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CALIFORNIA STATE ALLOCATION BOARD  
PUBLIC MEETING

STATE CAPITOL, ROOM 4202  
SACRAMENTO, CALIFORNIA 95814

DATE: WEDNESDAY, November 3, 2010  
TIME: 2:07 P.M.

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APPEARANCES

MEMBERS OF THE BOARD PRESENT:

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

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

SENATOR ALAN LOWENTHAL

ASSEMBLY MEMBER JULIA BROWNLEY

ASSEMBLY MEMBER JOAN BUCHANAN

ASSEMBLY MEMBER MARTIN GARRICK

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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2  
3 CHAIRPERSON BRYANT: Call the State Allocation  
4 Board to order. We do not have a quorum quite yet, so we'll  
5 hold on the roll call. What I want to go ahead and do --  
6 welcome Assemblyman Garrick.

7 ASSEMBLY MEMBER GARRICK: Good to be here.

8 CHAIRPERSON BRYANT: We're honored to have the  
9 Assembly Republican Leader sitting in today for us. What I  
10 want to go ahead and do is before we even go -- get started,  
11 I want to start with Tab 20 which is page 206 because we  
12 have a slide show presentation that's going to be  
13 disruptive. So we're going to go ahead and get that  
14 started. So is that acceptable to everybody? Who's  
15 presenting on Tab 20? Dave?

16 We'll call the roll. After we do this item, we'll  
17 go ahead and establish a quorum.

18 MR. ZIAN: Okay. Madam Chair, members of the  
19 Board. It's kind of weird having you behind me. Tab 20,  
20 page 206, deals with the **Emergency Response to Natural**  
21 **Disasters**. After in the wake of the Calexico earthquake  
22 several months ago, there were some lessons learned and  
23 since that time, the OPSC has worked with CaleMA and CDE and  
24 DSA to a certain extent also in trying to formulate a more  
25 cohesive, comprehensive, K-12 disaster plan.

1           This item -- the cover sheet essentially lays out  
2 the roles and responsibilities of the various agencies  
3 involved in this process. So the OPSC's roles and  
4 responsibilities are not that of first responder but more of  
5 a coordinator, potentially a second funding tier in the  
6 event that certain activities as a result of a disaster are  
7 ineligible through the various processes that CalEMA would  
8 assist them with, and they'll be talking about this in a  
9 second.

10           Division of State Architect also has a roll in  
11 this as a part of the safety assessment program. They had  
12 various architects and engineers that are actually able to  
13 go out in the field and determine the structural integrity  
14 of buildings, the safety of buildings in the event of a  
15 disaster.

16           As far as CalEMA, they are the first responder in  
17 they're responsible for the overall coordination of  
18 disasters at various school districts when there is a  
19 disaster through the County of Office of Education and they  
20 will speak to their roles in more detail shortly. And also  
21 the California Department of Education, the last player in  
22 this, is also responsible for various advisory training and  
23 enforcement roles and they will also speak to their thing.

24           We have members of CalEMA that would like to  
25 present a brief PowerPoint presentation of their roles and

1 responsibilities and to that end, it would be Mustafa on?  
2 Okay. So do you want to speak from here.

3 MR. ABOU-TALEB: Good afternoon. My name is  
4 Moustafa Abou-Taleb. I'm the head of the Preparedness  
5 Division at CalEMA. I'm going to give a quick overview of  
6 what CalEMA does and get into a little bit of the  
7 preparedness activities and then I'll have Becky get into  
8 more response and recovery activities.

9 California is prone to many disasters. I mean I  
10 don't need to go over that. We have everything -- you know,  
11 almost every year, we see something new, but our typical  
12 fires, floods, earthquakes. CalEMA is the lead State agency  
13 in promoting disaster preparedness and awareness, supporting  
14 local responders -- we're not really the first responders.  
15 We're right there behind them to support them when they have  
16 a need.

17 We have a system that's the a bottom up called the  
18 Standardized Emergency Management System that allows us to  
19 gauge right away if there's need and it comes from the local  
20 to the region to the State and even to the Feds. So we play  
21 that role of orchestrating all that and supporting local  
22 governments as they need to respond to emergencies and  
23 disasters.

24 So the message is very clear: Be prepared at all  
25 levels -- government, private, citizens. Schools is a very

1 critical part of our infrastructure. Millions of school  
2 students, teachers, administration. They're really big in  
3 how we should support California and do a better job when  
4 things hit.

5           So CalEMA is the lead overarching. We go through  
6 the preparedness and then we go through response and  
7 activation, recovery. After the event, we're the liaison  
8 with the Federal Government, whether it's FEMA or Department  
9 of Military. We work as the grantee to bring the money and  
10 forward it to local government and those who are eligible  
11 and then we get into hazard mitigation and these are  
12 elements that Becky's going to talk about.

13           So we work with all levels of government,  
14 especially State agencies, including the Department of  
15 Education, Office of School Construction, to promote  
16 guidance. We have a lot of guides on our Webpage. I'll go  
17 through some of them in a little bit. We have drills. We  
18 have exercises. So we're getting out the message. The more  
19 we prepare now, the better off we're going to be when things  
20 happen.

21           The main efforts that are going on with the school  
22 disaster preparedness is our School Emergency Planning  
23 Program to all have this program. It really promotes all  
24 phases of emergency management and it's done by guidance.  
25 It's done by presentations and meetings and that's where we

1 partner with the Department of Education, Office of School  
2 Construction and we go out and promote all these efforts.

3           Safe Schools Website: This is a secure Website  
4 that's under development. This is going to be -- it's going  
5 to enable every school that's part of the system that logs  
6 onto the system to track and put their plans there and allow  
7 the local first responders, when an incident happens, to  
8 look at the plans right away. Some of it could be the  
9 actual construction of the school, where the entrance is,  
10 where the exit is, what the plan is for evacuation. So it  
11 really allows for a much faster and practical way for the  
12 first responders and the school to work together in the heat  
13 of the moment when an incident happens.

14           This is still under development. We're testing  
15 it. We're working with some school districts on it, but I  
16 think it's going to be the way we do things in the future.  
17 It's also going to have a lot of guidance for how to prepare  
18 plans. You don't have to reinvent the wheel. If there's a  
19 school or a college that did a job, you could look at it as  
20 a model and duplicate it.

21           So we're going to be working on this. We might  
22 have future presentations for you on this Webpage, but it is  
23 a secure Webpage and we're working with the first responders  
24 and other State agencies to implement this. So that's  
25 coming next.

1           We also developed the State Emergency Plan which  
2 is our overarching blueprint of how we do business,  
3 emergency management in California. The last revision was  
4 2009. We created what we call emergency functions. It's a  
5 way of grouping State agencies and State capabilities into  
6 functions and we have Emergency Function No. 3, Construction  
7 and Engineering, under DGS. They're the lead for it.  
8 They'll have a group specially for school construction and  
9 safety and everything that goes with it under emergency  
10 management. So that's something else that we're working on.

11           Most of you probably heard about the Great  
12 California Shakeup. It's the biggest earthquake  
13 preparedness drill and I would think any type of  
14 preparedness drill in the whole nation. This year it was on  
15 October 21st at 10:21 in the morning and 5.3 million  
16 schools, teachers, students, administration participated in  
17 this year's drill from California -- 5.3 million. So that  
18 was a huge other way to get this -- you know, this whole  
19 effort of emergency and preparedness and although it's  
20 about, you know, drop, cover, and hold on for earthquake,  
21 but it really promotes all types of preparedness. How do  
22 you have a preparedness plan, evacuation, what's your  
23 preparedness kit, how do you have one at home, how do you  
24 communicate with your children. So this is another way of  
25 getting just the whole State around a big event and

1 hopefully it carries on throughout the whole year.

2           So we're hoping to increase -- the total number  
3 was 7.8 million people registered this year for Shakeup and  
4 every year we're trying to move it 10 percent more.

5           The following things are specific guidance. It's  
6 on our Webpage. You could look at these guidance. The  
7 nonstructural earthquake hazards in California school, we  
8 talk to you about how to retrofit nonstructural like, you  
9 know, lights and equipment and furniture. Using SEMS, our  
10 Standardized Emergency Management System, at districts and  
11 sites, that's another guidance document.

12           ABCs for Post Evacuation, that's another document,  
13 and then we link to our Webpage and to a lot of other  
14 Federal and private sources for information. So we really  
15 have a lot of work and we're going to be working with the  
16 Department of Education, Office of School Construction  
17 consolidating a lot of these things in one simple, easy  
18 guide that would take the schools -- they don't have to go  
19 through a lot of things, give them all these different  
20 materials.

21           Preparedness Tips: Work closely with County  
22 Office of Emergency Services, first responders. I mean a  
23 school is part of a community. You have to work with them.  
24 They're all going to need each other in an event, so they  
25 have to work together not in a vacuum, enhance your

1 continuity planning. We've seen emergencies that are not  
2 our typical. They don't damage the building, but H1N1 could  
3 possibly take away half of your teachers or half of your  
4 students. Do you have a plan for these things. Talk to  
5 other schools on what works. Again you don't have to  
6 reinvent the wheel. If it works somewhere, you can take  
7 that model and work with it. Make room for volunteers.  
8 California is massive when it comes to volunteers. They're  
9 going to make a big difference in what we do when a big  
10 emergency happens.

11 I'm sure parents are a type of volunteers that  
12 want to help and support a school. So I'm talking about  
13 long-term. If your school is out and classes are going to  
14 have to be relocated, think of volunteers. They want to  
15 help. They just want to know where they fit in this whole  
16 system and train and exercise regularly obviously.

17 I'm going to introduce Becky Wagoner. She's the  
18 head of recovery. She'll talk a little bit what happens in  
19 the response and recovery and how you get your funding and  
20 how you maximize that.

21 MS. WAGONER: Thank you. So as Mous said, we've  
22 kind of got the phases of a disaster. We have preparedness  
23 to prepare and plan for the response. We have the response  
24 phase when something happens. Then once something happens,  
25 you go into recovery. Then next you mitigate to try to

1 prevent damage in the next event and then cycle starts all  
2 over again.

3           So he's talked about plan and preparedness. Just  
4 keep in mind under the State Emergency Management System all  
5 disasters are local. So all requests for State and/or  
6 Federal assistance come up through the local agency. And so  
7 a school district would request assistance through the  
8 operational area which is the county area, so it's all  
9 jurisdictions within the geographic boundary of that county  
10 would request assistance initially through operational area.  
11 And then the request go up through our California regional  
12 office. We have three regional offices in CalEMA.

13           And then goes up -- the damage assessment, which  
14 I'll talk about more. You know, we need to get an idea of  
15 the magnitude of the event before -- you know, as soon as we  
16 get a request for State and Federal assistance, we have to  
17 get numbers. We have to prove to FEMA that it's beyond the  
18 State and local governments' capability to recover and that  
19 takes collecting the damage data. So we always need help  
20 from including school districts, any jurisdiction involved  
21 in collecting that data.

22           Now, we have -- based on that, the preliminary  
23 damage assessments that we do, we would make either -- there  
24 are several ways to get State and Federal assistance. Under  
25 the California Disaster Assistance Act, the agency secretary

1 can concur with a local proclamation of an emergency and  
2 that would bring in just permanent repairs to infrastructure  
3 but not like emergency response costs for reimbursement.

4           The Government can proclaim and that would bring  
5 in both emergency response costs and permanent repairs and  
6 then if we prove to FEMA that it's beyond our capabilities  
7 and if the Governor would make a request to the President  
8 based on a joint preliminary damage estimate of FEMA and  
9 then they would -- the President at the recommendation of  
10 FEMA would make a determination for a major disaster  
11 declaration.

12           So the local proclamation is really the first  
13 step. A city and/or county under the Emergency Services Act  
14 would have to proclaim within ten days of the event that  
15 they have an emergency of extreme peril and that it's beyond  
16 their capabilities to respond and recover from.

17           The initial damage estimate is really where the  
18 school districts can really help out. The lessons learned  
19 from Imperial -- the Op area is the county. It's usually  
20 the County Office of Emergency Services. And they're  
21 getting pressured. They requested State assistance.  
22 They're getting pressured to collect initial damage  
23 estimates so we can get some idea of the magnitude of the  
24 event. You know, not every little detail, but is it -- you  
25 know, is it a hundred thousand, is it a million, is it a

1 hundred million, or what are we talking about here.

2           And so that's where the school districts can plug  
3 in and get their damage data, just an estimate at this  
4 point, to the Op area so that they could start building that  
5 IDE.

6           One of the -- I'll go into some other lessons  
7 learned from that. So then that is the basis for the  
8 request for State and/or Federal assistance and I've talked  
9 again, if looks like we could be getting close to getting a  
10 Fed dec, we would ask FEMA to do a preliminary damage  
11 assessment and we'd go out again and have the locals show us  
12 the damage.

13           And then as you can see -- or maybe you can't,  
14 but -- for California to get a major disaster declaration,  
15 it takes almost \$44 million in damage. So it's based on a  
16 per capita for the State and since we're a large state, you  
17 now, it takes a bit to get a major disaster declaration.

18           So the types of assistance, I talked again under  
19 the California Disaster Assistance Act, we can provide State  
20 funding, the secretary's concurrent, the Governor's proc.  
21 State agencies aren't eligible under this program, only  
22 local governments and there's no permanent repairs for  
23 private non-profits. When we get a Federal disaster  
24 declaration that kicks in the Federal Public Assistance  
25 Program, private non-profits are eligible, those that

1 provide essential governmental service, state agencies, and  
2 public assistance and hazard mitigation then will be  
3 available under the Federal program.

4           You have schools -- some charter schools that are  
5 private non-profits. One of the things that we've linked to  
6 in our Webpage but they're eligible for assistance, so  
7 schools, even schools that are under religious, if the  
8 school part of that religious facility is open to the  
9 general public, they're eligible for reimbursement too as a  
10 private non-profit.

11           So FEMA public assistance funding is -- there's a  
12 cost share. FEMA pays 75 percent. We pay 75 percent of the  
13 non-Federal share which is 18.75 percent and then the local  
14 is responsible for 6.25 percent.

15           So these are just some recovery tips that -- I  
16 think this stemmed out of the Imperial earthquake and I was  
17 down there for seven weeks working closely with Imperial  
18 County. And one of the -- some of the recommendations is  
19 that the school districts need to work closely with the  
20 County Office of Emergency Services which is the operational  
21 area during a disaster. That's part of SEMS. Like I talked  
22 about the bottom-up approach. Establish a code to track all  
23 your disaster-related activities and costs separate. Keep  
24 it separate from your regular stuff, the disaster work.

25           Document damage with photographs and create a time

1 of events. Some of the issues we had down there, they had  
2 no description of the damage. They brought a contractor in  
3 and said fix it. And we never saw how much of that was  
4 pre-disaster or what was disaster-related damage. So you  
5 have to be able to describe the disaster-related damage.

6           And then this came up I think because -- there's a  
7 program I know that you'll bring in trailers for classrooms.  
8 Temporary relocation or portable classrooms are eligible for  
9 reimbursement while permanent repairs are underway. And  
10 just so you know, we were able for some of the school  
11 districts including Calexico to get FEMA to pay for some of  
12 these early repairs, even though we couldn't document  
13 everything because we were able to prove if they had brought  
14 in temporary classrooms, it would have cost FEMA a whole lot  
15 more. So that's we were able to argue that they should be  
16 paying for all the repairs, even though we couldn't document  
17 on the description, the damage.

18           But just so you know that this is an option. So  
19 if you have a lot of damage and you're going to have a major  
20 reconstruction project, FEMA will pay for temporary  
21 relocation or classrooms for a limited time during the  
22 repairs.

23           So these are some of the other tips for  
24 procurement. These are some of the issues we saw, some  
25 emergency procurement. Now, you have to show reasonable

1 costs. You have to show you went out to competitive bid or  
2 you did a pre-disaster bidding process where you kind of had  
3 some pre-approved contractors and have adopted in advance  
4 some kind of memorandum of understanding or a resolution of  
5 a recent SOP or procedure that allows you to go out and do  
6 some noncompetitive bidding just during an emergency when  
7 you have -- you can't delay, like you can't delay getting  
8 your schools open again.

9           But have a process in place for disasters that you  
10 follow regularly on emergency basis. Avoid time and  
11 materials contracts or include not to exceed dollar amounts.  
12 Those are requirements for FEMA and that -- those are really  
13 only eligible for the work done like on smaller projects,  
14 \$100,000 or less, done normally within like the first 72  
15 hours after an event.

16           And FEMA will not reimburse costs plus percentage  
17 of contracts. So just kind of some of the things you need  
18 to know -- schools need to know.

19           I did put together a little tips for schools.  
20 There's more than this -- than what I've covered, so it's  
21 now on our Website, [CalEMA.ca.gov](http://CalEMA.ca.gov), for schools to look for.  
22 We've tied in with a preparedness school link, so there's  
23 information there specific for K through 12 schools.

24           So once we -- the other -- the next cycle is now  
25 that we've recovered, now the next step is to try to prevent

1 damage the next time around. So every time we get a Federal  
2 disaster declaration, normally we would give hazard  
3 mitigation grant program with it and because we have an  
4 enhanced plan, we get 20 percent rather than just 15 percent  
5 of the total dollars amount spent under the Stafford Act by  
6 the Feds for that event and that includes individual  
7 assistance and public assistance.

8           So that money is set aside for hazard mitigation  
9 grants. And it's a competitive process. It's a set dollar  
10 amount of money and there's a grading system based on the  
11 priorities of our State hazard mitigation plan. And  
12 applicants must have a FEMA-approved local hazard mitigation  
13 plan. So a school district would either have to have their  
14 own local hazard mitigation plan or be part of either -- you  
15 know, a larger plan like the county's plan where they help  
16 prepare it.

17           There's pre-disaster mitigation, so that -- the  
18 hazard mitigation plan program is by disaster. Annually  
19 there's a pre-disaster mitigation program. It's not a lot  
20 of money. It's -- the cap is 15 million per state per year  
21 and we don't always get that. We've been pretty successful  
22 in the past because we just turn in a lot of projects. But  
23 it's nationwide competition.

24           State and local agencies and special districts are  
25 eligible. It's all types of hazards. And the maximum is

1 3 million per project. One this good about this program, if  
2 you don't already have a local hazard mitigation plan, which  
3 is a prerequisite to get hazard mitigation grant money, you  
4 can apply for money to do a plan through this grant program.  
5 So -- and that's something to think about. .

6 And then this just gives you some of our sites, if  
7 you'd like additional information and also to access the  
8 information that Mous talked about and then for the tips for  
9 the school districts.

10 MR. ZIAN: So we have a representative here from  
11 CDE, Fred Yeager, the Assistant Director for California  
12 Department of Education and he can speak a little bit about  
13 the roles and responsibilities. Come right up.

14 CHAIRPERSON BRYANT: While we're lowering the  
15 screen, why don't we go ahead and have the secretary call  
16 roll and establish a quorum.

17 MS. GENERA: Senator Lowenthal.

18 Senator Hancock.

19 Senator Huff.

20 Assembly Member Garrick.

21 ASSEMBLY MEMBER GARRICK: Present.

22 MS. GENERA: Assembly Member Brownley.

23 ASSEMBLY MEMBER BROWNLEY: Present.

24 MS. GENERA: Assembly Member Buchanan.

25 ASSEMBLY MEMBER BUCHANAN: Here.

1 MS. GENERA: Scott Harvey.

2 MR. HARVEY: Present.

3 MS. GENERA: Kathleen Moore.

4 MS. MOORE: Here.

5 MS. GENERA: Lyn Greene.

6 MS. GREENE: Here.

7 MS. GENERA: Cynthia Bryant.

8 CHAIRPERSON BRYANT: Here.

9 MS. GENERA: We have a quorum.

10 CHAIRPERSON BRYANT: Thank you. Go ahead.

11 MR. YEAGER: Okay. Thank you. Fred Yeager,  
12 California Department of Education, School Facility Planning  
13 Division. The Department's involvement in safety planning  
14 is detailed in our Attachment B on page 212 of your agenda.  
15 In short, the Department's approach is on the prevention of  
16 student and staff injury during an event, such as the  
17 requirement for fire drills and earthquake drills.

18 The Education Code also provides the Department  
19 three responsibilities. One is in an advisory role.  
20 Through our coordinated school health and safety unit, we  
21 provide technical assistance to districts in preparing  
22 safety plans. And this is updated annually in collaboration  
23 with CaleMA pursuant to AB103 of 2006.

24 The Education Code also provides a training role  
25 for CDE where technical assistance and training is provided

1 in safe school planning and crisis response. Finally, there  
2 is an enforcement role contained in the Education Code where  
3 districts are to report on the status of their safety plan  
4 in their school accountability report card. And if that is  
5 not reported, the superintendent may assess a fine not to  
6 exceed \$2,000.

7 So that capsulizes the Department's participation  
8 and interaction and we are working with CaleMA no creating a  
9 more interactions and seamlessness in the approach. Any  
10 questions?

11 CHAIRPERSON BRYANT: Okay. Are there any  
12 questions or comments from the Board?

13 I do want to just ask CaleMA, but they left,  
14 but -- just what happens to the money -- what did you call  
15 it? The post hazard mitigation money. Do schools get to  
16 use any of that in the case of Imperial County?

17 MS. WAGONER: (Indiscernible-away from microphone)

18 CHAIRPERSON BRYANT: I think you have to come back  
19 up. We have -- we're on Webcast by law and we are also  
20 transcribed by law.

21 MS. WAGONER: Hazard mitigation grand program,  
22 about 12 months after the event and that's when they lock in  
23 that dollar amount I talked about, the 20 percent of all the  
24 total dollars -- Stafford Act money spent on it, then  
25 there's an application process.

1           CHAIRPERSON BRYANT: And it's all for -- so for  
2 this event, the Imperial County event, it would only be for  
3 that disaster area --

4           MS. WAGONER: No.

5           CHAIRPERSON BRYANT: -- or could it be for that  
6 type of hazard anywhere in the State?

7           MS. WAGONER: It's on State priority, but we -- we  
8 are awarded some FEMA for -- all counties in the State are  
9 eligible to apply for the hazard mitigation grant program  
10 and it's multi-hazard.

11          CHAIRPERSON BRYANT: Okay. Thank you. Any other  
12 questions? Okay. Let's go back, Dave.

13          MR. ZIAN: So let me wrap this item up real  
14 quickly.

15          CHAIRPERSON BRYANT: Okay. Sorry.

16          MR. ZIAN: So to that end, although OPSC is not a  
17 first responder, we do have procedures outlined at the  
18 bottom of page 207 and 208 and I know we spent a lot of time  
19 on this, so for the sake of brevity, I'll just say we have a  
20 communication, coordination, training, research, action  
21 plan, and requests of the Board various activities we can do  
22 that are prescribed in this item.

23                 Next steps for this will be posting to our Website  
24 shortly here FAQs -- disaster-related FAQs, working with --  
25 continuing to work with various agencies that we've talked

1 about earlier to develop a more comprehensive K-12 disaster  
2 plan guidance for school districts to guide them through the  
3 process, how to get a template, who to work with, contacts,  
4 and all that.

5 And at this point, I just ask for the Board's  
6 acknowledgement of this report and to approve the OPSC's  
7 procedures and guidelines in association with this item.

8 CHAIRPERSON BRYANT: Okay. I don't -- I think  
9 this is a nonaction item, so -- I don't think we can approve  
10 anything.

11 Do we want to go ahead and do Tab 19, page 204,  
12 just quickly **update on Imperial County**.

13 MR. ZIAN: Yes. Okay. Madam Chair, Tab 19,  
14 page 204. This is the latest in a series of reports. This  
15 is the third report in relation to the earthquake that  
16 occurred down in Baja California, Mexico on April 4.

17 I'm pleased to report that to date \$10.75 million  
18 have been released to two different school districts, the  
19 Calexico Unified School District and the San Pasquale Valley  
20 Elementary School District through accelerated  
21 apportionments, various projects to assist them in meeting  
22 their ancillary needs in relation to the earthquake  
23 disaster.

24 And in addition, CaleMA representatives working  
25 through the County Office of Education have also been able

1 to provide \$3.3 million in Federal funding for a total of  
2 \$14.05 million that have flowed to the various districts at  
3 this point.

4           Again the next item we just talked about, there  
5 will be ongoing discussions about actually dovetailing and  
6 creating a more comprehensive plan on how to deal with these  
7 earthquakes in the future. So are there any questions?

8           CHAIRPERSON BRYANT: Any questions? Okay. Great.  
9 Let's return to Tab 2, page 1, **Minutes**. Anyone have any  
10 corrections or comments to the Minutes. Is there any public  
11 comment on them? What about a motion?

12           MR. HARVEY: I would move approval.

13           ASSEMBLY MEMBER BROWNLEY: So move -- second.

14           CHAIRPERSON BRYANT: We have a motion and a  
15 second. Is there -- can you call the roll. We need one  
16 roll call.

17           MS. GENERA: Assembly Member Garrick.

18           ASSEMBLY MEMBER GARRICK: Abstaining.

19           MS. GENERA: Assembly Member Brownley.

20           ASSEMBLY MEMBER BROWNLEY: Aye.

21           MS. GENERA: Assembly Member Buchanan.

22           ASSEMBLY MEMBER BUCHANAN: Aye.

23           MS. GENERA: Scott Harvey.

24           MR. HARVEY: Aye.

25           MS. GENERA: Kathleen Moore.

1 MS. MOORE: Aye.

2 MS. GENERA: Lyn Greene.

3 MS. GREENE: Aye.

4 MS. GENERA: Cynthia Bryant.

5 CHAIRPERSON BRYANT: Aye.

6 MS. GENERA: It carries.

7 CHAIRPERSON BRYANT: Okay. We'll leave it open  
8 for Senator Lowenthal who will be coming at some point.  
9 Okay. Moving onto Tab 3, page 17, which is the **Executive**  
10 **Officer's Report.**

11 MS. SILVERMAN: Good afternoon. Definitely would  
12 like to share some good news today. Really exciting for  
13 this program. We actually -- with our priorities in funding  
14 and the funding round, we're excited to share that  
15 408 million was expended as a result of that priority round.  
16 So a good hoorah for all the efforts and the money going out  
17 within the 90-day time frame. So I mean it's a great  
18 testament about moving forward and how we can expedite and  
19 accelerate funding to build schools.

20 The next item I'd like to share with you is  
21 obviously there's a bond sale update on the Treasurer's  
22 Website. We're made aware that there's potentially two bond  
23 offerings on November 15th and November 22nd, the amount to  
24 be determined for this program. It's still unknown at this  
25 point in time. So we're obviously hopeful that there could

1 be additional dollars to be float into this program and  
2 obviously hopefully accelerating additional cash to the  
3 priorities in funding potentially.

4 We also wanted to share that --

5 CHAIRPERSON BRYANT: Assemblyman Garrick has  
6 a question.

7 MS. SILVERMAN: Oh, sure.

8 ASSEMBLY MEMBER GARRICK: Just a real quick  
9 question. Do you have an estimate of what the amount may  
10 be?

11 MS. SILVERMAN: No, I --

12 ASSEMBLY MEMBER GARRICK: A range?

13 MS. SILVERMAN: -- not sure. I've heard --

14 CHAIRPERSON BRYANT: Somewhere between zero and  
15 \$2.4 billion.

16 ASSEMBLY MEMBER GARRICK: That's a broad range.

17 MS. SILVERMAN: Yeah. We'll be working closely --

18 ASSEMBLY MEMBER GARRICK: Government accounting at  
19 its best. Okay. Next. Please. Go ahead. Don't let me  
20 hold you up with the details.

21 MS. SILVERMAN: Okay. So we also wanted to  
22 highlight -- I know we've been working on this item and  
23 obviously we've made great progress in this area in relation  
24 to the high performance regulations. We are going to be  
25 presenting later on in the agenda the memorandum of

1 understanding for the CHPS and DSA to actually get an  
2 understanding of the roles and responsibilities with the  
3 CHPS verification and the high performance incentive grant.  
4 So that's great news for school districts and the Division  
5 of State Architect moving forward.

6           The other issue we wanted to share with you  
7 obviously, it's a nice enhancement that we put -- we're  
8 going to be putting on our Website is obviously a matrix.  
9 For purposes of transparency, we'll be providing districts a  
10 tool that you guys could utilize in tracking your projects  
11 and it gives you real time information about where you are  
12 in the stream of processing and obviously it's a good  
13 management tool for accountability as whether or not we're  
14 adhering to a timeline. So it's a great tool for internal  
15 management and a great tool for school districts to track  
16 their projects.

17           And the other issue we want to share is the  
18 Department of General Services work force reduction and the  
19 impact to the Office of Public School Construction. Over  
20 the weekend, there was a thousand notification letters sent  
21 to a thousand employees of Department of General Services  
22 and the impact of that is as a result of the sale of the  
23 potential 11 properties, as a result of the '10-'11 budget,  
24 in reality it's a potential reduction of 500 positions and  
25 several of staff obviously did receive some of the

1 notification.

2 I along with DGS management will be assisting  
3 staff through this process to help minimize the impact to  
4 the Office of Public School Construction and obviously it's  
5 a two-tier process. The first step is obviously the  
6 notification, obviously following the Department of  
7 Personnel Administration rules as far as the notification.  
8 They obviously sent a lot more notices out and obviously  
9 trying to assist those individuals that are impacted by this  
10 potential surplus that we can help those individuals locate  
11 jobs in other State departments or even within our  
12 department.

13 So again we're working closely to have minimum  
14 impact to our particular office.

15 And the next issue we wanted to share is we're  
16 going to kick off an external training program beginning in  
17 2011. Some of the external training program that we're  
18 going to highlight is the financial hardship program, how to  
19 apply for school facilities funding, submitting a complete  
20 application, again how to submit school funding for new  
21 construction eligibility in funding, plan verification team,  
22 and site acquisition.

23 And we're looking forward to having additional  
24 announcements. We're going to have an outreach event.  
25 We're also looking for input from the stakeholder community

1 to share with us potential training areas of programs they  
2 would like us to reach out to them for.

3 And attached also is a 90-day work plan. We have  
4 Attachment 17A, 17B, and 17C and attached to that is also  
5 17D with the potential items that are facility hardships  
6 that we'll be presenting at the Board within the next  
7 90 days.

8 With that, that concludes my report.

9 CHAIRPERSON BRYANT: Okay. I just want to say  
10 something quickly about the 90-day workload. We -- I take  
11 my obligations under Option 5 of designing the agenda very  
12 seriously, of what stays on and what stays off, and I -- and  
13 again I do need to talk to Senator Hancock about this in  
14 terms of rules and procedures of the Board, but we're  
15 finding this question of when something is eligible to  
16 have -- we have an appeal and when it's ready to come to the  
17 Board to question -- it's a question that has a lot of  
18 variables in it. And we are not being very consistent.

19 And part of that is -- there's lots of reasons for  
20 it. The Board's interest in the project -- we've been  
21 trying to provide as much notice to people who are going to  
22 come to an appeal of when that might be and then we put on a  
23 workload and then it's not ready either for a reason from  
24 the district's point of view or from OPSC's point of view  
25 and so it goes off and it creates confusion and there's also

1 a manipulation that goes on where sometimes someone waits to  
2 see what the staff recommendation is and it's confusing.

3           And I don't have a perfect answer for it other  
4 than we're going to now provide these -- the spreadsheets  
5 that are on our desk today of kind of who's coming up and I  
6 think as we work through what the Audit Subcommittee's work  
7 and the Rules and Procedures Subcommittee's work, it will  
8 work out over time. I can now call these February issues,  
9 things that I won't be able to fix, but I just -- I wanted  
10 to just state that on the record, that, you know, everyone's  
11 doing the best they can and I know we've created confusion  
12 amongst the districts.

13           We're trying to be consistent and sometimes it's  
14 the bane of our existence. So I just wanted to put that on  
15 the table.

16           I think you had a question too on the -- Lisa.

17           MS. GREENE: Is it possible we could have someone  
18 from Human Resources address the issue about how the Board  
19 could exempt OPSC from this DGS move?

20           MS. SILVERMAN: We have an individual from Human  
21 Resources that can discuss the process, but I'm not sure if  
22 she can clarify the exemption for OPSC specifically.

23           CHAIRPERSON BRYANT: Is it even -- I don't even  
24 know if it's -- is it possible?

25           MS. HAMILTON: Hi. I'm Terri Hamilton. I work

1 with the Department of General Services and I'm the HR Chief  
2 and we have a team of staff working on this process for the  
3 restriction of appointment and OPSC is a part of General  
4 Services and so all employees within the umbrella of General  
5 Services are impacted. And if there was a way to do that,  
6 we would absolutely try to help, but as the process is set  
7 up, they are a part of it and so the classifications are  
8 impacted.

9 CHAIRPERSON BRYANT: Do you want to follow up.  
10 Assemblywoman Brownley.

11 ASSEMBLY MEMBER BROWNLEY: Yeah. I just wanted to  
12 follow up on that. It -- I hear what you're saying, that  
13 OPSC is part of DGS.

14 MS. HAMILTON: Right.

15 ASSEMBLY MEMBER BROWNLEY: I get that. But the  
16 services that they provide come from bond funding. So it  
17 doesn't make sense to me that you would treat them in a  
18 similar fashion that you would treat others employed in DGS  
19 when they've sold off property and facilities and so forth.

20 So there seems to me a very clear line to separate  
21 the two. I understand what you're saying within the  
22 department, but the funding sources for which these folks  
23 are doing their jobs comes from a very specific place.

24 MS. HAMILTON: Right. And I'm aware of that and  
25 for -- because they're a part of the civil service process

1 and the civil service uses a service-wide classifications  
2 and the employees within OPSC are in these classifications  
3 like the SSA, the AGPA, and so they're part of the bigger  
4 picture and there's no way to exempt that. To make the  
5 process fair and based on seniority, they're included in  
6 that.

7 ASSEMBLY MEMBER BROWNLEY: I think that this is  
8 something that should be agendized for us to have some kind  
9 of discussion on as we move forward. I mean I think that  
10 there might be some disagreement about how this is  
11 approached and that's okay to have a disagreement. I'm just  
12 saying that I think maybe we should put it on the agenda for  
13 us to have further discussion or at least an agreement of  
14 direction from what -- at least what our opinion is that we  
15 can share with DGS.

16 MS. HAMILTON: The rules that we follow are DPA  
17 rules and the State Personnel Board rules and I'd be happy  
18 to provide you with that information if that would help  
19 clarify the process.

20 ASSEMBLY MEMBER BROWNLEY: So -- but -- and you're  
21 saying within the rules, even though they're two entirely  
22 different funding sources, you treat them all the same. It  
23 doesn't matter from which funding sources it comes from --

24 MS. HAMILTON: That's correct.

25 ASSEMBLY MEMBER BROWNLEY: -- even though we've

1 made a commitment to the people of California who passed a  
2 bond saying that we would do a particular job, you're saying  
3 well --

4 MS. HAMILTON: It's two separate issues on that.

5 CHAIRPERSON BRYANT: It gets -- can I just -- I  
6 mean it just gets into this -- there's just such a tangle  
7 between all of the statutory scheme that relates to this  
8 program not to mention that there are -- the civil service  
9 rules are in the Constitution of California and it gets --  
10 there's just -- there -- it's extremely complicated and  
11 difficult.

12 I'm happy to have further discussion on it down  
13 the line maybe in February, but in all seriousness, it is --  
14 it's part --

15 ASSEMBLY MEMBER BROWNLEY: I've been turned down  
16 in other ways too, so --

17 CHAIRPERSON BRYANT: But it is just part of that  
18 completely complicated -- the question we've had in front of  
19 us, this is probably at the least the fourth or fifth time  
20 that it's come up in various contexts, the distinction --  
21 how this program is funded and how -- you know, where  
22 the staff reports, where the program resides, and, you know,  
23 it gets into this, you know, tangled web that we --

24 ASSEMBLY MEMBER BROWNLEY: That I --

25 CHAIRPERSON BRYANT: -- we have been unable to

1 separate on it.

2 ASSEMBLY MEMBER BROWNLEY: And I understand that,  
3 but it seems to me that what I'm hearing is if there's a  
4 reduction in work force, there's going to be a reduction of  
5 service, you know, to the school districts and so forth. I  
6 understand the entanglement.

7 But do we have some control about the --

8 CHAIRPERSON BRYANT: No. I think that's one thing  
9 that isn't quite right. I think that if -- let's say  
10 hypothetically that one of these employees gets laid off  
11 because of this process. They would be replaced by somebody  
12 who has higher seniority. So the person -- the position  
13 doesn't go away. There would be a person in the position.  
14 It just wouldn't be the person necessarily -- they'd have  
15 to -- it'd be a different person performing the same duties,  
16 but we can get a -- we could have DPA or SPB come in and  
17 explain it and it does get into that complicated funding  
18 issue that we've come across in various context all year  
19 long.

20 ASSEMBLY MEMBER BROWNLEY: Yeah. I mean we just  
21 have so many projects that aren't closed out and so forth.  
22 We have this backlog. It just seems to me that this is  
23 going to be very disruptive to a process that we are trying  
24 very diligently to improve upon and we have all recognized  
25 that, you know, the response time is not what we would

1 prefer and this is just going to put, you know, another  
2 wrench into the whole thing.

3 MS. HAMILTON: The funding source is specific to  
4 the Office of Public School Construction and with the  
5 classification portion of it, that allows employees with the  
6 highest seniority to bump the other employees. So if that  
7 helps clarify anything for you.

8 ASSEMBLY MEMBER BROWNLEY: Well, it's a matter of  
9 who knows how to do the job.

10 MS. HAMILTON: Right.

11 MS. GREENE: Right.

12 ASSEMBLY MEMBER BROWNLEY: So --

13 MS. HAMILTON: It's very technical. I recognize  
14 that.

15 ASSEMBLY MEMBER BROWNLEY: Yeah.

16 CHAIRPERSON BRYANT: Exactly. Because the people  
17 that I'm aware of who received the notice, this program  
18 can't survive without them, and so that's just something  
19 we're facing. Every program can survive without a person,  
20 but you just have a huge loss if any of this happens, but --  
21 Mr. Harvey.

22 MR. HARVEY: I just want to make sure everyone  
23 understands that this is a very preliminary notice. It  
24 doesn't mean layoffs are coming to every single person who  
25 received one of these letters and I would have likened it

1 to -- we had a discussion off mic before our meeting started  
2 about what could we compare this to and it's kind of like  
3 what happens in March with the teacher layoff notices. A  
4 lot more people get noticed about something that may happen,  
5 but that list shrinks for a lot of different reasons.

6           This list will shrink for a lot of different  
7 reasons. People will retire. People will leave the State.  
8 They will take other jobs. Classifications will be taken  
9 out of the notice because they won't truly be affected.

10           State law requires that we notice twice as many  
11 people that -- than would -- than are technically in the  
12 facility, in this case, these 11 State properties, and it's  
13 an iterate process. It's very dynamic and we will continue  
14 to apprise people that they are off the list and it will  
15 happen rather regularly.

16           We have -- our deputies meet with everyone in  
17 advance of receiving this letter as a way of saying this is  
18 not the kind of letter we wish you would receive, but  
19 understand it's just very preliminary. So before we begin  
20 to leap to what it might be impactful on OPSC, let's give  
21 this a month or two to shake out and I think you're going to  
22 see a less and less likelihood of our folk being impacted.  
23 But let's take it a month at a time.

24           CHAIRPERSON BRYANT: Ms. Greene.

25           MS. GREENE: As a rules committee consultant in

1 the 1990s, we moved people out of DPA and made them  
2 political appointees based on the specialization. Is there  
3 someone who could speak to that process, possibly in a month  
4 or two when we know more? That process used to be available  
5 for moving staff that were specialized off of and out of  
6 this program.

7 MS. HAMILTON: We could talk to DPA about  
8 something approaching -- exploring that.

9 MS. GREENE: Thank you.

10 CHAIRPERSON BRYANT: Ms. Moore. Another question?

11 MS. MOORE: I don't have a question on this issue,  
12 so if there's any others --

13 CHAIRPERSON BRYANT: Ms. Buchanan.

14 ASSEMBLY MEMBER BUCHANAN: I would just like to  
15 ask that, whether it's soon or in February, that we take a  
16 look at this because, you know, those of us -- Assemblywoman  
17 Brownley and myself who have been on school boards know  
18 that, yes, you issue more pink slips in March than you  
19 ultimately deliver, but it has tremendous morale impacts on  
20 people. I mean you can say, well, it probably won't happen,  
21 but if you're the one getting it, it doesn't feel really  
22 good. It affects productivity. I mean it's -- so I  
23 think -- and we know that keeping this program going in the  
24 most efficient way possible is what ultimately creates more  
25 jobs and helps us get out of this recession. So I would

1 appreciate any information you could give me and at least  
2 being able to have a discussion on it at a future meeting.

3 ASSEMBLY MEMBER BROWNLEY: And I would just -- as  
4 a final comment, would just like to say too I think the  
5 issue of just visiting the question whether OPSC staff  
6 should be part of DGS and I think that's something that  
7 should be discussed as well.

8 CHAIRPERSON BRYANT: Okay. Did you -- Ms. Moore  
9 has another item.

10 MS. MOORE: Well, just --

11 CHAIRPERSON BRYANT: We're moving on from that --  
12 personnel for now? Ms. Moore?

13 MS. MOORE: Well, I -- I mean I also as a Board  
14 member would express support for the State Allocation Board  
15 and particularly those that we know that were noticed and I  
16 think that you're hearing support from the Board on that and  
17 I hope that we do -- that we can hear additional options for  
18 those staff -- for that staff members.

19 The other piece I just wanted to comment on on the  
20 workload list is we removed the financial hardship report --  
21 was it last month or two months ago? And it was I thought  
22 going to come back and I don't know what -- I don't see it  
23 on the workload list and I wasn't sure if just because it  
24 already had been, whether it gets back on.

25 CHAIRPERSON BRYANT: I really hate -- I'm not

1 going -- I swear this will be the last time I say it. But I  
2 think it's -- we have so much to accomplish in these two  
3 months with trying to get the priorities in funding in done  
4 and doing the bond sale that there's a huge amount of staff  
5 work involved in that item. There's lots of comments from  
6 stakeholders --

7 MS. MOORE: Um-hmm.

8 CHAIRPERSON BRYANT: -- and we felt like it just  
9 needed a little bit more time and it needed to be better  
10 thought out than where we were and so we just had to move  
11 it. We haven't placed it back on, but it's -- you know,  
12 we -- it needs to go back on the first part of the year.

13 MS. MOORE: Okay.

14 CHAIRPERSON BRYANT: February.

15 MS. MOORE: Just as long as we haven't lost track.  
16 Yeah. No -- okay. Because it is important.

17 CHAIRPERSON BRYANT: Yeah, it is. And I don't  
18 mean to -- it wasn't matter of just wanting to get rid of  
19 it. It's just one of those things that, you know, with  
20 everything that's going on and adding this thing we just  
21 talked about, Lisa and discussed it and it just seemed like  
22 we didn't have the bandwidth to get done before the  
23 holidays.

24 MS. MOORE: Great.

25 CHAIRPERSON BRYANT: Okay. So moving onto Tab 4,

1 **Consent Calendar**, page 18. Are there any questions on it?  
2 Is there any public comment on the Consent Calendar? Is  
3 there a motion?

4 MR. HARVEY: So move approval.

5 ASSEMBLY MEMBER BUCHANAN: Second.

6 CHAIRPERSON BRYANT: Okay. All those in favor.

7 (Ayes)

8 CHAIRPERSON BRYANT: Okay. Moving onto Tabs 5 and  
9 6, page 105 and 109, Ms. Silverman.

10 MS. SILVERMAN: Yes. Can I grab your attention to  
11 stamped page 105. We wanted to highlight in the **Status of**  
12 **Fund Release Report** quickly that in the middle chart for  
13 April 2009 bond, the original allocation was \$1.4 billion  
14 and we released \$2.3 million through October 14th. So that  
15 was the latest releases in that category.

16 And for the bottom chart with the October 2009 and  
17 the November 2009 sales, we liquidate over 28 and a half  
18 million dollars in that particular category. So those  
19 particular -- particularly the last chart on that page,  
20 there has been -- it's only 46 -- 46 percent of the funds  
21 have been released. So it speaks to, you know, some of the  
22 challenges of moving that particular money out the door.  
23 And those are under the requirements of the original  
24 18-month provisions.

25 And if I can draw your attention to stamped

1 page 106, the general obligation sale for November and the  
2 commercial paper received in December and we had a minor  
3 release of .6 -- \$600,000 in that particular category. And  
4 in the March 2010 sale, we had \$32.7 million that was  
5 liquidated. So that is actually progressing along.

6           On page 107, the summary, we released  
7 \$64.1 million during the last month's activity. Again  
8 highlighting that we've liquidated all funds with respect to  
9 the priorities in funding, so obviously you saw a spike in  
10 September and the last trickle-through activity in the first  
11 few weeks of October. Again the goal is obviously to expend  
12 this money as quickly as possible.

13           And if I can grab your attention on stamped  
14 page 108, we have these bar charts as kind of a summary  
15 illustration of all the monies that we receive in the 2009  
16 pool, likewise in the March 2010 pools. Again summarizing,  
17 there's \$776 million of cash that we have in the program and  
18 I think we -- we had a conversation, Cynthia and I, during  
19 the week about the first phase of that chart. It speaks to  
20 the gray area and the somewhat of a peach area. That's  
21 \$404 million that's still sitting in the prior bond  
22 disbursements in 2009 and again that money is part of the  
23 18-month timeline.

24           And so if you look at the reciprocal timelines  
25 from month to month, it seems like there's very minimal

1 disbursements going on in those particular pots. But  
2 likewise in the lower chart, you see the striped area, that  
3 is -- so it is liquidating. So there's \$372 million that's  
4 sitting in that lower part of that bar graph.

5           So again, you know, the whole purpose of trying to  
6 set up -- and I know something we're going to talk about  
7 later in the agenda is to liquidate these funds, show a need  
8 for the program, and show that we're processing shovel-ready  
9 projects in hopes of obviously getting additional funds for  
10 the program because we have a huge need and the goal is to  
11 get the money out there.

12           So if anything, we'd like to emphasize, for those  
13 projects that are sitting out on the list that are waiting  
14 to come in, you know, we encourage you to come in and  
15 expedite -- if you have 50 percent of the contracts, to move  
16 those funds forward.

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

18           CHAIRPERSON BRYANT: Any questions? Did you cover  
19 Tab 6?

20           MS. SILVERMAN: Yeah, we could cover Tab 6  
21 quickly. For this month's activity, we want to highlight to  
22 the Board on page 109, we have processed in Proposition 1D  
23 \$66.3 million in applications which represents 56 million in  
24 modernization, .4 in high performance, and overcrowded  
25 relief grant of 10.2 million. In total, 66.3 for

1 Proposition 1D.

2 In the middle chart, Proposition 55, we've  
3 liquidated 6 million in new construction, 3.2 million in  
4 modernization, and 9.2 million total for Proposition 55.

5 And the lower category is Proposition 47.  
6 25.4 million in new construction and so in total, bottom  
7 column going down, 100 million -- excuse me -- nearly  
8 \$101 million that we processed in SFP funding this month.

9 If I can grab your attention, turn to page 110, we  
10 did have minimum activity in Proposition 1A. .5 million was  
11 processed and that was the result of a closeout adjustment,  
12 meaning that the school district had additional funds coming  
13 to them. So that was good. So a total -- we processed 62  
14 applications or \$101 million for this month for this  
15 program.

16 And if I can direct your attention to the middle  
17 of the chart, is the emergency repair program. This month  
18 we processed 36 applications for \$10 million and in total it  
19 shows a total need of nearly \$160 million for the emergency  
20 repair program. And as we all are aware, there are no funds  
21 this year to disburse for these particular applications. So  
22 with that, I'll open it up to any questions.

23 CHAIRPERSON BRYANT: Are there any questions on  
24 Tab 6?

25 MR. HARVEY: Last month I asked about our

1 continued additions to the unfunded list for this very, very  
2 crucial program, this emergency -- critical program. You've  
3 just indicated there are no dollars in the budget. At what  
4 point do we step back and say we need to quit adding to the  
5 unfunded list? There are wonderful needs, but we have no  
6 money. This is, what, the second or third year we haven't  
7 had money for this program.

8           Is there some answer to that? I know we raised it  
9 last month and everyone of good faith hopes to fund it, but  
10 the real dollars aren't there.

11           CHAIRPERSON BRYANT: Mr. Ferguson.

12           MR. FERGUSON: Chris Ferguson, Department of  
13 Finance. The administration's committed to the \$800 million  
14 as part of the Williams settlement. To date, 338 million  
15 has been provided to the emergency repair program.  
16 Recognizing that there are no funds in the 2010-'11 budget,  
17 we've requested that the Office of Public School  
18 Construction suspend processing applications until  
19 additional funds are available.

20           What that entails is the Office of Public School  
21 Construction will maintain the applications they've received  
22 in house but will not continue to process them until funds  
23 are available.

24           MR. HARVEY: Thank you, Chris.

25           CHAIRPERSON BRYANT: Okay. Moving on -- any other

1 questions on that? Okay. Moving onto **Consent Specials**. We  
2 have three items on Consent Specials and we need to take  
3 them each up individually. Oh, did you -- were you trying  
4 say something on that?

5 MR. HANCOCK: Yes, ma'am, if I may.

6 CHAIRPERSON BRYANT: Apologies.

7 MR. HANCOCK: I'm Bruce Hancock, Hancock, Gonos &  
8 Park. I represent many districts with tens of millions of  
9 dollars of applications that have been filed in good faith  
10 with the Office of Public School Construction. I did not  
11 know that this item was going to be presented or discussed  
12 today and I do not have authority from the school districts  
13 I represent -- or work for to represent them here, but I  
14 would feel confident in expressing the strongest possible  
15 objection to the suspension of processing of these  
16 applications.

17 There is a law that has been ignored again and  
18 again and again about this program and about funding these  
19 applications. The very idea that stopping the processing  
20 will somehow solve some problem is a mystery to me. What it  
21 seems to do is allow the State and the administration to get  
22 off the hook for a contract that it made as a result of the  
23 Williams lawsuit.

24 I think that any movement to suspend work on these  
25 projects is a violation of not only law but trust with

1 school districts. Thank you.

2 CHAIRPERSON BRYANT: Thank you. Next is the  
3 **Consent Specials.**

4 MS. MOORE: Well, I mean I can't just let that  
5 lie.

6 ASSEMBLY MEMBER BROWNLEY: Yeah, I can't either.

7 MS. MOORE: So let's talk about why did we suspend  
8 again.

9 MS. SILVERMAN: Well, I think for this budget  
10 year -- and Chris can probably speak to this, I mean we  
11 received no allocation in part of our budget for these  
12 positions.

13 MR. FERGUSON: Currently there is no cash to  
14 provide for these apportionments. Until there is cash, we  
15 would restart at that point.

16 CHAIRPERSON BRYANT: Mr. Brownley.

17 ASSEMBLY MEMBER BROWNLEY: Well, you know, I hear  
18 what you're saying about the -- you know, that there wasn't  
19 any money apportioned in this budget cycle, although I  
20 really concur with the gentleman's comments and I am  
21 concerned that if we stop processing -- so school districts  
22 are submitting these in good faith and I think if we stop  
23 processing them and stop putting them in a queue so to  
24 speak, it is -- we're liable for not really upholding what  
25 the Williams Act is all about.

1           So that is a concern for me. I don't know under  
2 whose authority it is to, you know, just completely stop  
3 doing that or not. I'm unclear about that. But I certainly  
4 would want to advocate for anything to continue --  
5 continuing the process by which these applications are  
6 completed and fulfilled and obviously I'm an advocate for  
7 providing funding to address those projects.

8           MS. MOORE: We also have other projects within the  
9 State Allocation Board realm that we are processing without  
10 cash. Now, they don't -- they come from the bond funds and  
11 this funding comes from annual appropriations of the  
12 Legislature, but Mr. Hancock is correct that there was an  
13 \$800 million deal struck of which we've paid about -- as a  
14 State, about 340 million.

15           But I would think that in order to cease  
16 processing that there really would have to be action of the  
17 State Allocation Board and not an action of staff and so if  
18 there is concern, you know, by different -- like Department  
19 of Finance or any other department that that should be the  
20 action taken, I think it should be one that is recommended  
21 to the State Allocation Board and that we deliberate on  
22 that.

23           MS. GREENE: Lisa, did I hear you correctly that  
24 you got no funding for staff positions for this doing this?

25           MR. FERGUSON: There is no funding in the --

1 MS. SILVERMAN: In the budget.

2 MR. FERGUSON: -- current budget for that.

3 MS. GREENE: But it's a different question.

4 There's no funding in the program, but you have no funding  
5 of your staff.

6 MS. SILVERMAN: Those are general fund positions  
7 and likewise we didn't receive general fund allocation for  
8 those positions.

9 MS. GREENE: Thank you.

10 CHAIRPERSON BRYANT: And that's part of the  
11 conundrum. That's part of the conundrum is do you have --  
12 we don't have -- it's probably an appropriate use of bond  
13 funds to pay for a general fund program. So there's just  
14 this dilemma and we have so many applications backed up that  
15 it's just one of those -- it's a dilemma that the Department  
16 faces.

17 MS. MOORE: Well, given that, I would advocate  
18 that we have this item as a discussion item for the State  
19 Allocation Board and not -- as Mr. Hancock noticed, this was  
20 not noticed. It was part of the fiscal report and not  
21 really part of the program report and that if those are the  
22 problems and issues with that program that we ought to have  
23 a fair hearing on that and take appropriate action, and if  
24 there's no way that you can take any action, then so be it,  
25 but it just doesn't feel right that we cease something at a

1 meeting kind of as an undercurrent.

2 CHAIRPERSON BRYANT: Okay. We can take a look at  
3 that.

4 ASSEMBLY MEMBER BROWNLEY: And I would just like  
5 to concur with Ms. Moore's comments and support her in her  
6 efforts.

7 CHAIRPERSON BRYANT: Might be something you have  
8 to fix in your other world too, but let's work on that and  
9 we'll report back in December one way or the other.

10 So Tabs 7, 8, and 9, ordinarily we would take  
11 these up together, but we're going to take them up  
12 separately for a variety of reasons. So Tab 7, page 115,  
13 **Mendocino**. Do we need a -- on that really quick?

14 MR. MIRELES: Yeah. Tab 7 includes a request from  
15 the Mendocino County Office of Education to receive an  
16 unfunded approval for a facility hardship project at the  
17 Juvenile Hall Community Day School Campus. This particular  
18 campus experienced sewer line failures which required the  
19 closure of restrooms and the installation of portable  
20 restrooms.

21 The California Regional Water Quality Control  
22 Board has concurred with the civil engineer's report that  
23 health and safety exists. The district has met all the  
24 requirements to qualify as a facility hardship and therefore  
25 staff has recommended that the Board approve this project

1 for a total State share of \$25,886 and it be placed on the  
2 unfunded list. With that, I'll be happy to answer any  
3 questions.

4 CHAIRPERSON BRYANT: Any questions or comments?  
5 Any public comment on this item? Is there a motion?

6 ASSEMBLY MEMBER BROWNLEY: I move support.

7 ASSEMBLY MEMBER BUCHANAN: Second.

8 ASSEMBLY MEMBER BROWNLEY: Recommendation.

9 CHAIRPERSON BRYANT: A motion and a second.

10 ASSEMBLY MEMBER BUCHANAN: Second.

11 CHAIRPERSON BRYANT: All those in favor.

12 (Ayes)

13 CHAIRPERSON BRYANT: Any opposed or abstaining?

14 Okay. Moving onto Tab 8. In an abundance of caution, I  
15 would like to say I think I have a conflict of interest for  
16 financial reasons on this item, so I'm going to recuse and  
17 ask Mr. Harvey to do this item.

18 MR. HARVEY: Thank you, Madam Chair. We'll start  
19 with the staff report on this item. It is on page 118.

20 MS. KAMPMIENERT: Thank you. Good afternoon.

21 This is a request from the **Aspire Charter School** to hold  
22 title to their charter school facilities program project  
23 under Senate Bill 592. This project is located within the  
24 boundaries of Los Angeles Unified School District. The  
25 charter school has submitted a letter which you can find on

1 stamped page 120 and this letter outlines the reasons why  
2 title is not being held by a local governmental entity or by  
3 the school district.

4           Staff has reviewed this letter and believes that  
5 it does meet all the requirements of the Education Code and  
6 we would recommend that the Board make a finding that the  
7 charter school has met all of the requirements of the  
8 Education Code to hold title.

9           Also as I mentioned last month when the first  
10 batch of these came forward, there are conditions that need  
11 to be placed on the title that cannot happen until the Board  
12 grants the charter school permission to -- grants the  
13 charter school has met the requirements to hold it. So if  
14 the charter school does not follow through with placing the  
15 required restrictions on the title, such as the lien in  
16 favor of the State Allocation Board and the reversionary  
17 interest to the school district, we would return to the  
18 Board to recommend that the revocation of the funding be  
19 made.

20           With that, I'd be happy to answer any questions.

21           MR. HARVEY: Just to set the scene for what may be  
22 a discussion, could you please read to us what the State law  
23 says about a charter school's obligations --

24           MS. KAMPMIENERT: Sure.

25           MR. HARVEY: -- to submit what to us exactly.

1 MS. KAMPMIENERT: On page 118 under the authority  
2 section, you can find the Education Code  
3 Section 17078.63(a)(3)(a). And in this Education Code  
4 Section, it lists options for what a charter school provides  
5 as far as holding title and if the school district or if a  
6 local governmental entity is not holding title, then this  
7 provision can also be used and it states that the charter  
8 school can submit a request that the charter school be  
9 authorized to hold fee simple title to the subject property  
10 in trust for the benefit of the State public school system  
11 on which a lien shall be recorded in favor of the Board for  
12 the total amount of funds allocated pursuant to this  
13 article.

14 The charter school shall include with the request  
15 a statement outlining the reasons why ownership of the  
16 project facilities is not vested with the school district or  
17 local governmental entity. Prior to releasing any budget  
18 funds, the Board shall make findings that the applicant has  
19 submitted all of the information required by this paragraph.

20 MR. HARVEY: Thank you very much. Are there any  
21 questions from the Board? Please.

22 ASSEMBLY MEMBER BROWNLEY: So part of the  
23 procedure that you just cited there, it doesn't require a  
24 letter from the district saying that they're not interested  
25 in holding title anymore?

1 MS. KAMPMIENERT: No, it does not. The charter  
2 school needs to just provide reasons why the district is not  
3 holding title. In fact the statute doesn't even necessarily  
4 require that the district say no because there could be  
5 other reasons why the school district is not a good fit for  
6 holding title on the project.

7 ASSEMBLY MEMBER BROWNLEY: And who would you ever  
8 discern if there was a disagreement or a discrepancy about  
9 that? How would you facilitate that and determine that?  
10 Because you're just requiring in essence one party to make a  
11 declaration but not the other party.

12 MS. KAMPMIENERT: The charter school does indicate  
13 that they are certifying that it's true and it is coming  
14 from their perspective. However, the law also does not put  
15 the Board in the position of being a mediator in that role.  
16 So it's just asking that you acknowledge that they've  
17 submitted this declaration for why the charter school feels  
18 that the school district is not holding title.

19 ASSEMBLY MEMBER BROWNLEY: Thank you.

20 MR. HARVEY: Are there any other questions from  
21 Board members before I ask if there are any public comments?  
22 If there are no public comments, a motion is in order.

23 MS. MOORE: I'll move approval.

24 ASSEMBLY MEMBER BROWNLEY: Second.

25 MR. HARVEY: There's a motion and second. Without

1 objection, we will use the prior roll call.

2 MS. KAPLAN: No. You have to do roll call.

3 MR. HARVEY: I am very sorry. There is an  
4 objection. We will have a roll call on this item.

5 MS. GENERA: Assembly Member Garrick.

6 ASSEMBLY MEMBER GARRICK: Aye.

7 MS. GENERA: Assembly Member Brownley.

8 ASSEMBLY MEMBER BROWNLEY: Aye.

9 MS. GENERA: Assembly Member Buchanan.

10 ASSEMBLY MEMBER BUCHANAN: Aye.

11 MS. GENERA: Scott Harvey.

12 MR. HARVEY: Aye.

13 MS. GENERA: Kathleen Moore.

14 MS. MOORE: Aye.

15 MS. GENERA: Lyn Greene.

16 MS. GREENE: Aye.

17 MS. GENERA: And Cynthia Bryant abstained.

18 MR. HARVEY: The matter passes. We're on Item  
19 No. 9.

20 MR. MIRELES: Tab 9 beginning with page 123 is a  
21 **request for unfunded approvals for the sixth round of**  
22 **funding in the overcrowded relief program.** This particular  
23 program provides -- enables districts to reduce and remove  
24 portables on eligible overcrowded school sites. An  
25 overcrowded school site is defined as having a pupil site

1 density that is equal or greater to 175 percent of the pupil  
2 density as recommended by the Department of Education.

3 We received a total of nine applications. Two  
4 applications were withdrawn at the district's request. They  
5 elected to withdraw the applications and to reapply at a  
6 future funding round to maximize their funding. One  
7 application was -- did not meet the requirements as it did  
8 not have the Division of the State Architect plan approvals.

9 So we were able to fund six projects again for a  
10 total of \$10 million under this program. This would  
11 leave -- should the Board approve this, this would leave a  
12 total about 450 million of bonding authority for the  
13 overcrowded relief grant program.

14 Staff is planning on bringing back an item at the  
15 December Board to discuss potential changes that could be  
16 made to the program as well as the opening of potentially  
17 another filing period or whether the Board wants to consider  
18 other options with this funding.

19 Now, again this is 450 million in bonding  
20 authority. There have been some discussions on whether this  
21 money could be moved another program. I just wanted to  
22 inform the Board that that's something the Board could  
23 discuss but would require statutory change to move money  
24 from one pot to another.

25 But staff is bringing back an item at the December

1 Board to discuss these options and the potential opening a  
2 filing period. But for this item, the approvals have met  
3 the conditions and the recommendation is to approve 10.2  
4 million for the overcrowded relief grant program.

5 CHAIRPERSON BRYANT: I think we have public  
6 comment on this item.

7 MS. MOORE: Juan, are you saying that it's the  
8 intent of staff to bring it back for the potential for  
9 another round at the December Board meeting, so we're --

10 MR. MIRELES: Yes.

11 MS. MOORE: -- not acting on anything like that  
12 today.

13 MR. MIRELES: That's correct. The regulations do  
14 allow the Board to accept applications in subsequent filing  
15 periods. We do believe that that requires a Board action  
16 and we're going to bring back an item to have that  
17 discussion for a potential another round or whether the  
18 Board wants to entertain other options for the bonding  
19 authority that's remaining in this program.

20 CHAIRPERSON BRYANT: Okay. Go ahead.

21 MR. BAKKE: Thank you. Eric Bakke with Los  
22 Angeles Unified School District. I appreciate those  
23 comments at the end there regarding another filing round.  
24 One of the things that we have done over the last several  
25 years is focused on critically overcrowded schools program.

1 We're now transitioning to ORG and we've filed some  
2 applications post July 27 -- I guess it's the 27th of 2010,  
3 the filing period, but learned that there isn't a seventh  
4 round.

5           We just received notice from OPSC that our  
6 applications are going to be sent back to the school  
7 district. We were -- the program has been set up that  
8 there's a filing round every six months, but for whatever  
9 reason, there wasn't a seventh round either through this  
10 Board action or through regulation -- a seventh round made  
11 available that would -- I think the filing period would have  
12 ended January of 2010.

13           So we'd like to make sure that if we do have a  
14 conversation about another filing round, those applications  
15 that have been submitted to OPSC either grandfathered in  
16 some capacity to be included in the next filing so the  
17 applications don't have to be returned back to the school  
18 districts. I'd like to offer that suggestion for the  
19 conversation that will occur December.

20           CHAIRPERSON BRYANT: Is that possible? You  
21 haven't sent them back yet?

22           MR. MIRELES: I don't believe that we have  
23 technically sent them back yet. I think there were some --

24           CHAIRPERSON BRYANT: And how many applications is  
25 it?

1           MR. BAKKE: I don't have the number. It's not a  
2 large amount and I don't know what other school districts  
3 have filed, but I just know we have a small number we'd like  
4 to maintain in the existing filing period and make sure that  
5 they're accepted by OPSC. They were submitted in October,  
6 so --

7           MR. MIRELES: That's something we can --

8           CHAIRPERSON BRYANT: That'd be -- I mean that'll  
9 be part of the information you'll bring back for the Board  
10 to consider.

11          MR. MIRELES: Yes.

12          CHAIRPERSON BRYANT: Right?

13          MR. MIRELES: Will do.

14          CHAIRPERSON BRYANT: Okay.

15          MR. BAKKE: Thank you very much.

16          ASSEMBLY MEMBER BROWNLEY: He'll bring back  
17 LAUSD's information as well as any other --

18          CHAIRPERSON BRYANT: Anybody -- I mean just  
19 everything -- we had -- because my understanding was from  
20 this round, what, nine applications for this -- for round  
21 six and we approved six of them?

22          MR. MIRELES: That's correct.

23          CHAIRPERSON BRYANT: If we approve this item.

24          MR. LYON: Madam Chair, members, Richard Lyon on  
25 behalf of California Building Industry Association.

1 Listening to the staff report, I felt compelled to get up  
2 and to raise -- at least take the opportunity to raise the  
3 issue of programs that are, in the case of overcrowded  
4 relief, unsubscribed at this point with a healthy reserve --  
5 to the raise the bigger issue with the Board about the  
6 anemic activity and the anemic level of funding that we have  
7 for the core new construction program.

8           This is an issue that you're going to be facing in  
9 2011. We have limited funds available in that program.  
10 While we are not building all that much, we don't have that  
11 many applications coming in, activity will be picking up in  
12 the next couple years and we're going to have to make sure  
13 that we have a healthy program moving forward.

14           We face the prospect if we don't take some  
15 remedial action in 2011 of having the new construction  
16 program come to a halt and builders being forced to pay  
17 100 percent financing. That I don't think is an outcome  
18 that anybody wants to see.

19           So the reason for me approaching the mic today is  
20 to simply take the opportunity to say that we are going to  
21 have to have a full discussion at the Board level in 2011  
22 about the health and the vitality of the new construction  
23 program and potentially that means a discussion about  
24 rebenching some of the funds to make sure that we maintain a  
25 solvent new construction account. Thank you.

1           CHAIRPERSON BRYANT: Any other questions or  
2 comments from Board members on this item? So we'll bring  
3 this -- bring it back in December with all the -- kind of  
4 the options for everyone to consider. Like I think Juan  
5 made the point that if we were going to make any changes  
6 here, it would require legislation. So there's plenty of  
7 opportunity for everyone to weigh in on it.

8           If it's okay with everyone, I'd like to move to  
9 Tab 18 and take up the **High Performance Incentive** --

10          MS. KAPLAN: We need roll call vote.

11          CHAIRPERSON BRYANT: Oh, I'm sorry. Forgot about  
12 the -- is there a motion.

13          MR. HARVEY: I would --

14          ASSEMBLY MEMBER BROWNLEY: I move Item 9.

15          ASSEMBLY MEMBER BUCHANAN: Second.

16          CHAIRPERSON BRYANT: We have a motion and a  
17 second. All those in favor.

18          (Ayes)

19          CHAIRPERSON BRYANT: Opposed. Any abstentions?  
20 All right. So without objection, I'd like to move to Tab 18  
21 real quick and also take up Tab 22 which is the **OPSC DSA**  
22 **Program Review**. Mr. Amos is here on both these items, and I  
23 want -- I told him I'd try to get him out of here.

24                 I just want to say really quickly on the **High**  
25 **Performance** item, this is -- you may recall in May, we had

1 brought this item to -- we had the regulatory package to  
2 make changes to HPI, to try to increase our ability to get  
3 more of this HPI money out.

4           And we had -- you will recall there was the  
5 discussion about whether or not we could have CHPS perform  
6 certification, third-party verification, and review, and we  
7 had a very contentious Board discussion about that. And we  
8 did not end up doing that.

9           After that point, we had -- due mostly to  
10 Mr. Amos's leadership and Bill Orr from CHPS, we had a lot  
11 of internal discussions between DSA and CHPS and we came up  
12 with an MOU to allow State employees to perform a CHPS  
13 verification. It took an awful long time. I kept promising  
14 Senator Hancock that we would get it done in two weeks; I  
15 would stay on top of it, but it ended up taking us close to  
16 six months. But we are here today to approve -- to sign the  
17 MOU. It's not between the Board or anything, but I think --  
18 oh, Bill's here. Bill, come on up.

19           They're going to sign the MOU, just in a moment of  
20 ceremony, just because this is going to be huge to be able  
21 to have this -- provide this to districts the ability to do  
22 one-stop shopping for CHPS verification. So --

23           MR. AMOS: Well, thank you, Madam Chair, for those  
24 gracious comments and truly your leadership has been a  
25 moving force in this effort and I'm pleased to be here today

1 to sign on behalf of the Department of General Services in  
2 support of this effort. We think it's in keeping with the  
3 betterment of the State of California and our priorities,  
4 and to that end, I also want to thank Bill Orr for his  
5 leadership in the CHPS program. I think he's come a long  
6 way in working with us and of course navigating those State  
7 processes that are sometimes less than streamlined.

8           So with that, I want to thank Bill for his  
9 leadership. And if I could have you sign here, please.  
10 Here and here.

11           CHAIRPERSON BRYANT: Yeah, I feel like we should  
12 have photography, but trust me, I will remember this.

13           MR. ORR: I was hoping for the John Hancock quill.  
14 Thank you very much for the opportunity to be here.

15           CHAIRPERSON BRYANT: Brian's got it. The one  
16 thing that we did -- so this leads us into -- while they're  
17 signing, leads us into Item 18 which Brian will present.

18           But one of the things we discovered as we were  
19 going through the MOU is that in our work that we did on  
20 these regulations in May, we actually -- one of our intents  
21 was to make sure that all of the CALGreen standards that are  
22 going into effect as of January 1st are in the regulations  
23 and it turns out as we went through the process of  
24 developing the MOU, we discovered that we inadvertently left  
25 two of them out. And so we're going to -- this will allow

1 us to adopt emergency regs to move that forward. So with  
2 that, Brian, I may have just done all your work, but if  
3 there's anything you can add to what I just said.

4 MR. LaPASK: Thank you. Yeah. Basically you said  
5 it. We're just making changes today to accommodate for the  
6 requirements that are now part of CALGreen. We've kind of  
7 increased the bar for what the minimum requirements are for  
8 new school sites. This doesn't affect the construction  
9 additions or modernization projects.

10 The net effect was that the points went down by  
11 two for new construction projects on new sites and they  
12 didn't change at all for modernization or new construction  
13 addition projects. The last piece of this is we're hoping  
14 we can move these regulations on an emergency track.

15 CHAIRPERSON BRYANT: I just had a whispered  
16 question, but can you explain the difference between the  
17 yellow and green in the attachment?

18 MR. LaPASK: Yes. All the yellow highlights on  
19 the attachment are all the changes that we approved in  
20 May -- or that the Board approved in May. All the green  
21 changes are the subsequent changes we're making for green  
22 code requirements.

23 CHAIRPERSON BRYANT: Okay. We're going to try to  
24 move the entire package forward as emergency regs; correct?

25 MR. LaPASK: That's correct.

1           CHAIRPERSON BRYANT: Are there any questions on  
2 this item? Is there a motion? Any public comment I should  
3 add? Is there a motion?

4           ASSEMBLY MEMBER BROWNLEY: I move Item 18.

5           MS. GREENE: Second.

6           CHAIRPERSON BRYANT: We have a motion and a  
7 second. All those in favor.

8           (Ayes)

9           CHAIRPERSON BRYANT: I think when everybody comes  
10 back, we need to make sure they add on, so leave it open.  
11 All right. So then moving on -- oh, Mr. Harvey.

12           ASSEMBLY MEMBER BROWNLEY: He was just screaming  
13 aye.

14           CHAIRPERSON BRYANT: Did he say aye?

15           ASSEMBLY MEMBER BROWNLEY: Yes.

16           CHAIRPERSON BRYANT: All right. So moving on to  
17 Tab 22, the **Program Review**. Mr. Amos.

18           MR. AMOS: Good afternoon, Madam Chair, and  
19 distinguished members of the Board. I'm Stephen Amos with  
20 the Department of General Services.

21           Shortly after my arrival at the Department of  
22 General Services merely a year ago, I heard a lot of concern  
23 expressed by the Local Educational Agencies as to the  
24 duration and complexity of many of the State agency approval  
25 processes. Those processes were often voiced as rocks in

1 the sandals. They were many of the challenges, the  
2 bureaucratic red tape, and/or the delays during processes  
3 that were of concerned to the field.

4           Consequently, shortly thereafter, the Department  
5 of General Services hosted with DSA and OPSC to do joint  
6 statewide townhall quorums. These took place in March and  
7 April of last year -- or excuse me -- of this year and to  
8 that extent we heard from four different regions of the  
9 State, principally from school districts as to the  
10 challenges they were facing.

11           They tend to follow themes that were consistent  
12 across the State. That is we need to do a better job as the  
13 State agencies engaged in this process and we need to hear  
14 and listen more from those districts as to how we can better  
15 serve them.

16           On June 16th, the California State Assembly  
17 Education Committee conducted an oversight hearing in this  
18 very room in which there was -- these same concerns were  
19 expressed again and questions were poised to me at that time  
20 what reporting do you have on those issues and how do you  
21 intend to address them.

22           There was delineation between those that were  
23 short-term concern, things that could be addressed in the  
24 interim, short term, and long term. So to that end, I  
25 committed to a process as a follow on to the earlier efforts

1 and that was to host a series of meetings in which we would  
2 identify a 90-day action plan. This action plan, we refer  
3 to as the California Public School Construction Process  
4 Review, was initiated to provide a unique opportunity for  
5 State agencies to work collaboratively with their customers  
6 to improve and streamline the processes.

7           The crux of it is this report that I'm presenting  
8 here to you today was due to you on October 1st and while  
9 the report was done on October 1st, I was unfortunately not  
10 able to present at the last Board meeting, but I'm here  
11 today to give you the results of that report.

12           I think it's important to acknowledge a couple of  
13 things in prefacing this report. The first is that this  
14 report is the report of our customers and stakeholders.  
15 This is not a DGS, DSA, or OPSC report, nor is it an SAB  
16 report. It is merely the report of what our customers and  
17 stakeholders had to say.

18           It's also important to note that the members of  
19 the expert working group were not in full agreement on each  
20 of the suggested solutions proposed in this report and that  
21 while full consensus was not achieved for every issue, all  
22 parties agreed and expressed a willingness to move forward  
23 in working towards mutual resolve.

24           What I'd like to do is kind of delineate first who  
25 are the people that were involved in this process and make

1 up the expert working group. There are a total of 57  
2 parties that participated in the process. They included not  
3 only customers -- direct customers, but also stakeholders,  
4 contractors, associations, and other interested parties.

5           Of them, there were 20 school districts  
6 represented and one community college district also  
7 represented for a total of 57. The subcommittees were  
8 broken into six general categories. Those six categories,  
9 based on the recommendations we had received, were to  
10 address each of the core areas that have -- many of you have  
11 already seen this document, but for a reflection looks like  
12 this.

13           This is what exists today for our streamline  
14 process. It is, as you can see, a very cumbersome  
15 organizational structure that includes five different  
16 departments. It includes the six core areas of planning,  
17 design, plan review, funding, bidding, construction, and the  
18 project closeout. These include both DSA and OPSC and CDE  
19 operations.

20           So I share that with you to give you a general  
21 overview of how we broke down these subcommittees. Each had  
22 a chair for each one of those subcommittee areas. These  
23 individuals were identified as experts in their particular  
24 field, brains, skill, and expertise, and then they had a  
25 working group assigned to them in which they participated in

1 a process which was a charter.

2           The charter was they were to identify within those  
3 core areas what were the critical challenges and issues that  
4 they saw and/or obstacles that we need to streamline or  
5 reconsider and to prioritize them. So they were given ten  
6 different priorities -- or ten different rankings and then  
7 they were to prioritize those with the recommendations and  
8 timelines associated with them and/or whether or not these  
9 things would be fixed through policy, through practice,  
10 regulation, legislation, whatever would be the appropriate  
11 response.

12           I'm pleased to say that we did accomplish this on  
13 a fast-track, full participation. We were on schedule and  
14 did complete the report by October 1st.

15           What I would like to do is, is give you a brief  
16 overview of their findings because I think they speak  
17 volumes as to how they came to see the biggest challenges  
18 that the field faces today and what their recommendations  
19 for moving forward was.

20           The first was the lack of communication and  
21 coordination. Each one of these subgroups and the expert  
22 working group members had an opportunity to rank order and  
23 prioritize. To that end, they identified the lack of  
24 communication and coordination across all of those six core  
25 areas of influence and to that end, I think it speaks

1 volumes that this is what our stakeholders, this is what our  
2 customers see, and this is what they're recommending that we  
3 address.

4           Those recommendations for the lack of  
5 communication and coordination, I'll just briefly touch on.  
6 CDE, DSA, and OPSC to use a single project tracking number  
7 to provide uniformity of information sharing and to ensure  
8 that there is accuracy and to avoid the DSA number, the CDE  
9 number, and the OPSC number and trying to keep all of them  
10 straight.

11           The second was permit a DSA exemption form at  
12 intake for over-the-counter approvals, that is to ensure  
13 that the field doesn't have -- don't have to come into DSA  
14 and get every project plan reviewed but only those that  
15 shouldn't be exempted. So this would provide a fast-track  
16 process, cut down on unnecessary changes.

17           The third is create a streamlined process through  
18 the collaboration of CDE, DSA, and OPSC. That is -- that  
19 would include reducing the number of contacts, create a help  
20 desk, create a commonality or a common form of communication  
21 so that the -- from the customer's standpoint, it's  
22 seamless. You call one number, you get good information,  
23 you get directed to the right service, and you're handled  
24 appropriately.

25           One of the areas that was identified was initiate

1 an MOU or interagency agreement between CDE, OPSC, and DSA  
2 and the idea behind that was the creation of this MOU would  
3 help in terms of identifying a process that would include  
4 this one-stop shop, an ombudsman, a centralized tracking  
5 number -- or excuse me -- a single project tracking number  
6 and other processes.

7           The creation of a one-stop shop with a customer  
8 service orientation again rang true several times and the  
9 last one identified which was create an ombudsman for  
10 guidance and project assistance.

11           So those were the general recommendations that  
12 came out of the lack of communication and coordination realm  
13 and again each of those identified different processes in  
14 which you would get there, whether it be procedurally,  
15 regulatory, policy, procedural support, or legislative.

16           The second area that was a priority and ranked  
17 second was new projects held up due to DSA project closeout  
18 issues. This is a principal concern because at this  
19 juncture, we are faced with trying to get shovels in the  
20 ground, move the economy, respond to our mandates in the  
21 field, but we're challenged by the fact that we have so many  
22 closeouts. At this point, there are estimated to be 20,000  
23 projects that have beneficial occupancy with no closeout  
24 certification.

25           That doesn't mean that they're not safe, but what

1 it does mean is, is that we have a major challenge ahead of  
2 us to not only streamline that process but to also work in  
3 partnership, collaboration with the field, and work on  
4 addressing those concerns. It impacts the funding of future  
5 projects.

6           If you were the recipient a decade ago of a new  
7 construction project and now you've got modernization money  
8 and you want to move forward, you're challenged by the fact  
9 that you cannot start that project until you close out the  
10 old project. That is a very cumbersome, very challenging  
11 process that we need to streamline and work on.

12           To that extent, they identified a series of  
13 processes that they felt were important. These were  
14 suggested solutions. Create contractual language regarding  
15 responsibility of project team members to provide closeout  
16 certification documents. Eliminate in-plant inspection  
17 reports requirements for portable projects. This was a big  
18 sensitivity because these by definition as portables or  
19 relocatables are constantly on the move. We shouldn't have  
20 to certify them over and over and over again.

21           In addition to that, there was the allow design  
22 professional project inspectors or DSA field engineers to  
23 field verify adequacy of construction for projects closed  
24 without certification. Again a streamlining process to look  
25 at how we can do that in the field.

1           Streamlining documentation for new portable  
2 buildings: spoke to that earlier. Eliminate inspection  
3 documents that are DSA specific, meaning reduce what is now  
4 somewhere in the realm of about 25 documents down to 6 core  
5 documents that are necessary.

6           Provide that projects where the scope is limited  
7 to resolving health and safety issues shall not be held up  
8 due to a lack of certification on a previous project and  
9 that is ensure that we are not being a barrier to closing  
10 them out by the fact you don't have a closeout.

11           Allow design professional project inspectors or  
12 DSA field staff to certify adequacy of construction and the  
13 last was require local educational agencies and community  
14 college districts to be the repository of project records.  
15 These were recommendations that came from the subcommittee  
16 up through the larger expert working committee.

17           The third area that they approached was the  
18 concerns regarding funding adequacy. The first two  
19 obviously address largely concerns associated with DSA: the  
20 closeout certification process and the lack of communication  
21 streamlining process.

22           The third one here, which was rank ordered, and  
23 that again is, is the concerns regarding funding adequacy,  
24 focused on the lack of communication, coordination, and this  
25 area, and that was clearly an OPSC venue.

1           These were the recommendations that they  
2 identified in that process.

- 3           • Continue developing an accurate means of  
4           evaluating the true cost of building schools, data  
5           collection.
- 6           • Permanently adopt the general site development  
7           grant.
- 8           • Adopt a statutory appropriate Class B construction  
9           cost index that includes the prevailing wage  
10          requirement utilized in California.
- 11          • Adequately fund off-site mitigations.
- 12          • Adopt relevant elements of the lease-purchase  
13          program for the SFP, including costs per square  
14          foot, site development, off-site and service-site  
15          funding.
- 16          • Implement a new funding model for school  
17          infrastructure.
- 18          • Adopt cost containments, best value, and  
19          life-cycle measures that can be applied to school  
20          construction.
- 21          • Adopt alternative non-bond financing for school  
22          facility projects.

23           So those are the three general categories and then  
24 the synthesized list of recommendations that followed for  
25

1 moving forward and I guess I'd like to give you a minute to  
2 ask any questions regarding those recommendations or those  
3 processes before I wrap up in terms of the recommendations  
4 for moving forward as proposed by the expert working group.

5 CHAIRPERSON BRYANT: Are there any questions?

6 Ms. Greene.

7 MS. GREENE: I'll try to make these really short.  
8 On page 18, you say that there is a single project tracking  
9 number by CDE, DSA, and OPSC and right now they're not used  
10 or inconsistently used. You make the suggestion in one that  
11 you're going to come up with a number. It seems to me that  
12 it would be more important to implement the process than it  
13 would actually be to come up with a single number since it  
14 seems to already be there.

15 MR. AMOS: That is correct. At least in terms of  
16 what we've seen in our preliminary analysis, there is some  
17 IT interface issues that have to be resolved. I was remiss  
18 in not identifying that while I chaired this process, it was  
19 co-chaired by Kathleen Moore, my counterpart over at the  
20 Department of Education, and it was clear that they have  
21 made a lot of headway in this area and that we need to do  
22 more to coordinate.

23 It's clear that not only has CDE moved forward with  
24 its IT systems, DSA has a relatively sophisticated model  
25 also, but where we're somewhat behind is, is that in the

1 OPSC ranks, our IT systems are seven, eight years behind the  
2 times and what we need to do is work on common platforms for  
3 communication.

4 So it's merely we haven't done it and we should  
5 have and it's time.

6 MS. GREENE: On Table 1, lack of communication and  
7 coordination, this seems to be the shortest table of  
8 solutions for the most agreed-upon highest priority issue.

9 MR. AMOS: Um-hmm.

10 MS. GREENE: Is there going to be some more added  
11 to this? Are you going to address what seems to be the high  
12 priority item? And my concern I guess is that in looking at  
13 all of this, taking in the list of everyone who  
14 participated, you keep claiming this is client-driven and I  
15 understand that, but in terms of actual numbers, clients are  
16 overwhelmed by agencies. Could you address that, please.

17 MR. AMOS: Absolutely. It's much like we're here  
18 as the State Allocation Board as you're as a body and to  
19 review and collect information and impart your wisdom and  
20 lead this process, but we're joined by a much broader group  
21 of constituents and stakeholders. In this case, it's the  
22 opposite. What we have in part is, is we have Finance that  
23 needs to be at the table, Department of Education needs to  
24 be table to provide insight and guidance as to what we  
25 currently do and hear from the stakeholders and customers.

1           So while I would understand your concern that  
2 maybe 20 school districts is not an absolute sampling of  
3 what goes on across the State, we did in fact work very hard  
4 to ensure that we had every region represented, every size  
5 of school, that we had both the urban, the rural, we had  
6 hardship, we had county boards of education.

7           We tried to make it as representative as we could  
8 of the process. But the truth is, is that the customers, as  
9 much as I would like to say drive the train, the reality is  
10 we have a lot of stakeholders that have a very strong  
11 opinion on a lot of these issues and hearings from them and  
12 processing where we can find common ground I believe is  
13 advantageous.

14           So I do appreciate your comment. I don't think  
15 that I can completely remove your concern that there were so  
16 many other parties here that they outnumbered the school  
17 districts themselves, but the reality of it is, is we felt  
18 that at the time, these were the interested parties that  
19 needed to come to the table.

20           MS. GREENE: Thank you.

21           CHAIRPERSON BRYANT: Any other questions on this?  
22 Okay. Finish -- wrap up.

23           MR. AMOS: Okay. I'm wrapping up very quickly  
24 then. Basically in our summary and conclusions, we believe  
25 that if the departments engaged in this process, OPSC, DSA,

1 and CDE, continue the course, that is take a look at those  
2 things that are short term, things much as Ms. Greene cited  
3 as being things we could simply do ourselves -- we do these  
4 things and make things better. We can do a lot of that  
5 within the first 90 days.

6 Then we have the group, the interim things that  
7 are one to two years out that involve some policy, some  
8 regulation, and then we have the three year plus the  
9 legislative fixes that need to happen.

10 So we envision -- and one thing I've asked is,  
11 is -- or I've been asked to pose to you is that the expert  
12 working group would like to continue their work, continue to  
13 monitor the progress that the State agencies are making  
14 because quite frankly the first 90 days is all about what  
15 the agencies do and deliver on. And to that end, I hope  
16 that you will support that effort.

17 CHAIRPERSON BRYANT: Are there any additional  
18 questions? Ms. Brownley.

19 ASSEMBLY MEMBER BROWNLEY: Well, I thank you for  
20 joining us and presenting this and chairing the committee  
21 with Ms. Moore and coming up with these recommendations.

22 I'm -- in terms of the execution piece of it, I  
23 was hoping that we were going to have, you know, sort of  
24 time frames and benchmarks by which we could measure our  
25 process and while I haven't had a chance to really digest

1 the entire report, I'm not sure that it included, you know,  
2 real benchmarks for us to measure how well we are doing or  
3 not doing.

4 MR. AMOS: Excellent point and I very much  
5 appreciate the question. I was remiss in articulating that  
6 in the next meeting scheduled for the expert working group,  
7 the agencies are to put forward an action plan that  
8 articulates the implementation strategies for their review  
9 and approval, at which point we would bring that back. It  
10 was my intention that recognizing as much as the Chair has  
11 recognized as the tenure of those of us in the room, it  
12 makes sense that we would try to create a road map that was  
13 sustainable, that had deliverables, and that that would be  
14 passed on to each administration as the administrations  
15 change.

16 So I do believe that the expert working group as a  
17 body provides that kind of insight and can provide some  
18 level of accountability associated with that, from our  
19 standpoint in terms of as an agency, Department of General  
20 Services.

21 ASSEMBLY MEMBER BROWNLEY: And just I -- I  
22 understand or I don't want to ask a personal question of  
23 you, but I certainly have been hearing that it might be that  
24 you're going to be moving to some other responsibilities and  
25 if that indeed is true, are we working on some kind of exit

1 plan for you so whoever comes in is here to begin to  
2 transition to making sure that this happens?

3 MR. AMOS: That is concern, Assemblywoman  
4 Brownley, that I have articulated to a larger body, the  
5 expert working group. It is true that I am on loan to the  
6 Department of Corrections and Rehabilitation where I'm  
7 currently assigned, but this remains one of my portfolio  
8 items at DGS and I'll continue to oversee the day-to-day  
9 operations of the Office of Public School Construction and  
10 this process and any DSA improvements because one of the  
11 commitments that I made was, is to see this process through  
12 as long as I was in this position within the administration.

13 What I would hope that would come from the expert  
14 working group is a more defined road map as to what that  
15 charge is and the process for identifying my replacement  
16 moving forward. But I envision being here through January.

17 ASSEMBLY MEMBER BROWNLEY: So that means that we  
18 could potentially in 90 days or 120 days, you could come  
19 back and tell us, you know, where the improvements have been  
20 made, what may still be obstacles in terms of pursuing this  
21 and, you know, sort of having the data of where we are  
22 relative to closing out projects, you know, the time frames,  
23 how many projects have we closed out, have we shortened the  
24 time frame. I mean those were the sort of things and the  
25 benchmarks that I was sort of looking for that we could, you

1 know, measure our progress.

2 MR. AMOS: What I will commit is, is a monthly  
3 report that either can be made available through Lisa  
4 Silverman to this Board and I'd be more than glad to come  
5 back and present our progress monthly, however you would  
6 like to see it. I do believe a report is -- should be  
7 forthcoming. This is identifying the scope of the prongs,  
8 suggested solutions. We need to put forth an action plan,  
9 implementation elements, and some timelines associated with  
10 that and show you the deliverables accordingly.

11 ASSEMBLY MEMBER BROWNLEY: Thank you.

12 MR. AMOS: Thank you.

13 CHAIRPERSON BRYANT: Are there any other  
14 questions? I see we have public comment on this item.

15 MR. SAVIDGE: Thank you, Madam Chair. Bill  
16 Savidge, West Contra Costa Unified School District -- excuse  
17 me -- and Chair of CASH. I was a member of the expert  
18 working group, still am, and hope to continue. I want to  
19 thank Mr. Amos for his leadership in getting this going. I  
20 mean he's a commonsense kind of guy and when he took over,  
21 he could tell that things were pretty messed up in some  
22 parts of this program.

23 And I really appreciate that and I really  
24 appreciate Kathleen Moore's work on co-chairing and keeping  
25 the process going and providing that perspective also.

1           I want to focus -- I think it was a very healthy  
2 process. Board Member Greene made a really good point and  
3 I'll share with you what happened in the beginning and her  
4 point about the number of stakeholders versus the number of  
5 clients participating.

6           After the first meeting of one of the expert  
7 working groups, there was open rebellion regarding the  
8 number of stakeholders who are participating and we had a  
9 very good interaction and worked on the ground rules about  
10 how clients were going to be heard and going through this  
11 process and I think we reached some really good agreements  
12 about a process that really heard districts and community  
13 college districts going forward with a lot -- and toning  
14 down the interactions with some of the stakeholder groups  
15 such as the State agencies in the process.

16           We tried to address that as we went forward in a  
17 very well-facilitated process. I'd like to focus on the  
18 continuity because a lot of people have asked us why did we  
19 do this now at the end of an administration when there's --  
20 you know, as the Chair has said, February looms, you know,  
21 differences in staff and changes coming forward, but we --  
22 it's important that we started now and it's important I  
23 think for members of the Allocation Board who are going to  
24 go across the line here and continue on to let this work  
25 continue.

1           We've really identified some important things. We  
2 need to focus on sustaining the process and then figuring  
3 out are we meeting the goals and are we making progress  
4 towards the easy things to fix. Closeout should be a simple  
5 matter. This is not rocket science to closeout projects.

6           Some of the other recommendations that came from  
7 the group were truly visionary such as create a single State  
8 agency responsible for school construction, the one-stop  
9 shop of our dreams that we can go to in the private sector  
10 to get a project approved, and so some of this stuff is  
11 going to take years to do and it's going to take legislative  
12 vision to get there also, but I would hope that the  
13 Allocation Board would work with the expert working group,  
14 keep this going, sustain the process, and we want to come  
15 back to you and report on progress in the future. Thank  
16 you.

17           MR. BAKKE: Eric Bakke with the Los Angeles  
18 Unified School District. I wasn't a member, though I --  
19 someone probably in the work group would argue since I sat  
20 on the sidelines for many of the meetings, but James Sohn,  
21 our facilities director, was a participating member and  
22 focused on the closeout.

23           I think this process is rather unique in the sense  
24 that it is one of the first times we actually had a State  
25 agency open its doors and listen to the problems that the

1 school districts and the stakeholders had with the program,  
2 not just at OPSC, DSA, CDE, looking at it as a whole, trying  
3 to figure out how do we manage the process.

4           We have a map in our district that kind of  
5 outlines the process of building a school in the State of  
6 California. It looks like something out of the game Chutes  
7 and Ladders. It's complicated. It's archaic. It's just  
8 silly.

9           And what this group focused on was trying to  
10 figure out those obstacles to creating a smooth process. We  
11 simply only identified them. We haven't even got into the  
12 work of actually developing the solutions. We're going to  
13 be working with the State agencies over the next 90 days to  
14 figure out how do we help them in their process analysis --  
15 how to streamline the process.

16           But I think we have long-term goals of regulations  
17 and legislation that will help streamline the process. So  
18 we look to this body for support. We want to participate  
19 and make sure that it's something the State Allocation Board  
20 is comfortable with. I think reaching out to other  
21 stakeholders is absolutely important. There are 20-so  
22 individual interest groups included in the expert working  
23 group, but I think there's a number of small, medium, large,  
24 urban, suburban, north, south school districts represented  
25 in the subgroups and they really provide a lot of the input

1 to the process.

2           So we look for your guys' feedback and input and  
3 support, but we think this is a long-term process and I  
4 think the folks that are participating are very much engaged  
5 and are looking for the solutions and are going to continue  
6 the process even though we do have a change in  
7 administration. So just wanted to share that with you.  
8 Thank you.

9           MS. HANNA: Good afternoon, Madam Chair, Board  
10 members. My name is Jenny Hanna (ph). I'm a facilities  
11 officer for the Kern County Superintendent of Schools. I'm  
12 from Assembly Member Fuller's district.

13           And I was the chair for the funding work group and  
14 we had a saying in the work group about stones in the shoes.  
15 That was the big -- you know, let's get through them, let's  
16 get stuff happening, let's make things work better. And  
17 when it came to the funding topic, I always felt like those  
18 were the asteroids in space.

19           I mean really truly I think we just scratched the  
20 surface on that discussion. But I wanted to say is that  
21 I'll just echo what Eric just said. For me as a  
22 practitioner, as a person who really fills out those forms,  
23 I take a project from site acquisition all the way through  
24 construction and closeout. To have all the agencies present  
25 to hear the voices of concern and criticism was very

1 refreshing to me and I'm thankful for being involved in the  
2 process. I appreciate Mr. Amos's helping to keep customers'  
3 voices heard and not having to be squelched and I think that  
4 that happened in the process.

5 So I also would say that I would ask that we look  
6 at continuing some open line of communication in this  
7 format. It seemed to be a really successful way to get  
8 issues discussed and then identify solutions even though  
9 they were long term. So thank you.

10 MS. MATSUMOTO: Good afternoon. I'm Carri  
11 Matsumoto. I'm the Executive Director of Long Beach Unified  
12 School District in their facilities department. I too was  
13 actually a participant. I was one of the sub chairs. I was  
14 the first sub chair group to go in the process, so I  
15 appreciate the comments that were made, but I also wanted to  
16 acknowledge my -- the thankfulness I have and gratefulness  
17 for Mr. Amos and acknowledging the concerns I brought  
18 forward about the process of facilitation and engaging  
19 stakeholders and making certain that districts' voices were  
20 really a priority in the process.

21 And so I want to thank him and his staff and  
22 Ms. Moore for that opportunity to participate and I also  
23 echo pretty much everything that everyone else said. I  
24 think this was a once -- sort of a once in a lifetime  
25 opportunity in this program that I felt was really

1 refreshing as well and I think it's been a long road to get  
2 to where we are and I think that in order to sustain this  
3 process, it's important, at least from my perspective, that  
4 the complicated issues be looked at very carefully because  
5 there's so many items on that list of recommendations, but  
6 that we really look at the sustainability of a future  
7 program for the State for school districts that we really  
8 critically look at and involve the proper stakeholders,  
9 districts, and experts in the field to provide input on  
10 things like funding adequacy, the cost of construction.

11           These are not easy issues to tackle. So I  
12 appreciate the form in which we were able to discuss these  
13 issues openly and I think collaboratively really is  
14 important for us to continue in that fashion and that effort  
15 of collaboration was unique to me.

16           And so I really want to just say that I really  
17 think that we would appreciate the Board's support and  
18 continued openness in hearing from school districts  
19 throughout this process. I think I would like to see this  
20 continue, but I do think that we have to find a way to  
21 engage districts across the State because they're unique in  
22 their ideas, in their concerns, and their problems and  
23 challenges and I think we've only touched the surface for  
24 what we need to do in terms of our work together. So thank  
25 you very much.

1           MR. DUFFY: Good afternoon, Madam Chair, members.  
2 Tom Duffy for CASH. Standing in line here kind of reminds  
3 me of like standing in line for confession at the Cathedral  
4 and hopefully at the end of this, you don't have a penance  
5 for me, but I would agree with what our colleagues have  
6 said, that this has been an interesting process.

7           I think when -- the bottom line is -- comes down  
8 to leadership and hopefully the Department of General  
9 Services, Mr. Harvey, Mr. Amos giving the authority to DSA  
10 and OPSC to make decisions and move on because I think  
11 there's -- a lot of that was discussed and we always have  
12 the Allocation Board to come to to talk about issues if we  
13 are not pleased.

14           But if I may, Madame Chair, and Stephen, I don't  
15 know if you need to come up here, but I had two questions  
16 that I think were seminal for me that -- the first is, we  
17 had discussed the collaboration of the three agencies and  
18 that that was to be an important part of whatever we build  
19 for the future. And we had talked about -- I think Bill  
20 Savidge had mentioned the overall beautiful goal and  
21 objective of having all agencies under one shop and I don't  
22 think that's going to happen in at least my lifetime and I  
23 said that. I think you were there, Ms. Moore.

24           What I think could be done is the three agencies  
25 could collaborate and we had agreed that within 30 days of

1 the conclusion of this process, we'd have an MOU in place  
2 and I just -- I was wanting to know what's the status of the  
3 MOU. Are we there? Do you need our help? We're good  
4 wordsmiths.

5 MR. AMOS: Well, thank you, Tom, for putting it on  
6 the spot. Yes, we are moving forward. I know that Kathleen  
7 and myself have met. The leadership has drafted an MOU and  
8 we're working through the details of that MOU, but I think  
9 the voice of the expert working group and your support was  
10 well noted and I envision we'll be able to wrap something up  
11 in the very near future and be able to present that before  
12 the State Allocation Board if --

13 MR. DUFFY: My birthday's December the 5th. Do  
14 you think you could make that?

15 MR. AMOS: I pledge to do that.

16 MR. DUFFY: Okay. Just one --

17 CHAIRPERSON BRYANT: I just know that MOUs take  
18 six months to get done. February.

19 MR. DUFFY: No, no. We need to do this by  
20 December the 5th, Madam Chair, and we'll work with Mr. Amos  
21 on that.

22 The second is probably simpler, but we talked  
23 about short time frames and then longer time frames and I  
24 know you talked about going out into the years. We have an  
25 issue. This was the funding issue.

1           The general site allowance that has been moved  
2 from year to year to year and it was last November -- yes,  
3 it was last November that it was last approved. I think it  
4 goes away on January 1st if we do not renew that. Are we  
5 moving forward with that item to bring that back to the  
6 Board?

7           MR. AMOS: Tom, I don't have an answer for you.

8           MR. DUFFY: Okay. Can we move that item to the  
9 Board by the next meeting? Is that possible, or maybe, Juan  
10 or Lisa, is that on your workload list?

11           MR. MIRELES: I don't think right now we have it  
12 in our current workload. I think that this was part of the  
13 discussion that we're having with the whole grant adequacy  
14 discussion in terms of the overall grant amounts and general  
15 site and including everything not just, you know, the AB127  
16 adjustment, but the overall grant amounts.

17           MR. DUFFY: Well, what we would request, Madam  
18 Chair, members, is that you would request that this item be  
19 agendized at least for your discussion. Unless I'm  
20 incorrect, it dies if you don't take action before the end  
21 of this calendar year and if you would choose not to move on  
22 for whatever reason, then we would understand that.

23           The issue of the 127 increase I think is a much  
24 larger issue. The general site allowance is something that  
25 we all came to a conclusion about several years ago and it

1 just has continued on as a temporary item rather than a  
2 permanent item, so I would ask for that.

3           And, Mr. Amos, thank you for your involvement of  
4 us in the process. I am not a process guy at all. I'm the  
5 guy that just likes to say let's get this done and you were  
6 very patient with me and thank you for that.

7           MR. AMOS: Thank you, Tom.

8           MR. DUFFY: Thank you, members.

9           CHAIRPERSON BRYANT: Any other questions or  
10 comments on this item? Okay. I just want to say one  
11 last -- I'll say one last thing on this. I just -- I think  
12 getting the MOU is difficult to do for a variety of reasons  
13 and I just -- I know everyone has -- wants to get it done,  
14 but everyone's in transition. And so I just say to the  
15 stakeholders that spoke so eloquently about the process you  
16 guys have to carry this thing through transition and if for  
17 whatever reason the current cast of characters cannot  
18 achieve that, you have to help get it back onto the agenda  
19 next year.

20           A lot of the legislative members will remain, but  
21 there's going to be a -- you know, kind of some shifting  
22 around. So that's part of what I think is so good about the  
23 process is it does give you all a way to help with  
24 transition, so -- any other things? All right.

25           Let's move onto -- Tab 10 is off the agenda. So

1 we're moving to Tab 11, which is page 151.

2 MR. ASBELL: Good afternoon, Madam Chair, Board  
3 members. My name is Rick Asbell and I'm Operations Manager  
4 with Fiscal Services and alongside me is Michael Watanabe,  
5 who's an Audit Supervisor.

6 So if you would please go to stamped page 151.  
7 This item concerns **San Joaquin County Office of Education**.  
8 The purpose of the report is to present school facility  
9 program audit findings and to request the Board find that a  
10 material inadequacy has occurred which resulted in the  
11 funding advantage for the San Joaquin County Office of  
12 Education.

13 Additionally we wish to request you levy the  
14 appropriate interest penalty as provided in law.

15 As we began the audit process for these projects,  
16 it was revealed that the County Office falsely certified  
17 fund release authorization and received premature fund  
18 releases on the projects listed on Attachment C, stamped  
19 page 158. If you look at the attachment, the percentage  
20 under contract at the time of the certification were either  
21 at zero or 1 percent for the projects. Additionally the  
22 projects ranged between 67 and 237 days premature for a  
23 combined total 1,392 days premature.

24 As we look at the authority, statute provides the  
25 following. The essential element necessary to meet the

1 criteria of the statute is to have -- and this is quoted --  
2 a binding contract for the completion of the approved  
3 project, close quote.

4           The County Office submitted a fund release request  
5 using the fund release authorization form on which the  
6 County Office specifically checked the following  
7 certification. The district certifies it has entered into  
8 binding contracts for at least 50 percent of the  
9 construction including the plans applicable to the  
10 State-funded project.

11           Additionally statute requires when eligibility or  
12 funding application-related information is found to be  
13 falsely certified, the Office of Public School Construction  
14 shall notify the Board.

15           Material inaccuracy is further defined in the  
16 regulations that falsely certified information allowed this  
17 school district to gain an advantage in the funding process.

18           So based on these audit findings, there are three  
19 major issues for consideration by the Board. The first  
20 issue is material inaccuracy. The County Office falsely  
21 certified on fund release authorization submittals. Staff  
22 recommends that the Board find a material inaccuracy  
23 occurred for the County Office projects listed on  
24 Attachment C.

25           Another issue to deal with is the interest

1 penalty. If the Board finds the County Office applications  
2 have material inaccuracy, statute requires that the County  
3 Office shall repay the funding received as a result of the  
4 false certification.

5           Additionally regulation states the district must  
6 repay the additional funding received beyond the amount the  
7 district was entitled to for the project with the interest  
8 within five years from the date the Board made the finding  
9 of the material inaccuracy. Interest shall be assessed as  
10 described in Education Code Section 17070.51(b)(1).

11           Now recently there's been some discussion as to  
12 what the terminology additional funding means in the  
13 aforementioned regulation. We have talked to legal counsel  
14 about this language and legal counsel has opined that all  
15 funds released on a false certification are considered to be  
16 the additional funds.

17           Had the district certified as to the actual amount  
18 of construction contracts in place at the time, they would  
19 not have been eligible for any funds to be released.

20           Another thing that should be noted, this  
21 interpretation has been supported by Board actions in all  
22 the previous material inaccuracy penalty calculations for  
23 six school districts and as recently as last month. The  
24 interest lost by the State due to the premature fund  
25 releases on these eight projects is approximately \$257,000.

1           The third issue to deal with is the loss of  
2 self-certification privileges. If the Board makes a  
3 material inaccuracy finding, the law requires that the  
4 County Office be prohibited from self-certifying information  
5 on subsequent applications for a period of up to five years.  
6 Based on the multiple fund release occurrences, the  
7 cumulative duration of the funding advantage, which is the  
8 1,392, and staff's methodology for making these  
9 recommendations which is on Attachment B, page 157, staff  
10 recommends a loss of self-certification for a period of five  
11 years.

12           Now at the last Board meeting when we were  
13 discussing some material inaccuracy items, there was much  
14 discussion about the time that lapses between a false  
15 certification, the commencement of an audit, and finally the  
16 presentation of a potential material inaccuracy to the  
17 Board.

18           For the County Office projects, the false  
19 certifications occurred from 2002 to 2004. The County  
20 Office filed notice of completions for the eight projects in  
21 2005. However, rather than providing the OPSC with the  
22 final 100 percent expenditure report soon after the notice  
23 of completions for these projects which would have allowed  
24 the OPSC to immediately begin an audit of the projects, the  
25 County Office added minimal expenditures and submitted

1 99 percent reports in 2006 and 2007. The County Office did  
2 not submit all eight 100 percent reports until March of  
3 2009, four years after the County Office filed notice of  
4 completions.

5 The audit for all eight projects commenced three  
6 months later in June of 2009.

7 Now, I understand that there is a County  
8 representative here, but as stated in our item, I'd like to  
9 basically talk about the County Office's position.

10 The County Office agrees that there were eight  
11 premature fund releases and will accept a Board decision  
12 that a material inaccuracy occurred. However, the  
13 board [sic] does not think that it should be assessed an  
14 interest penalty because it believes that this penalty  
15 constitutes a double dip. The County Office arrives at this  
16 conclusion because it received financial hardship funding  
17 and it also is repaying interest associated with project  
18 savings earned since fund release.

19 The County Office will accept a two-year period  
20 for loss of self-certification and would like to use its  
21 financial hardship savings to pay the material inaccuracy  
22 interest penalty.

23 Now staff's response to the County's position is  
24 that we wish to clarify for the Board that there are two  
25 separate and distinct interest types associated with the

1 County Office projects. The first, the projects were  
2 apportioned and received 100 percent financial hardship  
3 funding. After completion of the projects, the County  
4 Office had approximately \$344,000 in financial hardship  
5 savings.

6 Additionally the County Office accrued  
7 approximately 414,000 in financial hardship interest as a  
8 result of State funds deposited in the County Office  
9 interest-bearing accounts.

10 If you would go to stamped page 156, the last  
11 paragraph on that page specifically addresses how financial  
12 hardship savings and financial hardship interest are to be  
13 handled. Regulation Section 1859.103 states, the State  
14 portion of any savings declared by the district or  
15 determined by the OPSC by audit must be used to reduce the  
16 SFP financial hardship grant of that project or other  
17 financial hardship projects within the district for a period  
18 of three years from the date the savings were declared by  
19 the district or determined by the OPSC audit. Any interest  
20 earned on a financial hardship project not expended on  
21 eligible project expenditures will be treated as savings and  
22 will be used to reduce the SFP financial hardship grant for  
23 that project.

24 These are the only options the financial hardship  
25 projects with savings which includes interest irrespective

1 of material inaccuracy.

2           The second separate and distinct interest type is  
3 associated with the material inaccuracy itself. Statute  
4 requires an interest penalty as a part of any material  
5 inaccuracy and it is not within the Board's discretion to  
6 eliminate the interest penalty should it make a material  
7 inaccuracy finding.

8           This interest penalty is in addition to any other  
9 amounts due to the State. The Board cannot offset the  
10 penalty with the financial hardship earned by the County  
11 Office.

12           In summary, if you look at stamped page 153(a),  
13 we've laid out a couple examples. The examples for  
14 District 1 and District 2 show the County Office proposes to  
15 pay the State the same amount, which is approximately  
16 759,000, that a non-material inaccuracy district would pay  
17 the State. Essentially in the County Office's proposal, the  
18 total amount owed by the County Office would be equal to the  
19 amount owed by a financial hardship district without any  
20 premature fund releases.

21           Regulation and statute do not allow for  
22 alternative calculations to the amount of financial hardship  
23 savings and financial hardship interest or the amount of  
24 material inaccuracy penalty that is owed. As in  
25 District 2's case above, statute and regulation require the

1 County Office to pay the financial hardship savings, which  
2 is the 344,000, and financial hardship interest, which is  
3 the 414- or 414,000 and then also pay the interest  
4 associated with the material inaccuracy of 257,000.

5 Now one of the things that we wanted to highlight  
6 also is in addition to this item focusing on the County  
7 Office, there are potentially other districts that may be  
8 impacted by the Board's determination on this item.

9 Given the current fiscal environment and the  
10 2 billion plus in unfunded list, any movement of the  
11 unfunded list could impact future school facility  
12 construction projects. If the interest penalty of 257,652  
13 is assessed and consequently repaid by the County Office,  
14 then some other project may move off the unfunded list and  
15 receive an apportionment and fund release. These projects  
16 would create jobs and modernize old or build new school  
17 facilities.

18 So based on these comments, staff is making the  
19 recommendations as stated on stamped page 154. That  
20 concludes my presentation. I'll be happy to answer any  
21 questions the Board may have.

22 CHAIRPERSON BRYANT: Why don't we go ahead and  
23 hear from the district.

24 MS. STARR: Thank you. Good afternoon. I'm Mamie  
25 Starr, the Director of Operations and Support Services for

1 the San Joaquin County Office of Education, and I certainly  
2 am fully aware that this whole concept of material  
3 inaccuracy penalties for premature fund releases is  
4 convoluted and I appreciate everyone's efforts in our regard  
5 and I want to iterate that the time that it has taken for us  
6 to get our projects closed has nothing to do with OPSC.  
7 They've been very supportive. They've been moving things  
8 along and there's a myriad of reasons why it's taken so  
9 long. I'm just happy we're coming to the end of the line.

10 I'd also like to point out that when it comes to  
11 premature fund releases, that's probably a problem that is  
12 going to be going away because on the 5005 now when we do  
13 all of our certifications, there's a place where you put in  
14 what is the date you signed your contract, what is the date  
15 of your notice to proceed.

16 So if someone does like I believe my predecessors  
17 did and they just kept going and checking, they can't really  
18 do that because now it's in your face. When did you sign?  
19 Oh, I didn't sign it yet. Well, now you've got to go back  
20 and get it done.

21 So I think this problem is going to go away. It's  
22 how you deal with it now, for all of us who are closing out  
23 projects. As staff indicated, SJCOE accepts the declaration  
24 of an MI because my predecessors did sign and file the 5005s  
25 before they signed construction contracts. We accept that

1 there is to be some consequence for doing this and we also  
2 agree that the only choice that the Board has is to rescind  
3 our self-certification privileges.

4           We'd like it to be not more than two years, but we  
5 will accept whatever the Board deems appropriate in this  
6 case. We also concur that if an MI is declared the Board  
7 has no choice but to impose a financial penalty. However,  
8 we disagree with how the code and regulations are being  
9 interpreted in the calculation of the penalty in the case of  
10 premature fund release MIs and I am speaking to that narrow  
11 group, premature fund release MIs.

12           And we do have some concern that hardship  
13 districts could be inadvertently prejudiced when it comes to  
14 payment of the penalty. Now the code and the regulations  
15 call for payment of a penalty proportionate to the  
16 additional funding received as a result of the MI plus  
17 interest computed as described in code.

18           And I did provide for you a copy of the code  
19 section as well as the pertinent SFP regulations. I  
20 understand that a State position is to maximize the dollars  
21 that leave so that they -- and the dollars that come back so  
22 that they can be spread among more districts. I understand  
23 that.

24           However, the interpretation has been that the  
25 penalty is the amount of the interest that the apportioned

1 and released funds would have earned while in the State  
2 coffers if they had not been released early. It has been  
3 stated that this is making the bonds whole and just for  
4 reference in our case, that is the \$257,000 plus.

5 First, I contend that nowhere in the code or the  
6 regulations that I can find is there language applying the  
7 concept of making the bonds whole or computing a penalty  
8 based on recouping lost interest. The code does prescribe  
9 two different formulas for computing interest on the  
10 additional funds received as a result of the MI.

11 Second, both the code and the regulations clearly  
12 say that when a district has an MI they must pay a penalty  
13 in an amount proportionate to the additional funding and  
14 it's emphasis on additional funding and we obviously do not  
15 share the opinion that the whole apportionment constitutes  
16 additional funding.

17 And you are to pay back interest as the code  
18 dictates based on that amount of additional funding. In a  
19 premature fund release, there is no additional funding  
20 received as there might be in the case of overstating  
21 eligibility. Therefore the question becomes upon what base  
22 is the interest to be calculated.

23 And it can be argued that additional funding is  
24 possible to get with a premature fund release because the  
25 money released will earn interest during the premature

1 period. And if you assume that this interest earned is  
2 additional funding, that amount plus interest on that number  
3 would be the amount that should be the penalty.

4           And just for reference once again in our case, we  
5 reported that on that \$16 million that we got prematurely --  
6 and it's on eight projects and it's all -- but I'm speaking  
7 to them collectively -- that we earned over \$70,000 in  
8 interest. I would contend that that constitutes the  
9 additional funding received as a result of the premature  
10 fund release.

11           And in our case, we could have spent this  
12 additional funding on a project, but we did not, so we  
13 contend also that we did not get a funding advantage nor did  
14 we actually spend any additional funding and this really  
15 matters because we're hardship.

16           In the levy of premature fund release penalties,  
17 there are different treatment potentials for hardship  
18 districts versus match districts. For example, a match  
19 district can move the SFP funds to another fund and not even  
20 have to report the interest let alone return it. They could  
21 use it to fulfill the penalty.

22           If the hardship district does not spend the  
23 interest on the project, it is to be returned to the State  
24 and deemed not available for payment of the penalty as staff  
25 indicated in the regulation. And there are other nuances as

1 well, but they start to get really up tiny avenues of  
2 interpretation.

3           In our situation, I think our folks may have held  
4 back spending that interest because they thought there might  
5 be a penalty. I found in trying to sort through all these  
6 closeout documents a part of a string of email where they  
7 said, oops, this could constitute a material inaccuracy, we  
8 were supposed to sign the contracts first.

9           And so we have held off because we knew that this  
10 was coming and staff was very good in working with us. We  
11 figured it out when they figured out and -- so we've held  
12 off some expenditures in our budget. We've held off filling  
13 some positions because we're like everybody else, if it's  
14 going to be a hit on our general fund, we need to plan for  
15 it.

16           In summary, we request that the Board first  
17 consider the possibility of a different interpretation of  
18 the code and regs when determining the premature fund  
19 release MI penalty and yes, I recognize that there have been  
20 decisions that have been made on the other interpretation  
21 that have resulted in districts paying money and so  
22 there's -- what happens with the look back, what happens  
23 with the now, and I indicated prospectively I think the  
24 problem's taken care of itself.

25           Second, whether or not there is a possibility in

1 an unintended prejudice in the treatment of hardship  
2 districts and the payment of the MI penalty, which is  
3 somewhat of a separate discussion but related to our issue  
4 about interest, and finally what is the appropriate amount  
5 that we should pay as an MI penalty. We do not argue that  
6 we need to pay a penalty. It's just upon the interpretation  
7 of the law what should be the basis for computing that  
8 proportionate additional funding and then the interest on  
9 top on that number.

10 That concludes my summary and I'd be happy to try  
11 to answer any questions that the Board may have.

12 CHAIRPERSON BRYANT: Are there any questions?  
13 Ms. Buchanan.

14 ASSEMBLY MEMBER BUCHANAN: Yeah. I have one  
15 question because it's consistent with other MIs we've looked  
16 at, but when -- you seem to be arguing that you should have  
17 to repay the interest at the rate you were earning on it and  
18 not what's being assessed?

19 MS. STARR: As we worked through -- as I've worked  
20 through looking at this and dealing with our own staff and  
21 legal counsel and so forth, we've come to different paths in  
22 the road at different times. Right now, if you take the way  
23 staff has recommended that we pay 257- -- if you buy this  
24 argument that there was \$257,000 in lost interest to the  
25 State and I say, well, yeah, but that same \$16 million was

1 sitting in my bank and not the State's and it earned money,  
2 that that's where I contend there is a double dip from the  
3 standpoint that I'm giving back the 70,000 I earned on it.  
4 So the same dollars can't earn twice and then that starts to  
5 get into the interpretation for hardship.

6 ASSEMBLY MEMBER BUCHANAN: So when it says here --  
7 because you actually highlighted this for us --

8 MS. STARR: Yes.

9 ASSEMBLY MEMBER BUCHANAN: -- that on the first  
10 page when you say State school -- as the case may be an  
11 amount proportionate to the additional funding received as a  
12 result of the material inaccuracy including interest at a  
13 rate paid on monies in the Pooled Money Investment Account  
14 or at the highest rate of interest for the most recent  
15 issues of State general obligation bonds as established  
16 pursuant to Chapter blah, blah, blah, whichever is greater.

17 So does that not define the interest rate?

18 MS. STARR: It defines the interest rate, but the  
19 question is to what number do you apply the interest. The  
20 number that the interest has been applied to in the past --  
21 and I recognize there's past history here and in the  
22 recommendations coming forward is the total amount of the  
23 apportionment. Now that's our apportionment.

24 ASSEMBLY MEMBER BUCHANAN: So if you receive the  
25 apportionment X days early -- I mean if you had been funded

1 with in the time frame allowed by statute, right --

2 MS. STARR: Um-hmm.

3 ASSEMBLY MEMBER BUCHANAN: -- there would be no  
4 penalty, but because you receive it early, that interest  
5 rate is applied to the number of days you held that money  
6 that was outside of the window. I mean so really what  
7 you're doing is repaying the State for -- I mean for the  
8 State's lost interest for those additional days that you  
9 were holding the money outside of statute -- of regulation  
10 when you should be funding.

11 MS. STARR: And the -- yes.

12 ASSEMBLY MEMBER BUCHANAN: Right.

13 MS. STARR: That is the interpretation.

14 ASSEMBLY MEMBER BUCHANAN: Right.

15 MS. STARR: However, we're saying that the code  
16 says in an amount -- shall be paid to the Board in an amount  
17 proportionate to the additional funding received as a result  
18 of the material inaccuracy.

19 ASSEMBLY MEMBER BUCHANAN: So explain to me when I  
20 interpret proportionate is to say those additional days that  
21 you held the money for which you, you know, were funded  
22 early. You're not interpreting proportionate in the same  
23 way. So could you explain to me how you're interpreting  
24 proportionment?

25 MS. STARR: Yes. The key is that it says

1 additional funding received. Well, I got my \$16 million.  
2 There's -- that was apportioned for me. I could go and get  
3 it any time after the Board did that. It's not additional  
4 money.

5 All I got additional as a result of that early  
6 release was the interest that I earned on the money. I am  
7 contending that when you look at additional funding, that  
8 was the amount and then we apply these interest to that.

9 ASSEMBLY MEMBER BUCHANAN: I understand what  
10 you're saying. It seems to me though that the question is  
11 do we follow these regulations that specifically say what  
12 the interest rate should be for those additional days you  
13 have the money or are we collecting what the district,  
14 County Board, or whatever -- the interest you earned on the  
15 money and I -- it seems -- this seems to me to be fairly  
16 specific in terms of what that charge is. I mean I don't --

17 CHAIRPERSON BRYANT: Staff, did you want to  
18 comment on that?

19 MS. SILVERMAN: Yeah. I believe statute's very  
20 specific when it comes to assessing an interest penalty for  
21 material inaccuracy and the distinction here is there was to  
22 some extent the -- they weren't rightfully entitled to those  
23 funds at that time. So you're absolutely correct. Even  
24 though it seems to be that distinction between I earned that  
25 16 million, I should have kept that 16 million, that's not

1 the issue.

2 The issue is they received that money prematurely  
3 and the State has bond costs associated or --

4 ASSEMBLY MEMBER BUCHANAN: Right. Well --

5 MS. SILVERMAN: -- debt service associated --

6 ASSEMBLY MEMBER BUCHANAN: -- if the State had had  
7 it, the State would have had that much more money to  
8 allocate out to other projects.

9 MS. SILVERMAN: And that's correct.

10 ASSEMBLY MEMBER BUCHANAN: That's the issue.

11 MS. STARR: But nowhere does it say that we are  
12 required as part of the penalty to make bonds whole or to  
13 provide the funding to recoup that interest. It says that  
14 we have to give back the additional funding we got and then  
15 the interest calculations that you point to are on that  
16 additional funding.

17 We don't argue that the code -- the code is pretty  
18 clear on what the interest rate is. It's just do you apply  
19 it to the 16 million --

20 ASSEMBLY MEMBER BUCHANAN: But are we now  
21 combining -- right now, are we now combining two different  
22 issues?

23 CHAIRPERSON BRYANT: Right.

24 ASSEMBLY MEMBER BUCHANAN: One is what the  
25 interest penalty is for the material inaccuracy, and the

1 other is what the additional funding you received because  
2 the cost of the hardship grants -- I mean the cost of the  
3 hardship projects was less than the grant amount? Are we  
4 not -- are we now talking about two different issues?

5 MS. STARR: I think, yeah, there's more than two  
6 issues that are sort of entwined in your comments. Where we  
7 are going with this is that -- let me give a parallel  
8 example.

9 If someone were to misstate their eligibility and  
10 they received grant funding and they got \$16 million and  
11 then it was determined there was an MI because they  
12 overstated their eligibility, then you come back and you say  
13 okay, what is their penalty. One, they have to either give  
14 back an amount proportioned to it, so give back that money,  
15 plus interest on that money and it doesn't say anywhere that  
16 it has to go for lost days or to recoup the interest that  
17 was lost by the State. It just says give the money back,  
18 pay this interest.

19 In our case, we're entitled to that money and the  
20 additional funding was because we got it early.

21 ASSEMBLY MEMBER BUCHANAN: Well, I'm just trying  
22 to -- so do you agree then -- are you saying there should be  
23 two different interest rates you're charged, one for the  
24 material inaccuracy and one for the overfunding or the --  
25 you know, the amount that -- excess funding you received to

1 remedy the financial hardship -- I mean --

2 MS. STARR: No. I'm saying that there should be  
3 no calculation of interest related to recouping the interest  
4 on the money we got. That the law does not say that.

5 ASSEMBLY MEMBER BUCHANAN: So how do you interpret  
6 this? It specifically says that this is the rate at which  
7 the interest will be calculated.

8 MS. STARR: It says -- if I can go back, it says  
9 that you pay back an amount proportionate to the additional  
10 funding received as a result of the MI including interest at  
11 the rate paid on monies in and then it goes on to say either  
12 at this rate or at this rate.

13 I am contending that you compute that based on any  
14 additional money we got not on the fact that we got our  
15 apportionment early and then have to recoup the State for  
16 interest lost.

17 ASSEMBLY MEMBER BUCHANAN: So you're saying  
18 because it says including instead of plus it doesn't mean --

19 MS. STARR: Right. It says result of the --  
20 additional funding received as a result of the MI including  
21 interest at the rate paid at. And that's why I say it  
22 really is a matter of interpretation and obviously for me  
23 \$70,000 is a lot different than a quarter of a million  
24 dollars when you're going to pay a penalty and we're giving  
25 all of the interest that we earned back which is sort of a

1 side issue.

2 ASSEMBLY MEMBER GARRICK: Just for clarification,  
3 Chair, if I may.

4 CHAIRPERSON BRYANT: Go ahead. Um-hmm.

5 ASSEMBLY MEMBER GARRICK: So you didn't receive  
6 any additional funding above and beyond what you had been  
7 authorized. Nothing in addition to what you'd asked for,  
8 nothing in addition to what was needed. It was simply a  
9 case of you got your money early.

10 MS. STARR: Yes. And if I can amend that because  
11 I want to be fair here.

12 ASSEMBLY MEMBER GARRICK: Please be accurate and  
13 fair.

14 MS. STARR: We try. We got the money early. We  
15 were entitled to it, but it earned interest while it was  
16 sitting in our bank. So one could say that that constituted  
17 additional funds because we theoretically under the  
18 regulations could have spent all the interest that we earned  
19 on our money on the project. Now the fact that we didn't is  
20 unique to us.

21 ASSEMBLY MEMBER GARRICK: The fact that you wisely  
22 managed the money that was given to you early and that you  
23 happened to earn some interest on it, the question better  
24 stated is why and how did you get your money earlier than  
25 you were rightfully due it. That's the question, not the

1 fact that you got any additional money over and above what  
2 you had applied for and that this, simple English, an amount  
3 proportionate to the additional funding received.  
4 Additional. Extra. I mean it's pretty clear -- as a result  
5 of the material inaccuracy.

6           There was no material inaccuracy tied into this,  
7 was there?

8           MS. STARR: Well, we are -- we're saying that we  
9 will accept one posed by the Board and that material  
10 inaccuracy was we said -- we certified on a form that we had  
11 had contracts signed and they were not signed. So we should  
12 not have filed for the funding early. That's the material  
13 inaccuracy.

14           MR. ASBELL: Can I follow up with a comment really  
15 quick.

16           CHAIRPERSON BRYANT: Yes.

17           MR. ASBELL: So we're talking about additional  
18 funding. I go back to what the Board has interpreted that  
19 to be. It's a light switch. If you prematurely certify,  
20 it's the whole amount. It's not part of it.

21           We've taken this item multiple times to Imp. It  
22 was vetted there. It went to the Board I think on three or  
23 four different occasions when we did the material inaccuracy  
24 overview item. It was always based on the whole amount.

25           CHAIRPERSON BRYANT: And --

1 ASSEMBLY MEMBER GARRICK: That seems to me a  
2 pretty arbitrary interpretation to me of charging the whole  
3 amount. You know that you're going to give them the whole  
4 amount eventually. The fact that they signed off on a piece  
5 of paper one day or 48 days ahead of the fact another piece  
6 was signed, the same amount was still going to be delivered;  
7 is that accurate? That's a yes or no question.

8 MR. ASBELL: Yes. Yes.

9 ASSEMBLY MEMBER GARRICK: Thank you. So there  
10 wasn't an additional amount. The fact they got it early and  
11 that they did materially inaccurately sign a piece of paper  
12 is a fact, true, but to qualify for the whole amount that  
13 they were qualified -- to take the whole amount they were  
14 qualified for and throw it into this additional definition I  
15 think is an interpretation beyond what the English language  
16 intends here and I am sympathetic to your cause as it  
17 relates to a lesser penalty.

18 It seems like a penalty is appropriate, but not in  
19 the total amount that's due according to staff's  
20 recommendation.

21 CHAIRPERSON BRYANT: They are not remitting the  
22 total amount that's due. It's the interest on the total  
23 amount.

24 ASSEMBLY MEMBER GARRICK: Okay.

25 CHAIRPERSON BRYANT: But for a set period of time,

1 the State was without the ability to use those funds. It  
2 could have been applied to somebody else and the State was  
3 paying GO bond costs and carrying costs and generally  
4 speaking, the Board has looked at these very strictly when  
5 there's a material inaccuracy or not. Ms. Buchanan.

6 ASSEMBLY MEMBER BUCHANAN: I was going to say the  
7 bottom line is when you sign the form and you say that  
8 you've got a contract to begin construction within a certain  
9 time period, we're assuming that you're -- that that's  
10 accurate. And so you're admitting that the contract -- I  
11 mean that that was signed -- that there is the material  
12 inaccuracy there because the construction did not begin  
13 within the six-month time period; right?

14 MS. STARR: We --

15 ASSEMBLY MEMBER BUCHANAN: Right.

16 MS. STARR: We did not have --

17 ASSEMBLY MEMBER BUCHANAN: So the --

18 MS. STARR: -- have our contracts signed.

19 ASSEMBLY MEMBER BUCHANAN: So the -- you know, the  
20 problem I have because I would love to find a way not to do  
21 this, but one is, you know, bond funds aren't there so  
22 districts can, you know, earn money or have the arbitrage  
23 off them. They're there for construction projects to begin  
24 and you -- you know, and if -- you know, and if the rules  
25 are that the projects need to begin within six months and

1 you're saying I've got a signed contract and they're going  
2 to begin within that time frame, then I'm giving money to  
3 you and we've seen cases where they've started a year late  
4 and I'm not giving it to another district that is ready to  
5 begin where you've got jobs and everything else that you're  
6 creating.

7           And so what happens is because you're funding it  
8 early, as Ms. Bryant said, the district is losing -- or the  
9 State is losing interest on that money and that is interest  
10 that would be going to fund other projects. And I don't  
11 think -- I mean if you look at school districts and the  
12 requirements they have with respect to general obligation  
13 bonds and when they have to commit, it is clearly obvious to  
14 me that whether you're selling bonds at the local level or  
15 the State level, the whole idea is you get the money out to  
16 projects.

17           CHAIRPERSON BRYANT: Right.

18           ASSEMBLY MEMBER BUCHANAN: So I just have a  
19 problem follow -- I mean a problem agreeing to the same  
20 interpretation because when I read the -- and what the --  
21 what it specifies the interest penalty is, to me it's very  
22 clear that the interest penalty is the greater of what the  
23 State would be receiving on the bond interest or from the  
24 Pooled Money Investment Account.

25           And I wish I could come to that other

1 interpretation, but looking at how we've applied it to every  
2 other district where we found a material inaccuracy, that's  
3 what -- essentially what we've done.

4 CHAIRPERSON BRYANT: Did you have a question,  
5 Ms. Brownley?

6 Let me just ask you so we do not have in front of  
7 us this question of the financial hardship, the overpayment  
8 there; is that correct?

9 MR. ASBELL: That's correct. That will be in a  
10 subsequent Board item, hopefully a consent item.

11 CHAIRPERSON BRYANT: Right. So that's -- so what  
12 the district -- so just -- because I don't think that's been  
13 very clear because it gets me confused every time we talk  
14 about this -- is there's a separate -- which is what the  
15 district is trying to suggest is that the repayment of the  
16 excess financial hardship savings, that is where you remit  
17 the interest that you earned while you were holding the  
18 extra funding.

19 MR. ASBELL: That's correct.

20 CHAIRPERSON BRYANT: So that interest payment is  
21 only on the difference; is that correct? It's not on the  
22 entire amount.

23 MR. ASBELL: Well, it's interest accrued while  
24 they have -- yeah. There's a draw down. Once they put  
25 money into their account, there's a draw down, but they're

1 accruing interest. So during the course of those  
2 projects -- the life of those projects -- or those eight  
3 projects, they accumulated that interest.

4 CHAIRPERSON BRYANT: Because I think it's not been  
5 made clear to the Board and it's gotten confusing with  
6 what -- how the district's been testifying is that -- what  
7 we find here is a material inaccuracy on this item and then  
8 we assess the penalty of the interest which as Ms. Buchanan  
9 explained -- I agree with her -- the way she's explaining  
10 it -- that would be the 257,000 and then in addition to  
11 that, we would have a loss of self-cert.

12 In addition to that, there would be a subsequent  
13 item brought back to the Board that would recoup from the  
14 district the interest that they collected on just the  
15 balance of the financial hardship or the entire amount?

16 MR. ASBELL: It's what they accrued over the life  
17 of the project. So if they put in 16 million initially and  
18 they get the draw down --

19 CHAIRPERSON BRYANT: So the effect of -- if we  
20 accept what the County's offering to do here, setting aside  
21 the two years lack of self-certification, what we would be  
22 essentially accepting is a no interest penalty on the MI and  
23 we would just be accepting the remittance of the interest  
24 that they would have to pay anyway on the financial  
25 hardship?

1           MR. ASBELL: Yeah. But you need to keep in mind  
2 that these are hundred percent State funded -- it was all  
3 State money.

4           CHAIRPERSON BRYANT: I know that. I'm just --

5           MR. ASBELL: All right. Okay.

6           CHAIRPERSON BRYANT: I just want to make sure that  
7 I -- so -- okay. So --

8           MS. MOORE: I didn't hear that, however. I heard  
9 that the County Office indicated that -- and if you read  
10 again the plain code of the law and then if you read the  
11 regulation which says must -- I don't hear them arguing  
12 about repaying interest, but it says must repay the  
13 additional funding received beyond the amount the district  
14 or County Office was entitled to for the project with  
15 interest.

16           And she's indicating that there was no additional  
17 amount. They received what they were entitled to. They  
18 received it early and the amount that could be considered in  
19 their case -- in their argument additional is the 70,000  
20 that was earned on the money during the time that they  
21 should not have had it.

22           So if you're assessing a penalty, what I heard the  
23 County Office say is the penalty is on the 70,000. Am I  
24 stating that correctly?

25           MS. STARR: Yes. That's -- that is our view and

1 that's how we are reading the code and regulations.

2 MS. MOORE: As opposed to 16 million -- or at  
3 varying times; right?

4 MS. STARR: Yes. With the concept of what  
5 constitutes additional funding. Yeah, we got it early. I  
6 can't argue that. Now I would like to point out though that  
7 this was in 2002, '03, and '04. So when you look at the  
8 situation that we have now relative to funding, yes, every  
9 dollar that comes through goes back to another district. In  
10 2003 and '04, that wasn't the current situation.

11 So we would argue we really didn't get any kind of  
12 a funding advantage nor was anybody else disadvantaged  
13 because we or other districts at that time got the funding  
14 early. And that the concept of the State recouping interest  
15 lost or fees lost or costs lost, I don't think the code  
16 addresses that, with all due respect that we have different  
17 interpretation of that piece of the language.

18 MS. KAPLAN: And I just want to bring to the  
19 Board's attention just a reminder that the Board had  
20 actually approved this funding for San Joaquin Office of  
21 Education. So therefore no other district could access this  
22 funding within the 18 months because of the 18-month time  
23 limit.

24 ASSEMBLY MEMBER BUCHANAN: But that's not the  
25 issue. The issue is we still would have drawn interest on

1 that funding. Say it's 16 million. Say the interest is  
2 \$200,000. We would have had \$16,200,000 if we would have  
3 waited to fund when you were actually going to be under  
4 contract within six months. We would given you the  
5 16 million, but we would have had \$200,000 still with the  
6 State to allocate to other projects. I think that's the  
7 issue.

8 MS. KAPLAN: Well, I'm not entirely sure what was  
9 going on with the PMIB at that time, but I believe it was  
10 bonds were selling and money was automatically going out for  
11 whatever districts that had come in.

12 CHAIRPERSON BRYANT: Ms. Silverman.

13 MS. SILVERMAN: You're still paying debt service  
14 on that money. Again you pointedly -- you hit that right on  
15 the head, Ms. Buchanan.

16 So, you know, I think we worry about the  
17 interpretation here just because we set precedent and we've  
18 had precedent here and set the policy as far as the  
19 recommendations. So it's a trigger -- it's a light switch.  
20 It's material inaccuracy and the interest penalties follow.

21 CHAIRPERSON BRYANT: Mr. Harvey.

22 MR. HARVEY: Well, again perhaps the wording in  
23 No. 2 on page 154 does express the Board's intent for what  
24 this term means and perhaps it's what we have used all along  
25 and it is -- it's to repay interest lost from the State

1 premature release of funding. It doesn't use the term  
2 additional. It doesn't change that which we have apparently  
3 had vetted at the Imp. Committee. We have had various  
4 votes.

5 To me the Recommendation No. 2 accurately states  
6 why we're assessing it the way we're assessing it. And I  
7 would for that reason support the staff recommendation.

8 CHAIRPERSON BRYANT: Including the loss of  
9 self-cert for up to five years?

10 ASSEMBLY MEMBER BUCHANAN: Or until they repay;  
11 right?

12 MR. HARVEY: Well, I'll allow others to discuss  
13 that. We did certain things last month on that regard. I'm  
14 not sure the facts dictate that the same way here, but I was  
15 trying to address just the penalty.

16 They've admitted that they agree to some level of  
17 loss of self-cert. I would like to hear what others may say  
18 on that.

19 MS. MOORE: I just have a further comment. I mean  
20 having sat through material inaccuracies for numerous years,  
21 I will say that I don't think we ever as a Board from my  
22 memory really delved into the issue that was presented  
23 today.

24 I don't think we ever really looked at the plain  
25 language of the law and the plain language of the regulation

1 and said geez, there could have been two interpretations of  
2 this language, the one that the County Office of Education  
3 is putting forward today and the one that probably -- that  
4 the staff has put forward.

5           So I don't think -- I think that has existed. I  
6 think that the County Office has actually presented us with  
7 a problem and that problem is that perhaps we have looked at  
8 this with only one eye and that there is a different way to  
9 interpret it. And then the Board -- as we know from the  
10 Attorney General opinion, the Board has the ability to  
11 interpret its own regulations. So then it becomes a Board  
12 decision. How is it that we want to interpret this  
13 regulation and I think that's what we're grappling with now.  
14 And, yes, it has a consequence for those that came before it  
15 because it is a precedent, but I'm not sure that we've ever  
16 been delivered this problem in the manner in which it's been  
17 clearly delivered today.

18           CHAIRPERSON BRYANT: Staff, did you have a  
19 response to that?

20           MR. ASBELL: I believe that when we did the  
21 overview items and we went to Imp., we specifically talked  
22 about dollar amounts. We gave examples. A certain fund  
23 release would be a million dollars. When we did the  
24 calculation, it was on that full million dollars. There was  
25 no proportionate part to it.

1           So when we're talking about that additional  
2 funding or that concept, we actually laid out dollar amounts  
3 in our examples.

4           ASSEMBLY MEMBER BROWNLEY: Well, that's -- I mean  
5 Ms. Moore is saying that there's -- that's the way we  
6 interpret it. That's the way the precedent has been set,  
7 but there might be another way in which to look at it of  
8 which we haven't exercised.

9           MS. MOORE: And I think there are two different  
10 cases that we are actually potentially looking at material  
11 inaccuracies within. One is one in which there was a  
12 material inaccuracy around what a district reported  
13 ineligibility which actually means they may have got more  
14 money than they were entitled. In the case of -- that case  
15 could happen and it did happen in the case of one of the  
16 school districts that did not report their certificates of  
17 participation and those could have been -- that those should  
18 have been credited towards the amount the State would have  
19 paid and that district had to pay a penalty around that.

20           That -- they got more money than they were  
21 entitled to and in the plain reading of the interpretation,  
22 you could say, okay, their interest on whatever they got  
23 extra, that's owed the State. And in the case that this  
24 district -- this County Office is presenting, it's saying I  
25 didn't get any more than I was entitled to. I got it early.

1 What's the penalty.

2 ASSEMBLY MEMBER BUCHANAN: What's -- I just have  
3 to ask you then. So what would you -- what is to stop any  
4 school district then from not accurately certifying that  
5 they have a contract to begin work within.

6 MS. MOORE: Well, there's a couple. I mean if you  
7 want to presuppose that school districts are out there  
8 wanting to do things inaccurately or falsely certify, I  
9 guess you can have that presupposition. But I think in most  
10 cases, I think districts want to do the right thing. I  
11 think Ms. Starr has pointed out that we have corrected the  
12 form so that -- I'll tell you when I was in a school  
13 district, you know those certifications, there's about two  
14 pages of them.

15 I looked up every regulation and every law they  
16 pertain to and when we signed that, we knew what we were  
17 signing. But it's a lot of work and so things have happened  
18 in this program and then when they happen, we've tried to  
19 address them by saying, okay, write your contract date down.  
20 So anybody filling out that form has to write the contract  
21 date now. It's -- you see that and you certify accordingly.

22 You know, do we think that districts purposely are  
23 going to certify incorrectly? That's what this law I guess  
24 anticipated and said we should have a penalty around that.  
25 The penalty of not being able to self-certify is a big

1 penalty and also we as a Board -- material inaccuracy for a  
2 district is a black eye and to, you know, some people, it's  
3 such a black eye that you might not have a job, you know,  
4 around that.

5           So I think that people take this very seriously  
6 and that that's a penalty right there, you know, and the law  
7 states that we should also penalize with interest on that  
8 that was earned.

9           ASSEMBLY MEMBER BUCHANAN: I don't think -- I  
10 would never want to presuppose that any district  
11 intentionally doesn't certify correctly; okay? But the  
12 statement that you signed or your predecessors signed is  
13 very clear that says, you know, you were going to have at  
14 least 50 percent of the work under contract within six  
15 months.

16           I also know that there are so many districts in  
17 line for money that something happens and your project is  
18 delayed and you're not -- you can't -- you know, you're  
19 not -- maybe you have to rebid or whatever happens, okay,  
20 you know, if there's no penalty, it seems to me that  
21 there -- you might just go ahead and -- I mean you could go  
22 ahead and sign it and say, you know, what's the worse that  
23 happens. You know, we have to give back the interest we're  
24 earned, but at least we've got the money and we're not going  
25 to have to wait for an additional funding round or whatever.

1           So I mean I'm relatively new to this Board, but if  
2 you're going to apply what we've done consistently, then you  
3 would apply -- you would take the same sort of action here  
4 that we've taken with other districts.

5           Now that's not to say that when this comes back to  
6 us, I don't think there's room to -- for discussion in terms  
7 of the financial hardship interest and whether or not we're  
8 double charging there and there should be some relief, but I  
9 definitely -- I mean it's hard for me to understand why  
10 we're going to, you know, sort of do 180 degree turn from  
11 what we've been doing with other districts and material  
12 inaccuracies, especially when the statement that you sign is  
13 very clear. It says we will -- you know, we'll have a  
14 contract for 50 percent of the work and all the interest you  
15 earn, you know, if you start out with your contract, you're  
16 not paying out all that money right away, so any interest  
17 you earn after that you get to keep. What you're really  
18 saying is there's a penalty during that time period from  
19 when you actually receive the funds and when you -- when  
20 that six-month window starts.

21           So I -- you know, I -- on the one hand, I'm  
22 sympathetic, but on the other hand, it's very inconsistent  
23 with what I've -- with the prior actions.

24           CHAIRPERSON BRYANT: Ms. Brownley.

25           ASSEMBLY MEMBER BROWNLEY: Do we know how many

1 cases of material inaccuracies we've had and what was the  
2 interest that was paid back to the State?

3 MR. WATANABE: We've had eight MI penalties.

4 ASSEMBLY MEMBER BROWNLEY: Eight?

5 MR. WATANABE: Out of those, six of them were due  
6 to premature fund releases. There was one that had to do  
7 with eligibility, not having it, and the second one was --

8 ASSEMBLY MEMBER BROWNLEY: So the six that are  
9 consistent with this situation, what was the size of the  
10 project -- the total size of the --

11 MR. WATANABE: They varied. We had one district I  
12 think had up to 22 projects and then we've had one district  
13 that had down to one. That's the full range.

14 ASSEMBLY MEMBER BROWNLEY: I see. So do you have  
15 any idea of what the collective dollar amount that we were  
16 talking about?

17 MR. WATANABE: In interest coming back?

18 ASSEMBLY MEMBER BROWNLEY: Yeah.

19 MR. WATANABE: On all those six?

20 ASSEMBLY MEMBER BROWNLEY: Um-hmm. I guess while  
21 he's looking at that, I think -- you know, I'm compelled  
22 that there could potentially be a different interpretation  
23 of this. I'm not saying that -- necessarily that I agree  
24 with it yet, but I concur that there potentially could be a  
25 different interpretation and if that's true -- and I hear

1 what Ms. Moore is saying that that's our decision to make, I  
2 wouldn't want to make that decision without further  
3 investigation and more information and so forth and so on.

4           So the conundrum -- you know, there's a conundrum  
5 here and, you know, do we spend the time to sort of explore  
6 that and postpone this decision. I mean the -- or do we  
7 stay with our current interpretation and if we did, I would  
8 say that I wouldn't concur with the argument that was begun  
9 made. And then of course the other -- third issue to deal  
10 with is the other districts that would have paid the penalty  
11 based on a potential old interpretation of what material  
12 inaccuracies are.

13           So it's, you know, depending on where people kind  
14 of fall, but, you know, the conundrum for me is trying to --  
15 if we believe that there's a potential of interpretation --  
16 a different interpretation, then I think that the only right  
17 thing to do would be to postpone this decision or, you know,  
18 they could pay us the interest and we could hold that in  
19 arbitrage and then when we figure -- no, just kidding.

20           MS. STARR: We'd be happy to get this closed and  
21 get the money moved on.

22           ASSEMBLY MEMBER BROWNLEY: But, you know, that's  
23 really the conundrum. You know, it's -- I would not feel  
24 comfortable, you know, moving forward with a decision if we  
25 were going to consider another interpretation today. If

1 there's consensus on the Board that we are committed to the  
2 current interpretation, you know, I have a different  
3 opinion, but --

4 CHAIRPERSON BRYANT: When we hear the -- when the  
5 financial hardship overpayment issue comes back, do we have  
6 flexibility there?

7 MR. ASBELL: No. It's in regulation.

8 CHAIRPERSON BRYANT: So -- okay. Can I suggest  
9 this because we're -- this meeting -- I was trying to get  
10 this thing adjourned by 4:00.

11 So if -- what if we -- I mean if a district has  
12 conceded -- I believe, I don't want -- correct me if I  
13 misstate this -- that there's a material inaccuracy here --  
14 and I think -- I sense there's consensus on the Board that  
15 we have a material inaccuracy situation. It's just a  
16 question of better understanding of how these -- the two  
17 pieces -- the financial hardship overpayment interacts with  
18 the interest on the material inaccuracy. I mean I -- I find  
19 myself supportive of the staff recommendation. I'm worried  
20 that the -- the five-year self-certification seems really  
21 long when the school district has been so cooperative on  
22 trying to work all these issues out.

23 But I don't know. I just -- I'm suggesting maybe  
24 we just find the material inaccuracy and we bring both of  
25 these back at the same time so that the Board can really

1 understand it. No?

2 MS. GREENE: No. The issue that Assemblywoman  
3 Brownley is concerned about and Ms. Moore is an issue of the  
4 actual interpretation of the regulation. It doesn't have a  
5 mixture of the hardship problem and the penalty interest.  
6 It's a different question.

7 CHAIRPERSON BRYANT: It does totally have an -- it  
8 is totally -- that is where the confusion's coming in I  
9 think completely.

10 MS. GREENE: No.

11 CHAIRPERSON BRYANT: Am I missing something?

12 MR. ASBELL: I think we tried to convey in the  
13 item that we're talking about apples and oranges. You got a  
14 regulation that talks about the interest associated with the  
15 financial hardship savings, but then you have the interest  
16 associated with the material inaccuracy. They're two --

17 ASSEMBLY MEMBER BROWNLEY: And that's all we're  
18 talking about right now.

19 MR. ASBELL: We're talking about -- just about the  
20 material inaccuracy.

21 ASSEMBLY MEMBER BROWNLEY: Correct.

22 MR. ASBELL: The only reason why we brought the  
23 financial hardship aspect into it is that was an option that  
24 the district threw in one of their correspondence, so we  
25 tried to explain it.

1           CHAIRPERSON BRYANT: Mr. Harvey.

2           MR. HARVEY: Well, in an effort to clear the plate  
3 one way or the other, I would like to make a motion that we  
4 find a material inaccuracy, make the assessment of interest  
5 as proposed in staff recommendation Item 2 on page 154, and  
6 that we limit the loss of self-certification to two years.

7           CHAIRPERSON BRYANT: Is there a second to that?

8           ASSEMBLY MEMBER BROWNLEY: Can I --

9           CHAIRPERSON BRYANT: Is there a second to that  
10 motion? I second that motion.

11          ASSEMBLY MEMBER BROWNLEY: May I speak to the  
12 motion?

13          CHAIRPERSON BRYANT: Yes, please.

14          ASSEMBLY MEMBER BROWNLEY: So do we -- relative to  
15 this five-year -- what do we call it? A five-year  
16 self-certification; right -- so I mean I agree with  
17 Ms. Moore. I think that that five year is very punitive and  
18 the whole notion of calling this, you know, a penalty  
19 bothers me because I really agree that school districts are  
20 not out there trying to game the system. They're trying to  
21 follow the rules and regulations and sometimes they make  
22 mistakes.

23                   And so, you know, I kind of feel like, you know, a  
24 harsh penalty is not really -- doesn't --

25          MR. HARVEY: The motion was a two year.

1 ASSEMBLY MEMBER BROWNLEY: I understand. So I was  
2 trying to say that I kind of agree with a shorter time  
3 frame. The question for me is the consistency in how we've  
4 acted in previous cases. Because that's something that we  
5 can't take back. I mean -- and the other thing, we could  
6 actually pay them back for -- if we decided to go by a  
7 different interpretation. We could figure that out. This  
8 we can't really figure out.

9 So I'm just wondering again has this Board been  
10 pretty consistent with those material inaccuracies around  
11 this five-year deal or the calming of the -- I know there's  
12 a formula for and because there's so many days. In this  
13 case, it's five years.

14 So have we been -- have we had an exception to the  
15 formulas?

16 MR. WATANABE: Based on the --

17 ASSEMBLY MEMBER BROWNLEY: No, I know, but that  
18 was a different -- an exception -- a different rationale --

19 MR. WATANABE: Yeah. Based on staff  
20 recommendations that are outlined on Attachment B, the  
21 Board's been consistent with the exception of Manteca last  
22 month.

23 ASSEMBLY MEMBER BROWNLEY: I'm sorry.

24 MR. WATANABE: With the exception of Manteca last  
25 month, the Board has been consistent --

1 ASSEMBLY MEMBER BROWNLEY: Okay.

2 CHAIRPERSON BRYANT: I'm sorry. Consistent with  
3 what? What'd you say? I didn't -- couldn't hear you.

4 MR. WATANABE: The staff's recommendation as  
5 outlined on Attachment B, the Board has taken those  
6 recommendations every time except for last month.

7 CHAIRPERSON BRYANT: All right. What's the  
8 pleasure of the Board?

9 ASSEMBLY MEMBER GARRICK: Madam Chair, I'm going  
10 to suggest a compromise position here since we're in -- a  
11 motion -- excuse me. I'd like to make a substitute motion  
12 or a friendly amendment to the existing motion, whichever is  
13 appropriate, parliamentary wise.

14 CHAIRPERSON BRYANT: We don't have rules.

15 ASSEMBLY MEMBER GARRICK: Okay. With that stated  
16 that we are ruleless and we want to make that clear --

17 MS. GREENE: We'll make those rules in February.

18 ASSEMBLY MEMBER GARRICK: Okay. Thank you. That  
19 from what I understood there's also another portion to this  
20 and that, just for clarification, is the \$70,000 that the  
21 16 million earned -- is that correct? That you want to deal  
22 with? I'm speaking to staff -- at a later date?

23 MR. ASBELL: No. That's completely different.  
24 What we wanted to deal with at a later date is the financial  
25 hardship savings and then the savings associated with the

1 money when they kept it in their accounts on that financial  
2 hardship funding.

3 ASSEMBLY MEMBER GARRICK: Okay.

4 MR. ASBELL: So it's a different type of interest  
5 that we're talking about, not material inaccuracy.

6 ASSEMBLY MEMBER GARRICK: How much was that?

7 MR. WATANABE: 414,000 and it includes the 70,000  
8 they earned during this time period.

9 ASSEMBLY MEMBER GARRICK: Okay. I remove my --  
10 thank you.

11 ASSEMBLY MEMBER BUCHANAN: Can I ask for one  
12 clarification. I thought at our last meeting we did --  
13 maybe it was on Manteca where we did allow -- where we  
14 restored self-certification once the interest penalty was  
15 paid. Did we do that? Didn't we do that for Manteca or  
16 not?

17 MR. ASBELL: I think that was Chula Vista and San  
18 Francisco.

19 ASSEMBLY MEMBER BUCHANAN: So we -- and since  
20 these occurred back in 2002 to 2005, we could restore  
21 self-certification once the interest penalty were paid.

22 CHAIRPERSON BRYANT: We could do that, but I just  
23 want to point out -- I actually -- because I'm obsessed with  
24 this date thing because I feel like we take forever to get  
25 these things to the Board, but that's why I think staff

1 brought up and -- you know, the district held back on  
2 their -- they had a 99 percent completion. They held back  
3 for four years. It took until 2009. It didn't really  
4 become final till 2009, so even though the act happened back  
5 in 2002, it has only been pending for 18 months or so. So  
6 it's to me slightly different, although if that works for  
7 the Board, I could probably get along with it.

8 ASSEMBLY MEMBER BUCHANAN: Well, I was going to  
9 say I -- you know, I think if -- Ms. Moore, her, you know,  
10 biggest concern is the black eye with the  
11 self-certification, that might be a reasonable path --

12 MR. HARVEY: Compromise.

13 ASSEMBLY MEMBER BUCHANAN: -- you know, to  
14 compromise.

15 CHAIRPERSON BRYANT: I'm not sure I heard that  
16 from Ms. Moore.

17 MS. MOORE: Well, I was just saying, you know,  
18 self-certification -- the loss of self-certification and the  
19 finding of an MI, I think the Board knows, is a big deal to  
20 a school district. So -- and I think they've indicated that  
21 they've had an MI, that that's never in question.

22 What I was saying is I actually think they've  
23 raised a point that we have not considered -- you know,  
24 thoroughly considered and I'm not sure, you know, even if we  
25 considered it, we might come back to the same interpretation

1 that the Board -- or come back to the interpretation that  
2 the Board had originally. But I had never thought about it  
3 in the manner in which they presented it and the plain  
4 reading of the regulation and the law.

5 MR. HARVEY: I will accept a friendly amendment  
6 that would state the loss of self-certification would  
7 terminate with the payment of the --

8 ASSEMBLY MEMBER BUCHANAN: Why don't you withdraw  
9 your motion and make a new one.

10 MR. HARVEY: All right. I withdraw my motion and  
11 make a new one.

12 CHAIRPERSON BRYANT: I'll withdraw my second.

13 MR. HARVEY: The new motion would be to find  
14 staff's Recommendations 1 and 2 on page 154 and as it  
15 relates to the self-certification, have it in place until  
16 the interest payment of 257,652 is paid in full. So you're  
17 finding the material inaccuracy, you're assessing the  
18 repayment for interest lost by the State, and you're  
19 terminating the black eye when they pay the entire amount  
20 back.

21 ASSEMBLY MEMBER GARRICK: Second.

22 ASSEMBLY MEMBER BROWNLEY: Can I speak to --

23 CHAIRPERSON BRYANT: Yes.

24 ASSEMBLY MEMBER BROWNLEY: -- that? So I think,  
25 you know, I could support that motion as long as we had

1 another motion that says we're going to bring this issue  
2 forward relative to what Ms. Moore's speaking to in terms of  
3 wrestling with what the interpretation is -- the right  
4 interpretation of this.

5           And then if we all agree that this is the right  
6 interpretation, we have nothing more to do with this case or  
7 any other case. If we come to the conclusion that there's  
8 another interpretation, then we have to wrestle with this  
9 case and all the previous cases I think to rectify that and  
10 do the right thing.

11           So if there was a commitment that we would look  
12 at -- or evaluate, weigh, decide upon the other potential  
13 way of interpreting this at a later date, then I think I  
14 could support. If not, then I would not be able to support  
15 it.

16           CHAIRPERSON BRYANT: Well, I think -- I mean I  
17 think that's what I was trying to suggest earlier, doing --  
18 looking at it altogether. I'm not positive, but I think I  
19 heard staff say that we have no flexibility on the other  
20 assessment. I'm not positive -- what you think -- if we  
21 decide -- if we get to the other issue in front of us and  
22 we're uncomfortable with this decision, do we have  
23 flexibility to fix it?

24           MR. DAVIS: The recommendations do have a specific  
25 number and this is what we're agreeing is the penalty and

1 these are the same recommendations that we had on these  
2 other MIs is how we assessed what the penalty was and those  
3 have already been assessed and voted on by the Board.

4 MR. HARVEY: But what I heard Member Brownley  
5 suggest was that we have a policy discussion on the  
6 interpretation of what additional funds means. It's the --  
7 Member Moore --

8 MR. DAVIS: To restrict each other prospective --

9 MR. HARVEY: A prospective --

10 MR. DAVIS: -- interpretation of the language of  
11 what additional funding received --

12 MR. HARVEY: Correct.

13 MR. DAVIS: -- what those words mean in the Ed  
14 Code.

15 MR. HARVEY: That's what I heard her suggestion to  
16 mean. Am I correct in that.

17 ASSEMBLY MEMBER BROWNLEY: Well -- yes, but with  
18 this clarification, understanding that it's on prospective  
19 and we could not correct --

20 MR. HARVEY: Correct.

21 ASSEMBLY MEMBER BROWNLEY: -- a situation if we  
22 decided differently on the interpretation and that pulls me  
23 away from agreeing -- or going along with the motion.

24 MR. HARVEY: Well, I think there probably is  
25 enough interest that we could direct staff to place that on

1 the 90-day calendar for discussion.

2 ASSEMBLY MEMBER BROWNLEY: And I think that's  
3 good. The problem with me supporting the motion that's on  
4 the table right now is that I might be penalizing someone at  
5 a level that's not consistent with what we may interpret in  
6 terms of what the code means. So that they would be  
7 penalized if we -- 90 days, we come around, we say, oh,  
8 well, we interpret actually differently, which means it's  
9 only interest on the 70,000 versus the 16 million and that's  
10 what we agree is what the additional is, and we've penalized  
11 this person unfairly in my mind. And so that's why I  
12 couldn't support it understanding that -- knowing that it's  
13 prospective thing and that we couldn't go -- because if we  
14 were going to go in the other direction -- if we could, but  
15 I'm being told that we can't -- I would want to go back to  
16 all of the districts that were sort of under the same  
17 condition and wrong -- right a wrong because I think that  
18 that would be the right thing to do.

19 It could be that we obviously agree with this  
20 interpretation and, you know, it's done and it's over with,  
21 but it's difficult for me -- knowing what I know in this  
22 moment to make a decision, I can't do it if I know I'm going  
23 to potentially vote --

24 CHAIRPERSON BRYANT: Ms. Silverman, did you  
25 have --

1 MS. SILVERMAN: Yeah. I mean does that create a  
2 liability for those projects that were obviously, you know,  
3 progressed up through the -- the port system. I know we had  
4 some issue with the material inaccuracy that was obviously  
5 defended by the Attorney General's Office and, you know,  
6 does that open up the door for a liability issue and I don't  
7 know if that's something that we want -- does that become an  
8 issue for us.

9 MS. KAPLAN: Madam Chair, just as for discussion  
10 on this. Is there any way -- or Lance, is there any way  
11 that this could be separated into two issues where there's a  
12 finding of material inaccuracy, loss of self-cert, and hold  
13 off on what the interest and the penalty would be until  
14 there's a discussion and then you could come back, based on  
15 that, make a decision so that you can have the attorneys  
16 look at it -- AG and then the Board could fully look at it,  
17 make a decision, and that apply to this case.

18 CHAIRPERSON BRYANT: I believe that's what I  
19 suggested ten minutes ago or so, although I didn't throw in  
20 the material inaccuracy -- I mean the loss of  
21 self-certification. Because if the Board's druthers is, is  
22 that's going to go away when they pay their interest, we --  
23 you know, I'm not sure we'd want to do that.

24 Did you have something --

25 MR. DAVIS: The motion before the Board right now

1 is for the -- once a material inaccuracy is found for this  
2 penalty we've already stated here. Now a new motion would  
3 definitely have to go forward.

4 CHAIRPERSON BRYANT: That can be arranged.

5 ASSEMBLY MEMBER BUCHANAN: So we're now suggesting  
6 that we find material inaccuracy and as part of the  
7 motion --

8 CHAIRPERSON BRYANT: And bring it back next month.

9 ASSEMBLY MEMBER BUCHANAN: -- subject to penalties  
10 to be determined after we have the discussion. Is that what  
11 we're saying?

12 CHAIRPERSON BRYANT: Yeah. Because I don't want  
13 us to get ourselves in a San Francisco situation where we  
14 found material inaccuracy five or six or ten years ago and  
15 then we bring it back and we wonder why we're still talking  
16 about it.

17 Did you have something wise to add?

18 MR. DUFFY: I don't know that it's wise, Madam  
19 Chair. I do not represent San Joaquin County Office of  
20 Education. I'm representing CASH and approaching you as a  
21 friend to the Board.

22 This issue -- and I agree with the interpretation  
23 that's being made by Ms. Starr. We had a discussion about  
24 this very thing approximately two years ago at an  
25 Implementation Committee meeting. Because of the issues of

1 Fresno and others, that colored the discussion I believe  
2 from how that came to the Board because it never got to the  
3 Board.

4           But the -- in -- I was troubled by something I  
5 heard Mr. Asbell state to you. He said you have no  
6 flexibility because of the regulation. The regulation is  
7 rooted in the law. If the regulation is not appropriate  
8 because it's not interpreting the law, then that may be  
9 changed. You did that for the Lennox School District on --  
10 it wasn't a material inaccuracy, but it was a  
11 misinterpretation of the law and the regulation was changed  
12 by the Board in order to not harm but help the district.

13           So just again approaching as a friend to the  
14 Board. It may be that you want to ask your staff to look at  
15 the regulation, look at the law, and have a discussion of  
16 the intent of the law and is it reflected accurately in the  
17 regulation. So not wanting to delay you ending this  
18 meeting, but I just felt compelled to come up and speak to  
19 the issue because it was addressed at the Implementation  
20 Committee some time ago. It just never got to the Board.

21           CHAIRPERSON BRYANT: Any last words, Mr. Asbell.

22           MR. ASBELL: I'm all tuckered out.

23           CHAIRPERSON BRYANT: Can I suggest that we find  
24 the material inaccuracy and that we bring this back next  
25 month.

1 ASSEMBLY MEMBER BUCHANAN: To determine --

2 CHAIRPERSON BRYANT: Yeah. The better item. We  
3 can consult with the Attorney General and just make sure  
4 that -- because I've kind of got myself a little bit  
5 confused and I'd like us to have a consistent approach.

6 MR. DAVIS: Well, that would require Mr. Harvey to  
7 withdraw his motion.

8 CHAIRPERSON BRYANT: Yeah. Mr. Harvey, can you do  
9 that.

10 MR. HARVEY: I will do so in the interest of  
11 congeniality. I do not support it. I support the motion  
12 that I made, but in the interest of moving the agenda, I  
13 will so amend my motion.

14 CHAIRPERSON BRYANT: We're finding a material  
15 inaccuracy only. Is there a second on that?

16 ASSEMBLY MEMBER GARRICK: Second.

17 CHAIRPERSON BRYANT: Should we call the roll or is  
18 everyone -- voice vote. All those in favor.

19 (Ayes)

20 CHAIRPERSON BRYANT: Any opposed? Any  
21 abstentions? Good. All right. We're going to move to Tab  
22 14 at the request of Senator Lowenthal, which is the **Audit**  
23 **Subcommittee Report** because apparently we're losing one of  
24 our expert witnesses.

25 SENATOR LOWENTHAL: Right. We're going to lose

1 one of our witnesses.

2 CHAIRPERSON BRYANT: So Senator.

3 SENATOR LOWENTHAL: Thank you.

4 CHAIRPERSON BRYANT: Page 175.

5 SENATOR LOWENTHAL: Shall I report?

6 MR. HARVEY: Please.

7 SENATOR LOWENTHAL: All right. The Subcommittee  
8 on Audits was established by unanimous decision of the State  
9 Allocation Board in recognition of concerns raised by school  
10 districts regarding changes in audit procedures and  
11 requirements. The Board requested that the Subcommittee  
12 study the scope of the OPSC auditing authority and bring  
13 recommendations to the State Allocation Board defining that  
14 authority. The Board further specified that the  
15 recommendations should seek to find a balance between our  
16 fiduciary responsibilities for bond accountability and the  
17 best use of State and local resources in conducting audits.

18 To accomplish this task, the Subcommittee with the  
19 endorsement of the full State Allocation Board, formed an  
20 audit working group, a group of audit experts. The group  
21 reviewed areas of redundancy in State audits of school  
22 districts and studied the scope of the School Facility  
23 Program audits.

24 Before we begin the discussion of the  
25 recommendations, I want to express my appreciation for the

1 members of the audit working group and all their thoughtful  
2 work. The group made up of auditors, State agencies, and  
3 school district representatives modeled the best of the  
4 democratic process. The audit experts listened to concerns  
5 raised about the current School Facility Program audit  
6 processes and thoughtfully responded, at times with  
7 reassurance to districts that those processes are necessary  
8 and typical and at times with information about the  
9 processes that can more efficiently accomplish the goals of  
10 accountability. Discussions were always professional,  
11 considerate, and well informed.

12           The suggestions of the working group are the  
13 foundation of the Subcommittee recommendations we have  
14 before us today. I believe these recommendations will  
15 ensure an accountable, transparent, and efficient audit  
16 process in the future. I ask for the Board's consideration  
17 of adoptions of these recommendations today. I'd also like  
18 to ask Subcommittee members, Kathleen Moore and Scott  
19 Harvey, if they'd like an opportunity to make comments  
20 before we ask the Assistant Executive Officer to present the  
21 Subcommittee's recommendations.

22           MS. MOORE: I'll be very brief. I'm very thankful  
23 for the working group and the leadership there that brought  
24 the recommendations forward to us for consideration. Thank  
25 you for all your time and effort involved in this.

1           MR. HARVEY: It was a pleasure to be part of this  
2 process. I think we've had healthy discussion about the  
3 breadth and scope of audits. We've had an interesting  
4 disagreement on who actually controls those audits. As I've  
5 said on more than one occasion, the Director of DGS  
6 certainly looks forward to hearing all of the wise voices  
7 from any source and he or she, since we are in transition  
8 now, will I'm sure take under advise the suggestions and  
9 will do a transparent, thorough, open audit, one that even  
10 perhaps should be done by an outside entity. I think we've  
11 all endorsed that conceptually. I think we've talked about  
12 Yellow Book standards. I think we've talked about  
13 corresponding early so people know predictably what to  
14 expect.

15           No one disagrees with that. So I want to thank  
16 Senator Lowenthal and Kathleen Moore for the time they  
17 spent. I think it was a healthy process and I would  
18 encourage the new DGS Director to seriously consider these  
19 suggestions -- when there is a new director. We don't have  
20 one yet.

21           MS. KAPLAN: Madam Chair, Board members, I am your  
22 Assistant Executive Officer, but I truly believe the experts  
23 are those that were sitting on the working group and I'm  
24 very thankful and so I'd like to introduce two of the  
25 individuals who were on the working group to present these

1 recommendations because they truly are, they're experts and  
2 have the inside working knowledge. So you have Lettie Boggs  
3 and you have Casandra Moore-Hudnall who's with the  
4 Controller's Office and Lettie does -- represents on behalf  
5 of the school districts. So I'm going to turn it over to  
6 them to present to you. Thank you.

7 MS. MOORE-HUDNALL: Thank you. The first issue  
8 that we discussed was the issue of the scope of the audit.  
9 The main issue that was brought up was that the scope of the  
10 audit needed to be defined. The School Facilities Program  
11 was intended to be a grant and goal program.

12 Our recommendation was to define the scope of the  
13 audit as a compliance audit. Local Education Agencies are  
14 audited to ensure that they are in compliance with the laws  
15 and regulations of the School Facility Program and that  
16 there would be an Audit Guide that would be revised and  
17 updated annually.

18 The second issue had to do with how audits are  
19 performed and the issue was that audits should be performed  
20 consistent with audits that are performed by other State  
21 agencies. Our recommendation is that audits should be  
22 performed in accordance with governmental audit standards or  
23 Yellow Book standards and the audits should commence within  
24 established time periods.

25 MS. BOGGS: An additional issue was regarding

1 objectivity and independence of the audit. Audits should  
2 not be conducted by the same entity that issued  
3 apportionment. We had a lot of discussion about the need  
4 for independence in the audit environment so that it assured  
5 a fair and independent look at the project for each  
6 district.

7           We had a lot of discussion about where this might  
8 occur and what it might look like. We spent a lot of time  
9 actually on this item. Two options that the Subcommittee --  
10 or our audit working group came up with were, one, the  
11 audits could be performed by the Controller's Office or  
12 secondarily, the expenditure audit could be performed by the  
13 district's independent auditors that they already hire to  
14 perform audit within the district annually.

15           MS. MOORE-HUDNALL: The next issue that came up  
16 was that program requirements at the time of the application  
17 change over time from when the LEA submits their annual  
18 application and the time the project is audited and our  
19 recommendation is, is LEAs should be audited subject to the  
20 audit kind and the regulations effective at the time the  
21 application is deemed complete and accepted by the OPSC.

22           And then to further -- go into it further, a  
23 complete application checklist would be included with the  
24 School Facilities Program Handbook and the LEAs would be  
25 given a notification upon their acceptance of the

1 application detailing which regulations and which Audit  
2 Guide the project would be subject to.

3           The other recommendation that we had is that OPSC  
4 would post electronically an archive of all previous and  
5 current regulations and audit guides for the district and  
6 the public that access. And then finally there would be an  
7 interim process that would be used to clarify the applicable  
8 laws and regulations and Audit Guide until a formal process  
9 is developed.

10           MS. BOGGS: An additional issue was that the LEAs  
11 should know the requirements for the audit at the time of  
12 the application to ensure that they're able to keep  
13 appropriate records and documentation throughout the  
14 project. The SFP Handbook and the Audit Guide should  
15 complement each other and incorporate compliance  
16 requirements in the handbook that the LEAs will be audited  
17 on and allow the audits to be audited to the Audit Guide  
18 requirements.

19           An additional concern was that once an audit is  
20 closed out that OPSC has the authority to reopen the audit  
21 at any time and relook at the expenditures, and this has  
22 been an ongoing back and forth with districts. The  
23 recommendation is that audits should not be reopened but  
24 that additional audits may be conducted if there is a  
25 finding of fraud or misappropriation of funds, illegal acts,

1 but when an audit is complete that the district can by and  
2 large rely upon that audit and move forward with  
3 expenditures, savings, and other things based on that audit.

4 MS. MOORE-HUDNALL: Okay. The next area that we  
5 discussed was the procedures on publishing and -- the  
6 findings and the audits. And in accordance with the  
7 Governor's Executive Order, all audits are to be posted on  
8 the accountability Website. Our recommendation is that the  
9 audits should only be published after the audit report is  
10 final and the LEA has had -- provided a written response.

11 The draft review of the audit should be given to  
12 the LEA 30 days prior to publishing the final audit and the  
13 LEA should have 30 days to respond. The responses should be  
14 published in their entirety and audit findings that are on  
15 appeal should be noted with any published audit information.

16 The next area that we discussed was the process  
17 for yearly update and communication to districts regarding  
18 changes with the audit process. The issue was that changes  
19 to the audit requirements are not effectively communicated  
20 to LEAs. A transparent process to revise the Audit Guide  
21 should be established that is relevant to the time of the  
22 audit.

23 Our recommendation is, is that the -- we create a  
24 standing Audit Committee that will do an annual review of  
25 the Audit Guide and create a process to address needed

1 changes. The Audit Subcommittee should be comprised of the  
2 California Department of Education, the State Controller's  
3 Office, facility and fiscal district staff, independent  
4 auditors, OPSC staff, or other appropriate staff.

5 MS. BOGGS: We also discussed streamlining actions  
6 within the audit process. One issue was that the program  
7 requirements can change from time to time from the time a  
8 district submits an application to the time that the  
9 district is audited. The recommendation is that we draft an  
10 incremental program compliance verification and separate the  
11 audit process and this was probably one of the more complex  
12 components that we're proposing.

13 Basically the proposal is that we would de-link  
14 the verification timeline for verifying certification of the  
15 '04 and the '05 from the expenditure audit that occurs after  
16 the final expenditure is done on the project, which can be  
17 five, six, even eight years later.

18 So this was a lot of discussion about the type of  
19 MIs that are coming and how can we address the issues that  
20 districts are having. One way that we could do that would  
21 be to make sure that the approvals such as we were just  
22 talking about in the last MI, those types of verifications  
23 are reviewed within one year of the 5004 submittal or the  
24 5005 submittal.

25 By doing it within that time frame, the people are

1 much more likely to still be at the district that made the  
2 decision. They're still there. Paperwork is fresh.  
3 Decision-making processes are still in recent memory and so  
4 people can explain how and why they did what they did.

5           This would produce a couple of other benefits.  
6 One of the benefits for the district is that if they know in  
7 a more timely manner that they have done something  
8 inappropriately, they can change before they have 8, 9, 10,  
9 11 succeeding projects that they make the same error on. So  
10 it provides a feedback loop for process improvement at the  
11 district.

12           It also provides a process improvement feedback  
13 loop at OPSC because right now they also aren't seeing the  
14 MI come through until so many years after the occurrence  
15 that they can't interdict how they are doing their program  
16 explanations to districts, the material in the manual, those  
17 types of things, so that those changes could be made in a  
18 more timely manner.

19           So if the verifications are certified within a  
20 one-year time frame, the audit of the expenditures would  
21 still occur later after the final expenditure much as it is  
22 now, but it would strictly be a basic expenditure audit  
23 layer verifying payments.

24           Another issue is that we had a lot of discussion  
25 about the fact that OPSC sometimes does not understand all

1 of the ramifications of how districts have to manage  
2 multiple funding sources for their projects, different nexus  
3 requirements for those funding sources, the process of  
4 managing multiple sources on multi-fund projects, multi-year  
5 projects.

6           So one recommendation is that OPSC be provided  
7 training to better understand the internal controls, cash  
8 management, and multi-fund accounting required at school  
9 districts to comply with their program and how those  
10 interrelate to other programs, which sometimes create almost  
11 a mutual exclusivity of abiding by everybody's rules. So if  
12 there was a broader understanding, perhaps the regulations  
13 could work together to provide documentation that meets more  
14 than one objective and at the same time, districts aren't  
15 being pulled in multiple directions to try and comply with  
16 related but separate programs.

17           MS. MOORE-HUDNALL: The next issue that we  
18 discussed was that audit requirements related to financial  
19 accounting are not coordinated with the requirements of the  
20 California School Accounting Manual that affects all LEAs.

21           The recommendation is, is that OPSC staff  
22 coordinate with the Department of Education staff who  
23 maintain the CSAM to assure that the financial documentation  
24 for audits is integrated part of the CSAM and doesn't pose  
25 additional accounting burdens on the LEAs.

1           In terms of the audit appeals process, the issue  
2 currently is that LEAs can appeal issues through the State  
3 Allocation Board and we were asked to discuss a process  
4 needed to address audit deficiencies that have a fiscal  
5 impact on the district and on the State.

6           Our recommendation is that the audit appeal would  
7 be the responsibility of the Assistant Executive Officer in  
8 consultation with the Office of Public School Construction  
9 and/or a future audit group to process the appeal and  
10 present the item to the Board.

11           MS. BOGGS: The final issue that we discussed and  
12 comes forward today is the Audit Guide. It was already  
13 recommended that the Audit Guide and a manual for the  
14 program be better coordinated, but we spent a lot of time  
15 talking about the Index and how it's organized because it's  
16 very problematic for districts because it jumps from program  
17 to program within the guide.

18           So it's rather difficult to read the manual or the  
19 Audit Guide and know that you've picked up all the criteria  
20 for any one component of the program. So we've made some  
21 recommendations that the Audit Guide be organized by  
22 elements of the program so that if a district was  
23 participating in any particular element, they could easily  
24 know that they've read all the pertinent parts.

25           Those are the recommendations.

1 MS. KAPLAN: So now it's up to discussion of the  
2 Board, any questions we'll be happy to take.

3 CHAIRPERSON BRYANT: Go ahead.

4 ASSEMBLY MEMBER BROWNLEY: I just had one question  
5 relative to the audit appeals process and I'm not quite sure  
6 I understood the recommendation with the appeal would be the  
7 responsibility of the Assistant Executive Director and/or a  
8 future audit group to process the appeal and present the  
9 item to the Board.

10 So that just means that they handle the  
11 understanding of what the appeal is to provide a Board  
12 agenda for us?

13 SENATOR LOWENTHAL: Yes.

14 ASSEMBLY MEMBER BROWNLEY: So we are still the  
15 Appeals Board.

16 SENATOR LOWENTHAL: Yes. They're just writing --  
17 as my understanding, they're -- the AEO writes the appeal  
18 report and presents it to the Board. It's really the  
19 Board's responsibility.

20 ASSEMBLY MEMBER BROWNLEY: Thank you.

21 MS. BOGGS: The concern was one of audit  
22 independence in that right now OPSC is a party to the  
23 transaction and yet they write the appeal documentation to  
24 the Board and the Committee felt it ought to be a more  
25 independent process that someone else should write the

1 documentation presenting --

2 ASSEMBLY MEMBER BROWNLEY: Very good. Thank you.

3 CHAIRPERSON BRYANT: Okay. I just have a couple  
4 questions. I want to talk for a minute about independence.  
5 So there -- I believe that most of our bond transactions in  
6 the State of California, that those audits are conducted by  
7 the departments who oversee the bond funds. It's a rare  
8 instance that it goes out to an independent third party to  
9 do the audits. Did you guys discuss that at all in your  
10 working group? How other State agencies oversee bond funds?

11 MS. MOORE-HUDNALL: It varies. The Controller's  
12 Office actually performs audits on behalf of other State  
13 agencies and we take a look and do audits of their bonds.

14 We also have -- there's also times when I believe  
15 that agencies may contract with an independent firm to do  
16 the audit and that's pretty much why you create an Audit  
17 Guide so that you can, you know, farm the audit out to a  
18 group of individuals that aren't within the organization  
19 that is actually running the program.

20 CHAIRPERSON BRYANT: And you did -- I mean my  
21 understanding was that this program doesn't have what is  
22 traditionally referred to as an Audit Guide.

23 MS. MOORE-HUDNALL: They have an Audit Guide.  
24 It's fairly difficult to follow and to understand and so  
25 this Committee was tasked with looking at that Audit Guide

1 and maybe making it something that's easier for both the  
2 districts to understand then, you know, any other auditor  
3 that might perform the audit.

4 CHAIRPERSON BRYANT: Do I have the wrong -- am I  
5 wrong about that --

6 MS. MOORE-HUDNALL: So that --

7 CHAIRPERSON BRYANT: -- or -- I thought we didn't  
8 have an Audit Guide.

9 MS. SILVERMAN: What we have is pretty much like a  
10 best practices handbook. It's more or less of a handbook.  
11 I mean the -- the staff did adopt an audit program which is  
12 something different. So I think it was obviously never set  
13 up that way.

14 CHAIRPERSON BRYANT: Okay. Well, let me just make  
15 some comments, Senator. You know, obviously we can turn  
16 back the time to last February when this initial  
17 conversation came up and you and I disagreed strenuously and  
18 we -- and I've told you all the way along that I would  
19 continue to disagree with you on this item.

20 However, I find myself in a position where I  
21 actually agree with virtually every single recommendation in  
22 this chart. We've had a lot of internal conversation.

23 SENATOR LOWENTHAL: What did you say?

24 CHAIRPERSON BRYANT: Yeah, I know. I know. You  
25 heard me correctly. There are a few things, but we've had a

1 lot of conversations -- the Department of General Services,  
2 OPSC, the Department of Finance, about this and ironically  
3 as we were clicking along on our internal path and you were  
4 clicking along on your external path, we find that we have  
5 an awful lot in common, that we actually have begun looking  
6 out having the field audits performed by an independent  
7 entity.

8           I think DGS is going to look -- I'm not positive  
9 they've actually started that, but we're going to look at  
10 hiring external auditing resources, bringing them in to  
11 start that process. Audits should conform to Yellow Book  
12 standards. We do need a comprehensive Audit Guide. I  
13 actually thought one did not exist.

14           I think you heard at one of your Subcommittee  
15 hearings from Chris Ferguson of my office who brought up  
16 the -- that we've used these -- this concept of an Audit  
17 Guide in just a regular education program. That Audit Guide  
18 is updated annually. It required legislation.

19           Our kind of initial read is that we may want to do  
20 this legislatively, really just say what the Audit Guide's  
21 going to look like, what's the entity that's going to  
22 approve it because I think the independence point is  
23 important.

24           Kind of in the recommendations here, you talk  
25 about people who should be on it. I think that it might be

1 something we want to declare legislatively. There are  
2 similar bodies already in legislation.

3 That we would have our current audit staff at OPSC  
4 perform desk reviews, perform inner program checks as was  
5 suggested to validate certifications and assess the control  
6 environment of a district. OSAE, which is our audit  
7 division, would work as more of in an advisory role for OPSC  
8 staff training and development. I think Ms. Silverman and I  
9 had a conversation earlier today about -- specifically about  
10 4B.

11 Some of this training's already taken place and it  
12 will continue along the way and we think that there should  
13 be an Audit Committee. This is something we think -- we  
14 actually think it requires legislation. I don't think we  
15 got a definitive answer on that, but we think that it might  
16 be a better way to go.

17 I think we disagree on the notion of the AEO  
18 writing up --

19 SENATOR LOWENTHAL: Presenting the report.

20 CHAIRPERSON BRYANT: -- presenting the report, but  
21 that's something I think that gets into a whole other  
22 discussion that Senator Hancock's kind of been leading on  
23 our procedures of the Board. But, you know, I think that  
24 having worked through these material inaccuracies over the  
25 past few days -- or past few months, it is really difficult

1 and the staff is just so -- they're -- they want the audit  
2 process to be respected because they understand completely  
3 that if they don't have a respected audit process that the  
4 Board's going to have difficulty finding these material  
5 inaccuracies, that we're going to have a hard time  
6 protecting the bond funds, and I think that what's happened  
7 is we are continuing down our separate paths and we find  
8 that we ended up in the exact same place.

9           And so I think what I might suggest is that we ask  
10 staff to -- a combination. I don't think it's just the OPSC  
11 staff. I think it includes Ms. Kaplan. I think it includes  
12 this expert working group who just did a great job on all  
13 these recommendations -- come back to us relatively quickly.

14           I think the recommendation of the Subcommittee was  
15 to have regulations to implement by January, but I would  
16 suggest that we have, you know, the combination of the  
17 regulations and the legislation necessary, not to mention  
18 the internal stuff we're already doing to get this -- to  
19 come back to the Board, you know, by January. Mind you, I  
20 won't be here, but I'll make sure that in our transition  
21 that this -- I think everyone -- I think OPSC staff's  
22 onboard with this plan and I think that we've kind of ended  
23 up in a good spot on this night. I actually tried to tell  
24 you earlier, but I kind of am enjoying the surprise.

25           SENATOR LOWENTHAL: Oh, okay. It is a surprise.

1           CHAIRPERSON BRYANT: Anyway. Any other comments?

2           SENATOR LOWENTHAL: So the recommendation then --  
3 excuse me -- would be to have this -- instead of voting  
4 today, to have a further --

5           CHAIRPERSON BRYANT: I think we can vote today. I  
6 think what I would -- if we want to vote today, we can.  
7 My -- I think the vote would be that generally speaking I  
8 think I would say everything except for 4A, if you want to  
9 specifically work off these sheets. But kind of generally  
10 speaking, everything off of this document except for 5A but  
11 we need to find a --

12          SENATOR LOWENTHAL: We leave 5A open?

13          CHAIRPERSON BRYANT: Some of it can be regulatory  
14 and Lisa Kaplan actually pointed out to me in my briefing  
15 that the regulatory process might take a certain amount of  
16 time because they're complicated. And I think we can get  
17 some of this, particularly creating the Audit Guide,  
18 creating the Audit Subcommittee in legislation and just get  
19 it done quickly.

20          SENATOR LOWENTHAL: So the first one would be to  
21 adopt the Audit Subcommittee's recommendations listed on  
22 Attachment A with the exception, you're saying, of  
23 Recommendation No. 5A.

24          CHAIRPERSON BRYANT: Right.

25          SENATOR LOWENTHAL: And to leave that open -- if

1 that's still --

2 CHAIRPERSON BRYANT: I think as part of that,  
3 Senator Hancock in conversation about how do we conduct the  
4 business of the SAB and in fact we've talked internally  
5 about that maybe what really should happen is, is we ought  
6 to use the Office of Administrative Hearings' procedure,  
7 that school districts -- rather than -- you saw our  
8 confusion sitting here today on trying to parse the  
9 individual what interest rate and this and that.

10 If we have a professionally done Audit Guide that  
11 we have confidence in, it is easy to turn it over to a  
12 hearing officer and then this Board does not find itself in  
13 a position of having to, you know, go over questions of  
14 fact. They have coming to them a recommendation from an ALJ  
15 and they can decide it. We don't have it totally flushed  
16 out, but that's kind of --

17 SENATOR LOWENTHAL: We don't have to have that  
18 flushed out because I still like --

19 CHAIRPERSON BRYANT: We don't. I just think --

20 SENATOR LOWENTHAL: -- to continue this discussion  
21 whether it's the AEO or that --

22 CHAIRPERSON BRYANT: Right.

23 SENATOR LOWENTHAL: -- just to leave it open at  
24 this moment.

25 MS. KAPLAN: That item as it falls under in

1 general appeal and process for appeals can be worked into  
2 the Rules and Procedures Subcommittee.

3 SENATOR LOWENTHAL: Okay. So let's -- with the  
4 exception then of that item, make a motion.

5 CHAIRPERSON BRYANT: I did see Rick come up  
6 with -- did I miss something.

7 MS. SILVERMAN: We just wanted to point out that  
8 to follow your lead, it was 5A that you wanted to not vote  
9 on -- or not accept.

10 CHAIRPERSON BRYANT: Well -- okay. I guess what  
11 I'm suggesting is we're accepting in concept the -- and  
12 maybe we don't have to have a vote on it. I just was trying  
13 to honor the Subcommittee's request to have a vote, but I  
14 just wanted to express complete agreement on a way that we  
15 can move forward and without dallying, without -- I think  
16 what's happened is that the separation has -- is not there  
17 where it used to be somehow or another.

18 SENATOR LOWENTHAL: I still would like to make a  
19 motion then to adopt the recommendations except 5A, to leave  
20 that open, that one, and to have them work on it.

21 MS. GREENE: Second.

22 MR. HARVEY: On the motion, if I just might  
23 indicate, I don't think we've ever had a separation on the  
24 concepts of independence, on transparency, on having advance  
25 notice, on having all of the things covered in this

1 document. It remains for others to decide the scope and  
2 content and who actually controls those things.

3 So I just want to make sure we weren't separating  
4 on all of these wonderful recommendations.

5 CHAIRPERSON BRYANT: Right. Although you're  
6 implying that -- I think that's fine.

7 SENATOR LOWENTHAL: And now are we going to  
8 instruct the staff the second part, to develop the  
9 regulations to implement --

10 CHAIRPERSON BRYANT: And bring them back.

11 SENATOR LOWENTHAL: And bring them back.

12 CHAIRPERSON BRYANT: With a caveat that there may  
13 be that they're extremely complicated and we are talking  
14 about going over the Christmas holidays when we're about to  
15 apportion, you know, a couple billion dollars -- knock on  
16 wood -- and -- so there's kind of workload issues and we  
17 aren't -- we didn't really have time and I think -- I don't  
18 think there's disagreement at the table on this. We didn't  
19 really have time to see how complex they are to do.

20 But I think we can come back by January --  
21 frankly, I -- we might have an interim report in December  
22 simply because I'll still be here -- on whether it takes  
23 legislation, regulation, and how complicated they are unless  
24 you -- I don't think you know; right?

25 MS. KAPLAN: I don't know immediately, but what we

1 can do is kind of what's been done before on the issue and  
2 recommendation. We can add another box and have a  
3 discussion as to whether it's regulation --

4 SENATOR LOWENTHAL: Well, you can instruct staff  
5 to develop regulations and/or legislation.

6 CHAIRPERSON BRYANT: Or implementation plan.

7 SENATOR LOWENTHAL: To -- or an implementation  
8 plan to implement the recommendation.

9 ASSEMBLY MEMBER BUCHANAN: Could we just take  
10 Senator Lowenthal's recommendation on 1A and instruct staff  
11 to come back to us with an update on January -- at the  
12 January meeting.

13 CHAIRPERSON BRYANT: Yeah.

14 ASSEMBLY MEMBER BUCHANAN: So I mean if they work  
15 it out, fine, but if not, we'll know where they are and  
16 whether or not there are additional issues that have to be  
17 resolved.

18 MS. MOORE: I think we would want to be clear  
19 though that we want to move forward with regulations in a  
20 timely manner.

21 ASSEMBLY MEMBER BUCHANAN: Right. Well, I agree,  
22 but I also --

23 CHAIRPERSON BRYANT: Right.

24 ASSEMBLY MEMBER BUCHANAN: -- when I take a look  
25 at this, you've got the Thanksgiving holiday. You have the

1 winter holidays coming up. So if they came back to us and  
2 could let us know where they are on implementing -- give us  
3 a status report on January 1, we'd know that it's continuing  
4 to move forward.

5 SENATOR LOWENTHAL: Would we like to have a draft  
6 report back in December if we can -- if it possible?

7 CHAIRPERSON BRYANT: I think it'd be great to have  
8 a report back and we can decide later what the --

9 SENATOR LOWENTHAL: We can ask for this in  
10 January, but also have a draft report back in December.

11 CHAIRPERSON BRYANT: And I think -- I just think  
12 that what's important for everybody to understand here is  
13 that the OPSC staff wants -- I mean I don't want to speak  
14 for you, but I think that they want to have the transparency  
15 and the confidence of the Board in this program and there --  
16 this is not taking a commitment on and in an effort to  
17 delay. But there really is timing issues just mainly  
18 because as Joan just pointed out, the holidays and  
19 everything.

20 So we'll report back in December and I think we  
21 have a motion. Do we have a second?

22 MS. MOORE: And a second.

23 CHAIRPERSON BRYANT: We have a second. Motion and  
24 a second. All in favor.

25 (Ayes)

1           CHAIRPERSON BRYANT: Any opposed? Abstentions?  
2 Okay then.

3           SENATOR LOWENTHAL: Good.

4           CHAIRPERSON BRYANT: Congratulations.

5           SENATOR LOWENTHAL: Well, thank you. It's been  
6 a -- again I cannot compliment the working group and we've  
7 had a number of meetings with them and they've just -- as  
8 you can see, this is a professional piece of work that  
9 they're bringing back to us and I think that we can all be  
10 proud of.

11           CHAIRPERSON BRYANT: We are running into almost --  
12 this going to break my record of my other longest meeting,  
13 which I thought this would be short today. We really need  
14 to get to Tab 13, which is the **Priorities in Funding**  
15 **Subcommittee Report** because we have decisions we need to  
16 make in order to move forward with December's apportionment.

17           Juan, did you want to set the stage or was I going  
18 to set the stage? I think you are.

19           MR. MIRELES: Thank you, Madam Chair. On  
20 October 28th, the Subcommittee met to discussion options on  
21 how to expedite the cash -- the available cash and as we all  
22 know, the first round of priorities in funding was an  
23 overwhelming success. And actually I wanted to take this  
24 opportunity to thank you, Madam Chair, for your leadership  
25 in spearheading those efforts as well as the rest of the

1 Board for taking action to implement this new process.

2 I also want to take the opportunity to thank all  
3 the school districts who accepted and met the challenge to  
4 submit the fund releases within 90 days, and last by  
5 certainly not least, I wanted to thank staff who are truly  
6 the unsung heroes in this whole process of doing all the  
7 work behind the scenes to get this program up and running.

8 So that helps us move forward and make an  
9 apportionment -- fund within 90 days. The discussion that  
10 the Subcommittee focused on apportionments that have already  
11 been made under the old system in which districts have up to  
12 18 months to submit a fund release request. Specifically we  
13 have approximately 600 million that fits within this  
14 category and we presented several different options for the  
15 Subcommittee to consider on how we can expedite the release  
16 of those funds in terms of allowing projects that are not  
17 ready to move forward to potentially step out of line.

18 If a district has a project that they have an  
19 apportionment but it's not ready to go, but then they have  
20 another one that's on the unfunded list and is ready to go,  
21 we talked about these -- several of these types of options,  
22 but ultimately the Subcommittee decided that these were a  
23 bit complex and instead wanted to focus on looking into a  
24 new method of managing our cash.

25 So what does that mean. One option that we

1 discussed was knowing that we had 600 million that has been  
2 apportioned, we know that most of those, about 250 million  
3 has been -- is set to expire in October 2011. This is the  
4 18 months that districts have to come in and submit a fund  
5 release.

6           So an option that was discussed is whether we use  
7 a certain amount, say 200 million, from these apportioned  
8 projects and use that -- those funds to apportion other  
9 projects. So basically we would be funding -- we would make  
10 apportionments for projects in excess of the cash available.

11           The Subcommittee wanted to take a look at this  
12 option and whether we have some risk in doing so. We have  
13 taken a look at this. We have talked to legal counsel and  
14 obviously there is some risk to this because we would be  
15 making apportionments absent cash being available.

16           We thought that this would create some liability  
17 for the State and is a bit risky, but wanted to bring it up  
18 to the Board for their consideration. We also thought that  
19 the Board could consider just focusing on putting the  
20 maximum amount of cash into this new priority system, which  
21 again is we plan just to submit a fund release within 90  
22 days as opposed to the old 18-month rule.

23           We also think that this new cash management system  
24 is something that the Board could consider in the future.  
25 Along with those options, staff is also proposing that the

1 Board consider moving the date in which we're going to have  
2 available cash for the next priorities in funding. What I  
3 mean by that is we were going to use the cash that's  
4 available on November 3rd for the next priorities in  
5 funding, but we realized that there's supposed to another  
6 bond sale in November and a lot of projects their 18 months  
7 are set to expire on December 10.

8           So instead of setting the deadline on  
9 December 3rd -- excuse me -- on November 3rd, we wanted to  
10 extend that to December 10th to see if there's more cash  
11 that becomes available and apply that to the next priorities  
12 in funding round.

13           So part of the option today is to take a look at  
14 this cash management system to see if the Board wants to  
15 entertain this and whether the Board wants to consider  
16 extending the deadline to use available cash from  
17 November 3rd to December 10. And along with that, I think  
18 the Chair has proposed to move that Board in December to the  
19 15th to still make apportionments at that Board meeting.

20           Another consideration for the Board is to discuss  
21 the future priorities in funding round, whether this should  
22 be on a periodic basis, whether it's on a quarterly basis,  
23 or how often should we have these in the future.

24           So with that, I'll be happy to answer any  
25 questions.

1           CHAIRPERSON BRYANT: Let me ask the Subcommittee  
2 members if you wanted to add anything to that -- maybe what  
3 I should just say is since we ended up doing a lot more work  
4 on this after the Subcommittee hearing and Juan explained it  
5 very well, but the bottom line is this, that if we -- you  
6 know -- we're supposed to close today the priorities in  
7 funding round that we started last month and I think what we  
8 hadn't thought all the way through was that we -- and we  
9 didn't know for sure, but we know now that there's -- the  
10 Treasurer's marketing a bond sale. We have no idea what our  
11 program will get. It'll be somewhere between zero and  
12 \$2.4 billion, pretty broad range, but we know we'll have  
13 that.

14           We also know that we have gone through all of the  
15 accounts that we have and we know what our -- I call this  
16 the couch cushion change, the money that we have that we can  
17 also put into the funding round. And we -- so we can take  
18 all those cash resources, marshal them, and have a very  
19 hefty priorities in funding round if we delay our December  
20 Board meeting for one week and we also extend the deadline  
21 for this priorities in funding round by one week.

22           That would be -- you know, that'd be our  
23 recommendation. That would probably give us -- you know,  
24 let's hypothetically say that the Treasurer can sell a  
25 billion dollars for our program. That gives us the

1 opportunity to get, you know, somewhere north of 1.5 billion  
2 into the system in the first quarter of 2011 and as you  
3 know, these are shovel ready -- immediate job creator  
4 project. So that's kind of our recommendation.

5           On a going-forward basis, the Board -- and this is  
6 something -- and I really wish this didn't have to be a  
7 February issue, but I'm just running out of time here. But  
8 on a going-forward basis, the Board is going to have to  
9 grapple with this question of how to manage the unfunded  
10 list and the apportionment list so that what we're really  
11 doing is we are saying to a district, giving a district a  
12 green light when they're ready to go and we have the money.

13           What we don't want to find ourselves in this  
14 predicament we've been in for most of 2010 where we had  
15 upwards of a billion dollars just lying around that was --  
16 that we were paying general fund interest costs on and that  
17 we weren't putting to work.

18           And so I don't have a perfect solution for that.  
19 I'm going to leave it to the staff we're leaving behind. I  
20 mean the Department of Finance staff is, you know, working  
21 on recommendations for us and we just know that we're never  
22 going to have the PMIA loan system back and we have to  
23 change the way we do business.

24           But we thought -- the Subcommittee -- and they can  
25 agree with me or not. We thought that just going forward

1 and putting as much cash into this round as possible, not  
2 tweaking, you know, around the edges of the program was kind  
3 of the best way to go. So I think -- Assembly Member  
4 Buchanan.

5 ASSEMBLY MEMBER BUCHANAN: I think you did a great  
6 job describing it and I definitely would support pushing out  
7 the December meeting because I think the more money we could  
8 get into projects, the better. And then I would only add  
9 that one that we're dealing with -- you know, what we have  
10 control over versus what we had to change legislatively and  
11 I think the path you described we felt was the best path to  
12 follow to be able to get more money into projects and also  
13 take a look a look at how we handle our cash management in  
14 the future so we sit on less cash and get more money out to  
15 projects, so --

16 CHAIRPERSON BRYANT: Ms. Brownley.

17 ASSEMBLY MEMBER BROWNLEY: So what about the  
18 people that are -- the projects that are on the 18-month  
19 list that are -- so how are -- within this plan, how do we  
20 handle that?

21 CHAIRPERSON BRYANT: Well, if you look -- this was  
22 kind of the sticky question and I'll tell you what my  
23 recommendation is really speaking from the Department of  
24 Finance position.

25 If you look at the chart that's on page 174, you

1 see that that represents the amount of money that is on the  
2 unfunded -- on the 18-month list and when those projects  
3 would have to perfect by. So they would rescind if they  
4 hadn't perfected them. So if you look at like October,  
5 there are \$600 million. Those projects, assuming that that  
6 number stayed the same, are all eligible for rescission and  
7 the Board could vote to rescind. I don't think that was on  
8 today's agenda, was it, those rescissions? They were on  
9 consent. So that \$6 million we rescinded on consent.

10 In the November ones, that 60 -- you see that  
11 64 million, that will be eligible to be rescinded in  
12 December. The other -- and then those December projects,  
13 that 110 million, we know those are all eligible to be  
14 rescinded on December 10th. So they either perfect or we  
15 rescind them and we can put all of those funds into this  
16 funding round.

17 And then you have the balance here. You have the  
18 remainder out there to April 2012 and our recommendation is  
19 that -- the total's approximately 400 million. Our  
20 recommendation is that we leave that 400 million as -- in  
21 our bank account, so to speak, and we do that for a couple  
22 of reasons. There's a question of whether or not the State  
23 has incurred liability. We say that the project's eligible  
24 for funding. If the district comes and asks for the cash  
25 and we find ourselves without enough cash, have we created

1 liability. That's the situation we were in at the beginning  
2 of 2009. We were never sued, even though we had that  
3 situation.

4           But it still -- we have a big liability question.  
5 We also know that we're going into a tough budget cycle.  
6 There's a chance with the new Governor, Prop. 58 session,  
7 you know, changes in the way we pass the budget, potential  
8 ballot measures that might be out there, there could be  
9 scenario where we would be in a blackout period of a longer  
10 time than usual in the spring and we might not be able to  
11 sell bonds.

12           And so we would just suggest that we leave the  
13 400 million alone. Now that's not to say -- we can. If the  
14 Board decides it wants to take a chance, we could add some  
15 of that money into our December apportionment. We're just  
16 for once being kind of cautious on this front. Now that  
17 we've gotten this cash balance down to no more than  
18 400 million, we think that's not objectionable. The  
19 Department -- the infrastructure area in our Department has  
20 said that that's less cash balance than some other places  
21 have and we know that we have -- we know when it's going to  
22 become available. So that's -- so we suggest that we put  
23 every bit of cash that we have available into the  
24 apportionment on December 15th but for those projects.

25           That's our recommendation, but -- Scott.

1           MR. HARVEY: Madam Chair, I want to thank you for  
2 succinctly stating what we heard and what we did as a  
3 Subcommittee. I think there was unanimity in the concept of  
4 not hurting those on the list. If they were to be  
5 rescinded, how do we capture those and put them to a better  
6 use, creating jobs, funding as we did in the last go-round,  
7 which was a hundred percent subscribed. Now who would have  
8 thought of that.

9           So building on that success, I'd like to move what  
10 you just stated, which is we extend the time period for the  
11 applications to come in by I think you said a week and that  
12 we postpone our Board meeting one week to the 15th of  
13 December, which would allow us then to capture these coins  
14 in the couch that you allude to and we will utilize the  
15 priority in funding mechanism that we used so very  
16 successfully the first time. We will have a discussion also  
17 on whether we should add a little bit more to it as you just  
18 concluded, risk or not, that may be a discussion we have.

19           But that I think accomplishes what we as a  
20 Subcommittee ended on.

21           MS. MOORE: I would second that and make a point  
22 that the one issue that we did not grapple with -- I think  
23 we've grappled with all the issues. We thought that the  
24 recommendations while creative probably would have created  
25 more confusion and that this is a cleaner method to

1 hopefully get out as much funding as possible over the next  
2 month.

3           And then that this Board really has to grapple  
4 with the up to 18 month issue --

5           MR. HARVEY: Um-hmm.

6           MS. MOORE: -- and I think we've all talked about  
7 that that was in place in a different time period for a good  
8 reason and we'll have a robust discussion around it, but in  
9 the cash management world that we have today, we need to  
10 grapple with that issue on the long term and perhaps that's  
11 in January, but at some future point, we really need to deal  
12 with it.

13           CHAIRPERSON BRYANT: All right. So we have a  
14 motion. Do we have a second? Did you --

15           MS. MOORE: I seconded it.

16           CHAIRPERSON BRYANT: Okay.

17           MR. MIRELES: Madam Chair, just to clarify, the  
18 extension would be to use available cash as of  
19 December 10th, not necessarily changing the -- extending the  
20 certification time period. We're still accepting  
21 certifications through November 8th, but it's using  
22 available cash instead of November 3rd, December 10th as the  
23 date. So we're not extending the certification time period  
24 just using available cash as of December --

25           MR. HARVEY: I don't think I said certification --

1 application period. We have to extend --

2 CHAIRPERSON BRYANT: I thought we were. I mean --

3 MR. HARVEY: I thought we had to extend the  
4 application period to get the more o--

5 CHAIRPERSON BRYANT: The round that we opened --  
6 yeah.

7 MR. MIRELES: It's just -- now we can keep the  
8 same period. It's just using cash available all the way up  
9 to --

10 CHAIRPERSON BRYANT: The round that we opened at  
11 our last meeting, doesn't that close today?

12 MR. MIRELES: November 7th.

13 CHAIRPERSON BRYANT: Oh, November 7th.

14 MR. MIRELES: 8th. Sorry. Excuse me. 8th.

15 CHAIRPERSON BRYANT: 8th. Okay. All right. So  
16 up until November 8th. And did you get the numbers you were  
17 going to get for me, the numbers of what we have in house on  
18 this round?

19 MS. SILVERMAN: I think Barbara shared with us  
20 earlier that we had already \$1.2 billion in requests that  
21 have submitted for -- just to compete for that 71 million.

22 CHAIRPERSON BRYANT: And you will use your  
23 usual -- you will send out an email to your usual list and  
24 just remind them that we are expecting a bond sale and that  
25 people should get them in and then everyone out there will

1 help spread the word that people should take a good hard  
2 look at getting in there because we'll have a large amount  
3 of money -- knock on wood -- to apportion.

4 MR. HARVEY: My amendment then would reflect that  
5 change. I mean my motion would accept that amendment.

6 CHAIRPERSON BRYANT: Okay. So all those in favor.

7 (Ayes)

8 CHAIRPERSON BRYANT: Any opposed? All right. So  
9 let me just make a suggestion. It's 6:00 o'clock. I'm  
10 sorry. I hate saying this. I feel like we can't finish the  
11 book tonight. There's a lot of really important things  
12 going on.

13 Temecula is here. I was going to ask if they  
14 would mind putting it over. Jeff.

15 MR. OKUN: Well, when I thought it was  
16 December 8th, I was okay, but December 15th, I have a  
17 function to be at at the district office. It's a function  
18 honoring me because I'm retiring, so I cannot not be there  
19 on the 15th.

20 CHAIRPERSON BRYANT: Okay. Then we probably -- up  
21 to the Board. We should probably hear your item then.  
22 Because you will be gone in January. So will I.

23 ASSEMBLY MEMBER BROWNLEY: You guys all say that  
24 with smiles on your faces.

25 CHAIRPERSON BRYANT: It's really -- okay. Then

1 let's --

2 MR. HARVEY: Madam Chair, can I ask staff to  
3 comment on one other -- I thought there was some timeliness  
4 on the **sale of the relocatables** and that's not terribly  
5 controversial and we could move on that to capture those  
6 dollars from that sale. We may want to take item --

7 CHAIRPERSON BRYANT: Is it timely?

8 MR. HARVEY: It's timely, I understand.

9 MS. SILVERMAN: Yes. I believe we had some  
10 commitments with districts to sell those particular  
11 portables and they've been waiting for the last --

12 CHAIRPERSON BRYANT: Okay. Then let's do that  
13 really --

14 MR. HARVEY: Can we just do that one in two  
15 seconds, I think.

16 CHAIRPERSON BRYANT: Tab 16.

17 ASSEMBLY MEMBER BROWNLEY: Yeah. Can I move  
18 Item 16.

19 MR. HARVEY: I will second Item 16. We have a  
20 motion and a second.

21 CHAIRPERSON BRYANT: Okay. All those in favor.

22 (Ayes)

23 CHAIRPERSON BRYANT: Okay. Thank you, Dave. That  
24 was an excellent presentation.

25 All right. Let's go to Tab 12 then, which is

1 **Temecula.**

2 MR. DAVIS: And that was just one tab. We have  
3 another relocation item.

4 CHAIRPERSON BRYANT: What?

5 MR. DAVIS: Tab 17 I think.

6 CHAIRPERSON BRYANT: Right.

7 MR. DAVIS: Or Tab 15 and 16.

8 CHAIRPERSON BRYANT: Oh, did I say it wrong?

9 MS. GREENE: It's 16.

10 CHAIRPERSON BRYANT: I might have said 17. Is  
11 that what you're saying? It's Tab 16, page 190, is what we  
12 just voted on for the record.

13 All right. So now we're on Tab 12, page 159.

14 MR. ASBELL: That's correct. So on page 159, this  
15 is for **Temecula Valley Unified**. This is another set of  
16 projects where we had premature fund release.

17 I'm not going to get into all the details about  
18 the authority and so forth because I know we've kind of  
19 covered that in the previous item. If you go to stamped  
20 page 166, there's a listing -- here's a listing of the  
21 projects. Take a look at the fund release authorization  
22 date and in looking at how much was under contract at the  
23 time of the fund release and then we would be looking at  
24 \$1.6 million interest calculation for the material  
25 inaccuracy.

1 I'm going to cut to the chase on this one right  
2 here. The question comes -- the question is going to be  
3 you've got CM contracts and which contracts do you use and  
4 how much dollars do you use in order to apply to the 5005.

5 Basically what we looked at and we had our legal  
6 office take a look at this also, the district had two  
7 contracts and if I could point you to page 162. They had a  
8 contract for Barnhart (ph), which is in the third paragraph,  
9 for 2.6 million and then reimbursable expenses of 342,000  
10 and then you had Edge Development, the second contractor,  
11 698,000 with reimbursables for 192.

12 When those contracts came up to staff, we took  
13 those contracts and we applied it to the 5005. Those were  
14 the only numbers that were in the contract. So what we've  
15 done is we've accepted the district's assertion or the  
16 contracts. I think the difference right now is how much of  
17 the dollar amount should be applied to the 5005.

18 We can only go by what we see a face value as  
19 staff. We don't have a crystal ball because I believe that  
20 there were some subcontractors that -- contracts were let  
21 three to four years afterwards, after these CM contracts  
22 were signed. So that's the question right now is how much  
23 do you apply to the 5005 certification based on these  
24 contracts.

25 CHAIRPERSON BRYANT: Is that it?

1 MR. ASBELL: I'm trying to keep it short and  
2 sweet.

3 CHAIRPERSON BRYANT: Okay. Jeff.

4 MR. OKUN: Thank you. Good afternoon or good  
5 evening as the case may be. My name's Jeff Okun. I'm the  
6 Assistant Superintendent of Business for the Temecula Valley  
7 Unified School District and I appreciate the opportunity to  
8 address this on these serious charges.

9 I'm going my presentation, which is about six  
10 minutes, but the question -- our question is not staff's  
11 question. Our question is totally different. Very simply  
12 the sole issue before the SAB today is did we falsely  
13 certify that we had binding contracts in place for  
14 construction of the seven projects that we prematurely  
15 received fund releases. The answer is simply no, we did  
16 not.

17 I testify to you today that in 2002 the district  
18 accurately certified that they had binding contracts for  
19 construction in place for a hundred percent of the work of  
20 the plans and specifications at the time the certification  
21 was made. Now eight years after the fact, the SAB is being  
22 asked to sit in the seats of our governing board and  
23 validate the reasonable and appropriate action and  
24 certification that was made in 2002.

25 I think all of us would agree that you must have a

1 strong body of evidence in order to make a finding that the  
2 district has falsely certified with an application to the  
3 State. There must be certainty in order to levy  
4 \$1.6 million fine and deny the district the privilege of  
5 self-certification for five years.

6           Despite repeated requests, staff has never  
7 presented any rule, regulation, or guideline of what  
8 constitutes a binding contract for completion of the  
9 project. In fact this issue is not even mentioned. It's  
10 not even the question, but that is the question of today.

11           In direct discussions, staff has taken the  
12 position that the interpretation of the certification should  
13 be self-evident, but I'm here to tell you that in 2002, it  
14 was not.

15           To illustrate the point, I notice that staff  
16 report goes to great length to talk about why our CM  
17 contracts were not CM at risk. Consistent with the comments  
18 made at our meeting with staff, the report further indicates  
19 that some types of CM contracts do meet the binding contract  
20 test. In other words, like the staff position on what  
21 constitutes a binding contract for construction is  
22 self-evident, staff believes that one should simply know  
23 what will be acceptable as a CM at-risk contract for  
24 certification. I think this makes my point.

25           We had binding contracts with two CM firms that

1 had been used to build over 31 projects that have been  
2 processed through OPSC. These were significant contracts  
3 that put a great deal of risk on the construction manager  
4 including even a requirement that the CM indemnify the  
5 district against cost increases from subcontractors. The  
6 firms who were also general contractors essentially acted as  
7 a general contractor for the district. At times they  
8 performed the work themselves. At other times, they acted  
9 in a true general contractor capacity. This method along  
10 with their reuse of plans allowed for quick construction of  
11 schools in a cost-effective manner that resulted in more  
12 dollars being available for construction.

13 I'm not going to go into the endless details of  
14 the contracts or spend time debating the various aspects and  
15 nuances of them. We have always maintained that our CM  
16 contracts constituted at risk contracts. Lacking any clear  
17 guidelines or regulations from OPSC on what defines a  
18 binding contract, the district took reasonable efforts in  
19 order to make the self-certification. Those steps included  
20 issuance of an RFP for CM services that required the CM firm  
21 to be a general contractor, establishment of budgets for  
22 each school project contained with the RFP, the requirement  
23 that the CM assume all responsibility for completing the  
24 entire project on schedule or be subject to \$3,000 a day in  
25 liquidated damages. The CM was required to post

1 construction bonds up to the hundred percent to the extent  
2 that the others in the project did not. The CM was  
3 responsible to pay for claims, for contractor cost overruns.  
4 The CM was required also to provide course of construction  
5 insurance.

6 The CM contract guarantees that the sum of all the  
7 construction contracts would be completed within the  
8 budgetary parameters established for those projects and that  
9 was an exhibit in the contract.

10 I ask you whether you agree with our position or  
11 not, such debates and ambiguity is really -- are they really  
12 to be the basis of a \$1.6 million fine and a five-year  
13 suspension of self-certification? Is that what the MI  
14 process boils down to? I don't think so and I hope you  
15 don't either.

16 In 2002, reasonable, intelligent, and honest  
17 people in Temecula determined they had binding contracts in  
18 place. They made certifications based on that and they had  
19 nothing to tell them their actions were incorrect. Surely  
20 now eight years later we're not going to base a material  
21 inaccuracy finding on the assertion that somehow we should  
22 have known better.

23 Temecula Valley followed all the regulations in  
24 place when we filed for 13 requests for funding. Seven of  
25 those 13 projects are subject to this Board item. This is

1 not a matter of district staff changes, regardless of what  
2 you may have read in the report. This program has been  
3 under my supervision since 2000.

4 I believe the certifications were accurate in 2002  
5 and I still do today. Our argument has not changed contrary  
6 to what may have been written. Our CM contracts were at  
7 risk, but more important to the issue of false  
8 certification, we have also maintained that the district had  
9 binding contracts in place for construction of these  
10 projects.

11 I have written documentation dating back to 2009  
12 where this position was articulated to OPSC. This is not a  
13 Johnny-come-lately argument devised because other arguments  
14 have failed.

15 In closing, I'd like to reiterate a few important  
16 points. Don't lose track of the important question. What  
17 guidelines, checklists, regulations were in effect in 2002  
18 to tell us that our CM contracts were not permitted for the  
19 purpose of certification. This is not about inappropriate  
20 expenditures. All the State funds were matched with  
21 district contributions and spent on the projects to complete  
22 them within the required timelines and in compliance with  
23 law and regulations.

24 Students that attended these schools back in 2002  
25 are now in high school. Material inaccuracy is a serious

1 matter carrying not only the stigma of severe penalties but  
2 a stigma of dishonesty. It's not just the  
3 self-certification. It's the stigma of being labeled an MI.  
4 It's not just the penalty. It must be applied to only the  
5 most egregious and clear-cut circumstances where the  
6 district knowingly broke clear rules.

7           It must be reserved for those who abuse the  
8 system, not for those who simply try to use it. On behalf  
9 of the governing board of TVOC, I request that the State  
10 Allocation Board find that a material inaccuracy did not  
11 occur on any of our projects before you today.

12           I have further comments on penalties and interest,  
13 but I will reserve those for later in the discussion should  
14 they become necessary. Thank you for your time and thank  
15 you for hearing this today.

16           CHAIRPERSON BRYANT: Did you want to respond?

17           MR. WATANABE: Let me start by kind of talking  
18 about what we did as auditors when we reviewed these  
19 projects when we first got them in our house. On the bottom  
20 stamped page 159, you'll see the certification made by the  
21 district, that the district certifies that it's entered into  
22 binding contract for least 50 percent of the construction  
23 included in the plans applicable for the State funded  
24 projects. This is the certification actually on the form  
25 the district signed prior to 2002.

1           When staff initiated this audit, we requested  
2 copies of all the construction contracts, copies of the  
3 construction manager agreements, and what we do is review  
4 those contracts for what the district is bound to legally in  
5 those contracts. The dollar amounts are spelled on page 162  
6 in paragraph 3.

7           Our legal counsel, our staff at DGS that work in  
8 the real estate services department, the State funded  
9 projects have all looked at this contract and all agree this  
10 is not a CM at-risk project.

11           Now what a CM at-risk project does is it binds the  
12 school district and it binds the CM to completion of the  
13 project. There are usually set amounts agreed upon,  
14 oftentimes a guaranteed maximum amount that the district is  
15 willing to pay to complete the project.

16           Those contracts are essentially like a  
17 construction project that's done with a general contractor.  
18 They see the entire project through. They'll issue bonds to  
19 guarantee completion of the project. They will directly  
20 contract with the trade contractors for completion of the  
21 project.

22           This contract is not a CM at-risk. Had it been,  
23 yes, the district would have met all of the certification in  
24 their project. With that said, when the district actually  
25 met these project certifications was actually three to four

1 years later and what we found on audit when we reviewed the  
2 contracts the district actually had in place was individual  
3 contracts with these trade contractors. They were not made  
4 wit the CM to the trade. It was made directly with the  
5 district.

6 At that point in time, the district was legally  
7 bound to those contractors to complete the project. Staff  
8 doesn't believe there was ever really a -- staff admits  
9 there isn't anything written in reg or statute that just  
10 defines binding contracts, but it's pretty clear from the  
11 legal standpoint in reviewing these contracts what the  
12 district is bound to.

13 CHAIRPERSON BRYANT: Are there any questions or  
14 comments from the Board? Mr. Harvey.

15 MR. HARVEY: I'm trying to follow your logic and  
16 on the one hand, you're not denying the right to use a  
17 construction management contract. You're not saying that  
18 doesn't become a vehicle. What you're suggesting is the  
19 point at which they certified they had 50 percent or more  
20 and your due diligence suggests that wasn't the case.

21 MR. WATANABE: Correct.

22 MR. HARVEY: So it -- you continue to argue not  
23 about the form, but about the amount.

24 MR. WATANABE: Correct.

25 MR. HARVEY: Thank you.

1 ASSEMBLY MEMBER BROWNLEY: What do you mean the  
2 amount?

3 MR. HARVEY: What I mean by the amount is that  
4 staff -- as they looked at the dollars under contract, it  
5 didn't meet our threshold for 50 percent or more.

6 MR. WATANABE: Right. On stamped page 166, the  
7 fourth column, on the form, the district certifies they have  
8 50 percent of the project under contract. In the case of  
9 these projects, they're all under 30 percent under contract  
10 and in some cases as low as 9 percent and this is already  
11 including the construction management contracts.

12 MR. HARVEY: So if I can ask the Superintendent,  
13 then they're not disputing your right to use the vehicle.  
14 It's when did you get that binding amount committed. Can  
15 you give me an example of where you believe you did not  
16 falsely certify that they were committed, that you actually  
17 had them.

18 MR. OKUN: Well, I think staff made our argument  
19 for us. He admitted there's nothing in place to tell us  
20 that we were doing anything wrong. I mean lacking -- we  
21 believed and still do -- not believed. We determined that  
22 the contracts we had with our CM met the test and we signed  
23 and certified it. I'm not denying that we didn't sign the  
24 form. We did sign the form and we do certify to that. We  
25 stand by that today.

1           Those are the contracts we used. And if there's  
2 not guidelines to tell us back then that these aren't the  
3 type of contracts you should use, then produce them and let  
4 me read them and then I'll tell -- and then you have a case,  
5 but as far as I'm concerned, staff is agreeing with us that  
6 there was nothing there in 2002 to tell us these CM  
7 contracts were not valid contracts the way we were using  
8 them.

9           It's self-certification. Okay. And if you're  
10 going to put the faith in the district to do the right  
11 thing, we did the right thing. We took the State money. We  
12 matched it and we built these schools. Okay. And we did it  
13 in the timeline you require us to do it: 18 months to have  
14 all the contracts let, three years to have the school  
15 completed.

16           We met those timelines and four years in the case  
17 of a middle school. So we've met all those requirements.

18           CHAIRPERSON BRYANT: Question.

19           MS. GREENE: Not a question. I would lead the  
20 Board to look at page 162. That shows in July 2007 in the  
21 report from OPSC that the Board has already voted a -- there  
22 was so much uncertainty going on in this period that from  
23 1999 to 2003, we already voted a grace period for schools  
24 because there was uncertainty about what CM at-risk was and  
25 what the contracts were and you certainly fall within that

1 period.

2           So again Rick said to me when I asked him this  
3 question, Rick said all we can do as OPSC staff is look at  
4 the front of the contract to see if the money was there,  
5 whereas the school district is saying we believed that when  
6 we went into the contract we were contracting for these  
7 projects.

8           MR. OKUN: For a hundred percent of the projects.

9           MS. GREENE: For a hundred period.

10          ASSEMBLY MEMBER GARRICK: I have a question or  
11 two.

12          CHAIRPERSON BRYANT: Mr. Garrick.

13          ASSEMBLY MEMBER GARRICK: Thank you. Gentleman  
14 from Temecula, the construction management contracts that  
15 you were utilizing, they required them to complete them on  
16 time under a certain dollar amount; correct?

17          MR. OKUN: Correct.

18          ASSEMBLY MEMBER GARRICK: And that was a hundred  
19 percent completion; correct?

20          MR. OKUN: Correct.

21          ASSEMBLY MEMBER GARRICK: Okay. I mean a hundred  
22 percent qualified -- and with the paragraph that explains  
23 the timeline and what seems to be almost a retroactive reach  
24 by someone here, back with new rules that were established  
25 in July of '07 to instances or construction that took place

1 in the early 2000s is wrong. I move that we dismiss this or  
2 whatever the appropriate phraseology is and that staff's  
3 recommendation, if they're encouraging some type of penalty,  
4 be overruled or --

5 MS. MOORE: Second.

6 ASSEMBLY MEMBER GARRICK: Thank you.

7 CHAIRPERSON BRYANT: Ms. Buchanan, did you want to  
8 comment?

9 ASSEMBLY MEMBER BUCHANAN: I can accept the  
10 recommendation. I do have a few questions though because,  
11 you know, I -- the contracts with the construction  
12 management firm, what was the dollar amount of those  
13 contracts?

14 MR. OKUN: The dollar amount of the contract was  
15 the budget for the schools to be built. That wasn't the  
16 dollar amount the CM was paid.

17 ASSEMBLY MEMBER BUCHANAN: So did you pay -- when  
18 you paid for the actual -- did you pay the general  
19 contractor or did you pay the construction management firm  
20 who paid the general contractor?

21 MR. OKUN: We paid the -- we paid -- actually paid  
22 to an escrow account that the construction management  
23 company controls and then they dole the payments out.

24 ASSEMBLY MEMBER BUCHANAN: Yeah. I am -- because  
25 I -- my experience with construction management firms and

1 hiring them is we all understand they're not the contractor.  
2 They're acting as your agent to go out to bid and in terms  
3 of the supervision, we know that architects, for example, if  
4 you -- if there's unforeseen conditions that they have  
5 missed, they're responsible for that liability.

6           Construction management firms can get -- you  
7 can -- if you want to take this logic to its conclusion, you  
8 could hire a construction management firm to help you with  
9 the conceptual design, to do the constructability reviews,  
10 to do all of that, that would constitute a contract -- get  
11 funding, you know, long before and when you take a look at  
12 the days here, when you're looking at 508 days, 494 days,  
13 that's a long time.

14           Now I -- I'm willing -- like I said, I wasn't  
15 here. I'm willing to accept the fact that there was  
16 significant ambiguity, but I do have to say going forward I  
17 don't buy the argument that being in a contract with a  
18 construction management firm is the same as having  
19 50 percent of a project under construction.

20           MS. GREENE: We've clarified it since.

21           ASSEMBLY MEMBER GARRICK: It's been clarified  
22 since. And that's the point that --

23           MS. GREENE: I call for the vote.

24           ASSEMBLY MEMBER GARRICK: -- that this is reaching  
25 backwards in time.

1 ASSEMBLY MEMBER BUCHANAN: Right. Fine now. But  
2 I'm just saying I was on a school board then. We hired a  
3 construction management firm and I wouldn't have done it,  
4 but I -- like I said, I wasn't here then. I'm willing to  
5 accept that, but I --

6 CHAIRPERSON BRYANT: Would you call the roll.

7 MS. GENERA: Assembly Member Garrick.

8 ASSEMBLY MEMBER GARRICK: What are we calling the  
9 roll on? My motion?

10 CHAIRPERSON BRYANT: Your motion.

11 ASSEMBLY MEMBER GARRICK: My motion? Good. I  
12 just want to make sure that this is perfectly clear to  
13 everyone here. Aye on my motion.

14 MS. GENERA: Assembly Member Brownley.

15 ASSEMBLY MEMBER BROWNLEY: Aye.

16 MS. GENERA: Assembly Member Buchanan.

17 ASSEMBLY MEMBER BUCHANAN: Aye.

18 MS. GENERA: Scott Harvey.

19 Kathleen Moore.

20 MS. MOORE: Aye.

21 MS. GENERA: Lyn Greene.

22 MS. GREENE: Aye.

23 MS. GENERA: Cynthia Bryant.

24 CHAIRPERSON BRYANT: Aye.

25 MS. GENERA: It carries.

1           CHAIRPERSON BRYANT: Okay. So do we have to do  
2 any other business?

3           MS. SILVERMAN: Tab 15 is the only item left.

4           CHAIRPERSON BRYANT: Which was what?

5           MS. SILVERMAN: It's a report on the relocatable  
6 program.

7           MR. HARVEY: We can roll this one.

8           CHAIRPERSON BRYANT: We'll do it next --  
9 Mr. Duffy, do you have public comment on an item not on the  
10 agenda?

11          MR. DUFFY: I do.

12          CHAIRPERSON BRYANT: Go ahead real quick.

13          MR. DUFFY: I do, Madam Chair. Hopefully  
14 Ms. Jones was able to distribute to you a letter that I have  
15 addressed to each of you individually and it addresses the  
16 AB127 per pupil increase of 6 percent that's been allowed in  
17 statutes beginning in January of 2008.

18                 The Board did grant the increase in 2008 after a  
19 good deal of drama that happened in May of 2008. There has  
20 been not an increase since that time. So there was no  
21 increase in 2009 nor for 2010 and we are just on the verge  
22 of going into 2011.

23                 Last January, you did receive a report from OPSC  
24 that was an analysis of cost that I think went back to 2008.  
25 So I think that really should have been for 2009

1 consideration, but it was brought to you in January 2010 and  
2 we made comment that there was a flaw in that report and  
3 there's a copy of the letter we gave you at that time  
4 attached to this.

5           We are not asking that you agendize an increase  
6 according to AB127, the 6 percent increase. We realize that  
7 there's been a huge amount of work that's been done and we  
8 appreciate the leadership of you, Madam Chair, and the other  
9 members to sell bonds and move things along. And there has  
10 been -- we have had many discussions that have been personal  
11 discussions as well as some that have been public about the  
12 issue of pressure on existing bond authority.

13           So we're not asking for that at this time. But  
14 what we are asking for in this letter is that you relieve  
15 districts of the requirement to fill out the PIW which is  
16 the document that collects the new construction contract  
17 construction information and in order to do that, you would  
18 have to agendize your regulations.

19           I won't go on, but this is something when I made  
20 an announcement at the CASH membership meeting today someone  
21 made a comment that was a very positive comment about what a  
22 relief, you know, that -- you know, thank you, that would be  
23 great.

24           So we're not asking for the increase. What we're  
25 saying is you don't need this information if indeed you're

1 not studying the cost of construction for consideration  
2 providing an increase. So all we're saying is if you bring  
3 the item, which is your regulation, and you take out of that  
4 regulation the project information worksheet requirement,  
5 then move on and then we figure out what we do for 2011 and  
6 beyond. So thank you.

7 CHAIRPERSON BRYANT: Thank you. All right. Is  
8 there any other business? Okay. Then this meeting's  
9 adjourned. We'll reconvene on December 15.

10 (Whereupon, at 6:25 p.m. the proceedings were recessed.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )  ss.  
COUNTY OF SACRAMENTO        )

I, Mary C. Clark, a Certified Electronic Court Reporter and Transcriber, Certified by the American Association of Electronic Reporters and Transcribers, Inc. (AAERT, Inc.), do hereby certify:

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IN WITNESS WHEREOF, I have subscribed my name on December 5, 2010.

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