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CALIFORNIA STATE ALLOCATION BOARD  
PUBLIC MEETING

STATE CAPITOL, ROOM 447  
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, OCTOBER 6, 2010  
TIME: 2:22 P.M.

Reported By: Mary Clark Transcribing  
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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

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

SCOTT HARVEY, Chief Deputy Director, Department of General Services, designated representative for Ron Diedrich, Acting Director, Department of General Services.

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

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

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER JOAN BUCHANAN

ASSEMBLY MEMBER KEVIN JEFFERIES

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA SILVERMAN, Acting Executive Officer

LISA KAPLAN, Assistant Executive Officer

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

LANCE DAVIS, Staff Counsel

P R O C E E D I N G S

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CHAIRPERSON BRYANT: I apologize to everyone for the late start. Secretary, will you call the roll.

MS. GENERA: Senator Lowenthal.

Senator Hancock.

Senator Huff.

Assembly Member Jefferies.

ASSEMBLY MEMBER JEFFERIES: Here.

MS. GENERA: Assembly Member Brownley.

Assembly Member Buchanan.

ASSEMBLY MEMBER BUCHANAN: Here.

MS. GENERA: 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. So welcome to Assembly Member Jefferies. This is his first time at the State Allocation Board, so let's give him a quick meeting so he's spoiled. That's my goal.

1           Just a couple notes on the agenda. We're  
2 pulling -- we've pulled Tab 7. We're also going to pull  
3 Tab 21 which is the report on the review of the operations  
4 of OPSC and what that is -- DSA. Sorry. Otherwise out of  
5 my head.

6           Mr. Amos had a death in his family and he's not  
7 with us today and I just -- he and I talked and I think we  
8 all agree that it was a really good idea for him to be here  
9 when we went over that. He's going to be circulating around  
10 a little bit. I think most of the members should have a  
11 copy of the report by now and he's -- he will be here in  
12 November for his required grilling -- or actually I think  
13 he's pretty -- I think everyone's pretty pleased with the  
14 results of that, so we'll hear on that in November.

15           Tab 2 is the **Minutes** from the previous meeting.  
16 Is there any comments or questions from the Board? Any  
17 comment -- public comment on the Minutes? Is there a  
18 motion?

19           MS. MOORE: So moved.

20           ASSEMBLY MEMBER BUCHANAN: Second.

21           CHAIRPERSON BRYANT: We have a motion and a  
22 second. Can you call the roll.

23           MS. GENERA: Assembly Member Jefferies.

24           ASSEMBLY MEMBER JEFFERIES: I need to abstain. I  
25 wasn't here.

1 MS. GENERA: Assembly Member Buchanan.

2 ASSEMBLY MEMBER BUCHANAN: Here -- or yes.

3 MS. GENERA: Scott Harvey.

4 MR. HARVEY: Aye.

5 MS. GENERA: Kathleen Moore.

6 MS. MOORE: Aye.

7 MS. GENERA: Lyn Greene.

8 MS. GREENE: Aye.

9 MS. GENERA: Cynthia Bryant.

10 CHAIRPERSON BRYANT: Aye.

11 MS. GENERA: It doesn't pass. When someone shows?

12 CHAIRPERSON BRYANT: Yes. Leave it open. Senator

13 Hancock will join up at some point, so -- Tab 3, the

14 **Executive Officer's Report.** Ms. Silverman.

15 MS. SILVERMAN: Yes. We're happy to report a few

16 items this month specifically related to priorities in

17 funding. We wanted to report back to the Board that -- the

18 Board took action on August 4th to authorize 78

19 apportionments at that meeting that represented 65 projects

20 for \$408 million. And we're happy to report just

21 306 million of that 408 million have been already expended

22 or liquidated and apportioned to districts. And so that

23 equates to 33 school districts that received funds.

24 And to date, we still have seven districts with 13

25 projects that represent 72 million that haven't come in for

1 their funds, and so we have been obviously communicating  
2 with those districts about the urgency because the time does  
3 expire November 12th and it's very important that they come  
4 in and subject the requests for their funds for that  
5 72 million. And likewise, I know we've been communicating  
6 with the districts almost on a weekly basis to figure out,  
7 you know, if there's anything that we could help them with.

8           And the next item is we're also sharing with the  
9 Board -- we are also, on Tab 12, introducing another  
10 priority funding round. We've obviously had success with  
11 the last round that was presented and staff is highlighting  
12 today an opening of a new funding round which will also open  
13 October and early November.

14           And what's available as we speak now is about  
15 \$70 million as a result of the Board action last month. And  
16 again the goal is to reconcile all the cash prior to  
17 apportioning projects or once the project round is closed,  
18 then obviously we'll reconcile all funds and there obviously  
19 will be available additional funds for that priority round.

20           We also wanted to share with you the seismic  
21 mitigation program update. We received funds from the  
22 Seismic Safety Commission to go out and set up a template to  
23 go ahead and do engineering reports or studies for school  
24 districts that may have been impacted with those facilities  
25 that obviously are in serious danger and are in the shake

1 zone.

2           So currently we have nine districts in the state  
3 that wish to participate with the engineering study and the  
4 first site visit is going to be happening the last two weeks  
5 of October. So we're hoping that that would encourage  
6 districts to come in once they have their seismic -- the  
7 engineering study reports to come in and access this program  
8 for the seismic mitigation.

9           And lastly we wanted to share with the Board that  
10 again for transparency purposes on Tabs -- excuse me --  
11 page 14 and 16, we have highlighted the 90-day workload and  
12 obviously Cynthia already with you -- the Chair has shared  
13 that Mr. Amos will be presenting the program in November.  
14 With that, I'll open it up for questions.

15           CHAIRPERSON BRYANT: Are there any questions for  
16 Ms. Silverman?

17           MS. KAPLAN: I actually just have one comment as I  
18 just saw the tentative workload plan. In regards to the  
19 tentative workload plan that I got for November, it says  
20 reports, SAB Audit Subcommittee. The Chair, Senator  
21 Lowenthal, actually asked that to come as an action item in  
22 November.

23           CHAIRPERSON BRYANT: Okay. We can work -- we can  
24 get that out.

25           MR. HARVEY: And the other thing I picked up just

1 hours ago was the work of the SAB Rules and Procedures.  
2 While we completed our work, the Chair, Senator Hancock,  
3 will not be available in November and she's asked that it  
4 trail to a future meeting and I think she'll work with the  
5 Chair and the Executive Officer to find that right time.

6 MS. KAPLAN: Tentatively asked December as an  
7 action item.

8 CHAIRPERSON BRYANT: Yeah, I don't -- it's not on  
9 there, but we --

10 MS. KAPLAN: It's on the November 3rd as an action  
11 item.

12 CHAIRPERSON BRYANT: Oh, yeah. Oh.

13 MS. KAPLAN: We need to change that to December.

14 CHAIRPERSON BRYANT: Okay. Yeah, we definitely  
15 will do that. She just mentioned that to me, so I'm sure  
16 December is what she's intending. We'll double-check when  
17 she's here.

18 Okay. Moving on to the **Consent Calendar**. Is  
19 there any -- everyone comfortable with the Consent Calendar?  
20 Mr. Harvey.

21 MR. HARVEY: I would like to pull an item for a  
22 very quick set of questions and perhaps a motion. It is the  
23 emergency repair program unfunded approvals.

24 CHAIRPERSON BRYANT: Okay. Do you want to go  
25 ahead and talk about it or should we do -- go to the rest of

1 the Consent Calendar first?

2 MR. HARVEY: Whatever your --

3 ASSEMBLY MEMBER JEFFERIES: I'll move the balance.

4 CHAIRPERSON BRYANT: Okay.

5 MS. MOORE: Second.

6 CHAIRPERSON BRYANT: Motion and a second. Is  
7 there any public comment on Consent other than the emergency  
8 repair program? Okay. Call the roll.

9 MS. GENERA: Assembly Member Jefferies.

10 ASSEMBLY MEMBER JEFFERIES: Aye.

11 MS. GENERA: Assembly Member Brownley.

12 ASSEMBLY MEMBER BROWNLEY: Aye.

13 MS. GENERA: Assembly Member Buchanan.

14 ASSEMBLY MEMBER BUCHANAN: Aye.

15 MS. GENERA: Scott Harvey.

16 MR. HARVEY: Aye.

17 MS. GENERA: Kathleen Moore.

18 MS. MOORE: Aye.

19 MS. GENERA: Lyn Greene.

20 MS. GREENE: Aye.

21 MS. GENERA: Cynthia Bryant.

22 CHAIRPERSON BRYANT: Aye.

23 MS. GENERA: Carries.

24 CHAIRPERSON BRYANT: Thank you. Mr. Harvey.

25 MS. KAPLAN: And specifically for anybody asking

1 or watching, these are items -- pages 109 to 112 is the  
2 **emergency repair program.**

3 MR. HARVEY: It indeed is. I am highly supportive  
4 of this program, but I want to seek with you all some  
5 guidance as to what we may want to do with this today.  
6 We've had this very important program in our unfunded list  
7 because there hasn't been any budget appropriation for these  
8 dollars. We've got a budget that is apparently going to be  
9 voted on very soon. I don't know if this is the kind of  
10 thing that we might want to wait for to see what the  
11 Legislature does with funding because we keep adding lots of  
12 dollars to an unfunded list and it's been years since we've  
13 had any dollars to actually put out the door.

14 At some point, we may need to take a hard look at  
15 this. We've got the Williams settlement. We've got needs.

16 We have requirements, but practically we haven't had the  
17 money and we've asked and we've asked and we've begged, but  
18 we haven't had the money.

19 I don't know if we're just fooling ourselves and  
20 putting out false hopes, but I thought I'd seek your  
21 guidance as to whether we want to take action today, put it  
22 off until what we see happens with the budget, but at some  
23 point docket it for some discussion.

24 CHAIRPERSON BRYANT: Mr. Ferguson.

25 MR. FERGUSON: If I may, Chris Ferguson,

1 Department of Finance. The administration is committed to  
2 funding the remaining balance of the 800 million provided in  
3 the Williams settlement. However, at this time, there was  
4 no funding included in the 2009 appropriation for emergency  
5 repair and I'm unfamiliar what the status of the current  
6 budget allocation in the budget negotiations for the  
7 emergency repair program.

8 That said, we would ask that the Department of  
9 General Services continue to process these applications  
10 until we have additional clarity. But again the  
11 administration is committed to fully funding the Williams  
12 settlement over time albeit at a slower pace than has been  
13 funded in the past.

14 CHAIRPERSON BRYANT: Okay. So, staff, could we  
15 bring -- just update Mr. Harvey or update the Board in  
16 November on where this is?

17 MS. SILVERMAN: Yeah, we can actually --

18 CHAIRPERSON BRYANT: Work with the Department?

19 MS. SILVERMAN: -- agendaize that for the Board  
20 action.

21 CHAIRPERSON BRYANT: Okay. Is there a motion on  
22 the emergency repair program?

23 MS. MOORE: I'll move the emergency repair program  
24 unfunded approval list.

25 MS. GREENE: Second.

1           CHAIRPERSON BRYANT: Is there any public comment  
2 on that item? Is there any objection to substituting the  
3 unanimous roll call? Okay. So ordered. Tab 5. Let's take  
4 up Tab 5 and Tab 6 together. Ms. Silverman.

5           MS. SILVERMAN: Yes. I get your attention on  
6 Tab 5, page 113. Again what we've been highlighting every  
7 month is the process of how we've been liquidating the  
8 various bond sales ever since we've instituted -- there has  
9 been a freeze in fact.

10           If I can have you turn over to page 115, with the  
11 success of priorities of funding, obviously we've had an  
12 opportunity to liquidate \$460 million over the last six  
13 weeks, so that speaks volumes to what we're doing with the  
14 bond funds that we have been allocated. So again over  
15 330 million represents priorities of funding.

16           And if I can your attention and turn to page 116,  
17 as a result of all the bond sales from March 2009 through  
18 December 2009 and March 2010, we have still 841 million that  
19 we speak to that are currently in our fund balances that  
20 represents projects that have been apportioned. So a good  
21 majority of those funds actually sit in March 2010 and  
22 equally we still have 435 million in bond funds that haven't  
23 been requested in the 2009 bonds.

24           So equally we have liquidated 83 percent of a  
25 \$2.9 billion -- excuse me -- \$2.1 billion that we received

1 in 2009 bond sales and liquidated 70 percent of the March  
2 2010 bond sales, but we still have again 841 million that  
3 are left to be apportioned.

4 So again we had much success with priorities.  
5 However, when the clock was reinstated and the Board took  
6 action back in March, there was still that \$900 million that  
7 was provided on a first-in-first-out basis. So with that,  
8 I'll open it up to any questions.

9 CHAIRPERSON BRYANT: Are there any questions on  
10 Tab 5? Mr. Harvey.

11 MR. HARVEY: If I could seek some clarity on  
12 page 113 and perhaps you're getting to the issue of pace of  
13 expenditure, but I notice that in the October '09 and the  
14 November '09 sales that are on the bottom of that page 113,  
15 we only have 40 -- 30 percent of the proceeds released,  
16 whereas on the other bonds, there's 70, 80, 90 percent. Is  
17 there something unique about that timing of the sale? Is it  
18 to do with enrollments falling and schools not needing the  
19 programs they thought they had? Is there a way of  
20 incentivizing those funds to come back to us so we can put  
21 them out because otherwise folks sit on these things  
22 potentially for 18 months. And -- is there any reason why  
23 you think only 40 percent of those funds have gone out?

24 MS. SILVERMAN: Well, I know we obviously provided  
25 certification sometime in -- I believe in February on these

1 projects -- or these funds and I think the reality is until  
2 we have cash to backup some of those projects that were part  
3 of the original \$2.4 billion because we didn't reach that  
4 turnover point.

5           We had \$2.4 billion that was held out there when  
6 the freeze hit in -- put in effect, but we didn't actually  
7 get the entire \$2.4 billion not until the fall sale, which  
8 is representative of the October and the December bond  
9 proceeds that came in.

10           So once we got cash for those projects, they were  
11 able -- they were actually established to be plugged back in  
12 because their 18 month has been suspended. So until they  
13 had cash to back them up, then they became an active  
14 project. So those projects technically restarted their  
15 clock and their -- whatever was remaining as far as their  
16 18-month provision was concerned, they still had that time  
17 that was still remaining on the books.

18           So technically why we don't understand as far as  
19 why those projects aren't moving forward. There could be  
20 local issues that why didn't they aren't coming in for the  
21 funds.

22           MR. HARVEY: But the good news maybe if we adopt  
23 the priorities in funding item later in our agenda and we  
24 find a way of having schools release their hold so that we  
25 have cash coming to others, that could be another source?

1 MS. SILVERMAN: Yes. Potentially.

2 MR. HARVEY: Potentially.

3 MS. SILVERMAN: Potentially.

4 CHAIRPERSON BRYANT: Assemblywoman Brownley.

5 ASSEMBLY MEMBER BROWNLEY: Thank you. Just to  
6 follow up on that line of questioning. Do we track at all  
7 relative to, you know, the thousand school districts up and  
8 down the state and school districts who have passed bond  
9 measures in their local districts? Do we look at how much  
10 bonding money is out there in the districts and even further  
11 how much bond money has been sold by districts so that we  
12 kind of know -- excuse me -- on the other side of the  
13 lever --

14 MS. SILVERMAN: Try to --

15 ASSEMBLY MEMBER BROWNLEY: -- the ledger, what's  
16 happening out there.

17 MS. SILVERMAN: Well, we do track the various  
18 elections that obviously voter does approve local bonds.

19 ASSEMBLY MEMBER BROWNLEY: Right.

20 MS. SILVERMAN: But as far as trying to create the  
21 nexus of why they're not coming in, it could be, you know, a  
22 variety of issues --

23 ASSEMBLY MEMBER BROWNLEY: No, no, no, no. I'm  
24 just wanting to know if we actually look -- have that data  
25 readily available. We know now that we have 800 some

1 million dollars is what you're telling us we have.

2 MS. SILVERMAN: Right.

3 ASSEMBLY MEMBER BROWNLEY: I'm just curious to  
4 know what it looks like on the other side relative to how  
5 much --

6 MS. SILVERMAN: Authority's out there.

7 ASSEMBLY MEMBER BROWNLEY: -- capacity is out  
8 there relative to bonding capacity and then how much bonds  
9 have been sold by districts --

10 MS. SILVERMAN: Right.

11 ASSEMBLY MEMBER BROWNLEY: -- and what that  
12 activity looks like.

13 MS. SILVERMAN: We don't have that information,  
14 but I'm sure that's something we can look into, but -- and I  
15 know the other factor is the assessed valuations. You know,  
16 that also comes into play as part of whether or not the  
17 community can actually go out and rally out their bonds  
18 or --

19 MS. KAPLAN: Have any authority to go out for  
20 bonds.

21 MS. SILVERMAN: Yes. Exactly.

22 ASSEMBLY MEMBER BROWNLEY: I mean I think that  
23 that would be very important data for us to have and how we  
24 could monitor that in some way I think would be very  
25 important.

1           CHAIRPERSON BRYANT: Yeah. It's just something  
2 that I've been -- I share your frustration because all year  
3 long we've had this -- as we've looked at these issues, it's  
4 just something under the old system with the PMIA and the  
5 PMIB giving out the loans, we didn't have to worry about  
6 that. It was kind of up to the districts and we didn't need  
7 the -- we didn't need to know and we've had some assistance  
8 from CASH over the last years on surveying their members and  
9 the staff have been active in asking as they work through  
10 various issues with districts and so we're learning a little  
11 bit more about it. We've never had a need to know. Go on.  
12 Did you want to add something?

13           MR. MIRELES: Yeah. Madam Chair, this type of  
14 information is available -- or at least it was on the  
15 Treasurer's Website in terms of local bonds and what's been  
16 authorized. We can take a look to make sure it's still  
17 available --

18           CHAIRPERSON BRYANT: But not -- but we aren't --  
19 we don't know. I think what Assemblywoman Brownley is  
20 getting at is we don't know if they're selling their bonds  
21 and if their programs are active. We just don't know what  
22 they're doing out there. Assemblywoman Buchanan.

23           ASSEMBLY MEMBER BUCHANAN: I think -- and I know  
24 we're going to talk about this later in the agenda, but I  
25 think the issue is, is how do we get money to projects that

1 are shovel ready. But we also have to realize that it's not  
2 just good enough to know how much is being sold in bonds  
3 because some of those districts may not even be eligible to  
4 be in the state program if it's -- do they now have  
5 eligibility with this new construction. They may -- their  
6 modernization project certainly would have eligibility.

7           So, you know, we have to -- we're going to have to  
8 put together a matrix that really will take into  
9 consideration the different factors so we know ultimately  
10 what demand there is out there for state matching funds.

11           CHAIRPERSON BRYANT: Anything else on this? Want  
12 to move on to Tab 6.

13           MS. SILVERMAN: Tab 6, stamped page 124. What we  
14 want to present to the Board this month is we're actually in  
15 Proposition 1D, which is the orange upper tier of your page,  
16 we are actually producing -- processing \$1 million in  
17 unfunded approvals that represents four projects and  
18 actually 42 projects that represent \$94.8 million in  
19 modernization and 78 projects that represent \$93.6 million  
20 in career tech.

21           Additionally, we're also processing a million  
22 dollars that represent five projects in high performance.  
23 So in Proposition 1D, the activity is \$190.4 million in  
24 unfunded approvals.

25           And in your middle column, we're actually showing

1 or reflecting in the Board, there's \$10.5 million in new  
2 construction projects that represents four projects that are  
3 being processed this month. Likewise, in the lower column,  
4 Proposition 47, we're processing 21 projects of new  
5 construction that represent 62 and a half million dollars.

6           So in total we're processing \$263.4 million in  
7 unfunded approvals this month. And if you look at the  
8 column next to that, the accumulated unfunded approvals as  
9 of August 25th was \$2.2 billion and reflective of this  
10 month's activity of 263-, we're -- technically we have  
11 nearly \$2.5 billion in unmet needs for this proceeds.

12           So if I could draw your attention to page 125, in  
13 the center of the column, there is again the emergency  
14 repair program and the activity we mentioned earlier.  
15 There's 13 and a half million dollars in the Consent Agenda  
16 that represents 43 projects for emergency repair. So that  
17 brings the total to date of cash needed for the emergency  
18 repair program of \$149.7 million.

19           I also wanted to highlight again the charts.  
20 We've made some enhancements this month on page 126. In the  
21 spirit of -- and I understand the chart's still small and  
22 the numbers are still small, but at least -- maybe with a  
23 microscope you can see the numbers. We'll work on enhancing  
24 this as we go through.

25           But Proposition 1D, we have liquidated out of the

1 original \$7.3 billion -- 58 percent of those proceeds have  
2 been apportioned and then the maroon column represents the  
3 unfunded approvals and 17 percent or \$1.2 billion have been  
4 liquidated and we still have untapped authority -- remaining  
5 bond authority of 25 percent or \$1.8 billion.

6           And Tab -- page 127, Proposition 55, over  
7 \$10 billion in bond authority, the blue represents  
8 \$8.7 billion that have been apportioned. That's 88 percent  
9 of the bond. The maroon is 683 million or 7 percent has  
10 reflected on the unfunded approval list and we have  
11 5 percent of remaining bond authority in Proposition 55.

12           Likewise, the next page, Proposition 47, original  
13 allocation of 11.4 billion. We have 94.8 billion that have  
14 been -- 94 percent has been liquidated or \$10.8 billion.  
15 544 represents unfunded approvals or 4.8 percent, and we  
16 still have .4 percent or 49.4 that remains in bond  
17 authority.

18           And the last chart is representative of the new  
19 construction bond authority from Proposition 1D, 55, and 47.  
20 That represents over \$14.4 billion of authority provided by  
21 the voters and we have expended 90 percent or \$12.9 billion  
22 that have been apportioned in new construction.

23           Likewise we have 6 percent in Proposition --  
24 excuse me -- in unfunded approvals that sit on the unfunded  
25 list and 4 percent that actually is available or

1 \$516 million in new construction bond authority.

2 With that, I'll open up to questions.

3 CHAIRPERSON BRYANT: Are there any questions on  
4 Tab 6? Okay. Then we'll move on to **Consent Specials**.

5 Tab 7 is removed. So we have Tabs 8 and 9. Any objection  
6 to taking those up together? Is there any public comment on  
7 either one of those items? Is there a motion?

8 ASSEMBLY MEMBER BROWNLEY: So moved to support.

9 MS. MOORE: A comment, so after the motion.

10 MR. HARVEY: I'll second.

11 CHAIRPERSON BRYANT: Ms. Moore.

12 MS. MOORE: Yes. So we're taking up the career  
13 technical education facilities program as well and I just  
14 wanted to indicate that the Department of Education has a  
15 role in that program as well and the last time that we were  
16 before the Board, I believe it was Senator Hancock asked for  
17 some information about the types of industry sectors, the  
18 number of industry sectors that we funded during this  
19 program.

20 So what I've included in the letter that you'll  
21 receive is a chart that shows the amount of funding through  
22 this round of funding by region and by industry sector and  
23 that is -- was in response to Senator Hancock's question,  
24 but I thought all of the Board should have the information.  
25 So together with the Office of Public School Construction,

1 this program ran a little bit differently than what we  
2 normally have done in the school facility program in that it  
3 really was competitive based on educational program and then  
4 funding flowed as opposed to just the eligibility and per  
5 ADA amount.

6           So again it was a great partnership with the  
7 Office of Public School Construction and we really  
8 appreciated our role in it and are really happy that we're  
9 apportioning the last round today.

10           CHAIRPERSON BRYANT: Yes. Thank you. This is  
11 really interesting. It's heartening to see such a broad  
12 range of sectors represented and getting funding from this  
13 program and I think I -- on the chart in Tab 6, you could  
14 see the zeros, so we are really pleased that this represents  
15 the end of this program. There might be some rescissions,  
16 but we'll worry about that later. But generally speaking,  
17 we've now apportioned 500 million for 502 projects and  
18 that's pretty unbelievably amazing. So thanks to every --  
19 to the staff and people that are building these facilities.

20           ASSEMBLY MEMBER BUCHANAN: Is there going to be  
21 any follow-up so we know how many students will ultimately  
22 enroll in these programs? I mean are we going to know --  
23 are we -- if they're high school programs, do we have demand  
24 for five or six periods a day or, you know, what --  
25 ultimately what the impact is?

1 MS. MOORE: I don't believe there was the  
2 requirement for that level of data.

3 ASSEMBLY MEMBER BUCHANAN: I know there wasn't a  
4 requirement. I just didn't know if we were going to --

5 MS. MOORE: But I think probably as career  
6 technical education has been a very supported part of the  
7 last bond measures, that there probably will be the demand  
8 for information and as we can at the Department of  
9 Education, we'll certainly any information that we have  
10 around the program because we want to see them successful as  
11 well and we want the Board and obviously the Legislature  
12 when we look at the next bond measure to have adequate data  
13 in which to move forward their projects.

14 As you know, school districts -- you know, these  
15 are tough times. Career technical education is taking its  
16 hit as well as all education programs. However, we hope  
17 that this facilities program provides the spaces that those  
18 programs can operate within and that they, you know, don't  
19 suffer on the chopping block of school districts right now.  
20 It's a good first step.

21 ASSEMBLY MEMBER BUCHANAN: Yeah. I support the  
22 program. I just think it would be -- to have some follow-up  
23 surveys or something, just to have some information on, you  
24 know, ultimately how successful they are and what the impact  
25 is if we're going to, you know, move forward and have an

1 idea of the direction we should be going.

2 MS. MOORE: I think that we can certainly from the  
3 Department provide that type of information. As you know,  
4 career technical education is one of the components of  
5 closing the achievement gap and one that our superintendent  
6 has been very interested in. So any way that we can assist  
7 to provide good decision making at the State Allocation  
8 Board level as well as at the legislative level, we will  
9 provide as much information as possible.

10 ASSEMBLY MEMBER BUCHANAN: Thanks.

11 CHAIRPERSON BRYANT: Okay. So we have a motion  
12 and a second. Is there any objection to substituting the  
13 unanimous roll call? Okay. Hearing none, so ordered.

14 Moving on to **Specials and Appeals**. We're going to  
15 take Tab 13 first. Probably should have ordered it that way  
16 originally, but it wasn't until we were really looking at  
17 things though. Ms. Kampmienert.

18 MS. KAMPMIENERT: Thank you. Good afternoon.  
19 I'll bring Tab 13 as a follow-up item to the Board's actions  
20 last month to make \$5 million available for joint-use  
21 projects. We have -- as a part of the Consent Agenda this  
22 month, we have some joint-use projects that did rescind  
23 which put additional authority and cash back into the  
24 joint-use program.

25 So what we are doing as part of this item is a

1 couple different things. First, we are asking the Board to  
2 make apportionments for the four projects that were part of  
3 this year's joint-use filing round and also convert the  
4 project that was on the unfunded list from an unfunded  
5 approval to an apportionment.

6 Now to do that, the Board has two options with how  
7 they want to transfer the authority and the cash for the  
8 program and to -- there's a lot of numbers on this item and  
9 a lot of technical details, but the basic decision is under  
10 Option 1, the Board would be making enough cash and  
11 authority available to take care of those five projects that  
12 we currently have in-house and make apportionments -- full  
13 apportionments for all five of them.

14 And if the Board chooses to go with Option 1,  
15 there will be a remainder of \$1.6 million left over for the  
16 priorities in funding item that will be discussed later as  
17 part of this agenda.

18 Under Option 2, the Board can choose to make the  
19 apportionments for the five projects that are currently  
20 in-house and reserve authority and cash for projects coming  
21 in the next round. Now the joint-use program is an annual  
22 funding cycle that does not close until March of 2011 and by  
23 statute, the apportionments are not made until July of 2011.  
24 So by choosing Option 2, the Board would be reserving  
25 1.6 million in cash until July of 2011.

1           Now there are some trickle-down effects depending  
2 on the option that the Board chooses. If you choose  
3 Option 2, then there is an impact to the charter school  
4 facilities program item and the reason for that is that we  
5 need to use the authority and the cash from the  
6 lease-purchase program and if it goes to joint use, it can't  
7 go to the Proposition 55 charter schools, which we can get  
8 into as part of the charter item.

9           And then also it changes the amount of funds  
10 available for the October 2010 priority funding round of  
11 jobs that come 71.8 to \$70.24 million.

12           So with that, I don't know if we wanted to take up  
13 the charter item before we -- or take discussion.

14           CHAIRPERSON BRYANT: Ms. Brownley.

15           ASSEMBLY MEMBER BROWNLEY: You know, in terms of  
16 some of these joint-use projects rescinding, do you know  
17 what the reasons were and what I guess the other alternative  
18 question is, was the pipeline -- look, if this is not going  
19 to be funded until you said July 2011?

20           MS. KAMPMIENERT: 2011.

21           ASSEMBLY MEMBER BROWNLEY: So kind of  
22 understanding what's -- what activity is going on there I  
23 think would be helpful.

24           MS. KAMPMIENERT: We currently have no  
25 applications in-house for this current joint-use cycle, but

1 typically we would receive them closer to the March  
2 deadline. So we have nothing in-house right now and as for  
3 the rescissions, those projects did not meet their time  
4 limit to come into the program, and so --

5 ASSEMBLY MEMBER BROWNLEY: Their what limit?

6 MS. KAMPMIENERT: Their time limit to come in and  
7 finalize the project. So those were rescinded for not  
8 making that time limit.

9 CHAIRPERSON BRYANT: What's the pleasure of the  
10 Board? Do you want to talk about the charter schools and  
11 then figure out the two of them together? Probably the  
12 best.

13 MS. KAMPMIENERT: Okay.

14 CHAIRPERSON BRYANT: Go ahead then.

15 MS. KAMPMIENERT: So the charter school funding  
16 item is behind Tab 10 and this is also a follow-up to the  
17 Board's decision last month to make \$10 million in the cash  
18 proceeds available for the advance fund releases for design  
19 and site acquisition purposes.

20 Now, we had two groups of charter school  
21 preliminary apportionments that were approved by the Board  
22 back in -- one group in 2005 using Proposition 55 funds and  
23 a group in 2008 using Proposition 1D funds. Both of those  
24 rounds were declared inactive due to the fiscal crisis  
25 because we didn't have the cash for them to move forward.

1           As part of this program, the charter schools can  
2 come in and access advance fund releases to help with the  
3 design costs and also to help purchase the land. The  
4 charter schools sometimes cannot move forward with their  
5 projects without access to the state funds.

6           The Board made 10 million available for these  
7 purposes. We are coming back to ask for direction on how to  
8 allocate the \$10 million between the two groups of  
9 preliminary apportionments.

10           Staff is recommending that as much cash as  
11 possible be used towards those charter school projects that  
12 were approved in 2005 because those are the older projects.  
13 They only have 14 months remaining on their time limit once  
14 the projects are declared active again.

15           So the chart on stamped page 218 of your agenda  
16 would show that if we used the lease-purchase program cash,  
17 we would have 6.4 million available for the Proposition 55  
18 projects and to get to the full 10 million the Board made  
19 available, that would leave 3.59 available for  
20 Proposition 1D.

21           With the joint-use item, if you flip back to  
22 Tab 13, page 233(b), if the Board uses Option 2 on joint  
23 use, we've put in the chart in there showing what the change  
24 in the dollars would be. It would result in 2.64 million  
25 being available for Proposition 55 projects and 7.36 million

1 being available for Proposition 1D.

2           Now, there are also two other things that we are  
3 seeking direction for as part of the charter school item.  
4 Because these projects have been waiting for cash for so  
5 long, we don't have just a list where we can go straight  
6 down the list as a first-in-first-out method. So we're  
7 proposing that -- once the Board determines how much cash to  
8 provide to each group of charter school projects, we're  
9 proposing to notify all the charter schools that would be  
10 impacted and ask them to submit a letter requesting  
11 participation if they're ready for their advance fund  
12 release or site acquisition -- design or site acquisition  
13 money.

14           Once we receive the request letters, we would then  
15 conduct a lottery to see -- we would conduct a separate  
16 lottery for the Proposition 55 money and a lottery for the  
17 Proposition 1D money. And depending on the number of  
18 recipients pulled, the applications -- or the applicants  
19 would have a set time frame to come in and meet the program  
20 requirements.

21           They have to go back to the California School  
22 Finance Authority to update their financial soundness  
23 determination before we can release these funds and so the  
24 timeline for them to complete those documents is dependent  
25 on how -- what the workload impact is going to be to the

1 California School Finance Authority. So if we receive more  
2 than eight -- if we receive one to eight recipients as a  
3 result of the lottery, then the charter schools would have  
4 90 days to complete the necessary steps and submit their  
5 fund release request. Nine to 15 recipients, we would have  
6 about -- we would have a 120-day timeline and if we get more  
7 than 16 recipients, it would be closer to 150 days.

8           We don't anticipate going much past the 120 days.  
9 The lottery would have to then pull every single one of  
10 tiniest projects first in order for that to happen.

11           So that's the second piece of it. And then the  
12 third piece of the transfer of bond authority, if we use the  
13 LPP cash for the Proposition 55 projects, we have left over  
14 LPP authority that moves to Proposition 55. Now the  
15 authority is not going to be used for the charter school  
16 projects. We've already reached the cap on the amount of  
17 bonding authority made available under Proposition 55 for  
18 these projects.

19           So we can use the cash. The authority goes to  
20 Proposition 55, but we need the Board to determine whether  
21 it goes to new construction, Proposition 55, modernization,  
22 or joint-use. And with the chart as it is now, you're  
23 deciding on 5.8 million in authority. If you go with  
24 Option 2 on the joint-use item, it goes down to that  
25 2.06 million number in authority.

1           And with that, I will take questions.

2           CHAIRPERSON BRYANT: That was very well done. Show  
3 of hands, how many followed that completely.

4           ASSEMBLY MEMBER JEFFERIES: Could she repeat that.

5           CHAIRPERSON BRYANT: She can. That's what so  
6 funny. So are there other questions for Barbara? Any  
7 initial thoughts?

8           MS. MOORE: I have a question and that is I know  
9 at our last meeting we were dealing with the amount that was  
10 remaining at the time. I gather from your discussion here  
11 and from the document that I just perused that we have an  
12 additional situation with some additional money that came  
13 back in from rescissions on joint use.

14           That being said, I think also at the time of the  
15 motion to put 10- for the charter schools and 5 million for  
16 the joint-use, when we talked about the 5 million for  
17 joint-use, we were talking about funding the projects that  
18 were known; is that correct? And to do that, we actually  
19 need 5.88 million; correct?

20           MS. KAPLAN: I think it's 6.8 --

21           MS. KAMPMIENERT: 5.88 authority, you need  
22 6.7 million cash.

23           MS. MOORE: 6.7 million in cash. And there is  
24 actually in cash available so to speak for joint-use in the  
25 amount of 8 something?

1 MS. KAMPMIENERT: 8.41.

2 MS. MOORE: Well, if I may, because we were the --  
3 the Department really supported -- and I know the Board does  
4 as well -- supported both charters and joint-use, but we  
5 made the motion on joint-use and I think made the motion  
6 with the thought process that the five projects that were  
7 ready would be able to proceed.

8 So to honor that but then to also honor the  
9 10 million for the charters, I would move is Option 1 that  
10 funds all of the joint-use that's available; correct? And  
11 then provides a maximum amount for the charters in both  
12 authority and cash; correct? Am I making a correct  
13 statement?

14 MS. KAMPMIENERT: Yes. And with Option 1, you  
15 would also leave 1.62 million available for priorities in  
16 funding, extra cash.

17 MS. MOORE: And then there's a decision that the  
18 Board needs to make concerning that. I could support that,  
19 so --

20 MR. HARVEY: I would second that motion in large  
21 part for what you've articulated, but also it does free  
22 money to be spent now for construction-ready projects. It  
23 doesn't keep it until July 2011.

24 CHAIRPERSON BRYANT: And the impact of that is, is  
25 that we would be -- in the charter school world, there

1 would -- we would be funding so to speak more recent  
2 applications than the older ones; is that right?

3 MS. KAMPMIENERT: If you use Option 1 on the  
4 joint-use item, you are funding more of the older charter  
5 applications --

6 CHAIRPERSON BRYANT: The older.

7 MS. KAMPMIENERT: -- than the newer ones.

8 CHAIRPERSON BRYANT: Okay. Okay. All right. Are  
9 there any other questions on that? Is there any public  
10 comment on this item? Do you want to go ahead?

11 MR. DAVIS: Just to make clear, we're voting on  
12 Option 1 for joint-use.

13 MR. HARVEY: Yes.

14 MR. DAVIS: Is that correct?

15 MS. KAPLAN: And then take them up separately.

16 CHAIRPERSON BRYANT: We do need to take them up  
17 separately?

18 MR. DAVIS: Yes. We'll need to take them both up  
19 separately.

20 CHAIRPERSON BRYANT: Okay. Then this is on  
21 Option 1 for joint-use.

22 MR. HARVEY: Tab 14.

23 CHAIRPERSON BRYANT: On Tab 13.

24 MR. HARVEY: 13?

25 CHAIRPERSON BRYANT: Call the roll.

1 MS. GENERA: Assembly Member Jefferies.

2 ASSEMBLY MEMBER JEFFERIES: Aye.

3 MS. GENERA: Assembly Member Buchanan.

4 ASSEMBLY MEMBER BUCHANAN: Aye.

5 MS. GENERA: Scott Harvey.

6 MR. HARVEY: Aye.

7 MS. GENERA: Kathleen Moore.

8 MS. MOORE: Aye.

9 MS. GENERA: Lyn Greene.

10 MS. GREENE: Aye.

11 MS. GENERA: Cynthia Bryant.

12 CHAIRPERSON BRYANT: Aye.

13 MS. GENERA: Would you like me to hold it open for  
14 Assembly Member Brownley?

15 CHAIRPERSON BRYANT: Yeah, and Senator Hancock.  
16 Would you like to make a motion on Tab 10 since you were so  
17 good at it.

18 MS. MOORE: I was going well. I don't know. I  
19 might not be able to continue on that. So in keeping with  
20 what I indicated, we would approve staff recommendation;  
21 correct?

22 MR. HARVEY: Right.

23 MS. MOORE: To execute what we just said.

24 MS. KAMPMIENERT: Right. If you -- and if you --  
25 and by approving staff recommendation, part of the

1 recommendation is also to transfer the leftover authority to  
2 the new construction pot in Prop. 55.

3 MR. HARVEY: Yes.

4 MS. MOORE: Yes.

5 MR. HARVEY: There are two recommendations on  
6 page 219.

7 ASSEMBLY MEMBER BUCHANAN: But the staff  
8 recommendations, both actions --

9 MR. HARVEY: Yes.

10 MS. MOORE: So I would move staff recommendation.

11 ASSEMBLY MEMBER BUCHANAN: Second.

12 CHAIRPERSON BRYANT: Okay. Without objection,  
13 we'll substitute the same roll call that we had on Tab 13.  
14 Okay. Moving on to Tab 11. Barbara, I think it's you  
15 again.

16 MS. KAMPMIENERT: It's me again. Tab 11 is also  
17 related to the **charter school facilities program**. This is a  
18 follow-up item and one of the last stages in the  
19 implementation of Senate Bill 592.

20 What Senate Bill 592 did was allow for charter  
21 schools and local governmental entities to hold title to the  
22 charter school projects constructed under this program. The  
23 Board back in February of 2010 passed the regulations  
24 implementing this law outlining the process that charter  
25 school would use when requesting to hold title and as part

1 of the item today, we have four charter schools found on  
2 Attachment A, page 222.

3           We have four charter schools representing six  
4 projects that have made the request to hold title to their  
5 facilities. The charter schools as part of their request  
6 have to indicate why title is not being held by the local  
7 school district or by a local governmental entity and as a  
8 condition of holding title, there are also certain things  
9 that must be placed on the chain of title, including a lien  
10 in favor of the State Allocation Board, a restrictive  
11 covenant requiring that the facilities be used for public  
12 school purposes, and a remainder interest reverting back to  
13 the school district or the Board in the event that the local  
14 disclaims their interest in the title.

15           Staff has reviewed the requests from these four  
16 charter schools and they meet the requirements in Senate  
17 Bill 592. They -- as part of this recommendation, we get to  
18 sort of a situation where timing is critical because before  
19 they put the lien on the property and satisfy some of the  
20 requirements in Education Code, they need the Board's  
21 approval to hold title on their own.

22           So the recommendation is structured so that the  
23 Board makes a finding that the charter school meets all of  
24 the necessary requirements to hold title. However, if it's  
25 not finalized if the conditions are not placed on the title,

1 we would come back to the Board with a different  
2 recommendation because that project would not be in  
3 compliance with the Education Code. We don't anticipate any  
4 problems with these projects at the current time though.

5 So with that, we would ask for any questions and  
6 then also for the recommendations, we are inquiring as to  
7 whether the Board would like these items to be placed on the  
8 Consent Agenda in the future. And with that, I'd be happy  
9 to answer any questions.

10 CHAIRPERSON BRYANT: Are there any questions on  
11 this item? I think moving it to Consent would be an  
12 excellent idea, similar to what we did last month. We're  
13 just hearing it for the first time and then we can move to  
14 Consent with the same documentation. Did I miss a question?  
15 Ms. Brownley.

16 ASSEMBLY MEMBER BROWNLEY: Yeah. I'm sorry. I  
17 know I had to step out for just a minute to take a phone  
18 call, so I apologize. But I wanted to -- on this particular  
19 item, I wanted to -- and if somebody's already asked the  
20 question, I apologize. Have we done sort of our due  
21 diligence around -- just confirming with the school  
22 districts that this is both -- you know, the charter  
23 schools' desire to take title as well as the school  
24 districts' desire?

25 MS. KAMPMIENERT: What we asked in the letter

1 is -- and it's actually in the regulations is that the  
2 charter schools certify that their statements are -- they're  
3 basically certifying to the accuracy of their statements.

4           What we've learned from these charter schools is  
5 that they have worked with the school district, but that the  
6 school district for various reasons doesn't wish to hold  
7 title typically for reasons of liability. With these  
8 particular schools, we have actually heard from I believe  
9 three of the districts who have asked OPSC if there's a way  
10 out of holding title in the past. So we -- we're not aware  
11 of any issues with the school district being in disagreement  
12 with this.

13           We also did notify the impacted school districts  
14 and we plan to do this in the future as well, but we did  
15 notify them that an item related to a charter school holding  
16 title within their district was going to be presented to  
17 this Board and gave them contact information if they had any  
18 questions or concerns about the item.

19           ASSEMBLY MEMBER BROWNLEY: Okay. So you send out  
20 a letter to inform the school district that this item's  
21 coming before the State Allocation Board and then said you  
22 ask the requesting charter schools to confirm with the  
23 school district?

24           MS. KAMPMIENERT: Well, the charter schools -- as  
25 part of submitting their letter, they have indicate why the

1 title is not being held by the school district.

2 ASSEMBLY MEMBER BROWNLEY: Uh-huh.

3 MS. KAMPMIENERT: So in the letters which we've  
4 included for your reference, they've provided some reasoning  
5 behind that and then they also certify that the reasons that  
6 they're giving to the Board -- they certify that it's true.

7 ASSEMBLY MEMBER BROWNLEY: So it's sort of a  
8 self-certification.

9 MS. KAMPMIENERT: It is a self-certification.

10 ASSEMBLY MEMBER BROWNLEY: We're going to be  
11 talking about I guess that later on in another context. But  
12 that's sort of what it is is a self-certification?

13 MS. KAMPMIENERT: It's a self-certification. We  
14 happen -- we tend to hear a lot about these projects even  
15 though it is a self-certification, we're pretty comfortable  
16 with these district just because we've gotten the phone  
17 calls prior to any discussions about 592 --

18 ASSEMBLY MEMBER BROWNLEY: Right. Okay. And so  
19 there's a proposal now to put this on the consent calendar  
20 with future recommendations. Well, you know, I guess the --  
21 I have a little bit of a concern around that. I think in,  
22 you know, 95, 98 percent of the cases, it's probably very  
23 mutual, you know, that this is coming together because I  
24 hear districts' concerns about liabilities and other kinds  
25 of things. And so they want the charter school to take care

1 of that, but that's -- might not necessarily be true in  
2 every single situation and, you know, I've just, you know,  
3 been up here today, but I've heard a little bit of  
4 rumblings. I don't know if there's been any testimony about  
5 some district concerns about a school or two here that's on  
6 this agenda.

7           So I'm little bit worried about it being on the  
8 Consent just so we have sort of the proper airing of it and  
9 not that if it's not on Consent, it doesn't get aired, and I  
10 know that we can pull items off of the Consent, but I just  
11 want to make sure I think most importantly that we're doing  
12 our due diligence, that everybody is indeed informed up  
13 front so by the time it gets to us, it's pretty -- people  
14 are very clear. I mean we shouldn't -- this should be a  
15 process where there's not any public testimony at the State  
16 Allocation Board because that agreement took place in the  
17 district and we're just then ratifying their agreement and  
18 that's the way it should be. I think that's the way the law  
19 is written and I just want to make sure that that's what  
20 we're doing.

21           And if we find that we're not that we're not  
22 getting any public testimony on stuff, I'm fine with it  
23 going on Consent, but if we're -- you know, we're getting  
24 into a place where we're having to pull items and so forth  
25 and so on, then I think that we have to kind of look to see

1 how we can bear better our due diligence around in forming  
2 districts about what's happening.

3 CHAIRPERSON BRYANT: Did you have a comment?  
4 Assembly Member Buchanan.

5 ASSEMBLY MEMBER BUCHANAN: I was -- as  
6 Assemblywoman Brownley, I mean it seems to me if you can  
7 pull an item from Consent, then that should solve the  
8 problem. I mean I assume you're going to continue to notify  
9 districts that you have a request. So I would hope that if  
10 district objected to title being transferred that we would  
11 notified or in that situation, you would put it on as an  
12 action item instead of a Consent item and we would discuss  
13 that separately.

14 CHAIRPERSON BRYANT: I mean one of the  
15 possibilities is kind of middle ground. This isn't -- I  
16 don't know if you're thinking a regular Consent or Consent  
17 Specials -- that this is -- Specials -- it's in a separate  
18 tab.

19 ASSEMBLY MEMBER BUCHANAN: Right.

20 CHAIRPERSON BRYANT: It highlights it much more to  
21 the public.

22 ASSEMBLY MEMBER BUCHANAN: Right.

23 CHAIRPERSON BRYANT: And we usually take them up  
24 in a group, but it --

25 ASSEMBLY MEMBER BUCHANAN: So is this a Consent

1 Special?

2 CHAIRPERSON BRYANT: I don't know what -- I'm not  
3 sure what your recommendation was.

4 MS. KAMPMIENERT: Right now -- it's in the  
5 Specials right now. We could move it to Special Consent or  
6 Consent --

7 ASSEMBLY MEMBER BROWNLEY: I would be happier with  
8 it being in Special Consent, even though we might be --

9 MR. HARVEY: Obviously we have a recommendation  
10 that combine the Consent Calendar into one calendar --

11 ASSEMBLY MEMBER BROWNLEY: Right. Well, we're not  
12 there yet.

13 MR. HARVEY: -- so we may have to discuss this  
14 when it comes to the full Board.

15 ASSEMBLY MEMBER BROWNLEY: And if it wasn't there,  
16 I would prefer that we run with this as an agenda item for,  
17 you know, another time or two before we leap-frog in to it  
18 just being on Consent. I would prefer that, but I would be  
19 happy if it was on the Special Consent item as we know it  
20 today.

21 CHAIRPERSON BRYANT: But we may not be having it.

22 MS. KAPLAN: We'll at least have Special Consent  
23 for two more months.

24 MR. HARVEY: Exactly.

25 MS. SILVERMAN: I think we -- we can work with

1 that.

2 CHAIRPERSON BRYANT: We'll work with that. Okay.  
3 We're clear. I think everyone is clear on what the concern  
4 is, so -- all right. So I just want to -- so we're moving  
5 on. Next is Tab 14 which is --

6 MR. HARVEY: Do we need a motion on this?

7 CHAIRPERSON BRYANT: Oh, we need to do this.

8 MR. HARVEY: I would move the staff recommendation  
9 on this charter item.

10 CHAIRPERSON BRYANT: With adjustment on Consent  
11 Calendar.

12 MR. HARVEY: With the adjustment to Special  
13 Consent.

14 MR. DAVIS: So that would be recommendations 1 and  
15 2 and not 3?

16 CHAIRPERSON BRYANT: Well, it is 3, but --

17 ASSEMBLY MEMBER BUCHANAN: -- putting it on  
18 Special Consent instead of Consent.

19 MR. HARVEY: Put it on Special Consent.

20 ASSEMBLY MEMBER BROWNLEY: Thank you, Steve.

21 MR. HARVEY: No problem.

22 MS. GREENE: Second whatever he said.

23 CHAIRPERSON BRYANT: What to call the roll.

24 MS. GENERA: Assembly Member Jefferies.

25 ASSEMBLY MEMBER JEFFERIES: You know, I don't have

1 a dog in the fight on the Special Consent, but sure. Okay.

2 MS. GENERA: Assembly Member Brownley.

3 ASSEMBLY MEMBER BROWNLEY: Yes. Aye.

4 MS. GENERA: Assembly Member Buchanan.

5 ASSEMBLY MEMBER BUCHANAN: 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: It carries.

15 CHAIRPERSON BRYANT: Okay. Before -- well, next  
16 is Tab 14. Before we move on there, I just want to just  
17 thank the staff. We kind of -- our motion last time on this  
18 5 for joint-use and 10 for charters seemed easy to all of  
19 us, but this OPSC staff led mostly here by Barbara just had  
20 an amazing time trying to -- the items were difficult and  
21 complicated, trying to explain it. I mean the amount of  
22 work that went in to Barbara's, you know, five or ten minute  
23 explanation is incredible. So thank you. Because I think  
24 we did something really good here and we couldn't have done  
25 without your work. So that you.

1           Okay. So Tab 12.

2           MR. MIRELES: Madam Chair, this next item  
3 establishes the **October 2010 priority round of funding**. As  
4 Ms. Silverman mentioned earlier in her Executive Officer's  
5 Statement, we released approximately 336 million out of the  
6 408 million that was apportioned during the first priority  
7 round.

8           Given this overwhelming success of the program,  
9 staff is proposing to establish the second for the October  
10 2010 priority funding round. At this point, we have  
11 approximately 71 million cash available for apportionment.  
12 This total amount is represented in stamp page 229 from the  
13 various different bond sources.

14           Staff is proposing to use this cash available as  
15 well as any additional cash that becomes available as of  
16 November 3rd Board meeting for the next priority round of  
17 funding.

18           In order to open up the next filing round, staff  
19 has updated the procedures established during the first  
20 priority round as listed on the attachment on page 230.  
21 Some of the highlights that we've updated is just that the  
22 Board will be declaring that the new filing period would be  
23 from October 7th through November 8th. This is the filing  
24 period for districts to submit their certifications. The  
25 certifications are the same that were in the first round,

1 which is essentially that districts have to certify that  
2 they can come in without 90 days of an apportionment and  
3 submit a fund release request. Failure to do so would  
4 result in them being placed on the bottom of the unfunded  
5 list and they would receive an unfunded approval date of  
6 March 2011.

7           We've also added a different section to include  
8 the new lottery system that the Board recently approved.  
9 This is in cases where we don't have enough cash to fund all  
10 projects that are received within the same day.

11           Those are just some of the highlights that we've  
12 updated on the attachment to again establish this new  
13 priority funding round. We are anticipating making  
14 apportionments at the December Board meeting which means  
15 that the districts will have until March 2011 to submit  
16 their fund release request.

17           With that, we are recommending that the Board  
18 approve this new procedure along with all of the guidelines  
19 in that attachment.

20           CHAIRPERSON BRYANT: So if there was a bond sale  
21 between now and November 8th, that could be added into  
22 this --

23           MR. MIRELES: Yes.

24           CHAIRPERSON BRYANT: -- event funding round.

25           MR. MIRELES: That is what staff is proposing.

1           CHAIRPERSON BRYANT: And at the November 3rd  
2 meeting, would you come back with a final -- I mean we still  
3 have a chance to intercede if we want to make -- in November  
4 we will confirm the amount that's in this round?

5           MR. MIRELES: Yes. We'll bring a report to the  
6 Board informing them of what's available should the Board  
7 decide to use all of it or not.

8           CHAIRPERSON BRYANT: Okay. Having said that, I  
9 don't know -- I mean I think we are not sure what happens  
10 with the fall bond sale yet and so you'll -- I was going to  
11 ask staff earlier, but I can ask now that when you do know  
12 what's going to happen, can you just let the Board know and  
13 put a public notice on our Website so that people are aware,  
14 you know, kind of if there is or isn't because I think it's  
15 important that -- for them planning this, they may want  
16 to -- someone might want to wait if we're not -- you know,  
17 wait for a spring bond sale before they go into priorities  
18 in fundings. I think we need to keep stakeholders aware of  
19 where we think we are -- and the Board.

20           MS. SILVERMAN: Yeah. We can certainly post a  
21 notice of a bond sale or not.

22           CHAIRPERSON BRYANT: Okay. The next think I just  
23 wanted to mention which Assembly Member Buchanan alluded to  
24 earlier is I think that one of the -- I've had some thoughts  
25 about -- I think a lot of us have -- we had such great

1 success with priorities in funding and I think when you look  
2 at what you talked about in Tabs 5 and 6 about the cash that  
3 still exists in the program, I think we have another  
4 opportunity to think about that.

5 I mean it's clear that the PMIA system that we had  
6 before is no longer going to work the way it has and while  
7 we are getting close to being at the end of our bond  
8 authority, we're not close to the end of the cash involved  
9 for this program which means we're not at the end of getting  
10 shovel ready projects going, getting schools built, using  
11 the reserves, and using the cash that we have on hand.

12 And so I think that it might be worthwhile to  
13 consider appointing a subcommittee similar to what we did  
14 last time with developing priorities in funding to go back  
15 and really think this through. Where does the Board want to  
16 be in this post PMIA world and I -- you know, the Department  
17 of Finance, you know, we have a lot of expertise in that and  
18 we're happy to help. I think it's kind of -- I used to  
19 think, turning back time to the beginning of the year, that  
20 even though we are in this post PMIA world that we didn't  
21 have to do this, but I think we have such a hunger for  
22 shovel ready and that we have -- we've seen it -- we have a  
23 system that we can do it, where we can honor all of the  
24 conditions that are in our program, make sure that schools  
25 have certainty about what they're going to get funded, but

1 use our cash to stimulate -- to move -- you know, to get  
2 some of the shovel ready stuff done.

3 And so I think Assembly Member Buchanan might want  
4 to add to what I just said.

5 ASSEMBLY MEMBER BUCHANAN: Well, we talked a week  
6 or so ago. I just have a strong interest in making sure  
7 that we find a way to release funds to districts that are  
8 ready -- projects that are ready to go to bid because, you  
9 know, if we are prioritizing projects that aren't going to  
10 go to bid for 12 or 18 months, we're doing very little to  
11 help the economy get going and then along with that, we  
12 really take a look in terms of -- because once we allocate  
13 the funds, we set them aside. So, you know, making sure we  
14 take a look at that to make sure we're actually funding as  
15 many projects as we can, you know, take a long on average  
16 how long it takes for projects to go to bid so we, you know,  
17 ultimately reserve the right amount or make sure we have  
18 bonding authority for those that have been approved, but  
19 we're doing it in such a way that we're getting money out to  
20 schools and projects and, you know, it's benefiting the  
21 schools and the kids and it's also benefiting the economy.  
22 So I think it's worth a discussion.

23 CHAIRPERSON BRYANT: Any other thoughts on this?  
24 Mr. Harvey.

25 MR. HARVEY: Well, I think three of us at least

1 share this interest. I think that's what prompted my  
2 questions on the 40 percent expenditure in one of the bond  
3 categories, the fact that we have money -- a large amount of  
4 money that is not available to those that are in need and  
5 construction ready.

6           So I absolutely would support any discussion by  
7 any group involving any stakeholders that can talk about  
8 ways to incentivize those that are hanging onto the money  
9 that may want to let it go and some promise of getting put  
10 back at the top down the line, but let's take advantage of  
11 those that have projects that are construction ready and of  
12 course I love to re-discuss what we mean by construction  
13 ready, but we'll save that for another meeting.

14           CHAIRPERSON BRYANT: Okay. So I'm completely  
15 willing again to spend as much time as possible with the  
16 stakeholder groups. I just thought the subcommittee process  
17 worked so well on priorities in funding, on getting the  
18 lottery decided on all those things, and I think it's the  
19 fastest way for us to do it. So anybody who would like to  
20 join me on a subcommittee, I'd be happy to. Want to do  
21 that? Kathleen.

22           MS. MOORE: Yeah. I just had a comment. I'd be  
23 happy to serve on the subcommittee. I thought it was a very  
24 good vetting process that we did before and we were able to  
25 come forward to the Board I think with a proposal that had

1 been carefully considered and lots of people had the input  
2 on it.

3           And I would share the interest of having  
4 shovel-ready projects at the same honoring that we have  
5 apportioned to those districts and how indeed do we honor  
6 that in a way that works for school districts. So I think  
7 that's an important piece of the puzzle and I'm sure we'll  
8 hear from districts as well what good ideas there are around  
9 that and I'd like to see that represented as well. So I'll  
10 be happy to serve.

11           CHAIRPERSON BRYANT: Okay. Did you want to add  
12 something?

13           MS. KAPLAN: Just one question. Are we going to  
14 also offer to the three Senators who may not have a chance  
15 to be here today if they are also interested in serving.

16           CHAIRPERSON BRYANT: Yeah. Absolutely. Anybody  
17 who -- just -- you know, it takes time. Although we are in  
18 interim, so -- you know, and hopefully we can get this done  
19 quickly so that we can take a look and see if there's any  
20 that are there.

21           MR. DAVIS: Madam Chair, just for clarification.  
22 This would be a new subcommittee not an existing  
23 subcommittee with new members. It will --

24           CHAIRPERSON BRYANT: Yes. Well, yeah --

25           MR. MIRELES: Priorities in funding subcommittee.

1           CHAIRPERSON BRYANT: I guess it could be a  
2 reconfigured, priorities in funding part deux

3           ASSEMBLY MEMBER BUCHANAN: -- an ad hoc committee;  
4 right.

5           CHAIRPERSON BRYANT: Okay.

6           MR. HARVEY: Well, I -- if I could, I would love  
7 to serve on that for as long as I'm in this capacity.

8           CHAIRPERSON BRYANT: Okay. We always like to have  
9 you there.

10           All right. So is there a motion on the opening  
11 this second priorities in funding round.

12           MR. HARVEY: I would move staff's recommendation.

13           ASSEMBLY MEMBER BROWNLEY: Second.

14           CHAIRPERSON BRYANT: Call the roll, please.

15           MS. GENERA: Assembly Member Jefferies.

16           ASSEMBLY MEMBER JEFFERIES: Aye.

17           MS. GENERA: Assembly Member Brownley.

18           ASSEMBLY MEMBER BROWNLEY: Aye.

19           MS. GENERA: Assembly Member Buchanan.

20           ASSEMBLY MEMBER BUCHANAN: Aye.

21           MS. GENERA: Scott Harvey.

22           MR. HARVEY: Aye.

23           MS. GENERA: Kathleen Moore.

24           MS. MOORE: Aye.

25           MS. GENERA: Lyn Greene.

1 MS. GREENE: Aye.

2 MS. GENERA: Cynthia Bryant.

3 CHAIRPERSON BRYANT: Aye.

4 MS. GENERA: It carries.

5 CHAIRPERSON BRYANT: Okay. Then Tab 14. I just  
6 wanted to just kick off Tab 14 while Rick's coming up to the  
7 dais. You know, I asked staff to put this on here as an  
8 explanation of what -- how they approach material  
9 inaccuracies because the next three items are material  
10 inaccuracy items and I keep getting confused about it.

11 It hasn't come to us in a while and so this  
12 really -- this is not an action item. I got a lengthy legal  
13 analysis about why it is bad or not bad. We can talk about  
14 that later. It's really -- the purpose is just to walk us  
15 through how they make the recommendation. When we get to  
16 the next items that are district specific, we can reject  
17 those recommendations or we can do anything differently, but  
18 it's really just how the staff looks at these issues when  
19 they're making a recommendation to us. We decide everything  
20 when we get to the district, specific ones, that's -- you'll  
21 understand why the recommendation is the way it is.

22 So this is kind of an overview before we get into  
23 each individual item.

24 MR. ASBELL: Thank you, Madam Chair, for that  
25 clarification.

1           So as we begin this item, there are couple things  
2 that we need to kind of keep in the background here. Staff  
3 can only make recommendations to the Board concerning the  
4 loss of self-certification. The Board ultimately determines  
5 the length of the loss of self-certification.

6           A little bit more history. Previous versions of  
7 this report were presented to the Board on three separate  
8 occasions in 2008. As a result of discussions at the  
9 January 2008 SAB, staff was requested by the Board to come  
10 back and discuss the background and methodologies used in  
11 recommending interest due to the state and time period for  
12 loss of self-certification privileges.

13           The Board requested the background methodologies  
14 be discussed further at the Implementation Committee. The  
15 issues related to premature and invalid fund releases which  
16 are a type of material inaccuracy were discussed extensively  
17 at four Implementation Committee meetings. Staff also  
18 formed a work group consisting of Implementation Committee  
19 members to solicit further suggestions.

20           In terms of authority, statute states, If any  
21 certified eligibility or funding application related  
22 information is to have been falsely certified by school  
23 districts, architects, or design professionals hereinafter  
24 referred to as material inaccuracy, the OPSC shall notify  
25 the Board.

1           The material inaccuracy statute became effective  
2 January 1 of 2001. The statute also provides the Board with  
3 the authority to impose penalties if material inaccuracies  
4 have occurred.

5           Additionally, SFP regulation defines material  
6 inaccuracy as any falsely certified eligibility or funding  
7 application related information submitted by school  
8 districts, architects, or other design professionals that  
9 allow the school district an advantage in the funding  
10 process.

11           As a point of clarification under the laws and  
12 regulations governing material inaccuracy, the term false --  
13 falsely certified is used. However, it is not necessary for  
14 the Board to determine that the certification was knowingly  
15 false. The term in this context is a simple and common  
16 meaning of an inaccurate or false statement.

17           For your reference, we have added additional  
18 authority citations in Attachment A on stamp page 237.

19           Before interest and loss of self-certification  
20 privileges can be imposed on a district, the Board must find  
21 that a material inaccuracy occurred for the district. Once  
22 again I reiterate only the Board can find a -- make a  
23 finding of a material inaccuracy.

24           Staff presents research, analysis, and  
25 recommendations to the Board for material inaccuracy

1 consideration. Based on the information provided in the  
2 item, staff may make that following recommendations to the  
3 Board including but not limited to: a finding that a  
4 material inaccuracy occurred, require the district to repay  
5 the additional funding received beyond the amount the  
6 district was entitled to for the project, require the  
7 district to repay the interest resulting from the funding  
8 advantage, prohibit the district from self-certification  
9 privileges for a period of up to five years.

10 Now looking at loss of self-certification  
11 recommendations themselves. Staff considers a number of  
12 factors relative to the projects being audited as well as  
13 previously closed projects for the district. Those factors  
14 include: Did the project meet the fund release  
15 authorization requirement before the 18-month time limit on  
16 fund release; does the district have prior rescissions  
17 associated with premature fund releases; what is the  
18 cumulative total in days of all noncompliance for all  
19 premature fund releases for the district; does the district  
20 have other audit findings related to current or past audits;  
21 how material are the findings; are there any other  
22 mitigating circumstances to consider.

23 Most of these factors are incorporated in a flow  
24 chart on stamp page 238 which is Attachment B. That assists  
25 staff in formulating a loss of self-certification

1 recommendation to the Board. Once the Board has made a  
2 material inaccuracy finding, statute states the Board shall  
3 prohibit a school district from self-certifying certain  
4 project information for any subsequent applications for  
5 project funding for a period of up to five years following  
6 the date of the finding of a material inaccuracy until the  
7 district's repayment of the entire amount owed.

8           Now this brings up an interesting situation. You  
9 can interpret this last part of the statute or until the  
10 district repayment of the entire amount owed as when they  
11 make that full payment, their loss of self-certification  
12 penalty ends. However, another interpretation is the Board  
13 has the final say of if and when the district loss of  
14 self-certification period is over up to a period of five  
15 years.

16           With past material inaccuracies, the Board has  
17 been generally consistent with this approach. Another issue  
18 to take into account that can't be overlooked is the  
19 potential for the inequitable treatment for districts that  
20 have been found to be material inaccurate.

21           Districts who have funds available to pay off the  
22 amount owed can essentially buy out the remaining loss of  
23 self-certification period versus a district that does not  
24 have the money to pay the amount owed as quickly. Simply  
25 put, those who pay back quickly can regain their

1 self-certification privilege while others can't and are more  
2 harshly penalized.

3           Finally, from a commonsense standpoint, what is  
4 the disincentive of providing a false certification for a  
5 district if all they have to do is just pay the amount of  
6 the interest.

7           A little bit more background as we're talking  
8 about past material inaccuracies. Since the inception of  
9 the program in 1998, the Board has found seven districts as  
10 listed on stamped page 239, Attachment C, to be materially  
11 inaccurate, including two districts at the January 2008  
12 Board. These seven districts encompass 36 projects or .58  
13 percent of the 6,249 projects that have been audited so far.

14           Staff's recommendations and Board approvals in  
15 regards to loss of self-certification penalties have been  
16 generally consistent with the guidelines set forth in  
17 Attachment B, stamped page 238. I'd be happy to answer any  
18 questions that you may have.

19           CHAIRPERSON BRYANT: Are there any questions or  
20 ready to move on to -- yeah.

21           ASSEMBLY MEMBER BROWNLEY: Just a clarification.  
22 What did you say the dollar amount was on this chart with  
23 the number of schools?

24           MR. ASBELL: I didn't specify a dollar amount.

25           ASSEMBLY MEMBER BROWNLEY: Oh, I thought you did

1 on this past material inaccuracies. Did you specify --

2 MR. ASBELL: Oh, are you --

3 CHAIRPERSON BRYANT: Total amount of projects, I  
4 think.

5 MR. ASBELL: Total amount of projects, yes. And  
6 then I pointed out a percentage of projects compared to how  
7 many have been closed.

8 CHAIRPERSON BRYANT: What was the amount?

9 MR. ASBELL: It was 36 projects for -- of 6,249  
10 projects that have been audited or .58 percent.

11 MR. HARVEY: Not a dollar amount.

12 CHAIRPERSON BRYANT: Okay.

13 MS. MOORE: I have a question. On the seven  
14 districts noted on 239, of those seven, how many did the  
15 Board allow or determine could, once they repaid the  
16 interest and penalty owed, begin certifying again?

17 MR. ASBELL: It was one district, but it  
18 comprises, when you're looking at the school district, C1  
19 and C2, but it's the same school district.

20 MS. MOORE: One district. How many projects?

21 MR. ASBELL: I don't know offhand.

22 MS. MOORE: Okay. That's --

23 MR. ASBELL: Seven projects.

24 MS. MOORE: Okay. Thank you.

25 CHAIRPERSON BRYANT: Mr. Harvey.

1           MR. HARVEY: I just need a very quick explanation  
2 about what self-certification and the loss thereof means  
3 because in the next items, every district is saying once I  
4 make payment, I don't want to have any self-certification  
5 loss. So what are they giving up? I'm trying to understand  
6 the significance of that act.

7           MR. ASBELL: So under the current process, if  
8 there is no loss of self-certification for a district, they  
9 submit either a 5004 or 5005 -- they're standard forms --  
10 and it's a self-certification. We just take it on face  
11 value and we move forward.

12           ASSEMBLY MEMBER BUCHANAN: They check a box.

13           MR. ASBELL: They check a box. With a district  
14 that has loss of self-certification in place, we have to do  
15 our due diligence and follow up with some additional  
16 documentation and additional research to make sure that the  
17 certification is correct.

18           MR. HARVEY: So they get their money, but they  
19 don't get it as timely.

20           MS. KAPLAN: And they're charged --

21           MR. ASBELL: And they're charged a hundred dollars  
22 an hour to go through that process.

23           MR. HARVEY: And how many hours do we normally  
24 take to do this additional work? How costly is this to a  
25 school district?

1           MR. ASBELL: Well, as a frame of reference, I  
2 believe in one of the other items, we talk about the fact it  
3 would cost 40 -- I think it was \$4,400 to have looked at  
4 seven projects and -- I may have to skip forward maybe to  
5 take a look at that particular item, but, yeah, I think we  
6 do kind of break it out. That would be \$4,400. Give me a  
7 second here.

8           MS. KAPLAN: Just one -- and one quick question.  
9 I'm not sure if OPSC knows this. What is the financial or  
10 fiscal effect for losing self-certification on a district or  
11 their ability to sell bonds or move forward on their  
12 projects? Do we know that?

13           MR. ASBELL: No. No, we don't know that.

14           MS. SILVERMAN: We don't know the implications for  
15 that.

16           MR. HARVEY: Do -- is there anyone that has any  
17 recollection of the public policy argument for why this --  
18 I'll call penalty, loss of self-certification, was part of  
19 this matrix that you look at?

20           MR. ASBELL: I believe --

21           MR. HARVEY: They're paying the fines. They're  
22 paying the interest back and then we also have the right to  
23 say up to five years, you lose this thing. Do you know why  
24 that was a tag-on or an add-on?

25           MR. ASBELL: Well, the statute came into play in

1 2001. I don't know about the history of -- what the genesis  
2 was behind that.

3 CHAIRPERSON BRYANT: Well, because -- I mean I  
4 think it's because they certify that they are eligible to  
5 receive the funds and then they weren't. So I think that --

6 MR. HARVEY: It truly is just -- it's a penalty. I  
7 mean paying back that which you gain the advantage of, the  
8 different -- is not enough. You need to be  
9 slapped/penalized for falsely certifying.

10 ASSEMBLY MEMBER BROWNLEY: Well, I think they did  
11 intend it to sort of be a hammer so that school district  
12 would self-certify correctly and it would expedite. Time is  
13 money kind of thing. I don't think that based on at least  
14 the data here that too many districts are intentionally --

15 MR. HARVEY: Only seven.

16 ASSEMBLY MEMBER BROWNLEY: -- you know, trying to  
17 buy early retrieval of funds in some sense by virtue of  
18 cheating and paying the interest and therefore giving, you  
19 know, out of that and getting my money earlier. So I don't  
20 know.

21 CHAIRPERSON BRYANT: We can hold public comment on  
22 this item. Tab -- you can speak on 15.

23 MR. DUFFY: Say again.

24 CHAIRPERSON BRYANT: We're going to hold public  
25 comment on this.

1 MR. DUFFY: Okay.

2 CHAIRPERSON BRYANT: Thank you.

3 MR. DUFFY: I just didn't want her (indiscernible-  
4 away from microphone) why this came about.

5 CHAIRPERSON BRYANT: Well, if it's helpful, go  
6 ahead. I was trying to avoid public comment because I'm  
7 trying to save time, I mean -- Tom. Really quickly.

8 MR. DUFFY: Madam Chair, Members, Tom Duffy for  
9 CASH. The school facility program was brand new. It began  
10 in late 1998 and it was taken flight in 1999 and 2000. Jack  
11 O'Connell wrote this legislation because of the enormity of  
12 the responsibilities districts took upon themselves for  
13 making that self-certification and there were concerns  
14 because of the amount of bond funds that sometimes districts  
15 would potentially make mistakes.

16 I think that in terms of the history there's been  
17 very, very few issues about this. We really like  
18 self-certification. We think that really helps to speed  
19 things up. Mr. Harvey, I think you recognize that and I  
20 believe that the districts in the main honest. But it was  
21 because this program was new and self-certification was  
22 across the board where it didn't exist before. All right.  
23 I'll be quiet the next time too.

24 CHAIRPERSON BRYANT: Okay. Thank you. And that  
25 opens the can of worms. Additional public comment.

1           MR. TAO: Madam Chair, if I may. I apologize. I  
2 was the one who sent the letter. Hello. I'm Terry Tao. I  
3 work for the law firm of Atkinson Andelson. We represent  
4 about 350 school districts throughout the state, roughly a  
5 third of the school districts in the state.

6           The reason I'm here is with regard to a  
7 fundamental problem with the agenda item as we see it and  
8 I'm not going to talk unnecessarily about it is that I put  
9 into the letter.

10           I think there's a slightly larger issue that I  
11 think needs to be vetted here which is one of what is it  
12 that the original statutory structure of Ed Code  
13 Section 17070.51 was designed for. It's essentially a  
14 discretionary statute. It is a statute that is meant for  
15 the State Allocation Board to be able to determine what is a  
16 false certification and what is improper.

17           And what we see in the graphs and the charts and  
18 the flowchart methodology is a prescriptive methodology of  
19 determining penalties, a prescriptive methodology for  
20 determining how things will be applied which doesn't  
21 necessarily follow either the statute or the regulatory  
22 scheme. And that is one of the fundamental problems with  
23 what it is that has been set forth in the policy as a whole.

24           The reality is the flowchart that's been provided  
25 is essentially taking away discretion from you as Board

1 members and putting it in the power of the Office of Public  
2 School Construction staff.

3 CHAIRPERSON BRYANT: Explain -- I don't -- explain  
4 how that is. I just -- I mean the State Allocation Board  
5 has recommendations in front of it that we can completely  
6 reject and do whatever we want to. How does the OPSC  
7 document interfere with that.

8 MR. TAO: The OPSC document gives you very  
9 specific guidelines as to what happens with a certain number  
10 of days and what happens with the type of recommendations  
11 that are made and OPSC has taken that discretion onto  
12 itself.

13 I'll give you an example and this is one that some  
14 of you may remember and some of you may not. There was a  
15 case a while ago -- and I'll mention the name because it was  
16 quite public -- Murrieta Valley Unified. They came up here.  
17 They came and they said, oh, you know, we accidentally  
18 falsely certified, our fault, we never built the project,  
19 and we need to return the money.

20 So they came forward to OPSC. It would have  
21 fallen under your chart as a very severe penalty with regard  
22 to application of the material inaccuracy and what staff  
23 told this Board was, you know what, we're not going to apply  
24 this policy and the reason we're not going to apply this  
25 policy is because they came forward and they admitted that

1 they made a mistake, so therefore the policy doesn't apply  
2 to them. That's a discretionary act.

3 The other thing that I think is important to  
4 recognize, if you go back to 1859.2, the definition, it  
5 seems like every time that definition is brought up, the  
6 actual definition seems to be misinterpreted. One, this  
7 knowingly false material inaccuracy is patterned after the  
8 False Claims Act, which is essentially a quasi criminal  
9 statutory scheme, and as such there are implications to the  
10 school districts that are extremely severe.

11 It usually means people lose their jobs. It  
12 usually means that a school district's going to have trouble  
13 with their bond. It usually means some difficulty at the  
14 school district level.

15 The false certification as interpreted by staff is  
16 the same as inaccurate and inaccurate is not false. False  
17 requires some knowing, some scienter, essentially a  
18 knowledge that something is done or reckless disregard. And  
19 that is not the case with the application of this flowchart.

20 So in fact it should be a case-by-case  
21 application. I'll give you another example and this was the  
22 one that I think staff has spent a lot of time trying to  
23 dissect because it was a significant issue that at least I  
24 brought up multiple times in front of the Implementation  
25 Committee and it's nowhere in the write-up, but it was

1 talked about here, which is in the statutory scheme, it  
2 talks about or if the school district repays. And that's  
3 been ignored.

4           And what we were told before was, you know what,  
5 it's discretionary. It's our discretion. We are not going  
6 to apply that part of the statute.

7           That's -- that can't be. That cannot be. It's a  
8 discretionary statute for you as the State Allocation Board  
9 to apply and in this particular case with the statute, it's  
10 not discretionary. It says if you repay that you don't get  
11 hit with a penalty.

12           So staff has chosen to take an interpretation that  
13 is not discretionary and make it discretionary. So there's  
14 an issue with discretion. There's an issue with application  
15 of statute.

16           CHAIRPERSON BRYANT: Okay. Thank you.

17           MR. TAO: Thank you.

18           CHAIRPERSON BRYANT: And this -- it would have  
19 been helpful to have gotten your letter sooner. This  
20 actually -- this is one of those rare items that has been  
21 out in the public for several days now not to mention --

22           MR. TAO: Well, I've actually commented at each of  
23 the Implementation Committee meetings and none of my  
24 comments have made it into the Implementation Committee  
25 record. But I would urge the State Allocation Board to

1 reject this policy because this is a policy that is  
2 inconsistent with the statute.

3 CHAIRPERSON BRYANT: It's not -- okay. Well, I  
4 don't think that -- as I said to begin with, that's not the  
5 question in front of us.

6 MR. TAO: Thank you.

7 CHAIRPERSON BRYANT: Okay. Any other questions  
8 on this before the staff goes into Tab 15? Oh, sorry.

9 ASSEMBLY MEMBER BUCHANAN: Yeah. I read this --  
10 and I could be wrong -- as staff's recommendation would be  
11 based on the flowchart, but there would be discretion up to  
12 the State Allocation Board in terms of extenuating  
13 circumstances or whatever in terms of how it wanted to  
14 impose any penalties. So I have to tell you I -- clearly  
15 the fact that there's such a small percentage indicates that  
16 school districts for the most part play by the rules.

17 So I just want to tell you, you know, thoughts  
18 that I have on this. Okay. One is that I do think there  
19 should be, you know, some consequences for districts that  
20 take longer that aren't ready fund. You know, they take  
21 longer than others because if there's not some kind of  
22 consequence, then why not just get in line and whatever  
23 interest you're paying on this versus what you've got to  
24 pay, there might be -- you know, you might end up paying a  
25 little bit more, but that's money that could be out building

1 other projects, modernizing schools, whatever,

2           So -- but at the same time, the frustration I  
3 would have if I were on the board of one of these districts  
4 is when you have a project that occurred in 2001 or '02 and  
5 we're just now dealing with it in 2008, that's a long  
6 time -- or 2010, that's a long time for a project to have  
7 passed and, you know, there -- it's -- you're penalizing  
8 potentially kids that aren't even attending the same school  
9 anymore. I mean and that -- I have a problem with that.

10           It should -- if we're going to deal with it, we  
11 should be able to deal with these audits in a timely manner  
12 so we discover the discrepancies and it's not we're imposing  
13 penalties eight years after an event occurred because I  
14 think that is even more punitive to a school district.

15           So I don't know what the right answer is, but it  
16 just seems to me there ought to be some sort of better way  
17 of dealing with it and when you read like San Francisco  
18 Unified's situation where they had to put to stop on all  
19 projects temporarily, I don't know if we should require more  
20 reporting or what. Certainly they said in their letter that  
21 they are now attaching the signed contracts with their  
22 requests, so I don't know if that is easier than trying to  
23 have to go through a self -- or going through an additional  
24 certification because my guess is a hundred dollars an hour  
25 probably doesn't fully cover staff's time to go through the

1 additional certification.

2           So there's got to be some way we can deal with  
3 this in a timely manner and in a cost effective manner and  
4 there should be -- like I said, I don't know what the  
5 penalty should be, but you certainly don't want to do  
6 anything that encourages -- if there's no -- if it's no  
7 harm/no foul, then why not get in line and get the money  
8 and -- you know, and hold it. So --

9           CHAIRPERSON BRYANT: I think that I share your  
10 frustration on the length of time it takes to get it here,  
11 but I would say that I -- you know, it's sort of similar to  
12 how I feel for the -- you know, the football players who are  
13 playing on the USC football team this year. I mean  
14 sometimes you end up paying a penalty for something that  
15 happened a while ago, and, you know, I think the staff  
16 feels -- you know, I think the staff's been trying to get  
17 this back to us for a while and I just -- but I don't know  
18 what we can do about it exactly.

19           MS. SILVERMAN: You have a few more too, so --

20           MS. MOORE: Could I just have a couple --

21           CHAIRPERSON BRYANT: Yes.

22           MS. MOORE: Two comments. They're probably one on  
23 each side of the issue as it's presented. I think we've  
24 struggled a lot with the falsely certified both as a Board  
25 and I think as a constituent in this ascription of intent

1 and, you know, how -- I heard today a different take on that  
2 and I certainly would like us to explore that because if  
3 there is other examples of false certification meaning  
4 intentional certification versus unintentional, I think that  
5 we should as a Board kind of go through that.

6           We've struggled with that. First time I've heard  
7 it. I didn't see the letter. So I think that's important.

8           On the other side of it, I will say having sat  
9 here through many of the -- much of this that we as a Board  
10 at one point -- and I don't know -- it probably wasn't the  
11 current Board, but we said to staff we're a little bit  
12 uncomfortable with it all being left up to us how much  
13 penalty there is and I do believe that staff went back and  
14 said, well, here's a construct that you could work within  
15 that's objective. It says how many days there are, how much  
16 it would be. You the State Allocation Board could work  
17 within that construct. We'd make the recommendation. I  
18 think staff was actually feeling a little concerned about  
19 making a recommendation about a material inaccuracy, how  
20 much there should be.

21           But we asked for an objective standard, as I  
22 recall, and that's probably where the genesis of some of  
23 this came. So comments on both sides of it. I'm not sure  
24 we're there yet, but we certainly owe the three districts  
25 that are before us today an answer and directly because what

1 you've brought up.

2           This can't go on and on and on for a school  
3 district especially when we know that it's here. So I hope  
4 that we can take action on the school district items and  
5 perhaps go back and actually look at some of the issues  
6 that -- legal issues that are raised -- our legal counsel --  
7 and refine this even better so that we move forward both on  
8 the material inaccuracy acknowledgement of school districts  
9 and what the Board does.

10           I actually think there's a pretty good success  
11 story here if you look at the percentages. They're low and  
12 it could -- you know, you don't know if there's recidivism  
13 because of the penalty or not, but we think that it's worked  
14 so far, but I think it still needs some refinement.

15           CHAIRPERSON BRYANT: Okay. Tab --

16           ASSEMBLY MEMBER BROWNLEY: Chair.

17           CHAIRPERSON BRYANT: Ms. Brownley. Sorry.

18           ASSEMBLY MEMBER BROWNLEY: Yeah. I just wanted to  
19 make a comment as well and sort of following up on  
20 Ms. Moore's line of thinking because I do think this issue  
21 between sort of false or mistaken certification needs to be  
22 really looked at.

23           I also agree with having some framework and us to  
24 be able to deliberate in a more consistent way, but I think  
25 that we might have to have two charts in some sense. I

1 mean, one, you know, how do we determine what is false and  
2 what is unintentional in terms of just making a mistaken.  
3 You know, what would we look for to determine that and then  
4 once we've made that determination, then having the  
5 framework so that we can be consistent within those kind of  
6 categories.

7           And I don't know whether this one that's proposed,  
8 you know, what that fits for. Does that fit for the sort of  
9 unintentional or the ones that may be deliberately making  
10 false claims. And I just don't know the answer to that.

11           CHAIRPERSON BRYANT: I think -- I mean I think --  
12 if I could just respond. I think that we -- the Board in  
13 the past has taken these up one at a time and just made a  
14 decision based on case-by-case. If we were to adopt a  
15 framework or if we were to accept that this was going to be  
16 our framework or have two options, I think we'd have to go  
17 through a regulatory process and adopt a policy, you know,  
18 and it gets into the issue that's in the letter that we were  
19 kind of arguing over a little bit.

20           In this instance, this is like a staff -- this is  
21 just the staff's guidance for themselves internally almost  
22 to make a recommendation. So if it got up to us having a  
23 framework that we always used, we would probably need a  
24 regulation or a statutory change.

25           And I think the point is, is that these have

1 always been decided on a case-by-case basis. Each case with  
2 its recommendation comes to us and that's -- you know, it's  
3 the part where we end up being somewhat of an appeals body.

4 ASSEMBLY MEMBER BROWNLEY: So -- and historically  
5 then, is it true that we have never looked at the until the  
6 district repays the entire amount owed? We've always looked  
7 at the penalty of certification taken away?  
8 Self-certification taken away?

9 MR. ASBELL: Could you rephrase the question --

10 MR. HARVEY: There was one case where we  
11 allowed --

12 CHAIRPERSON BRYANT: I think we've done both ways;  
13 right?

14 MR. HARVEY: Both ways.

15 ASSEMBLY MEMBER BROWNLEY: You've done it both  
16 ways.

17 CHAIRPERSON BRYANT: Yeah. I personally have  
18 never acted on one.

19 MR. ASBELL: With one -- just one district.

20 MS. SILVERMAN: And I think the point was,  
21 obviously we -- we obviously had more facts and a little bit  
22 more history about how it was applied and I think the  
23 purpose of providing this flowchart was to bring some kind  
24 of consistent framework. So there wouldn't be  
25 inconsistencies and obviously the level of transparency on

1 how the Board could make that decision on how the penalties  
2 are self -- loss of self-cert could be made and that was the  
3 whole purpose of a flowchart.

4 ASSEMBLY MEMBER BUCHANAN: I have another  
5 question. Am I missing something because it seems to me  
6 this is relatively straightforward. You have a release of  
7 funds. You're supposed to start -- you're supposed to have  
8 a contract that says that 50 percent of the work is going to  
9 be under contract and within a certain time frame and if  
10 it's not, then clearly you've been funded earlier and you're  
11 getting the use of that money instead of the state having it  
12 in its funds drawing interest, it could be used for another  
13 project; right?

14 So it doesn't seem to me that this is all that  
15 complicated. I don't know what guidelines there are or  
16 whatever in terms of if a district all of a sudden has  
17 complications and has to rebid or something else or isn't  
18 out there -- actually they probably should have already bid  
19 in terms of what they do then if they find it themselves. I  
20 mean I don't know if there are guidelines on that, but it  
21 doesn't seem to me that this is -- whether it's -- you know,  
22 I don't know whether it's intended or knowingly or whatever,  
23 but it seems to me that this is -- it should be a pretty  
24 simple process.

25 CHAIRPERSON BRYANT: Let's test that theory out by

1 moving on to Tab 15.

2 MR. DAVIS: Madam Chair.

3 CHAIRPERSON BRYANT: Oh, sorry.

4 MR. DAVIS: Are we going to vote on accepting this  
5 report?

6 MR. HARVEY: No.

7 CHAIRPERSON BRYANT: No. It's not anything to  
8 accept or anything.

9 ASSEMBLY MEMBER BROWNLEY: I just did one final  
10 comment is that to say that on Attachment B here, there is  
11 nothing on this chart that includes pay your penalty and  
12 you're done on this chart. So I just want to point that  
13 out.

14 CHAIRPERSON BRYANT: Right. And I think that -- I  
15 think staff feels that you get into an unlevel playing  
16 field. If you have a poor district, it couldn't pay its  
17 fine and move on where a more financially established --  
18 that's how I understood what you said.

19 MR. ASBELL: Right. Yes.

20 ASSEMBLY MEMBER JEFFERIES: If I may, I'm not --  
21 as someone who's coming into this with an absolute fresh  
22 pair of eyes to this never having dealt with this before, I  
23 would argue in my position that the Education Code doesn't  
24 give you that discretionary ability. It doesn't say you  
25 shall have the option of eliminating that. It is one of the

1 requirements in the Code and it says that you lose your  
2 self-certification for five years unless you're going to  
3 pay. And if you choose to pay, it seems obvious to me that  
4 if the district says we're going to pay, there's no  
5 discretion that you'd say no, no, you can't do that because  
6 the Education Code provides for it.

7           It doesn't say that staff has the authority to  
8 deny payment. That is a provision built into the Code. Now  
9 certainly an attorney could have fun with this all day and  
10 say well, it doesn't say this or that.

11           CHAIRPERSON BRYANT: I was -- yeah. I was kind of  
12 hoping to avoid that --

13           MR. HARVEY: 237.

14           CHAIRPERSON BRYANT: -- as much possible, but I  
15 think there's different ways to read that statute and I  
16 think when we get into the meat of it, you'll hear that  
17 argument and I think Lance can opine as to what has been the  
18 traditional interpretation of that at the State Allocation  
19 Board.

20           But why don't we go ahead and get into the item  
21 and then we can see where it leads.

22           MR. ASBELL: Okay. So Tab 15?

23           CHAIRPERSON BRYANT: Yes.

24           MR. ASBELL: Okay.

25           CHAIRPERSON BRYANT: Unless we want to put these

1 all over.

2 MR. ASBELL: Okay. So if you would to stamped  
3 page 240. The purpose of this report to request the State  
4 Allocation Board approve staff's loss of self-certification  
5 recommendation for **Chula Vista Elementary School District** as  
6 set forth in this item.

7 Just a little bit of background. In January 2008,  
8 the Board found the district to be material inaccurate.  
9 Attachment C is a copy of the actual Board item. That's  
10 stamped pages 244 to 247. So in that item, things were  
11 pointed out such as the district prematurely submitted two  
12 fund release authorization forms, cumulatively being 617  
13 days premature.

14 The Board did find them material inaccurate. The  
15 Board required the district return \$53,145 in interest. The  
16 Board requested discussion for loss of self-certification  
17 penalties at a future Board meeting and at an Implementation  
18 Committee meeting.

19 One thing to think about in your deliberations.  
20 Because the district has repaid the interest owed as a  
21 result of the Board's material inaccuracy finding, the Board  
22 may wish to consider no loss of self-certification  
23 privileges for the school. The district has had no SFP  
24 funding requests for several years.

25 So on page 241, we lay down three options. First

1 option is prohibit the school district from  
2 self-certification of project information for a period of  
3 five years; prohibit the Chula Vista Elementary School  
4 District from self-certification until October 2015; specify  
5 that the district will be charged an amount of a hundred  
6 dollars per hour for additional hours necessary to process  
7 and review the district's applications submitted during the  
8 timelines as prescribed in SFP regulations.

9           Option No. 2 is to consider an alternative loss of  
10 self-certification period of up to five years. Option 3,  
11 find that the district has satisfied the material inaccuracy  
12 penalty by repaying the interest. And staff is advocating  
13 Option 1.

14           CHAIRPERSON BRYANT: Ms. Greene has a question.

15           MS. GREENE: Where did the hundred dollars an hour  
16 come from?

17           MR. ASBELL: It's in statute.

18           MS. KAPLAN: It's regulation.

19           MS. GREENE: Okay.

20           MR. ASBELL: Or regulation.

21           MS. GREENE: Regulation by this Board.

22           MS. KAPLAN: Yes.

23           MR. ASBELL: Yes. And it's been that way for  
24 quite a while, the hundred dollars has been.

25           CHAIRPERSON BRYANT: Okay. Are there any

1 questions -- do you want to go ahead? Are you from the  
2 district, I'm taking it? Okay. Why don't you go ahead and  
3 speak. We can ask questions --

4 MS. SCHOLL: I'm Carolyn Scholl. I'm the  
5 Facilities Planning Manager for the Chula Vista Elementary  
6 School District. In 2002, the Chula Vista Elementary School  
7 District signed certification for the fund release for two  
8 modernization projects, two elementary schools, in the  
9 amount of \$3 million in good faith believing that 50 percent  
10 of the fund release had been spent or contracted for.

11 In December of 2002, the funds were released to  
12 the district. The district ultimately spent \$14 million on  
13 these projects far in excess of the \$3 million it received.

14 An OPSC audit in August of 2007 disallowed some of  
15 the expenditures that had been initially reported. One and  
16 a half years later, January 2008, the State Allocation Board  
17 issued a material inaccuracy finding.

18 Despite the district's significant expenditures on  
19 these projects, the district did not dispute the finding and  
20 requested an invoice for the penalty. One and a half years  
21 later in May of 2009, the district was invoiced for \$53,000  
22 which the district paid the following month in June of 2009.

23 At that time, the district had paid its penalty  
24 for the material inaccuracy in accordance with the  
25 regulations in effect, specifically at Code

1 Section 17070.51(b)(2) which states in part that the Board  
2 shall prohibit the school district from self-certifying for  
3 a period of up to five years or until the district's  
4 repayment of the entire amount owed at paragraph one.

5 Now three years after the finding, the Board is  
6 being asked to apply an additional penalty of a five-year  
7 loss of self-certification. The district believes Ed Code  
8 that the penalty has already been paid in full and  
9 respectfully requests that this Board uphold the Code at the  
10 time of the finding and not apply additional penalties.

11 Thank you.

12 CHAIRPERSON BRYANT: I'm going to just interrupt  
13 this discussion for one second. Could we lift the call on  
14 the Minutes.

15 MS. GENERA: To approve the Minutes. Assembly  
16 Member Brownley.

17 ASSEMBLY MEMBER BROWNLEY: Aye.

18 MS. GENERA: Thank you.

19 CHAIRPERSON BRYANT: That's out. So thank you.  
20 All right. Now are there any --

21 ASSEMBLY MEMBER BROWNLEY: That's what I flew up  
22 here for this morning. I knew there was a purpose.

23 CHAIRPERSON BRYANT: All right. Are there any  
24 questions of either the staff or the district? Mr. Harvey.

25

1           MR. HARVEY: Well, the nub of it is this or, isn't  
2 it. Do we have any guidance from our counsel on what this  
3 may mean? I know historically we seemed to have  
4 predominantly imposed penalties, loss of self-certification.  
5 One district, seven projects, we did not, but while there  
6 were a very few number, in a majority of those numbers, we  
7 did the loss of self-certification. So help me understand  
8 what the or means here.

9           MR. DAVIS: Historically, the Board has  
10 interpreted that or more or less as an option for the Board.  
11 It's the discretion to the Board. What's the limit on how  
12 long we will withhold self-certification. I probably need  
13 that for the record, huh. That we would withhold  
14 self-certification for a period of time. It could be up to  
15 five years. It could be less than five years. It could be  
16 up to the time period that they repay the payment -- the  
17 overpayment with interest or it could be beyond that.

18           It seems to be the -- at a maximum it could be --  
19 assessed against them where they would not be able to  
20 certify would be up to five years and that seems to be the  
21 interpretation the Board has taken in the past.

22           MR. HARVEY: The staff added to that by saying  
23 part of their reason for not including it is it looks like  
24 it benefits more wealthy districts. Those that can afford  
25 to pay in a timely fashion or in a bulk, if this were

1 imposed automatically, they would have this sanction that  
2 was envisioned in law.

3 MR. DAVIS: In other words, it's policy -- that  
4 particular interpretation where first -- there's not the  
5 inequity of those that can pay up, get out of the penalty.  
6 It also is the issue of giving a discretion for those who  
7 are more egregious in what the material inaccuracy might be.  
8 It gives that discretion to the Board. It's not in the  
9 statute, but the interpretation is that discretion is given  
10 to the Board to assess what the penalty should be in  
11 accordance to what the material inaccuracy is.

12 MR. HARVEY: And the testimony by the attorney  
13 earlier would argue for this because he argued that we  
14 should have flexibility. It should be a policy call on a  
15 case-by-case basis. It should not be a cookie cutter. It  
16 should not be a template. So following past practice would  
17 also be consistent with that testimony.

18 MR. DAVIS: That would be my understanding.

19 MR. HARVEY: Thank you.

20 CHAIRPERSON BRYANT: Ms. Buchanan.

21 ASSEMBLY MEMBER BUCHANAN: Yeah. I'm going to get  
22 back to what my basic problem is and that is that I mean  
23 this -- the funds were released in 2003; right? Or  
24 actually --

25 ASSEMBLY MEMBER JEFFERIES: September 2002.

1           ASSEMBLY MEMBER BUCHANAN: September 30th, 2002.  
2     So now we're talking about prohibiting self-certification  
3     till 2015, so it's so long after the event occurred that it  
4     seems to me that makes it even more punitive regardless of  
5     whether a district still has funds remaining or not.

6           But my other question is, is how does it happen  
7     that we release funds and a project doesn't start for, you  
8     know, a year and four months, year and three months after we  
9     release the funds. I mean it -- are there no checks and  
10    balances or how do we deal with this. Because what this  
11    says is one project didn't start for -- what was it, a  
12    hundred and something days and the other project -- let's  
13    see what page it is -- and the other project was over 400  
14    days -- didn't start for over 400 days? I forget -- 186  
15    days on one project and 431 days on the other.

16           So I mean how does that happen that, you know, we  
17    certify that a project's going to start and there's no  
18    communication between the district and the state for over a  
19    year and the funds have been released.

20           CHAIRPERSON BRYANT: Well, this is -- I mean I  
21    think -- staff, do you want to respond to that?

22           MR. ASBELL: I mean this goes back to  
23    self-certification. They certify, we get out of the way,  
24    it's up to them to move forward and make sure they have the  
25    contracts in place and begin building the project.

1 ASSEMBLY MEMBER BUCHANAN: And so what are the  
2 state guidelines? So if I'm the district and I certify and  
3 maybe I have -- maybe there's extraneous events that happen  
4 and I'm not able to start, what am I supposed to do? What  
5 does statute say I'm supposed to do if I've received the  
6 money and I can't bid in time?

7 MR. ASBELL: Well --

8 MS. SILVERMAN: I mean there is also a voluntary  
9 mechanism. A school district, if they obviously realize  
10 they've moved before, you know, statutory requirement, they  
11 can always come in to OPSC and say, you know what, obviously  
12 there could be a problem with me jumping ahead. You know,  
13 could we have a -- let's talk about this issue as opposed to  
14 waiting to get that call or letter validating that  
15 certification. And that could come later. You're  
16 absolutely right.

17 ASSEMBLY MEMBER BUCHANAN: But is there something  
18 in statute that says if you can't start within a certain  
19 amount of time, you have to return the money or notify or do  
20 anything?

21 MR. ASBELL: We have -- time limit on fund  
22 release, meaning once you get the apportionment --

23 ASSEMBLY MEMBER BUCHANAN: Right.

24 MR. ASBELL: -- you have to come in with a valid  
25 fund release within 18 months.

1 ASSEMBLY MEMBER BUCHANAN: I understand that.

2 MR. ASBELL: There is the other part to this too  
3 that once you get the money and you're moving forward, we  
4 have a substantial progress check.

5 ASSEMBLY MEMBER BUCHANAN: Right. The 50 percent.  
6 But what is there in statute that says if you get the money  
7 and you don't need -- something comes up and you can't meet  
8 the substantial progress, what the district is supposed to  
9 do then. Nothing. Just wait and see if they --

10 MR. ASBELL: I believe that they would have to  
11 probably request a rescission.

12 ASSEMBLY MEMBER BUCHANAN: And then we don't  
13 perform an audit for five years.

14 MS. SILVERMAN: No. It's up to two -- I mean once  
15 that hits the timeline to complete, the district notifies us  
16 the project is complete -- a hundred percent complete. Then  
17 we have up to two years to pull the project for an audit.  
18 So technically it may not be five years, but I think part of  
19 the -- one of the issues here is unfortunately this item has  
20 been agendized several times over and unfortunately the  
21 Board has not stepped forward and made a recommendation on  
22 the loss of self-cert. So unfortunately the district's been  
23 kind of in abeyance for quite some time.

24 MS. KAPLAN: And just to clarify, Assemblywoman  
25 Buchanan, because you bring up a valid point of talking

1 about what if a district does come forward, we also have to  
2 look at the reality of districts that in this instance or  
3 any other instance, somebody may have started then they left  
4 and so the other new facilities manager may have come in and  
5 assumed everything was correct. So they may have not been  
6 able to voluntarily know and come in to the State Allocation  
7 Board because then that opens up a whole other can of worms  
8 and if we're talking about a district voluntarily coming in  
9 and they don't get an MI, but that doesn't -- that  
10 discretion is not allowed in statute for staff to do. So  
11 I've heard that discussion --

12 ASSEMBLY MEMBER BUCHANAN: I don't think a change  
13 in staff is necessarily a good excuse. I mean a district  
14 should have procedures in place so even if it gets a new  
15 director of facilities or whatever, it's still following  
16 statute and it's still doing the proper reporting.

17 I just -- I guess, you know, my frustration is, is  
18 this sort of drags on and I don't know what -- like I said,  
19 does the district -- is it clear that a district, if they  
20 can't start in time, they should be returning the money,  
21 they should be notifying us, they should be applying for an  
22 extension. You know, what are those guidelines so that  
23 we -- so that districts follow those after they have  
24 self-certified.

25 MS. SILVERMAN: I think probably some of the

1 potential is, you know, if they come in early and realize  
2 that they may -- to some extent may have to stand back in  
3 line for their project, so that may be one of the outliers  
4 of why they may not come forward.

5           But I mean we're open to meeting with districts  
6 early if they have some kind of issue that they'd like to  
7 talk about because I think preventative measures are  
8 important and we would definitely willing to speak with  
9 districts about these topics.

10           CHAIRPERSON BRYANT: Mr. Jefferies, did you --

11           ASSEMBLY MEMBER JEFFERIES: Yeah. I apologize to  
12 my colleagues up here as a one-timer having to ask --

13           MR. HARVEY: No. Please.

14           ASSEMBLY MEMBER JEFFERIES: -- questions, but I'm  
15 being asked to assess a penalty for a crime -- and I don't  
16 mean to use the word crime in the sense of the criminal  
17 terminology. I'm being asked to assess a penalty for  
18 something I don't know what you did wrong. Any reasonable  
19 person is going to want to know what the violation was to  
20 determine an appropriate level of response to ensure that  
21 there is deterrence to not do it again and/or make  
22 restitution.

23           We're not provided that benefit -- I'm not  
24 provided that benefit of what was done wrong. That's my  
25 first concern. And then my second one is assuming that

1 every district has to pay back some level of funds, my  
2 curiosity is -- as my first question now, my curiosity is  
3 the funds that you utilize to pay the interest or to pay  
4 back, do they come from a construction fund, a mitigation  
5 fund, or do they come out of a district's general operating  
6 fund basically cutting funds that would otherwise go to  
7 classrooms?

8 MS. SCHOLL: I'm not -- I don't know where the  
9 funds came from. I wasn't with the department when the fine  
10 was paid. The crime is that we didn't spend or contract for  
11 50 percent of the fund release at that time. That doesn't  
12 mean that no expenditures were made. We were short of the  
13 50 percent. And also as I said before, during the audit,  
14 some of the expenditures that were reported were disallowed,  
15 which brought us short as well.

16 ASSEMBLY MEMBER JEFFERIES: That opens up an  
17 incredible can of worms for me to even wonder why we're here  
18 discussing this if we're -- if the end product was what was  
19 approved, the end product serves the delivery of  
20 education -- I -- I don't even -- you know, I mean I know  
21 there's a procedure that needs to be in place to prevent  
22 school districts from skipping ahead of those who are  
23 prepared to put in place those facilities that are being  
24 offered. I get it. There's competition for limited funds,  
25 so -- okay. I won't continue here.

1           CHAIRPERSON BRYANT: Ms. Buchanan.

2           ASSEMBLY MEMBER BUCHANAN: Yeah. I was going to  
3 say in this case, I -- my recommendation would be that we  
4 not -- that we not impose a penalty of not -- of not  
5 requiring self -- not allowing them to self-certify, yeah,  
6 and that I -- in response to Assembly Member Jefferies, I  
7 think, you know, when people pass bonds, whether they're  
8 local bonds or whether they're state bonds, they pass them  
9 with the intent that the money's going to get out to fund  
10 projects within a reasonable time.

11           And I think the problem is, is that if you're  
12 selling a bond and you're giving it to a project and the  
13 project is going to happen -- you know, it's not going to  
14 get -- the money's just going to be banked for, you know, I  
15 won't say arbitrage purposes, but in local bonds, there's  
16 arbitrage laws. The money's just going to be banked, then  
17 in a local district, you can actually lose the tax exempt  
18 status of the bond.

19           So the real intent is that the money go -- and the  
20 reason you have self-certification is so the money goes to  
21 projects. The reason you're getting the funding is because  
22 the project's ready to be -- you're signing a contract,  
23 50 percent is going to be complete, and it's there to deter  
24 districts from taking the money and sitting on it because  
25 we're talking about jobs, whatever.

1           You know, in this situation, I mean I think it  
2 happens rarely. I have a problem with going back and  
3 penalizing districts for an event that happened seven or  
4 eight years ago, but I think the intent of the penalty or  
5 whatever is to do just that, prevent the money being put  
6 into an account and projects not being done because when you  
7 release money, you're releasing it for projects that are  
8 going to bid and --

9           ASSEMBLY MEMBER JEFFERIES: Is that the case here?  
10 That their intent was to sit on it?

11           ASSEMBLY MEMBER BUCHANAN: Well, it -- I don't  
12 think the intent was, but at the time they certified, they  
13 said we've got 50 percent under construction and they didn't  
14 have that for over a year later. So I don't know what the  
15 intent was, but the -- you know, so again I don't think they  
16 should lose self-certification given the time that's passed,  
17 but --

18           ASSEMBLY MEMBER JEFFERIES: Okay.

19           ASSEMBLY MEMBER BUCHANAN: -- but I do agree with  
20 the basic process that says if we're releasing money to you  
21 that's because you're ready to -- you're in the process of  
22 building or modernizing or whatever you're doing.

23           CHAIRPERSON BRYANT: Ms. Moore.

24           MS. MOORE: I would support what I think you're  
25 saying is Option 3 and I'd also just generally again make a

1 comment that I think the system is working fairly well, if  
2 I'm reading the statistics correctly. 99.5 percent of  
3 districts do correctly certify so far from the statistics of  
4 the Office and move forward with their projects. So any  
5 help that we can give to the .5 that for some reason is not  
6 making those -- is not correctly doing it, I think we should  
7 help, but on the whole, it's very successful  
8 self-certification on this point and I also think that a lot  
9 of time has passed. They've paid the penalty. There is  
10 statement in the law. There is some discussion about that  
11 or, and so I'd support Option 3.

12 ASSEMBLY MEMBER BUCHANAN: Is that a motion?

13 MS. MOORE: And second it.

14 CHAIRPERSON BRYANT: We have a motion and a  
15 second. I just -- Mr. Harvey, do you want to say something?

16 MR. HARVEY: On the motion -- and I'm going to  
17 tell you why I'm voting no. I believe part of the delay was  
18 because this Board couldn't come to grips with what they  
19 wanted to do and it was our fault. So I think -- I'm  
20 comfortable following the intent of the legislation which  
21 says -- and until we change the legislation or the  
22 regulation, we don't have to know what the intent was. If  
23 they falsely certify, there can be a penalty.

24 Now, I don't think five years is proper, but I  
25 don't think giving them a walk is proper either. So I'm

1 voting no on the motion because it doesn't give them any  
2 loss of self-certification and I think they should have some  
3 level of loss. Not five years, not three years, but  
4 something that says and recognizes hey, we did something  
5 that we shouldn't have done. We don't know the intent, but  
6 we need to be accountable for that. So I'm not voting for  
7 Option 3 because of that.

8 CHAIRPERSON BRYANT: Okay. Call the roll. Is  
9 Senator Hancock coming?

10 MS. GENERA: Assembly Member Jefferies.

11 ASSEMBLY MEMBER JEFFERIES: I vote aye.

12 MS. GENERA: Assembly Member Brownley.

13 ASSEMBLY MEMBER BROWNLEY: Aye.

14 MS. GENERA: Assembly Member Buchanan.

15 ASSEMBLY MEMBER BUCHANAN: Aye.

16 MS. GENERA: Scott Harvey.

17 MR. HARVEY: No.

18 MS. GENERA: Kathleen Moore.

19 MS. MOORE: Aye.

20 MS. GENERA: Lyn Greene.

21 MS. GREENE: Aye.

22 MS. GENERA: Cynthia Bryant.

23 CHAIRPERSON BRYANT: Do you need my vote to get it  
24 out?

25 MS. GENERA: Yes.

1 CHAIRPERSON BRYANT: I'll vote aye.

2 MS. GENERA: Motion carries.

3 CHAIRPERSON BRYANT: Tab 16. Thank you.

4 MR. ASBELL: Okay. So this is almost the same  
5 scenario we've got for **San Francisco**. This is on stamped  
6 page 248. They did go to the Board January 2008. They had  
7 a premature fund release of 103 days. The Board did find  
8 them material inaccurate. They were required to pay  
9 \$123,000 in interest which they did, and so that's the  
10 facts. Basically looking at the same options also.

11 CHAIRPERSON BRYANT: Do you have something to add?

12 MR. GOLDIN: Yes, Madam Chair.

13 CHAIRPERSON BRYANT: Identify yourself.

14 MR. GOLDIN: My name is David Goldin. I am the  
15 Chief Facility Officer for the San Francisco Unified School  
16 District. In November 2004, I arrived in the district.  
17 This was of the 36 or 37 projects that were referenced. One  
18 of them belongs to us. It was a project at Galileo High  
19 School. For those of you who have ever been to San  
20 Francisco, it's right across from Ghirardelli Square. It's  
21 a landmark building.

22 The project was built. It was finished. It was  
23 highly successful.

24 As apparently the story goes, in 2001, the  
25 superintendent put all construction on hold for a few months

1 in the school district to make some investigations. During  
2 that time, a fund release occurred, 103 days. The bid was  
3 lost. The project was rebid.

4 In 2006, this was -- or the end of '06, early '07,  
5 this was brought to our attention. We have a full-time  
6 person in our office processing these sorts of documents.  
7 We quickly acknowledged that this had happened. It was not  
8 done deliberately. It was not done for any advantage. It  
9 was a circumstance of events. We went to the January 2008  
10 hearing. We did not contest. The findings were that there  
11 were material inaccuracies. We said we agree. Not because we  
12 felt we had been criminal, but because we admitted that it  
13 was in fact for 103 days inaccurate.

14 So we immediately paid back the interest funds.  
15 We put procedures in place that says from now on at a fund  
16 release, we have a contract, we have a notice to proceed,  
17 and it gets attached so we in fact know this can't happen  
18 again.

19 We then waited from 2008 to now I find it sort of  
20 interesting if the penalties had actually occurred for the  
21 most part, they would have already had expired. We're here  
22 today. We sort of believe that we've repaid the earnings as  
23 was said. We respectfully request that you do not further  
24 penalize us.

25 We believe it would be excessively punitive and

1 harsh punishment almost three years after the SAB had the  
2 findings. Quite frankly, my own personal perspective in  
3 working with CASH and other organizations, I think it sets a  
4 somewhat poor public policy at a time of extreme crisis of  
5 school districts throughout the state where more than ever  
6 we are trying to work very hard with our government  
7 partners, be it CDE, be it OPSC, the Division of the State  
8 Architect. I'd rather be building relationships than  
9 disagreeing and this was a case where we thought we had  
10 moved forward and set the place where we could make a  
11 decision and move on.

12           So we therefore respectfully request that the  
13 Board approve and accept Option 3 which is similar to the  
14 option you said before which finds that we have satisfied  
15 the material inaccuracy penalty by repaying the proceeds of  
16 \$120,000. And other than that, I thank you for your time  
17 and for your judgment.

18           ASSEMBLY MEMBER BUCHANAN: I'd like to move  
19 Option 3.

20           ASSEMBLY MEMBER JEFFERIES: Second.

21           CHAIRPERSON BRYANT: You have much better facts in  
22 front of you and I agree that you had -- I mean you have  
23 that -- it's much better facts. It's going to be easier for  
24 me to vote aye at this time. Is there a second?

25           MS. KAPLAN: Jefferies.

1 CHAIRPERSON BRYANT: Okay. Call the roll.

2 MS. GENERA: Assembly Member Jefferies.

3 ASSEMBLY MEMBER JEFFERIES: Aye.

4 MS. GENERA: Assembly Member Brownley.

5 ASSEMBLY MEMBER BROWNLEY: Aye.

6 MS. GENERA: Assembly Member Buchanan.

7 ASSEMBLY MEMBER BUCHANAN: Aye.

8 MS. GENERA: Scott Harvey.

9 MR. HARVEY: No.

10 MS. GENERA: Kathleen Moore.

11 MS. MOORE: Aye.

12 MS. GENERA: Lyn Greene.

13 MS. GREENE: Aye.

14 MS. GENERA: Cynthia Bryant.

15 CHAIRPERSON BRYANT: Aye.

16 MS. GENERA: It carries.

17 MR. GOLDIN: Thank you very much.

18 MR. ASBELL: So if you go to Tab 17, stamped  
19 page 256. This is for **Manteca Unified**. Just a word of  
20 caution, this is different than San Francisco and Chula  
21 Vista. This is the first time this item is being heard, so  
22 they have been found to be material inaccurate.

23 So the purpose of this report is to present school  
24 facility program audit findings for Manteca Unified, to  
25 apprise the Board why the material inaccuracy has occurred

1 which resulted in a funding advantage for the district, to  
2 request to levy the appropriate interest penalty as provided  
3 in law.

4           Audit findings for three of the school district's  
5 SFP projects reveal that the district falsely certified on  
6 fund release authorization forms and received fund releases  
7 on the district's three projects as listed on Attachment C,  
8 stamped page 263. After the preliminary audit findings,  
9 staff worked with district representatives to gather  
10 additional information in order to validate the findings.

11           Based on the available information, staff  
12 concluded that each of the projects were 447 days premature.  
13 Some background: The district has violated a couple  
14 sections in the Education Code. Education Code  
15 Section 17072.32 states the essential element necessary to  
16 meet the criteria in this Education Code is to have a  
17 binding contract for the completion of the approved project.

18           The district submitted a fund release request  
19 using the fund release authorization form on which the  
20 district specifically checked the following certification.  
21 The district certifies it has entered into bindings  
22 contracts for at least 50 percent of the construction  
23 included in the plans applicable to the state funded  
24 project.

25           To confirm compliance with the this SFP

1 requirement, inaccurate certification is necessary. The  
2 district prematurely certified.

3           Additionally Education Code 17070.51(a) requires  
4 that when eligibility or funding application related  
5 information is found to be falsely certified by school  
6 districts, architects, or design professionals, the OPSC  
7 shall notify the Board. Material inaccuracy is further  
8 defined in the regulations that the falsely certified  
9 information allowed the school district to gain an advantage  
10 in the funding process.

11           The district's position as we have it in the item,  
12 the district maintains the mistake was honest in nature and  
13 only happened because there was a change in staff at the  
14 time. The district had no intention of falsely certifying  
15 the Form 5005. Because these projects were all bid together  
16 and the fact that the district was undergoing staff changes  
17 at the time the forms were submitted to the OPSC, the new  
18 district staff was unaware that they had broken any rules.

19           Additionally, there were four other prior projects  
20 that were audited by the OPSC with no audit issues found.  
21 The district is aware that they owe the state interest in  
22 the amount of \$139,397 and is prepared to pay this amount  
23 back to the state.

24           Now, one side note: It should be noted that the  
25 district was active in the SFP from the year 2000 to 2003

1 with adjusted grant fund releases for 11 projects. All the  
2 fund releases required a valid fund release authorization  
3 form.

4           So based on the audit findings, there are two  
5 major issues for consideration by the Board. The first  
6 issue is material inaccuracy. The district falsely  
7 certified on their fund release authorization submittals.  
8 Under the law and regulations governing material inaccuracy,  
9 the term falsely certified is used and once again it is not  
10 necessary for the Board to determine the certification was  
11 knowingly false.

12           If the Board finds the district's applications as  
13 material inaccuracies, the statute requires that the  
14 district shall repay the funding received as a result of the  
15 false certification which in this case is the interest  
16 calculated from the fund release date of February 19, 2003,  
17 for all three projects to the date when the district awarded  
18 a binding contract for at least 50 percent of the  
19 construction included in the plans which was May 11, 2004.

20           The law also required that the district be  
21 prohibited from self-certifying for a period of up to five  
22 years and the regulations the district shall be charged an  
23 amount of \$100 per hour for the additional hours to process  
24 and review the district's applications.

25           Based on the multiple premature fund release

1 occurrences and the cumulative duration of the funding  
2 advantage which totals 1,341 days, staff is recommending  
3 loss of self-certification privileges for a period of five  
4 years. Staff's position is consistent with past Board  
5 material inaccuracy actions of this nature.

6           The second issue that the Board much address if a  
7 material inaccuracy is found is repayment of interest lost  
8 by the state due to the premature fund release. Since the  
9 funds were prematurely released to the district, the  
10 district received a funding advantage and the state lost  
11 interest on those funds during the period of time that the  
12 funds should have remained in the state bond accruing  
13 interest.

14           The interest lost by the state is \$139,397. The  
15 interest calculation is based on various amounts -- warrant  
16 amounts, number of days premature, and the interest rate at  
17 that time. The number of days used in the interest  
18 calculation is determined by the period between the warrant  
19 release date and the date of the award of construction  
20 contract that meets the fund release authorization  
21 threshold.

22           Also as a side note, an item was presented at the  
23 October 2008 Board outlining staff's recommendations for the  
24 recovery of interest due to material inaccuracy. In  
25 considering this item, the Board agreed with the methodology

1 used by its staff for the recovery of interest for premature  
2 fund release for this type of project.

3           So the staff has laid out a couple options.  
4 Option 1A, find that the material inaccuracy occurred for  
5 SFP application numbers listed on the Attachment C, prohibit  
6 the district from self-certifying for a period of five  
7 years, specify that the district will be charged an amount  
8 of \$100 per hour for the additional hours necessary to  
9 process and review the district's applications, require the  
10 district to repay the interest lost by the state from the  
11 premature fund release in the amount of \$139,397, require  
12 payment of the entire amount within 60 days after the Board  
13 made the finding of material inaccuracy or payment in  
14 installments with interest with a period of no more than  
15 five years from the date the Board made the finding of  
16 material inaccuracy.

17           Option B is essentially the same thing as 1A. The  
18 only difference is the Board can prohibit the loss of  
19 self-certification for alternate period of up to five years.

20           Option 2 is require the district to repay the  
21 interest lost by the state from the premature fund release  
22 of funding in 139,000 for all three projects. There would  
23 be no material inaccuracy finding. Are there any questions?

24           CHAIRPERSON BRYANT: Okay. Any questions? Hear  
25 from the district.

1           MR. GARR: My name is Michael Garr. I'm the  
2 Director of Facilities for Manteca Unified School District.  
3 I took over the position in May of this year, so all this  
4 happened prior to me having this position.

5           There's three projects in question. The projects  
6 were approved in 2000, 2001. The 5003 -- 5005s were  
7 submitted in 2003. The projects proceeded. There was -- as  
8 you've heard, it's all factual information they have -- it  
9 happened. I can't deny those things.

10           In 2005, the notice of completions were all  
11 submitted. 2007, the audit began and the district -- at the  
12 time, her title wasn't director, but she addressed the  
13 concerns and there's a letter that the Board should have  
14 about how she addressed the concerns. That's back in 2007.

15           So now we're 2010, three and a half years later,  
16 looking at whether or not we lose our self-certification for  
17 five years. There's been a history with the district of  
18 numerous projects. These are the only three projects, and  
19 they were bundled together, that had this issue.

20           We've had numerous projects for a lot more money  
21 than these projects were with no issues at all.

22           What I'm asking is that you look at the  
23 consideration of time spent on this. We've waited three and  
24 a half years. The money's been set aside. I can't answer  
25 where the money came from, whether it came from the

1 projects. The projects were -- one of them was  
2 significantly overspent, so the district contributed more  
3 money than initially anticipated.

4 The money's been set aside since 2007 to repay  
5 this and we've been waiting our turn to come and do this.  
6 So we've already spent three and a half years looking at  
7 this. So I ask some consideration with I believe it's  
8 Option 1B in time that's already been spent doing this when  
9 you consider an up to five year restriction on our  
10 self-certification.

11 CHAIRPERSON BRYANT: Can I ask a question. When  
12 was this first ready to come to the Board? I know it's been  
13 on and we've moved it a couple times. I feel like I've  
14 moved it a bunch of times. March maybe?

15 MR. ASBELL: I'm not sure. I can't answer.

16 MS. SILVERMAN: It may have been one of the  
17 earlier projects listed on the calendar in March when we  
18 start posting our calendar. So it may have been there.

19 CHAIRPERSON BRYANT: That's what I was thinking.  
20 Do you recall when it was first kind of on the agenda?

21 MR. GARR: No, I don't. I heard it was before --  
22 like I said, I got there in May. It had already been  
23 agendized and taken off and so --

24 CHAIRPERSON BRYANT: Is there any comments or  
25 questions from Board members?

1 MS. MOORE: I just have a clarification, Mr. Garr.  
2 What is your recommendation for -- you said 1 -- you're  
3 asking for 1B?

4 MR. GARR: We're asking for consideration in  
5 reduction of the five years. We're willing to pay the fine  
6 as it's stated, the interest, and we're asking for a  
7 reduction in the five-year loss of self-certification. I  
8 think that's excessive.

9 ASSEMBLY MEMBER BUCHANAN: Given that, you know,  
10 this is in terms of time when the event occurred and how  
11 much time has delayed is similar to the Chula Vista, I'd  
12 like to make a motion that the district lose  
13 self-certification until the fine is paid.

14 ASSEMBLY MEMBER BROWNLEY: I'd second that.

15 ASSEMBLY MEMBER BUCHANAN: So once you've paid the  
16 fine, you will have your self-certification privileges back.

17 CHAIRPERSON BRYANT: Okay. We have a motion and a  
18 second.

19 MR. HARVEY: Is that 1B?

20 ASSEMBLY MEMBER BROWNLEY: I can't quite  
21 determine --

22 MS. SILVERMAN: So I mean are we -- are they --

23 CHAIRPERSON BRYANT: It's actually -- I think it's  
24 really Option 2 only adding in the finding of a material  
25 inaccuracy.

1 ASSEMBLY MEMBER BUCHANAN: Right. Yeah.

2 MS. SILVERMAN: Do you still find them to be  
3 material inaccurate?

4 ASSEMBLY MEMBER BUCHANAN: Yeah. We find them to  
5 be material -- yeah, the material inaccuracy and that they  
6 will have the loss of self-certification until the penalty  
7 has been paid.

8 MS. KAPLAN: So it would a modified 1B. So it'd  
9 be finding them materially inaccurate and then up to five  
10 years, the Board can condition the loss of  
11 self-certification as deemed complete upon payment.

12 MS. JONES: Modified Option 2.

13 MS. KAPLAN: No. 2 does not find a material  
14 inaccuracy.

15 CHAIRPERSON BRYANT: Okay. Yeah. Do you have a  
16 comment -- okay.

17 ASSEMBLY MEMBER BUCHANAN: I think it's more a  
18 modified 1C actually.

19 CHAIRPERSON BRYANT: This one's harder for me. I  
20 just -- this is coming to us -- I mean this is coming to us  
21 in its purest form and we're -- you know, these are going to  
22 take time and this USC football team in a way. I mean  
23 they're -- the audit -- the school district didn't come  
24 forward. They found it in the audit and we're not -- in the  
25 old ones -- in the other two, we're talking about these went

1 back to 2003, 2004. The Board first heard them in 2008.

2 Here I'm just -- here it's just not just a matter  
3 of not -- of just them paying the fine. I think this gets  
4 to what you said earlier which was quite persuasive in  
5 terms -- was your motion is that there -- the school  
6 district essentially isn't going to get a penalty and it  
7 seems to me an equity issue and it seems to me that we have  
8 a -- you know, we'd have a similarly situated. You sounds  
9 like you have the cash ready, that you could write a check,  
10 so your self-certification penalty may last 24 hours  
11 depending on how quickly you get a check up here.

12 And it seems unfair to me that -- I mean it was a  
13 material inaccurate statement and that we have a -- we do  
14 have a system where there has to be some kind of a penalty  
15 and I feel like we're -- the facts aren't there to just let  
16 them slide because our time here is much better than our  
17 time was on the previous two.

18 ASSEMBLY MEMBER BUCHANAN: Yes and no. Because  
19 the event occurred back in -- the funding was in -- the  
20 forms were signed in 2003 in January. They met the  
21 threshold in 2004. So -- and the warrants were released in  
22 February 2003. So --

23 CHAIRPERSON BRYANT: The project was completed in  
24 2005 was when -- and then in 2006, it was audited.

25 MR. GARR: 2007 it was audited.

1           CHAIRPERSON BRYANT: 2007. The district's been  
2 going back and forth now. I don't know if staff -- I mean  
3 there's kind of -- okay. So if 2007 they started going back  
4 and forth and the back and forth drives me crazy. Staff  
5 talk, districts talk, and there's a kind of -- I've seen in  
6 this program, kind of a spirit of delay. We all delay  
7 because we talk back and forth, back and forth.

8           So if we -- so there's been some sort of a delay  
9 from 2007. Some of it could have been the district slowly  
10 talking. Some of it could have been staff slowly talking.  
11 Consultants get involved. So there's part of me that was  
12 sort of looking back to 2007. Maybe we're at 2010, we put a  
13 two year penalty on them instead of five year, but there --  
14 some of the -- I mean they -- there's not -- more -- you  
15 know, lack of due process that there was on the previous two  
16 that was a lot the Board's fault because we in 2008 said put  
17 it off and we never brought it back till now.

18           Here there -- I don't know, maybe you guys can  
19 comment a little bit on what this back and forth has been.

20           MR. ASBELL: Can I comment just on stamped  
21 page 263. If you look at that, they submitted a 5005  
22 January 17, 2003, for all three projects. The percentage  
23 that they had under contract for the first project was  
24 22 percent. The second and third, they had zero percent.  
25 They didn't meet the threshold until 447 days later after

1 they submitted their 5005.

2 ASSEMBLY MEMBER JEFFERIES: And they're not  
3 disputing any of those findings.

4 MR. ASBELL: Right.

5 ASSEMBLY MEMBER JEFFERIES: And so I guess my  
6 point goes back to what you were raising, that's sort of a  
7 due process point of view as well. I mean once staff has  
8 identified that there has been a breach of, you know,  
9 whatever the terminology you want to use and there should be  
10 some expectation that it's going to be heard in a reasonable  
11 time with a decision made and maybe -- excuse the  
12 terminology -- maybe consideration needs to be given for  
13 time served already for the years that it's taken to get  
14 here.

15 And I don't know that you've applied for any  
16 funding since the determination or the finding -- the  
17 preliminary finding by staff that there was some  
18 inaccuracies.

19 MR. GARR: They have applied for funding since  
20 then.

21 ASSEMBLY MEMBER JEFFERIES: And did you receive  
22 any?

23 MR. GARR: Yes, they received then.

24 ASSEMBLY MEMBER JEFFERIES: Since then?

25 MR. GARR: Yes.

1 ASSEMBLY MEMBER BUCHANAN: And those projects have  
2 been audited?

3 MR. GARR: I don't have that information.

4 CHAIRPERSON BRYANT: Did you want to add  
5 something?

6 MR. WATANABE: Yeah. I'd like to address --  
7 Michael Watanabe, OPSC. I'd like to address both Assembly  
8 Member Jefferies' and Buchanan's concerns about the time it  
9 takes to audit.

10 Once a district receives their fund release, they  
11 have up to four years to complete their project. If they  
12 complete it in one year, we don't know until the district  
13 tells us the project's a hundred percent complete. And  
14 we've heard this many times at the Implementation Committee  
15 that districts like to purposely leave their reports at  
16 99 percent and delay their project as long as possible.

17 So it's not always that staff's, you know, slow to  
18 respond. School districts wait to delay the audit as long  
19 as possible too. So -- and then keep in mind that beyond  
20 that four years from the fund release, we have another two  
21 years to audit the project. So there's a big time lag, but  
22 it's not always on staff.

23 MR. ASBELL: And one other thing too. When we've  
24 identified with preliminary findings that there could be a  
25 potential material inaccuracy, we work very diligently with

1 the districts and sometimes that -- you know, that takes  
2 some time.

3 Many scenarios like this have been taken care of  
4 because we've been able to find additional expenditures that  
5 get them over that threshold. So it's time well spent  
6 because a lot of times we can take care of this by finding  
7 these additional contracts and expenditures. That by its  
8 very nature extends out the audit.

9 CHAIRPERSON BRYANT: Yeah. I'm having a hard time  
10 exactly comprehending when that point was. I'm all with the  
11 notion that we're not -- five years seems really  
12 unreasonable to me to put on you today clearly. But saying  
13 that it's good enough that you pay when I'm pretty sure  
14 based on your testimony you could write the check tomorrow,  
15 I feel like we have better facts in front of us that there  
16 should be a penalty here.

17 ASSEMBLY MEMBER BUCHANAN: And so what are you  
18 recommending?

19 CHAIRPERSON BRYANT: Well, I'm not a hundred  
20 percent there.

21 MR. HARVEY: Let me try one.

22 ASSEMBLY MEMBER BUCHANAN: Okay.

23 MR. HARVEY: I will have a substitute motion which  
24 is Option 1A, but I would reduce the loss of  
25 self-certification to two years. So it would expire in --

1 1B. I'm sorry. A, B, C -- 1B. So it would be finding of  
2 the material inaccuracy and you would have a five year loss  
3 of self-certification.

4 CHAIRPERSON BRYANT: Two years.

5 MR. HARVEY: Two years. Good God. Two years.

6 MS. GREENE: He can't read.

7 ASSEMBLY MEMBER BROWNLEY: You said you were going  
8 to try to make a motion. You're trying. You're trying.

9 MR. HARVEY: Obviously I -- I should be Steve  
10 Harvey rather than --

11 ASSEMBLY MEMBER JEFFERIES: It's up to the Chair.  
12 I can't recognize you. Only the Chair can.

13 CHAIRPERSON BRYANT: So -- just needs to be  
14 recognize. I recognize whoever needs recognition.

15 ASSEMBLY MEMBER BUCHANAN: Well, and the  
16 implication of that is if you turn in the 5004, 5005 form  
17 going forward, it will not be deemed complete until you've  
18 had certification verification.

19 MR. ASBELL: Yes.

20 CHAIRPERSON BRYANT: I'd second Mr. Harvey's  
21 motion. Can we call the roll on --

22 ASSEMBLY MEMBER JEFFERIES: I need an English  
23 translation to what she just said.

24 ASSEMBLY MEMBER BROWNLEY: Will you just  
25 clarify --

1 ASSEMBLY MEMBER JEFFERIES: Does that mean the  
2 projects that you have in place now you can self-certify or  
3 you can't?

4 MR. GARR: That's what I wanted to -- I wanted to  
5 ask some questions about how that's going to work -- how  
6 that goes about in the future. What if we don't put any  
7 projects forth in two years? I understand the notion about  
8 having a penalty and I agree --

9 CHAIRPERSON BRYANT: You're --

10 ASSEMBLY MEMBER JEFFERIES: That's easy for you.

11 MR. GARR: But if the intent of the Board is to  
12 have a penalty imposed, why isn't it imposed for a number of  
13 projects? Why isn't it the next two projects, I do get --  
14 have to be certified through OPSC.

15 CHAIRPERSON BRYANT: Because --

16 ASSEMBLY MEMBER BUCHANAN: I don't think you want  
17 to go there.

18 MR. HARVEY: Yeah. That could be a ten year. I  
19 like that one.

20 MR. GARR: What about the projects we currently  
21 have?

22 ASSEMBLY MEMBER BUCHANAN: They're funded. It's  
23 just going forward with the 5004, 5005 forms.

24 MS. SILVERMAN: It's any new projects moving  
25 forward after the Board has made their recommendation of

1 material inaccuracy.

2 MR. HARVEY: Yes.

3 MS. SILVERMAN: So new projects as of today.

4 MR. GARR: So any projects that are in the  
5 process, we're good.

6 MR. HARVEY: You're good.

7 CHAIRPERSON BRYANT: Yeah.

8 MR. GARR: Okay.

9 MS. MOORE: Also we should just be clear. It's  
10 not just the 5005. It's everything the district turns in  
11 has to be confirmed by the Office of Public School  
12 Construction and so it's not just one form. It's the entire  
13 process.

14 MR. ASBELL: That's through the life of the  
15 project from funding application to the audit.

16 ASSEMBLY MEMBER BUCHANAN: And so could you tell  
17 me what the --

18 ASSEMBLY MEMBER BROWNLEY: For the next two years.

19 MR. HARVEY: For the next two years.

20 ASSEMBLY MEMBER BUCHANAN: For the next two years.

21 But that's for new projects going forward or --

22 MS. KAPLAN: Not currently in-house.

23 MS. MOORE: I just heard a different wrinkle that  
24 I want to clarify. I heard you say that the loss of  
25 self-certification, like, for instance, if we voted for the

1 two years. I heard you say that it would be for the life of  
2 the project.

3 In my mind the loss of self-certification is the  
4 two year period. Whatever happens after that two year  
5 period, they're back in to certifying.

6 MR. ASBELL: I misspoke.

7 MS. MOORE: Okay. Thank you.

8 MR. ASBELL: Excuse me.

9 ASSEMBLY MEMBER BUCHANAN: So are we clear that  
10 it's for new projects going forward for two years and then  
11 if -- even on one of those new projects, I guess if you're  
12 three years out, then at that point in time, you can finish  
13 the project self-certifying. Is that --

14 MS. MOORE: I think there's a further clarity,  
15 so -- because I think it's important. It's not new  
16 projects. It's anything the district does from -- in the  
17 next two years is not self-certified. So it could be a  
18 project that partially already went through filing certain  
19 things and now when they file the next item --

20 ASSEMBLY MEMBER BUCHANAN: That's what I'm trying  
21 to clarify because it was said that this would not affect  
22 any projects that are in process right now. So --

23 MS. MOORE: I'm saying I -- what is it?

24 ASSEMBLY MEMBER BUCHANAN: -- that's what I'm  
25 trying to clarify.

1 MR. ASBELL: It states in statute, it's  
2 perspective for any subsequent after the material inaccuracy  
3 finding.

4 MS. KAPLAN: Yeah. 17070.52(b)(2) says for any  
5 subsequent applications for funding, so new ones not  
6 currently existing or anything in-house.

7 MR. HARVEY: And it's for -- it doesn't -- it's  
8 for -- it says funding.

9 MS. MOORE: I stand corrected.

10 MR. GARR: Well, I got to clarify for myself then.  
11 So anything that currently is in process, I can self-certify  
12 for, but simultaneously I can't self-certify for anything  
13 new that I start.

14 ASSEMBLY MEMBER BUCHANAN: And any new --

15 ASSEMBLY MEMBER BROWNLEY: For two years.

16 ASSEMBLY MEMBER BUCHANAN: -- applications for  
17 funding, you can't certify for two years.

18 MR. GARR: All right.

19 ASSEMBLY MEMBER JEFFERIES: I strongly recommend  
20 you not --

21 ASSEMBLY MEMBER BROWNLEY: And you have to pay the  
22 penalty.

23 MR. GARR: Right.

24 ASSEMBLY MEMBER BROWNLEY: Right.

25 MR. GARR: I understand that part.

1 ASSEMBLY MEMBER BUCHANAN: So would it -- can I  
2 withdraw my motion then since you have a substitute motion?

3 CHAIRPERSON BRYANT: Yes, you can. That'd be  
4 great. Thank you.

5 ASSEMBLY MEMBER BROWNLEY: Well, you need a second  
6 for that.

7 MR. DAVIS: So to clear the motion, it's 1B with  
8 the self-cert --

9 CHAIRPERSON BRYANT: Two years.

10 MR. DAVIS: -- loss for two years.

11 CHAIRPERSON BRYANT: I seconded his motion. I  
12 didn't -- anyway, so call the roll on the substitute motion.

13 MS. GENERA: Assembly Member Jefferies.

14 ASSEMBLY MEMBER JEFFERIES: Aye.

15 MS. GENERA: Assembly Member Brownley.

16 ASSEMBLY MEMBER BROWNLEY: Aye.

17 MS. GENERA: Assembly Member Buchanan.

18 ASSEMBLY MEMBER BUCHANAN: Aye.

19 MS. GENERA: Scott Harvey.

20 MR. HARVEY: Aye.

21 MS. GENERA: Kathleen Moore.

22 MS. MOORE: Aye.

23 MS. GENERA: Lyn Greene.

24 MS. GREENE: Aye.

25 MS. GENERA: Cynthia Bryant.

1 CHAIRPERSON BRYANT: Aye.

2 MS. GENERA: Carries.

3 CHAIRPERSON BRYANT: Thank you.

4 ASSEMBLY MEMBER JEFFERIES: We have to go.

5 MR. GARR: I have never been involved with a  
6 project that was not self-certified. Is there some  
7 procedure that --

8 CHAIRPERSON BRYANT: What -- Ms. Silverman or  
9 Mr. Mireles will call you tomorrow and --

10 MR. GARR: Thanks.

11 CHAIRPERSON BRYANT: You'll probably get special  
12 handling.

13 MR. GARR: Thank you.

14 MR. HARVEY: We are losing a quorum. Do we have  
15 any votes outstanding? The rest are reports.

16 CHAIRPERSON BRYANT: Let's -- everything else is  
17 reports.

18 MR. HARVEY: So you're --

19 CHAIRPERSON BRYANT: Thank you, Mr. Jefferies.  
20 Sorry it was not --

21 MR. HARVEY: Thank you, Mr. Jefferies.

22 CHAIRPERSON BRYANT: Okay. So Tab 18, as I did  
23 mention earlier, is withdrawn. Tab 19 is **HPI**, just real  
24 quick. We will be bringing this back in November. We do  
25 need to tweak our HPI regulations that we did in May because

1 we realize we made an error on having all the Cal Green  
2 things in that regulation. We also should be able to  
3 announce an MOU with CHPS. That'll come up.

4 Do we need to take up -- do we want to go ahead  
5 and talk about Tab 20 or do we want to put that over?

6 ASSEMBLY MEMBER BUCHANAN: Can we put it over?

7 CHAIRPERSON BRYANT: Let's put it over. Everybody  
8 read this Tab 20 and we'll bring it back --

9 MR. HARVEY: Just bring the regulations after five  
10 years. We don't need a report. Just bring the regulations.

11 CHAIRPERSON BRYANT: Or bring the regulations.  
12 We'll do a dual track.

13 MS. SILVERMAN: We'll provide a report and the  
14 regulations.

15 MR. HARVEY: Yes.

16 CHAIRPERSON BRYANT: Okay. All right.

17 MS. MOORE: Wait, wait, wait. What did we just  
18 decide? That we're going to bring the report and  
19 regulations back next meeting? I'm uncomfortable with that.  
20 I like the report first and then the regulations.

21 CHAIRPERSON BRYANT: We'll have a discussion and  
22 then we'll bring regulations in December.

23 MS. MOORE: Thank you.

24 MR. HARVEY: The report codifies and talks about  
25 what the regulations include. Is there a reason not to do

1 them together?

2 MS. MOORE: There are concerns about the report  
3 and I think given this additional time, I hope that staff  
4 can work on those concerns.

5 CHAIRPERSON BRYANT: We could have a scenario --  
6 would you be -- if we brought back -- we could bring back  
7 what a regulation might look like, expand the report a  
8 little bit without having -- with a guaranteed no adoption.  
9 So maybe that might even help form the discussion a little  
10 bit if we saw what our regs might look like.

11 MS. MOORE: I would be okay with that as of --  
12 you're kind of -- in forming a first read type piece.

13 CHAIRPERSON BRYANT: First reading.

14 MS. MOORE: But I would encourage staff to work on  
15 some of the concerns raised on the financial hardship report  
16 and --

17 MS. SILVERMAN: Can you work with us to -- I mean  
18 we're kind of unclear about what those concerns are. We'd  
19 be willing to work with you on that item.

20 MS. MOORE: Sure.

21 CHAIRPERSON BRYANT: Ms. Kaplan, have you heard  
22 anything from Senator Huff?

23 MS. KAPLAN: I gave him about two minutes ago, I  
24 said five minutes, and I have not, so --

25 CHAIRPERSON BRYANT: Okay. Are there any other

1 items to come -- did you want -- public comment on items not  
2 on the agenda?

3 MR. DUFFY: Just one clarification on the  
4 financial. Thank you, Madam Chair. Not wanting to prolong  
5 this meeting, but I just wanted clarification on the -- what  
6 you're going to do with financial hardship. What is it that  
7 you will do with financial hardship at the next meeting? I  
8 was unclear of the conversation.

9 CHAIRPERSON BRYANT: We'll at least bring the  
10 report back and staff's going to work on expanding the  
11 report. Maybe they'll include some draft concept and staff  
12 is going to per Ms. Moore's request work with stakeholders  
13 who are interested. So anyone who wants to work on that  
14 should talk to -- I don't know who's in charge of that.  
15 Mr. Mireles, is that you? Yeah.

16 MR. HARVEY: And if there is a regulation, it is  
17 like a first reading. It will not be for action. It will  
18 be to set the frame work for discussion.

19 MR. DUFFY: Okay. Because I was going to make a  
20 number of comments today and I will make those comments to  
21 Mr. Mireles, Ms. Silverman.

22 CHAIRPERSON BRYANT: And we'll have a full  
23 discussion in November.

24 MR. DUFFY: Okay. Thank you very much.

25 CHAIRPERSON BRYANT: Closed session will not be

1 happening today. So that's canceled. I forgot to announce  
2 that at the beginning. So there's no other business. Any  
3 public comment on an item not on the agenda? All right.  
4 Then we're adjourned.

5 (Whereupon, at 4:48 p.m. the proceedings were recessed.)

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