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CALIFORNIA STATE ALLOCATION BOARD

PUBLIC MEETING

(TELECONFERENCE)

ZIGGURAT BUILDING
707 3RD STREET
BOARD ROOM 6-300
WEST SACRAMENTO, CALIFORNIA 95605

DATE: WEDNESDAY, FEBRUARY 23, 2022

TIME: 4:00 P.M.

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APPEARANCES:

MEMBERS OF THE BOARD PRESENT:

GAYLE MILLER, Chief Deputy Director, Policy, Department of Finance, designated representative for Keely Bosler, Director, Department of Finance

ANA LASSO, Director, Department of General Services

JEREMY SMITH, Appointee of Gavin Newsom, Governor of the State of California

JUAN MIRELES, Director, School Facilities and Transportation Services Division, California Department of Education, designated representative for Tony Thurmond, Superintendent of Public Instruction

- SENATOR SCOTT WILK
- SENATOR CONNIE LEYVA
- SENATOR JOHN LAIRD
- ASSEMBLYMEMBER PATRICK O'DONNELL
- ASSEMBLYMEMBER CHAD MAYES

REPRESENTATIVE OF THE DEPARTMENT OF GENERAL SERVICES,
OFFICE OF PUBLIC SCHOOL CONSTRUCTION PRESENT:

BARBARA KAMPMEINERT, Deputy Executive Officer

1 Transcribed by: Melissa Reid,
2 eScribers, LLC
3 Phoenix, Arizona

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1 SENATOR WILK: Present.

2 MS. JONES: Senator Leyva.

3 SENATOR LEYVA: Here.

4 MS. JONES: Senator Laird.

5 Assemblymember O'Donnell.

6 ASSEMBLYMEMBER O'DONNELL: O'Donnell, here.

7 MS. JONES: Assemblymember Mayes.

8 ASSEMBLYMEMBER MAYES: Here.

9 MS. JONES: Juan Mireles.

10 MR. MIRELES: Here.

11 MS. JONES: Jeremy Smith.

12 MR. SMITH: Here.

13 MS. JONES: Anna Lasso.

14 MS. LASSO: Present.

15 MS. JONES: Gayle Miller.

16 MS. MILLER: Here.

17 Great. We have a quorum. Thanks, everyone.

18 Next order of business are the minutes.

19 Ms. Silverman is celebrating her grandchildren, so

20 she's not with us today, but we've seen lots of beautiful

21 pictures. It's really exciting, so we wish her all the

22 best. So Ms. Kampmeinert is going to lead the way today.

23 Will you -- the minutes from January 26th, any changes or

24 questions on those? Any public comment? Seeing none.

25 I'll move approval. Do we have a second?

1 SENATOR LEYVA: Second.

2 MS. MILLER: Thank you, Senator Leyva.

3 Ms. Jones, will you call the roll on the minutes,

4 please?

5 MS. JONES: I will.

6 Senator Wilk.

7 SENATOR WILK: Aye.

8 MS. JONES: Senator Leyva.

9 SENATOR LEYVA: Aye.

10 MS. JONES: Assemblymember O'Donnell.

11 ASSEMBLYMEMBER O'DONNELL: Aye.

12 MS. JONES: Assemblymember Mayes.

13 ASSEMBLYMEMBER MAYES: Aye.

14 MS. JONES: Juan Mireles.

15 MR. MIRELES: Aye.

16 MS. JONES: Jeremy Smith.

17 MR. SMITH: Aye.

18 MS. JONES: Anna Lasso.

19 MS. LASSO: Aye.

20 MS. JONES: Gayle Miller.

21 MS. MILLER: Aye.

22 The minutes are adopted.

23 Next, Ms. Kampmeinert, the executive officer

24 statement, please?

25 MS. KAMPMEINERT: Yes. Thank you. So in the

1 executive officer's statement this month, we'd like to
2 highlight a few items. The first is a status update on
3 the 22nd priority funding round and the apportionments.
4 So right now we are looking at that \$250 million in
5 General Fund that we did apportion in January. And we
6 wanted to let the Board know that to date we have
7 received 22 fund release requests, totaling \$35 million.
8 And there are 79 projects that will still need to request
9 their funds, and those requests are due by Tuesday,
10 April 26th.

11 We also wanted to highlight that we had a virtual
12 state agency workshop with the Department of Education
13 and the Division of the State Architect. And we also had
14 a great case study that Pixley Union School District
15 provided for that workshop as well. And that was a very
16 successful event with 573 external participants joining
17 us. The topics included an overview of the state agency
18 role in the school construction process, and then we did
19 a detailed training session for our California preschool
20 transitional kindergarten and full-day kindergarten
21 program. We have received a lot of positive feedback on
22 that workshop, and the three agencies are in the planning
23 stages for the next event, so more to come on that.

24 And then we also wanted to share that we are
25 wrapping up our stakeholder meetings on the updates to

1 the facilities inspection tool that are required pursuant
2 to SB 129. We've had two prior meetings, and our third
3 meeting is scheduled for March 3rd, and that's going to
4 begin at 3:00 and it will be through Zoom. We anticipate
5 bringing forth the proposed changes to the Board in the
6 next few meetings after the conclusion of that meeting.

7 And then we also did want to share, and many of you
8 are aware of this, but we did want to share that the
9 audit by the California State Auditor of the SFP
10 modernization has concluded and that report is now
11 public. And the great news is that the report did
12 conclude that OPSC and the State Allocation Board are in
13 compliance with requirements and state law and program
14 regulations and policies when processing and awarding
15 funds for modernization projects. This is excellent
16 news. There were no audit findings and no official
17 response is required by OPSC for the Board, so that was
18 great news.

19 There are a number of recommendations in there for
20 the legislature to consider for future program changes,
21 and we have included a link to the full audit report in
22 the executive officer's statement, if anyone would like
23 to access that.

24 And then just a reminder that our next meeting is
25 March 23rd at 4 p.m. With that, I'm happy to answer any

1 questions.

2 MS. MILLER: Thank you. Any questions?

3 ASSEMBLYMEMBER O'DONNELL: O'Donnell has a statement
4 real quick, if I could?

5 MS. MILLER: Please, Mr. O'Donnell.

6 ASSEMBLYMEMBER O'DONNELL: Yeah. I'd just like to
7 congratulate and recognize the staff on that recent
8 audit. Actually, it highlighted the fact that you're
9 doing a good job. The program overall works to serve
10 California's children. There's hardship built in, which
11 is essentially equity, and again, I think it just is a
12 reflection -- that audit is a reflection of the fine work
13 that is done by the staff.

14 MS. MILLER: Yes. I second that, Mr. O'Donnell.
15 Thank you.

16 And congratulations to the team that does such a
17 great job.

18 MS. KAMPMEINERT: Thank you.

19 MS. MILLER: Great. Seeing no further comments,
20 right? Mr. Watanabe, you don't see any either, right?
21 Okay.

22 We will move on to the consent calendar, please.

23 MS. KAMPMEINERT: The consent calendar is ready for
24 your approval.

25 SENATOR LEYVA: So moved.

1 MS. MILLER: Great. Thank you, Senator Leyva.

2 I'll second.

3 May we -- any public comment on the consent
4 calendar? Seeing none.

5 May we take the roll on the consent calendar,
6 please, Ms. Jones?

7 MS. JONES: Yes, ma'am.

8 Senator Wilk.

9 SENATOR WILK: Aye.

10 MS. JONES: Senator Leyva.

11 SENATOR LEYVA: Aye.

12 MS. JONES: Assemblymember O'Donnell.

13 ASSEMBLYMEMBER O'DONNELL: Aye.

14 MS. JONES: Assemblymember Mayes.

15 ASSEMBLYMEMBER MAYES: Aye.

16 MS. JONES: Juan Mireles.

17 MR. MIRELES: Aye.

18 MS. JONES: Jeremy Smith.

19 MR. SMITH: Aye.

20 MS. JONES: Anna Lasso.

21 MS. LASSO: Aye.

22 MS. JONES: Gayle Miller.

23 MS. MILLER: Aye.

24 The consent calendar is adopted. Thank you very
25 much.

1 Ms. Kampmeinert for the financial reports, please.

2 MS. KAMPMEINERT: Yes. The financial reports are
3 beginning on page 54, and just a couple things to
4 highlight this month. We did want to point out on
5 stamped page 54 that we did release \$158 million in funds
6 during the month of January, so that was a good number
7 there.

8 And we also wanted to share that on page 56, we are
9 able to make a new approval for a career technical
10 facilities program grant. So we're able to provide
11 another district with some funding, and that district is
12 a small district that's very excited about this award, so
13 that is great news.

14 And then just a general note on this, that because
15 of one of our action items that changed the grant
16 amounts, the consent calendar and the financials do show
17 fewer than usual unfunded approvals, but in March, you
18 can expect the financials to show a lot more, because we
19 will be bringing the unfunded approvals forward for the
20 equivalent of our January, February, and March boards.

21 And with that, I can answer questions.

22 MS. MILLER: Thank you, Ms. Kampmeinert.

23 So this is on the -- our next action item is on the
24 increase for the grants based on cost, so that's our next
25 item. So we'll open that up for any questions. But any

1 other than on the cost adjustment, are there any
2 questions about -- any questions on the financials?

3 That's really exciting about the additional grant.
4 Thank you for pointing that out.

5 Seeing no questions, any public comments on the
6 financials?

7 With that, Ms. Kampmeinert, I think that that was
8 the perfect segue into our action item.

9 MS. KAMPMEINERT: Yes. So the much anticipated
10 information has come from the RSMeans to provide us with
11 the rate of change in the construction cost index
12 measures. And just as a reminder, typically, we do this
13 in January, but the data was not available just because
14 2021 was a very interesting year for costs, and so
15 RSMeans was running the data up until the very end of the
16 year to make sure that they got a complete picture of
17 2021. We have received that data set and it has been
18 determined that the rate of change between 2021 and 2022
19 is equal to 15.8 percent. So you'll see that we've
20 included the corresponding adjustments to the school
21 facility program grants beginning on page 75 of the
22 agenda in the blue and white charts there.

23 So we are recommending that the Board approve the
24 15.8 percent change to the grant amounts, pursuant to the
25 RSMeans Class B construction cost index. And this is the

1 measure that the Board had adopted back in 2016 and
2 directed us to use moving forward. It is still the
3 measure that contains the most California-specific data.
4 We do take a peek at the other measures on occasion just
5 to make sure it's still tracking and it does appear to be
6 doing so.

7 And with the Board's approval of this item, when we
8 bring back the unfunded approvals beginning in March, all
9 of those projects will include the new 2022 grant amounts
10 in their project calculations. With that, I'd be happy
11 to answer any questions.

12 MS. MILLER: Are there any questions? I know it's
13 -- obviously, we spoke about this last time that we had
14 to wait until the very end of the year, and so you can
15 see the impacts, obviously, of inflation and other costs
16 and how much construction has increased, so. And we
17 vetted it a few times, just because we recognize it's a
18 high number.

19 And just as a reminder, funding goes with this
20 percentage, not construction. So the funded amounts
21 you'll see starting in March will reflect this increase,
22 but not when construction begins. And that's how our
23 laws and regulations are written.

24 So any public comment on the increase in the grant
25 amounts based on the construction cost index? Seeing

1 none.

2 I will move approval of the construction cost index
3 amount. Do we have a second?

4 SENATOR LEYVA: Second.

5 MS. MILLER: Thank you, Senator.

6 Do you have a comment, Ms. Lasso? Oh, no. Great.

7 Ms. Jones, will you take the roll?

8 MS. JONES: I certainly will.

9 Senator Wilk.

10 SENATOR WILK: Aye.

11 MS. JONES: Senator Leyva.

12 SENATOR LEYVA: Aye.

13 MS. JONES: Assemblymember O'Donnell.

14 ASSEMBLYMEMBER O'DONNELL: Aye.

15 MS. JONES: Assemblymember Mayes.

16 ASSEMBLYMEMBER MAYES: Aye.

17 MS. JONES: Juan Mireles.

18 MR. MIRELES: Aye.

19 MS. JONES: Jeremy Smith.

20 MR. SMITH: Aye.

21 MS. JONES: Anna Lasso.

22 MS. LASSO: Aye.

23 MS. JONES: Gayle Miller.

24 MS. MILLER: Aye.

25 The construction cost index is adopted. Thank you

1 very much.

2 And now, Ms. Kampmeindert, we're moving to the index
3 adjustment on the assessment for the development.

4 MS. KAMPMEINERT: Yes. So this item comes before
5 the Board every two years. And with this item, statute
6 does require that the maximum assessment for development
7 be adjusted each two years and it uses the same
8 construction cost index changes that we apply to our
9 grant amounts. So we're still using the RSMMeans data,
10 and what we're adjusting here is essentially the level 1
11 developer fees. And we've included a chart on the
12 following page, on page -- well, I'm sorry. It's not a
13 chart, but a table on page 85 that shows what the level 1
14 fees have been, and these are the fees for the assessment
15 for developers and it's on a per-square-foot basis.

16 Because we do this every two years, the number is a
17 little bit bigger than what was just done when we did our
18 construction cost index change item. But if you compare
19 January 2020 to January 2022, there has been a 17.45
20 percent increase, the bulk of that being from '21 to '22.
21 And by applying that percentage increase, it does change
22 the per-square-foot amount to \$4.79 for residential and
23 \$0.78 for commercial-industrial space.

24 So we are recommending that the Board increase the
25 2022 level 1 assessments in the amount of 17.45 percent

1 pursuant to that RSMeans data. And if the Board approves
2 it, those amounts will be effective immediately.

3 MS. MILLER: Great. Thank you.

4 Any questions on the assessment for development
5 increase? Seeing none. Any public comment? I don't see
6 any public comment.

7 I'll move adoption of this index adjustment for the
8 assessment for development increase; may we have a
9 second, please?

10 MS. LASSO: I will second.

11 MS. MILLER: Okay. Thank you, Ms. Lasso.

12 Ms. Jones, will you take the roll on this one,
13 please?

14 MS. JONES: I will.

15 Senator Wilk.

16 SENATOR WILK: Aye.

17 MS. JONES: Senator Leyva.

18 SENATOR LEYVA: Aye.

19 MS. JONES: Assemblymember O'Donnell.

20 ASSEMBLYMEMBER O'DONNELL: Aye.

21 MS. JONES: Assemblymember Mayes.

22 ASSEMBLYMEMBER MAYES: Aye.

23 MS. JONES: Juan Mireles.

24 MR. MIRELES: Aye.

25 MS. JONES: Jeremy Smith.

1 MR. SMITH: Aye.

2 MS. JONES: Anna Lasso.

3 MS. LASSO: Aye.

4 MS. JONES: Gayle Miller.

5 MS. MILLER: Aye.

6 The index adjustment and the assessment for
7 development is adopted.

8 Next, we will move on to our piggyback contracts
9 item and the public contract code. Ms. Kampmeinert?

10 MS. KAMPMEINERT: Thank you. So --

11 MS. MILLER: Oh, excuse me. I'm so sorry. There is
12 a public commenter listed. I'm going to make sure, sir,
13 it's on this item, however. Because you need to speak on
14 the items on the agenda. So I've unmuted you,
15 Mr. Willner.

16 MR. WILLNER: Yes. Hello.

17 MS. MILLER: Hi. Are you speaking on one of the
18 index adjustments for construction or development fees?

19 MR. WILLNER: No. I was speaking on the piggyback
20 matter.

21 MS. MILLER: Okay. I see. You were just raising
22 your hand early. You're very on top of it. I appreciate
23 that, sir. So I'm going to go ahead and ask that you
24 mute yourself and we'll go through the item. We'll have
25 Ms. Kampmeinert explain it, and then we'll come right

1 back to you. Thank you.

2 Go ahead, Ms. Kampmeinert, I apologize.

3 MS. KAMPMEINERT: Oh, no worries. Thank you.

4 So yes. We have moved onto the report section of
5 the agenda. So I just want to start by saying this one
6 is not an action item, but we did want to bring this
7 topic before the Board for a refresher and also so that
8 we can get this information out to school districts as
9 well. And it does relate to the use of piggyback
10 contracts and how that connects to public contract code
11 compliance when we are speaking about modular
12 construction on permanent foundations.

13 And this topic did come before the Board in 2005 and
14 again in 2006. And the Board had some very robust
15 discussions about the appropriateness and the legality of
16 using piggyback contracts for this type of project. And
17 essentially with the piggyback contracts, this is an
18 alternative to doing the typical bid process for the
19 project where each school district would go out to bid
20 through various means and prior structures and build the
21 projects.

22 So there was some concern with the use of piggyback
23 contracts because essentially school district, number
24 one, puts this contract in place and then it's available
25 to others for usage at the same rate, and the other

1 school districts would not be bidding separately, they'd
2 be using the original contract. The Board did have some
3 concerns with that at the time, and ultimately, after
4 looking into how this works, had asked us to take a look
5 and work to clarify this issue with the Attorney
6 General's Office. And so an Attorney General's opinion
7 was sought on this issue. And we have included that as
8 part of the item. We actually felt it was important to
9 provide the history to the Board. So you'll see some
10 transcripts from the original meetings in '05 and '06, as
11 well as the full text of the Attorney General's opinion.

12 And why this is coming back to light is that we were
13 made aware from stakeholders that there may be some
14 alternate interpretations of the Attorney General's
15 opinion. So we were getting some requests on taking a
16 look at that to see if something had changed that would
17 warrant a relook at this Attorney General's opinion. So
18 we have been working with legal counsel to see what's
19 changed and if there was anything that needed
20 clarification.

21 What you'll see in the Attorney General's opinion
22 are a couple statements. One, your typical portable
23 classroom, which the way I've kind of been trying to
24 describe this, because it's a simple one, you know, we
25 all think about this, you've got that portable that's out

1 there in the field. It's not intended to be there long-
2 term. Maybe there's a construction project going on
3 somewhere else on the site, or maybe the intent is to
4 have it at school site number one this year, but we know
5 we're going to need it over at school site number two the
6 next year. So it's not going to become a part of that
7 school site, it's your true portable that's going to be
8 moved around.

9 Those purchases, the purchase of the actual portable
10 classroom, that could be done through a piggyback
11 contract. But the AG -- and the AG opinion does call
12 that out. So it was not addressing the purchase of a
13 portable classroom that is moving around various
14 locations. But what the AG did conclude was that if you
15 are using modular and you're installing it onto a
16 permanent foundation, then it is becoming part of the
17 land. And so that makes it not -- it makes it no longer
18 personal property and instead that is real property, and
19 then that type of project must be bid.

20 So piggyback contracts for modular construction on
21 permanent foundations was not found to be acceptable
22 pursuant to that AG opinion. So we wanted to bring this
23 back up because it's been quite some time since we had
24 this topic. We did issue an email blast to all districts
25 reminding them of the topic, but we wanted to close the

1 loop after we got the questions from districts that had
2 some different opinions on this.

3 So we wanted to make sure that nobody runs into any
4 issues from a funding perspective. Because if we're
5 seeing these projects come forward, part of the process
6 of applying for funding is certifying that you're in
7 compliance with all laws governing school construction,
8 and public contract code is included in that statement.
9 So we were concerned that this could have an impact for
10 districts down the line if this wasn't made known.

11 So this in the interest of transparency and
12 reminding everyone about the AG opinion that we had
13 received back then. We did not find any areas that we
14 felt like needed to be addressed, because all of the
15 questions, really were getting at various ways to try to
16 work around the edges of the AG opinion as opposed to
17 clarify the AG opinions. So we weren't really seeing
18 anything that needed clarification at this point.

19 So there has been no change to the policy. It was
20 just a revisit of this topic to make sure that nothing
21 needed another set of eyes on it. So with that, I would
22 be happy to answer any questions.

23 MS. MILLER: Great. Thank you very much.

24 We're going to start with a question from
25 Mr. O'Donnell, please. And then we'll get to you,

1 Mr. Willner, really appreciate you hanging tight. Sorry.

2 Go ahead, Mr. O'Donnell, please.

3 ASSEMBLYMEMBER O'DONNELL: Yeah. Thank you. I get
4 that we're really pondering a legal question here and
5 that is whether or not piggybacking is allowed for
6 modulars, and I get that the answer is no per the AG's
7 opinion. But if you back up, a more -- a broader
8 question would be, should we allow modulars to piggyback?
9 I get that it might take further action, either through
10 the state legislature, or likely through statute, but do
11 you have an opinion as to whether or not we should allow
12 piggybacking on modulars?

13 MS. MILLER: Do we know? Do we have a thought on
14 that? Obviously, this is an information item, so if you
15 -- if we wanted to maybe have a longer discussion about
16 whether or not we should allow modulars kind of writ
17 large, we could certainly -- we could agendize that for
18 next time, or I could see if -- I could upgrade
19 Mr. Patton as well on this question. Did I do that
20 already? Oh, sorry. Did I do that wrong?

21 MR. PATTON: Well, if it's informational and she has
22 just a short thought, she could share right now.

23 MS. MILLER: Yeah. Do you have -- oh, you don't
24 want to know kind of more details?

25 Do you have any thoughts, Ms. Kampmeiner, on

1 whether or not modulars, because it is -- I mean, it does
2 sort of beg that question, right?

3 MS. KAMPMEINERT: Well, so the reason we're bringing
4 it up is because of the original AG opinion and the
5 Board's concern originally. So we are following the
6 original guidance from the Board and the AG on this one,
7 and I don't know that we have looked at the concept of
8 maybe changing the statute on this, but it does feel like
9 it is a public contract code issue. So that would be
10 something that if the Board was interested in pursuing,
11 we would be happy to take a look at it, or it could
12 follow the legislative path as well.

13 ASSEMBLYMEMBER O'DONNELL: Thank you.

14 MS. MILLER: Thanks. Mr. O'Donnell, do you want
15 Mr. Patton to opine on it, just in terms of the legality,
16 and then we could certainly look into what it would take
17 to --

18 ASSEMBLYMEMBER O'DONNELL: I don't know. I think --

19 MR. PATTON: Can you hear me okay?

20 MS. MILLER: We can.

21 MR. PATTON: Okay.

22 MS. MILLER: Mr. Patton.

23 MR. PATTON: It's the first time I've been promoted
24 at an SAB meeting. With legal, Ephraim Egan is on the
25 call here also. You can see him. And so I'll actually

1 sort of stand aside, but basically we all will repeat
2 what Barbara has said, which is that the AG opinion is
3 pretty clear that when an item is attached to real
4 property it is a fixture and should be treated as part of
5 real property and not personal property that's subject to
6 the piggybacking statute. And the law, you know, favors
7 wherever possible, competitive bidding.

8 So we sort of default to what the Attorney General
9 already said and don't see any reason to delve much
10 further. We obviously deferred to, you know, policy
11 changes and the wisdom of the SAB.

12 MS. MILLER: I'm so sorry, Mr. Egan, that I didn't
13 see you. Do you want to add to that? I sincerely
14 apologize.

15 MR. EGAN: No. It's okay. So --

16 MS. MILLER: That's what happens when I'm promoted
17 to host. Look at what Mr. Watanabe created his monster.
18 Okay. Sorry.

19 MR. EGAN: No, no issue. So again, I want to agree
20 with what Tom and Barbara did state, that the AG opinion
21 is fairly clear that as soon as you affix a classroom
22 onto a permanent foundation, you now consider it as real
23 property. And the piggybacking can't be applied to
24 something that constitutes real property.

25 Again, if we want to look at something else or

1 another specific issue, we can take a look at that, if
2 that's what the SAB wants us to do. Again, and if the
3 statute changes, then that's a whole different animal
4 itself. But the law is fairly clear in regard to public
5 contracts that competitive bidding is favored.

6 MS. MILLER: Got it. So I think maybe what
7 Mr. O'Donnell was asking for was just if we just take a
8 look at -- I think the legal piece is clear, but should
9 we be considering modulars to kind of expand our aperture
10 of what can be included. So I don't think -- it sounds
11 like it's not a question that can be answered today,
12 because today we're just looking at the AG's opinion and
13 reporting on that. But if we could maybe put this back
14 on the agenda for the March or April -- March may be a
15 little long, but April, just to see if there's some
16 options maybe that we just haven't thought about.

17 Is that possible, Ms. Kampmeiner, just to think
18 about it?

19 Ms. Lasso? And then we'll go to our public
20 commenters.

21 MS. LASSO: Sure. I guess, I've had conversation
22 about this before with folks, and even when you drop a
23 portable, which is considered the personal property, it's
24 not affixed to a foundation, you still have to connect it
25 to utilities. And there's some connectivity that happens

1 there. And so I guess, my question, it's very -- it's
2 like splitting hairs at this point, isn't that also
3 permanent, the utilities, electrical or water? And so I
4 would like to hear, what's the difference between a slab
5 foundation with stub-outs, as opposed to dropping a
6 portable and having to still do sites?

7 MS. MILLER: That's an interesting question. Right.
8 Because it has to be attached, do you know?

9 MS. LASSO: It still has to be connected --

10 MS. MILLER: Yeah.

11 MS. LASSO: -- unless it comes with own utilities
12 built in. So even if they're differentiating between a
13 slab on grade and a foundation for a modular and a
14 portable that gets dropped, you still have to connect a
15 portable, so isn't that also permanent?

16 MS. MILLER: Do you know the answer to that, Ms.
17 Kampmeindert or Mr. Egan, or is that something we want to
18 get back to as well for when we put this back on the
19 agenda?

20 MS. KAMPMEINERT: We can certainly follow up, but I
21 think the focus of the AG opinion was really related to
22 the foundation, and it did not necessarily address how
23 the utilities itself were connected. So the foundation
24 was the piece that was connected to that permanent
25 foundation itself, as opposed to how you're hooking up to

1 the electrical. And we have seen different
2 configurations of that.

3 Obviously, there are some configurations that are
4 more permanent than others when you're stubbing it out
5 and dropping the -- you know, obviously, you're going to
6 need electricity regardless of how long that portable is
7 staying, so we do recognize that our utilities run to
8 these buildings, but we've seen differences in how the
9 building is placed. And that seemed to be where the AG
10 opinion was connecting it and the permanence of that
11 facility. But we're happy to take a look and see if
12 there's anything else to that line of questioning as
13 well.

14 MS. LASSO: Thank you very much, Ms. Kampmeinert.

15 MS. MILLER: Senator Laird?

16 SENATOR LAIRD: All I was going to say, is I was
17 apologizing for being late. The Rules Committee ran
18 long, and one of the reasons was is we confirmed Ana
19 Lasso, and it was just great to see her in action knowing
20 all about the slab concrete and everything else, so.

21 MS. MILLER: That is such great news. That's like
22 the third great thing we've heard on this call. Yay!
23 Congratulations, Director Lasso. That's so exciting.

24 MS. LASSO: Thank you.

25 MS. MILLER: That's a huge win for the State of

1 California. Okay. We forgive your tardiness, Senator,
2 because you had a good reason. A different appointment,
3 you know --

4 Okay. I'm so sorry, Mr. Willner. If you want to go
5 ahead and I'm going to promote, or Michael, maybe could
6 you help me promote Mr. Heron as well, please?

7 Go ahead, Mr. Willner on the piggyback rules and
8 maybe --

9 MR. WILLNER: Okay. Great. Thank you so much. Can
10 you hear me okay?

11 MS. MILLER: We can. Thank you very much for being
12 here.

13 MR. WILLNER: Okay.

14 MS. MILLER: Can you just state your name for the
15 record as well, please?

16 MR. WILLNER: Sure. My name is John Willner, and
17 I'm speaking tonight on behalf of American Modular
18 Systems. And overall I want to say thank you to the
19 Board and to staff for clarifying this issue. We think
20 you did a great job of summarizing what's been done and
21 where things stand. And we do understand and agree with
22 the overall conclusions of the report, that there's a
23 distinction to be made between modular building
24 components that are assembled on site as a kind of
25 construction and portable or relocatable classrooms that

1 are these units that are built in a factory, come with
2 ceiling and floor, and are moved on site and can be moved
3 around.

4 But we do think that some clarification is needed
5 with regard to the issue of what is a permanent
6 foundation. Both your report and the AG's opinion focus
7 on two issues in determining whether or not something is
8 permanently affixed. One is the nature of the product,
9 right? So it is a self-contained unit that you bring
10 from a factory that is essentially a product, like
11 modular furniture, but in this case it is, you know, a
12 completely built classroom that's brought on site.

13 But the other, and this is really important, because
14 the case law talks a lot about this, is that whether
15 something is permanently affixed is based primarily on
16 the intent of the buyer. So in other words if a school
17 district is buying a portable classroom and intends to
18 move it, then even though it is connected to a
19 foundation, if the intent is not to permanently affix it
20 in place, then it does not become real estate and should
21 not be treated as real estate. It should be treated as a
22 product that is being bought and attached, like
23 machinery, and then reattached elsewhere.

24 And the issue really comes around, I think there's a
25 shorthand that happens when people talk about permanent

1 foundations. The traditional distinction is well, if
2 it's concrete it's permanent, and if it's wood it's not.
3 But that's really not true in terms of the facts on the
4 ground. There are plenty of examples that we can provide
5 of school districts that either use concrete pads or stem
6 wall foundations that are both concrete, where their
7 intent is to put something up temporarily and then either
8 remove it or move it later. And so the simple
9 distinction of concrete versus wood we don't think is a
10 really useful one and has resulted in a lot of confusion
11 when school districts asked for fully built classrooms
12 that are put on site, but they're set on stem wall
13 foundations.

14 And this confusion -- this focus on what the
15 foundation is made of seems to have taken over a little
16 bit, instead of an analysis of what is personal property
17 versus what is construction. So what we urge you to do,
18 we're going to submit -- we hope it's helpful. We're
19 going to submit a short white paper to you giving our
20 legal view of this issue. I think it's very interesting
21 that the various issues that you've raised of why, you
22 know, why are some things categorized as portable versus
23 why some are not, so we're going to try and do that to be
24 helpful.

25 I'm not sure if -- I mean, you're being asked

1 tonight to accept this report. I'm not sure -- I mean,
2 certainly you can accept it and then we can submit more
3 information, or perhaps you might want to put off
4 accepting it so that we can work with your staff and
5 share our views about this, so that we can try and get a
6 clearer definition of what is portable versus what is
7 modular components. So --

8 MS. MILLER: Mr. Willner, so thank you. All of that
9 would be really useful, and I think certainly can inform
10 us. This is not an action item, so this isn't --

11 MR. WILLNER: No. I understand. I understand.

12 MS. MILLER: So no one is accepting the report per
13 se.

14 MR. WILLNER: Oh, okay. That's --

15 MS. MILLER: I just want to make sure you understand
16 the difference.

17 MR. WILLNER: Thank you. Okay.

18 MS. MILLER: But yeah. I think absolutely that we
19 -- our ability to discuss this again and learn from what
20 you plan to submit will be really useful.

21 MR. WILLNER: Okay.

22 MS. MILLER: So with that, and the knowledge that
23 we're going to discuss this one more time, if you don't
24 mind, I'm going to turn it to Mr. Heron for his public
25 comment.

1 MR. WILLNER: No. Absolutely. Thank you very much
2 for the opportunity to share that with you.

3 MS. MILLER: Thank you. We really appreciate your
4 time. Thank you very much.

5 Go ahead, sir.

6 MR. HERON: Thank you, Ms. Miller. And thank you,
7 Board members, for giving me a few minutes of your time
8 this evening. I just wanted to give you kind of a tale
9 from the field. I represent the San Jacinto School
10 District. We are an 89 percent unduplicated count
11 district. Our assessed value in our community is lower
12 than our surrounding areas, and probably the average in
13 the state. And you all know that what that means is our
14 residents pay a higher tax rate when it comes to funding
15 quality school facilities for our students.

16 We began the process to plan a new middle school
17 almost a decade ago so that we had some parity in terms
18 of modern school facilities for our students on both
19 sides of the boundaries of our district. We passed a
20 local school bond in 2016, and at the time, we still
21 didn't have the funding to build the entire school. So
22 because of what construction cost escalation was doing,
23 we went ahead and bid about two-thirds of the school. At
24 the time, that's what the board gave us direction to do,
25 so we could at least lock in some of the pricing that we

1 were seeing as things accelerated. We decided that we
2 were going to kind of gamble a little bit to figure out
3 how we could acquire the remainder of the funding to
4 complete the school.

5 About nine months into construction, we recognized
6 the monetary savings and the accelerated delivery model
7 that a modular construction building could offer us so
8 that we could complete the school and really keep our
9 promise to our voters. This middle school was a promise
10 of our 2016 election, essentially. Before we moved
11 forward, we did -- obviously, we obtained approval from
12 CDE and of course, the Division of the State Architect.
13 And we even consulted with some folks at the OPSC and
14 were told about the appeal process.

15 We took out a bridge loan to fund those modular
16 buildings to complete the school. And of course, our
17 board took action to accept the competitively bid
18 buildings. I think that's important to remember that
19 these buildings that we awarded a contract to, they were
20 competitively bid. They were not competitively bid by
21 us, obviously. We used the piggyback contract.

22 By changing the delivery model of the remaining
23 buildings, we actually saved, we figure, about
24 \$2 million. We took the square feet of the buildings
25 that we purchased -- that we competitively built on our

1 own, the stick-built buildings, if you will. And then
2 compared the square footage we received, you know, after
3 awarding the modular classrooms, and we saved about
4 \$2 million in construction costs. And it allows us to
5 complete the buildings and complete the school in a much
6 quicker timeline so that we're open at the beginning of
7 this school year.

8 So I just really appreciate the question that
9 Assemblymember O'Donnell asked earlier, I guess my
10 question is why are we removing this delivery model for
11 school districts, at a time where we know that quality
12 school facilities are what our communities and residents
13 deserve? And then I also think it just gives us
14 flexibility, and why wouldn't we want to save some money
15 and save some time in terms of construction when we see
16 what the construction escalation is doing and how
17 difficult it is to fund and build schools? So I'm
18 interested in following the discussion.

19 Again, I appreciate the comments from Ms. Lasso and
20 others that are asking -- you know, we understand the
21 intent of the AG opinion -- sorry. We understand the
22 opinion, but what's the intent? And why remove a good
23 delivery model if it's something that provides
24 flexibility of school districts so they can meet the
25 needs of their community? Thank you for your time.

1 MS. MILLER: Yeah, no. Thank you very much. And
2 please follow our agenda so you can see when this is
3 posted again.

4 So I think that was all really helpful. When either
5 -- it may not be until April that we're able to discuss
6 it again.

7 And Mr. Mireles, I really appreciate you pointing
8 out -- so because it's not an action item, we're
9 receiving the report today, but we absolutely will
10 continue discussion and continue to have input. So I
11 hope I'm not confusing anyone by saying we're not -- it's
12 not a Board action to approve. So hopefully I can
13 clarify that a little bit, but it absolutely warrants
14 more discussion and you'll see it on the agenda again.

15 Any other questions or comments? Seeing none.

16 Do you want to just give us an updated on the
17 projected workload, Ms. Kampmeinert?

18 MS. KAMPMEINERT: Yes. And we've got the balance of
19 our standard reports included in the agenda. We have
20 included the three-month workload. It looks like we'll
21 have an update to that one as a result of this meeting.
22 And just our workload lists are included, and the dates
23 of the '22 meetings are included. So that is something
24 to note, since we're now well into 2022.

25 Happy to take any questions.

1 MS. MILLER: Thank you. And after March, I believe,
2 we'll be back in person, correct? Yay.

3 MS. KAMPMEINERT: I believe so, yes.

4 MS. MILLER: Any questions?

5 So this brings us to our final public comment.
6 Anyone wishing to comment for any reason. I do believe
7 that the superintendent of Wasco Union wanted to take a
8 moment to comment during this time. So now is the time,
9 please, Mr. Kelly Richers, that you'll raise your -- oh,
10 there you are.

11 Great. Thank you so much. If you want to go ahead
12 and unmute yourself, sir, and if you want to comment on
13 anything not on the agenda this afternoon, please. So
14 you have to unmute yourself. I can ask you to unmute as
15 well. Mr. Richers, can you hear me? Mr. Richers? It's
16 your -- this is the time to speak, sir. So you'd have to
17 unmute yourself.

18 MR. RICHERS: Can you hear me?

19 MS. MILLER: Yes. We can hear you now, sir.

20 MS. RICHERS: Oh, thank God. I've been racing all
21 over Sacramento because I couldn't get a secure
22 connection in my laptop in my hotel room.

23 MS. MILLER: Oh, I'm sorry to hear that.

24 MR. RICHERS: I'm at the cash conference. So now
25 I'm standing on a bridge trying to get over to 707 3rd

1 Street where you said you could be, so --

2 MS. MILLER: Oh, man.

3 MR. RICHERS: All right. If I may?

4 MS. MILLER: Please begin.

5 Mr. RICHERS: Thank you for your time. My name is
6 Kelly Richers and I'm the superintendent for the Wasco
7 Union Elementary School District. A district of some
8 3,400 K-8 students located north of Bakersfield. Our
9 district has historically grown by approximately 50
10 students per year for at least the previous ten years
11 before the pandemic. Classrooms were overfilled by 2017.
12 A new school was opened in 2019.

13 The community of only 20,000 approved bonds totaling
14 over \$21 million. The district qualified at that time
15 for state construction funding of \$11 million. The
16 district also qualified for hardship funding, increasing
17 the amount to \$22 million. The state did not have the
18 money at occupancy and our application for construction
19 funding was placed on a received beyond bond authority
20 list. This Board now says they have funds available to
21 process payment.

22 Using current year enrollment figures, which are
23 disproportionately reduced by COVID-19, the Board is
24 calculating that we will receive only some \$3.1 million
25 of the \$22 million expected. We have apparently no

1 recourse under the option 1 you initiated in 2017. At
2 that time, reviewing the notes from the meetings, Board
3 Member Kim could not see how any school district could be
4 harmed, according to the meeting records. Cash
5 representatives in the next meetings warned that this
6 might be a violation of Statute 17070.75. You
7 nevertheless initiated option 1.

8 Your directions were to have staff bring an appeal
9 to the Board when someone is disadvantaged by this
10 program. We will be harmed irreparably using current
11 enrollment figures. The Wasco Union School District is
12 composed of 93 percent unduplicated students and 96
13 percent minority students. What you are intending to do
14 will cripple the district as the district will now have
15 to use General Fund money to cover the amount you are
16 proposing to not pay.

17 We will be in financial crisis for years to come, at
18 a time when other state agencies are infusing stimulus
19 monies and COVID relief funds. With no mechanism in
20 place to account for the loss of students through COVID-
21 19, this Board is discriminating against those districts
22 that have large numbers of marginalized students and
23 families, such as Wasco.

24 What makes this even more discriminatory is that
25 while the application from Wasco was waiting, this Board

1 funded under small school district rules the complete
2 rebuild of a neighboring school district that had allowed
3 its infrastructure to deteriorate completely. That
4 district has a totally different student ethnic make-up.
5 I believe the term once used was white flight. This
6 discrimination becomes now a civil rights violation.

7 The media will love the comparison to your
8 priorities should you proceed with your current plans. I
9 have contacted our senators and our governor's office
10 concerning this immoral and potentially illegal use of
11 COVID-19 enrollment decreases in calculating payments to
12 districts, and fully intend to pursue redress in state
13 and federal court should some accommodation not be
14 reached that mitigates this upcoming financial disaster
15 in Wasco.

16 Here are two proposals that would solve this.
17 Either pay affected districts the amount due based on
18 enrollment at filing, or give all impacted districts five
19 years to recover those enrollment losses and fund them at
20 that time. Last week, last Friday, was the first time
21 our enrollment increased since the pandemic started. We
22 know our population will increase, and the state's
23 responsibility for mitigating pandemic impact is
24 significant.

25 Thank you for your time. I do appreciate it.

1 That's it.

2 MS. MILLER: Thank you. Thank you, Mr. Richers.
3 Thank you for finding a space so that you were able to
4 communicate with us this afternoon. Just for the Board's
5 information, there is -- Mr. Richers is not commenting on
6 anything on the agenda today, it is about general
7 apportionments, and so we can -- are there any questions
8 on that?

9 Mr. RICHERS: It has actually entered the consent
10 agenda for Wasco.

11 MS. MILLER: Mr. Richers, well, it's not under the
12 consent agenda, Mr. Richers, unless you wanted to remove
13 that from the consent agenda, and you decided -- and you
14 chose not to. So that was already approved by the Board.

15 MR. RICHERS: Right. That's why I'm bringing it up,
16 yes. Uh-huh.

17 MS. MILLER: Sir, are you telling us -- would like
18 us to go back and not approve your apportionment in the
19 consent agenda this afternoon?

20 MR. RICHERS: I don't believe that there's an
21 alternative, because you don't allow us to renew our
22 place in line anywhere, so if you don't approve it, then
23 we would get nothing.

24 MS. MILLER: Well, unfortunately --

25 MS. KAMPMEINERT: May I --

1 MS. MILLER: Oh, sorry. Go ahead, Ms. Kampmeinert.

2 Yes.

3 MS. KAMPMEINERT: Yes. If I could just clarify
4 what's on the consent calendar for the district, it's the
5 eligibility adjustment, the new construction eligibility
6 adjustment. We have not actually finalized the
7 processing of the applications, so the funding
8 application is not a part of this agenda.

9 MR. RICHERS: Right. And that's why they put me to
10 the back of the agenda, and I appreciate that. Thank
11 you.

12 MS. MILLER: But I think it's a really important
13 point, Mr. Richers, that you -- what you're speaking
14 about is not on today's agenda. First, you go through
15 eligibility, of course, so that everybody in the state
16 has equal access to this program, there are rules and
17 regulations that everyone follows, including the daily
18 attendance.

19 And that is a big part of our regulation, that's
20 actually a big part of school funding, as you know,
21 generally. So the funding does come at a later date, but
22 I just want to clarify for the Board that you're not
23 disputing anything in the consent agenda, this is general
24 public comment about an allocation that has yet to be
25 made.

1 MR. RICHERS: That is correct.

2 MS. MILLER: Thank you. Thank you.

3 Any other questions on or any other member of the
4 public wishing to comment for any reason? Seeing none.

5 We're just going to go back through, Senator Laird,
6 just to make sure that we have recorded you on all the
7 various issues.

8 SENATOR LAIRD: That's correct.

9 MS. MILLER: We really appreciate that, sir. But I
10 think we are -- if anyone else -- I think that is the
11 last item of business before the Board this afternoon. I
12 really appreciate everyone being here. And
13 congratulations again, Ms. Lasso. That's very exciting.

14 MS. LASSO: Thank you so much.

15 MS. MILLER: Thank you.

16 So for the minutes, Senator?

17 SENATOR LAIRD: Aye.

18 MS. MILLER: Great. Thank you.

19 Do you want to take over, Ms. Jones, why am I doing
20 this?

21 MS. JONES: Yeah. I can take over.

22 MS. MILLER: Thank you.

23 MS. JONES: Senator, how do you vote on the consent
24 calendar?

25 SENATOR LAIRD: Aye.

1 MS. JONES: Thank you. Okay.

2 And then how do you vote on the two action items,
3 the annual adjustment to school facility program grants
4 and the index adjustment on the assessment for
5 development?

6 SENATOR LAIRD: Aye and aye.

7 MS. JONES: And I thank you. Thank you.

8 MS. MILLER: Thank you, everyone. We are adjourned.
9 We'll see you next month. Take care everyone. Have a
10 great afternoon. Bye.

11 MS. JONES: Thank you.

12 MS. LASSO: Thank you.

13 (End of recording)

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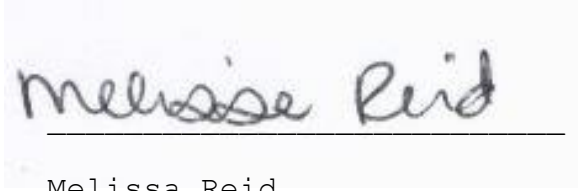
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