some updates, what's going on with the contact
23 the DSA's making, before we move forward.

24 Because I mean I hear what the -- we have
25 limitations here with the amount of monies we can use and I

1 would hate for us to exceed that limitation because what if
2 we do get programs -- I mean projects coming in and we may
3 find ourselves in a precarious situation.

4 MS. HICKS: I think -- make sure that it's clear
5 that what I'm proposing that DSA and OPSC reach out to these
6 districts that we know that already have the buildings that
7 have been identified as the most vulnerable and research
8 what it is they have pending, but also reach out to them and
9 help them understand what they can come in for, how we can
10 help them address their problem, and hear from them what
11 their problems are and then come back to you specifically
12 with the barriers to those school districts that have been
13 identified as being most vulnerable out of the entire list
14 of all the buildings that we're aware of and deal with
15 that --

16 MS. MOORE: I think that's good to go on and I
17 would encourage you to continue to do that, but I also
18 support the Senator's recommendation that it go to the
19 Implementation Committee because I'll tell you it's been a
20 year and a -- what -- as I said, in 2008, that interim
21 housing was an identified issue and now we're in 2010 and we
22 still haven't addressed it.

23 I would -- you know, as a -- not as a policy
24 consideration, but as a practical consideration, I would
25 rather than school districts have that money come in and

1 then we have to deal with maybe we have 20 million more
2 because of the interim housing and we have to somehow deal
3 with that. I would rather that we are erring on the side of
4 safety than we are erring on the side of conservatism around
5 the cost.

6 MS. KAPLAN: So to get clarification so I know as
7 we take it to the Implementation Committee, what I hear
8 wanting to be discussed is what's the barrier to the 77
9 identified projects to coming in and accessing funding. So
10 do we kind of want to limit it to the 77 identified projects
11 and working with DSA to have a discussion of what's, one,
12 the barrier with those projects and having a policy
13 discussion and then if there's solutions or potential
14 recommendations to then bring up to the Board to address
15 that? Is that what the Board or, Senator Hancock, you're
16 looking for?

17 SENATOR HANCOCK: Let me try. Because again what
18 I was thinking was that we ask the Implementation Committee
19 to come back to us quickly, like within two months, with
20 recommendations from the stakeholders who've been living the
21 problems as to what would facilitate getting that money out.
22 At the same time that the State Architect's office could
23 contact as many of the 77 schools on the list and find out
24 from them specifically do they know they're on the list, are
25 they prepared to come in under our present regulations, and

1 if they're not prepared to come in, what are their problems,
2 that we would then have a database in a short period of time
3 to give us answers for the policy changes that we might want
4 to make.

5 And I would move I guess those -- that we're
6 asking for a report in two months both from the
7 Implementation Committee which will be just the life
8 experience of the stakeholders and then also the survey move
9 forward on the 77 schools and that we find out what they
10 tell us specifically.

11 MR. NANJO: Since this is not listed as an action
12 item, I would recommend that this be considered direction to
13 staff instead of a motion -- formal motion.

14 CHAIRPERSON BRYANT: Do we --

15 SENATOR HANCOCK: Okay.

16 CHAIRPERSON BRYANT: Okay. Duly directed.

17 Item 23. Oh, let me -- before we do, this is our last item.
18 We are going to finish the binder again. But can we -- we
19 have a couple items open if you want to vote on them, so why
20 don't we go ahead and do those. Go ahead, Sue.

21 MS. GENERA: Okay. I'm sorry. So --

22 CHAIRPERSON BRYANT: Yeah, just the two. I think
23 there's two that are open. Whatever's open so we can close
24 it down.

25 MS. GENERA: Okay. Well, it would just -- oh, I'm

1 sorry. This is on Tab No. 4. Senator Hancock?

2 SENATOR HANCOCK: I'd need to -- I have to go.
3 I'm half an hour late for another meeting. This is Tab
4 No. 4?

5 MS. GENERA: Even if she abstains, it still
6 passes.

7 MS. KAPLAN: It's the delegation of authority.

8 CHAIRPERSON BRYANT: Delegation of authority.

9 MR. HARVEY: It's the delegation of authority to
10 Lisa Silverman.

11 CHAIRPERSON BRYANT: For -- just for the -- for
12 submitting regulations.

13 SENATOR HANCOCK: I'm trying to remind myself what
14 it's about.

15 MS. KAPLAN: It's just giving her the authority to
16 file regulations at OAL.

17 SENATOR HANCOCK: Well, aye. That seems to be
18 simple.

19 MS. GENERA: And Assembly Member Brownley.

20 ASSEMBLY MEMBER BROWNLEY: Aye.

21 MS. GENERA: Okay.

22 CHAIRPERSON BRYANT: And the next is the Consent
23 Calendar, Tabs 5 through 8.

24 MS. GENERA: All Tabs 5 through 8. Senator
25 Hancock.

1 MS. KAPLAN: One includes your seismic safety --

2 SENATOR HANCOCK: Oh, aye, of course. No, no.

3 The -- I didn't hear you say Consent Calendar. I'm sorry.

4 MS. GENERA: I'm sorry. Assembly Member Brownley.

5 ASSEMBLY MEMBER BROWNLEY: Aye.

6 MS. GENERA: And Tab 11, the CCI item to approve
7 staff Option 1.

8 ASSEMBLY MEMBER BROWNLEY: Yeah. Could I just ask
9 one question about Item 11 --

10 CHAIRPERSON BRYANT: Sure.

11 ASSEMBLY MEMBER BROWNLEY: -- because I wasn't
12 here for the discussion. I apologize. But we -- I had a
13 meeting in my office today with OPSC staff and there was
14 this question about the large unfunded approvals and with
15 the -- with the March unfunded approvals and -- wait, wait,
16 wait, wait.

17 I want to make sure that the March unfunded
18 approvals are approved as March unfunded approvals even
19 though they're going to come up in April? Did you guys
20 already discuss this? If you did --

21 CHAIRPERSON BRYANT: Well, yes.

22 ASSEMBLY MEMBER BROWNLEY: Okay.

23 CHAIRPERSON BRYANT: I actually had printed --

24 ASSEMBLY MEMBER BROWNLEY: Well, if you did, if
25 you could just clarify for me what --

1 CHAIRPERSON BRYANT: What we decided is to include
2 the January projects and the February projects. There are
3 no projects on the March agenda. So it would -- starting in
4 April, we would apply the new CCI rate.

5 ASSEMBLY MEMBER BROWNLEY: Okay. Well, when I was
6 in -- when I had the meeting in our office, I thought you
7 said that there were projects in March and you had it in
8 draft form, but just not ready to bring it forward.

9 CHAIRPERSON BRYANT: Right. We -- so you missed
10 my -- I kind of lost my temper on this.

11 ASSEMBLY MEMBER BROWNLEY: Oh. I'm so sorry.

12 CHAIRPERSON BRYANT: My only -- that's okay. I'm
13 much calmer now.

14 ASSEMBLY MEMBER BROWNLEY: It's an innocent move
15 on my part. I really --

16 CHAIRPERSON BRYANT: What I said was is that what
17 I tried to do when we set this item up was I purposely had
18 no projects on this agenda so that we would have a clean
19 break. And what I was frustrated about with our previous
20 discussion was part of why stakeholders -- rightfully so I
21 think -- were confused and there was concern about you
22 didn't have a December meeting, you could have had a
23 December meeting. There was all that confusion --

24 ASSEMBLY MEMBER BROWNLEY: Right.

25 CHAIRPERSON BRYANT: -- which is why we designed

1 this to have a clean break and the Board supported that and
2 we stuck with just doing -- so we will have to vote on the
3 February projects in April because they -- we never did
4 approve those last month.

5 There's nothing for March. So anything new added
6 to the list from this point forward gets the new rate with
7 the -- and we did not adopt regulations, so with the caveat
8 that we have flexibility to make changes down in the future.
9 That was really important.

10 ASSEMBLY MEMBER BROWNLEY: Okay. So -- and it was
11 a unanimous aye vote?

12 MS. SILVERMAN: Yes.

13 CHAIRPERSON BRYANT: Yes.

14 MR. HARVEY: Yes.

15 CHAIRPERSON BRYANT: In the end.

16 ASSEMBLY MEMBER BROWNLEY: Maybe that was a good
17 thing. I'll vote aye.

18 SENATOR LOWENTHAL: This is No. 11; right? I
19 don't want to --

20 CHAIRPERSON BRYANT: Okay. So Tab 23.

21 MR. INMAN: Good evening. My name is Steve Inman.
22 I'm an Audit Supervisor with the Office of Public School
23 Construction and I'm here to present the process by which
24 staff audit reports will be posted.

25 Before I begin, I would like to add that the

1 audits being posted will be our field audits and not the
2 desk reviews that that have been conducted in the past. So
3 that's -- there's an important distinction between those
4 two.

5 On June 4, 2009, the Governor issued Executive
6 Order S0809 which was superseded by the issuance of
7 Executive Order S2009 on September 9th, 2009, requiring the
8 posting of external and internal audits on the Governor's
9 Transparency Website.

10 This was based on the public's right to know where
11 the public funds are being spent efficiently and
12 effectively. Staff officially became engaged in field
13 audits in summer of 2009.

14 In the past, formal audit reports have not been
15 issued. However, this process has been adopted as a field
16 audit procedure. The purpose of this report is to provide
17 more background and relevant information to the reader who
18 may not be familiar with the program.

19 Once staff has concluded with this review of all
20 pertinent documentation they will adopt the following
21 process for posting its audits reports.

22 A draft report will be issued. The district will
23 be provided 30 calendar days to respond to the draft report.
24 Most state audit agencies provide a shorter response period,
25 only approximately 10 days, some 15 days. I know our desk

1 audit procedure in the past, we allowed 15 days to return
2 those cost reports.

3 Staff will review the district's response and
4 incorporate any changes if necessary and staff will issue
5 the final report with the district's response attached.

6 After that's completed, the OPSC will post a final
7 report to the Transparency Website within ten days of the
8 final report's release.

9 Authority: The Governor's Executive Order S2009
10 states in part that in addition to audits, state agencies
11 and departments shall take immediate action to post the
12 reporting Government Transparency Website program reviews,
13 monitoring and accountability reports, evaluations,
14 inspections, assessments, and studies of their operations
15 dating back to January 1st, 2008.

16 EC Section 17070.20 states that the Director of
17 General Services shall administer this chapter and provide
18 assistance to the Board as it requires. Government
19 Code 15490(c) reiterates that the Director of General
20 Services's role is staff to the SAB.

21 If there are any actions issued by the SAB that
22 directly impact the audit findings, the outcome will be
23 noted in the work papers. So that means after the auditor
24 issues his draft report that's immediately out of the field
25 work, the district responds and the OPSC evaluates that

1 response and the findings are resolved, that final report
2 will be issued, but that's not to say that the Board will
3 not continue to deal with, for example, material inaccuracy
4 items, items that typically go to the Board, any item that
5 creates an increase or decrease in the bond fund.

6 So the auditor's report will be out based on the
7 criteria the auditor worked with. Any Board items will go
8 to the Board, be resolved, and those issues will be added to
9 the work papers as they resolve.

10 CHAIRPERSON BRYANT: Okay. Are there any
11 questions? Senator Lowenthal.

12 SENATOR LOWENTHAL: Yeah. I think the
13 transparency is good. I think this is the right direction
14 to be moving in. I -- although we will be as a subcommittee
15 on audits looking at that -- those criteria and just making
16 recommendations back. We're not going to look at specifics,
17 but the overall criteria will be looked at.

18 So I'd like to delay the implementation until that
19 subcommittee makes recommendations back before we start to
20 post. Nothing's been posted in six months. We'll get that
21 done shortly. It just seems to me since we have a
22 subcommittee that's working on this that we just not -- we
23 still have all the audits, not doing anything, but the
24 posting of it just be -- we wait until we have that
25 recommendations to the Board. I'd like to say that we do

1 that because we will be working on those since we have not
2 implemented this yet.

3 And the major thrust of the Governor's was to look
4 at doing audits of state agencies and now we're looking at
5 subpart of that -- those public monies that that agency --
6 those -- and I think that's totally appropriate. I would
7 just like -- before we start putting all this out there,
8 that we have a subcommittee to report back to the Board
9 before we accept this.

10 MR. HARVEY: Senator, my only comment would be to
11 be consistent with what I said earlier is that we have I
12 think the right to look at whatever we want to look at --

13 SENATOR LOWENTHAL: You do.

14 MR. HARVEY: -- and we recommend to the Director
15 whatever he wishes, but it's still according to these
16 statutes his call and if the Director decides to post on
17 this Website, I think he may have that option --

18 SENATOR LOWENTHAL: Absolutely. Absolutely. But
19 I would like us not to move forward -- you know, the
20 Director may choose to do that, but I would still think we
21 as a Board, since we have authorized the subcommittee to
22 look at these -- before we start posting reports -- audits
23 on districts that we at least have that recommendations back
24 to us. Now that's what this -- you know, the action that
25 this Boards takes.

1 MR. HARVEY: So the Director may choose to put
2 something on --

3 SENATOR LOWENTHAL: Well, you're saying that he
4 may choose to do that anyway.

5 ASSEMBLY MEMBER BROWNLEY: Right.

6 SENATOR LOWENTHAL: You know, but I'm just saying
7 what we do is that since we have a working group now looking
8 at these criteria that we hold off before we actually post
9 the audits until we see the recommendations from the working
10 group.

11 MS. MOORE: I would support the Senator on that.
12 I had a question on this. Interestingly, I went to go see
13 where the -- this Website is and to see what it looks like
14 and, you know, what kinds of things are being posted there.
15 I saw a CDE audit posted there.

16 But I was curious, I didn't see -- and of course I
17 only -- I didn't have a lot of time in it, but I didn't see
18 other infrastructure reports -- audit reports like
19 Department of Transportation or -- others that I know are
20 doing infrastructure projects and I'm curious are you aware
21 of that? Are other infrastructure agencies placing their
22 audit reports and are there any other agencies like the
23 State Allocation Board that are giving grants to locals and
24 that local audit is then placed on the state reports as
25 well.

1 I was just curious if you all knew anything about
2 any of that.

3 MS. SILVERMAN: Well, as far as the infrastructure
4 audit program, that audit program is managed by the
5 Department of Finance, Office of Statewide Audits and
6 Evaluations, so I can't technically speak whether or not
7 they've completed any infrastructure audits.

8 But the requirements would be they would still
9 post those audit findings or results to not only their
10 Website, but the Government Transparency Website but -- and
11 they would audit, you know, other entities such as the UC
12 System, CSU.

13 So I mean if there was a requirement -- and I
14 understand the Executive Order. It requires that this be
15 made available once that report's final. So there is a
16 requirement that we have to follow.

17 CHAIRPERSON BRYANT: And there is a Bond
18 Accountability Website that is hosted by the Department of
19 Finance. I'm not a hundred percent sure I should be -- do
20 you know, Chris, if it has -- I'm not positive it has
21 audits, but the intention is that it's going to have.

22 It was always a -- we always had in this -- as we
23 worked on the strategic growth plan which Prop. 1D was part
24 of, an accountability program -- accountability ahead of
25 time, setting up systems whereby you were going to have a

1 program that ran efficiently, in progress accountability
2 where you weren't, you know, reviewing projects as they were
3 going, and a post accountability process where you would
4 post the audits as they came out on there.

5 And I just have to say I think that, you know, I'm
6 supportive of posting these obviously. The Governor has an
7 Executive Order.

8 I think -- I don't think that the Department or
9 the Office of Public School Construction can ignore the
10 Executive Order and if the audits, you know, are done, are
11 completed, they do need to be posted.

12 Now they don't have to say they're State
13 Allocation Board audits or that this is State Allocation
14 Board items since we haven't -- I have personally never seen
15 any of these audits and as --

16 MS. MOORE: I actually think it would be good for
17 the Board to see an audit. I mean if in fact it's the
18 completion of a project and that it is the final document
19 that really I think arbitrates the project that it would be
20 for the Board to have an example of that and to see that
21 because I think we're -- we should be knowledgeable about
22 something that's that important and that's being posted on
23 the Webpages.

24 What I would say about this too is school
25 districts are used to audits. They get audited every year.

1 And they also know that that audit format and how comments
2 are dealt with and so again I think it would be important
3 that the scope of these are well known to districts and the
4 types of, you know, comments are not individual to school
5 districts, but they're audit comments that would be of any
6 project.

7 So I guess what I'm saying is I'd hate to see
8 audits come at a school district that wouldn't -- that treat
9 that one any differently than any other school district and
10 are saying things because this information is available to
11 everyone in the state.

12 And so it should be in a format that districts
13 have knowledge of, you know, okay, well, that's how these
14 audits work and that they are very -- that they then are
15 responding to as well because it is public information and
16 it goes both ways.

17 I mean if it's damaging to a district, you know,
18 they're going to have to deal with that in their local
19 communities and so I think it's very careful that how things
20 are said to districts and if there's a format for that, it
21 would be great to know what it is.

22 MR. HARVEY: Actually I think we learn and I was
23 pleased when we met as an Audit Subcommittee that staff is
24 doing that very kind of outreach. Staff meets with the
25 district before the audit begins to go over the kinds of

1 information and data they're going to need and I think as we
2 unfold this, not only will the pilots that we've initiated
3 be helpful, but the proof will be in the pudding as we
4 continue to go through it and we're doing that very kind of
5 thing and I don't think there's anything wrong with us
6 having for information -- not action, information an example
7 of what we've completed as an audit.

8 CHAIRPERSON BRYANT: And I think it would be --
9 actually I think I would recommend that when you do go
10 public with audits that you notify the Board simultaneously
11 and we get copies of it as well. You know, even -- I mean I
12 don't want to kill a bunch of trees, you can at least give
13 us an electronic copy of all -- of anything that's going
14 public so we're at least aware of it and have -- and also
15 have notice of what's said in it and --

16 MS. SILVERMAN: Right. We can definitely provide
17 copies to the Board members once we issue the final report.
18 That's definitely something we can do.

19 But as far as -- it's -- this report will be
20 published in the Transparency Website, so it's not on OPSC's
21 Website. It's on the Transparency Website.

22 MS. MOORE: Yeah. No. I went to the Transparency
23 Website just to kind of get a flavor for what goes on, you
24 know, and I actually was looking for infrastructure
25 audits --

1 MS. SILVERMAN: Yeah. That's --

2 MS. MOORE: -- and they may be there. I didn't
3 see them.

4 MS. SILVERMAN: They would be under the Office of
5 Statewide Audits and Evaluations. That's the -- Department
6 of Finance is where you'd find that information.

7 CHAIRPERSON BRYANT: Public comment.

8 MR. SMOOT: Thank you. My name's Lyle Smoot
9 representing Los Angeles Unified School District.

10 I think we have a lot of concerns with these.
11 Number one is this appears to be a back door regulation and
12 I think it needs to be addressed by regulation and what you
13 adopt or don't adopt in that regulation, I think is up to
14 you obviously.

15 But amongst other things, there are a couple of
16 concerns. Madam Chair, you just were talking about getting
17 a copy of the audit report at the same time it goes on the
18 Website. Well, I would ask that it doesn't go on the
19 Website until that audit report comes to the Board and the
20 school district has an opportunity to come before this Board
21 and -- what's the right word -- appeal the terms and
22 conditions.

23 CHAIRPERSON BRYANT: But it is not an audit of the
24 State Allocation Board.

25 MR. SMOOT: I'm sorry.

1 CHAIRPERSON BRYANT: It is not an audit of the
2 State Allocation Board. I think we had that conversation --
3 he did, albeit maybe not the best conversation, but we
4 had -- it's clearly not the State Allocation Board's audit.

5 MR. SMOOT: I don't want to get into that --

6 CHAIRPERSON BRYANT: Well, I'm just saying --

7 MR. SMOOT: -- argument clearly, but if it isn't
8 an audit of the State Allocation Board and it is an audit of
9 the Office of Public School Construction that's being done
10 without following any process of the Administrative
11 Procedures Act, then I don't know how you do that without
12 something.

13 CHAIRPERSON BRYANT: I think audits aren't subject
14 to the Administrative -- audit procedures are exempt from
15 the Administrative Procedures Act.

16 MR. SMOOT: Well, at any rate, our biggest concern
17 is two things. First of all, that we be given the
18 opportunity to respond to the final audit report before
19 anything is done with it and of course we'd like to see some
20 kind of appeal process. If it's not to this Board, I don't
21 know who it's to because if the district totally disagrees
22 with the outcome -- I'm not saying that LA will or won't.
23 I'm just saying if we totally disagree with the outcome of
24 the audit report, you're just going to go ahead and post it
25 to a Website that is we believe totally wrong. Well, that's

1 going to create a lot of lawsuits. So thank you.

2 ASSEMBLY MEMBER BROWNLEY: So will the -- will
3 districts -- I mean if -- so you have an audit. You have
4 findings. You know, districts respond to the findings.
5 They say how they're going to correct the situation. Does
6 that get also posted as well?

7 MR. NANJO: Staff's report indicates that the
8 response of a district is posted along with the audit.

9 SENATOR LOWENTHAL: And the final report will be
10 the staff's response to that -- those comments? That will
11 be included?

12 ASSEMBLY MEMBER BROWNLEY: So it doesn't get
13 posted until there are responses to the findings; is that
14 correct?

15 MR. NANJO: That's my understanding.

16 ASSEMBLY MEMBER BROWNLEY: So if there was
17 something that the district would object to, they could say
18 in their response to the findings that indeed this is not
19 true. This doesn't happen. We are going to make the
20 correction by talking to the auditor to explain how we
21 address this issue.

22 CHAIRPERSON BRYANT: It would be my
23 understanding -- correct me if I'm wrong. My understanding
24 would be similar to how the State Auditor. When the State
25 Auditor publishes hers, she has it all together in one

1 thing, her audit and the response of the agency if they
2 choose to respond. Right?

3 MS. SILVERMAN: That's correct.

4 CHAIRPERSON BRYANT: Mr. Duffy.

5 MR. DUFFY: Okay. Madam Chair, members, Tom Duffy
6 again for CASH. We're in support of the idea of the audits
7 being on the Website and the responses and, Ms. Brownley,
8 the district's response would be there as long as it was
9 there within 30 days according to what I heard Mr. Inman
10 say.

11 We believe, however, that audits from a state
12 agency should not be anonymous, that there needs to be an
13 identification of who did that audit. So if it's Mr. Inman,
14 Mr. Inman's name and basically his qualifications for doing
15 audits, that that occurs when a school district -- and you
16 know this having been on a board. You receive the audit
17 report at the end of the year and the auditor is there so
18 whoever in the public wants to contact that auditor and ask
19 further questions can and it shows the qualifications of
20 that person.

21 So I think this is a new enterprise. We've been
22 anxious to see what would be yielded from these audits. We
23 asked a lot of questions and as I testified last month,
24 there seems to be a great deal of sensitivity and in fact
25 this has gone on for not quite a year, but pretty close to a

1 year and I use the term -- you were not here, Mr. Harvey,
2 but I used the term defensiveness. And my comment was if a
3 public agency is defensive in responding to the public, the
4 public's not going to be trusting the agency.

5 So I think the defensiveness needs to go away. We
6 just need to see what it is that needs to be looked at
7 according to what OPSC auditors think and we need to be able
8 to respond to that and you -- whatever the difference of
9 you, Mr. Harvey and Senator Lowenthal and who has authority,
10 we believe we can always talk to you because you're the
11 Allocation Board and we can express our concerns as to what
12 may be happening.

13 But we think that this is a good enterprise.
14 We're finally going to be able to see what has happened with
15 this new audit process that has been going on. Thank you
16 very much.

17 ASSEMBLY MEMBER BROWNLEY: I would concur with
18 that comment that nobody -- if we're going to strive for
19 transparency, we shouldn't -- people -- there should not be
20 any name of an auditor that's anonymous. I think that
21 that's fair and square.

22 CHAIRPERSON BRYANT: Any comments? Any further
23 comments? Okay. If there's no objection then, I think we
24 can adjourn.

25 MS. MOORE: Didn't you have though -- wasn't there

1 going to be a public comment period at the end?

2 CHAIRPERSON BRYANT: Oh, yeah. I'm sorry. I
3 forgot. Just --

4 MR. HARVEY: I wanted it at the beginning.

5 CHAIRPERSON BRYANT: I apologize. Yeah. We have
6 regular public comment before we adjourn. If anyone -- I
7 had said earlier if anyone wanted to talk about that other
8 issue, you're welcome to do it or any other comments. Or we
9 could adjourn.

10 ASSEMBLY MEMBER BROWNLEY: There's nobody rushing
11 to the podium.

12 CHAIRPERSON BRYANT: Without objection, then we're
13 adjourned.

14 (Whereupon, at 7:47 p.m. the proceedings were recessed.)

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