

1 members who would be happy to come down and --

2 MS. ROUSSIN: Thank you.

3 SENATOR MARGETT: Wannabe lawyers.

4 CHAIRPERSON SHEEHAN: All right.

5 MS. PARK: The Consent Calendar's --

6 SENATOR LOWENTHAL: -- we could do the
7 sandbagging.

8 CHAIRPERSON SHEEHAN: Yeah. As it were --
9 different kind.

10 All right. So if there are no other questions on
11 the Consent Specials, we'll entertain a motion.

12 ASSEMBLY MEMBER MULLIN: So move.

13 ASSEMBLY MEMBER DAUCHER: Second.

14 CHAIRPERSON SHEEHAN: We have a motion and a
15 second to approve the Consent Specials. All those in favor.

16 (Ayes)

17 CHAIRPERSON SHEEHAN: Any opposed? That is
18 approved.

19 MS. PARK: Next item is on the **Special Calendar**,
20 Tab 10, page 224. This item has to do with **piggyback**
21 **contracts** and public contracts compliance related to
22 **permanent modular school facilities**.

23 Back in 2005, the State Allocation Board directed
24 staff to obtain an Attorney General's opinion on whether or
25 not this method of contracting was appropriate.

1 Last month, right before the Board meeting on
2 January 24th, I received the Attorney General's legal
3 counsel's opinion, and at that time, I informed the Board
4 that we had received that opinion and at this meeting we
5 would bring forth the information on that opinion.

6 At that meeting, we were directed to notify all
7 school districts that they were not permitted to use this
8 method of contracting after January 25th of 2006. We put out
9 advisory on the Web site. We sent out a formal letter, and
10 we put it into our advisory actions.

11 So the Board -- the public in general has been
12 notified, but we do understand that there are individuals
13 here that do want to speak to the Board regarding this issue.

14 And just to say that our report is to accept the
15 Attorney General's Office opinion and to direct staff to
16 provide additional notices regarding the January 25th, 2006,
17 as the cutoff window for using this type of contracting.

18 So with that, I --

19 CHAIRPERSON SHEEHAN: Yes. I know a number of
20 people from the public would like to comment. So shall we
21 hear from them and then we can -- and I know a number of
22 Board members also would like to discuss this. Tom? And
23 then I have Karl Bradley? Are you Karl? Okay.

24 MR. DUFFY: Hi. Tom Duffy for Coalition for
25 Adequate School Housing. Good afternoon and thank you.

1 I sent a letter to you all today where we've
2 basically tried to identify for you that we believe that
3 proliferation of the use of piggybacks began in 2004 because
4 of the bid climate and what we referred to as the inadequacy
5 of the grants.

6 You heard a district I think about this time last
7 year who had bid a number of projects and found that it had
8 to scrap its stick-built plans and go with modular
9 buildings -- in other words, was able to provide classrooms
10 for those schools. That's happened over and over again in
11 California.

12 I wanted to point that out to you because what you
13 will be doing now without having dealt with the issue of
14 grant adequacy is probably continuing to hinder districts in
15 moving forward with providing classrooms.

16 The opinion is the opinion and we think that you
17 have to obey it, and we think that you have to follow this.
18 And so we suggest that you do that.

19 But we'd really like to have Ms. Goldberg's bill
20 and then also Ms. Daucher's bill move forward to deal with
21 grant adequacy and the adjustments of the bids at a time
22 during the year that isn't January, but is more related to
23 the actual indices and what's happening in the field.

24 So we think that that's critical and we have said
25 that to Senator Scott and his community and Ms. Goldberg and

1 her committee when we've talked about the bonds. So we think
2 that that's extremely important.

3 So grants are very low and districts have had to
4 avoid building schools that are stick-built schools and gone
5 with modulars or portables, and they will have to continue to
6 do that. The opinion just makes it harder for them.

7 And with that, the second part of the letter that
8 I sent to you identifies that the communication from Luisa --
9 and we thank her for that and we met with her to understand
10 how this would proceed. We think that further refinement
11 needs to be done so that districts will fully understand what
12 it is you require of them so that they are in conformance
13 with what you would like them to do.

14 I do not think that the issue is really -- is
15 easily definable as saying these are modular components and
16 this is a portable. I think that there's more to it.

17 We have experts in our organization. We'd be
18 pleased to meet with Luisa and others and in fact you may
19 want to -- I'm sure you're going to move forward with this
20 today, but you may want to ask the Implementation Committee
21 to just tease out the issues because I think that there will
22 be a number.

23 And it -- just having heard from a number of
24 districts and talked to many attorneys -- CASH has a legal
25 advisory committee and we have met with them and discussed

1 this in detail. We have a conference going on across the
2 street, talked about ~~that just this afternoon.~~

3 So we can give -- I think we can offer help to you
4 here.

5 You -- in 1998 this -- the state program changed
6 with SB50. One of the reasons that it changed -- and,
7 Ms. Goldberg, we talked about this at your committee about
8 three weeks ago.

9 One of the reasons that it changed to a grant
10 program was to delink the state funding mechanism and what
11 school districts do with that funding. In essence, the state
12 was being sued from time to time because school districts --
13 in the discovery process, was that -- it was found that there
14 was a lease-purchase document signed by the executive officer
15 and the school district and so that linked the state in and
16 the state was then sued.

17 You may with this directive -- and believing
18 you're going forward with it. You may find that part of that
19 delinking is gone away, that -- you may find -- and it's --
20 you know, we're not -- this is not a threat or anything.
21 We're just simply saying we don't want school districts to be
22 sued over this. You may be implicated in it, so that may be
23 something else that Mr. Ness helps you to look at.

24 So I think that that's important. Districts may
25 also be in the planning process and they may want to come

1 back to you for reimbursement because of what they have to
2 do.

3 And just sharing with you various that have come
4 our way. But we really would like you to deal with grant
5 adequacy and we believe -- and we told you this last May. We
6 believe you have certain authority through the regulatory
7 process and what is in statute to actually adjust the grants
8 now and we would urge you to do that.

9 Thank you. Any questions for me?

10 CHAIRPERSON SHEEHAN: Any questions for Mr. Duffy?
11 Senator Lowenthal.

12 SENATOR LOWENTHAL: Were not districts notified by
13 our own legal counsel that -- almost a year ago that this was
14 going on and that they should proceed with caution?

15 MS. PARK: That is correct. Back in February of
16 2005 when the issue was initially brought forward to the
17 Board, at that time, we did have Garry Ness's opinion and he
18 has concerns about -- she did have concerns about the
19 piggyback process the districts were using.

20 So at that time, when we went forward to ask for
21 an Attorney General's opinion, we did put out advisories
22 advising districts to move very cautiously when they use this
23 type of method.

24 MR. DUFFY: And, Senator, my response to that is
25 yes, and we've talked about it as well. But notwithstanding

1 that, districts had to move forward and put classrooms in
2 place and they did that with less than adequate funds.

3 So the -- last year was an important year for
4 districts to get a lot done just like this year is.

5 You had a particular concern and you've addressed
6 it -- or attempted to address it in your legislation and we
7 had opposed that and you may not have been pleased with us or
8 with me, but our opposition was really to allow districts to
9 continue to have the ability to move quickly and especially
10 at a time when we don't have enough grants.

11 And I'd be pleased to share the information that
12 we have developed in comparing the grants under the old
13 program to the new program because there is a deficiency.
14 Thank you very much.

15 CHAIRPERSON SHEEHAN: -- I think has a question.

16 ASSEMBLY MEMBER DAUCHER: Yes. You mentioned
17 delinking and linking. Are you getting -- are you saying
18 that currently if a district does something that they are
19 sued about that the only person who can be the recipient of
20 that lawsuit is the district? I know you can sue anybody,
21 but that we have protections in place so that the State
22 Allocation Board is not involved and that if we take this
23 action that that may muddle that or cloud that? And I guess
24 I'd like your opinion and then I'd like to hear our lawyer's
25 opinion.

1 MR. DUFFY: Maybe you --

2 ASSEMBLY MEMBER DAUCHER: Is that what you said or
3 not?

4 MR. DUFFY: It is what I said.

5 ASSEMBLY MEMBER DAUCHER: Okay.

6 MR. DUFFY: That under the old program, there was
7 a direct link because of the contractual relationship of the
8 lease-purchase program. Because the Allocation Board and the
9 state were sued when districts made mistakes and they may
10 have been small districts, they may have been larger
11 districts, but I remembered working with Senator Leroy Greene
12 on the issue of grants and he was very concerned because the
13 state was being sued for district mistakes.

14 So the delinking happened with the grants. That's
15 why you have the language and statute that says full and
16 final apportionment.

17 Now, you could be sued of course --

18 ASSEMBLY MEMBER DAUCHER: Right.

19 MR. DUFFY: -- for following the law and school
20 districts may be. It's just -- I was just suggesting that
21 this may be something that Mr. Ness needs to consider and
22 advise you on.

23 We haven't heard of anybody wanting to sue
24 anybody, but it -- this -- you know, we're talking about a
25 fairly sizeable amount of money that isn't in the pipeline to

1 be built.

2 ASSEMBLY MEMBER DAUCHER: I'd like to get --

3 CHAIRPERSON SHEEHAN: Sure. Garry, would you want
4 to address that briefly.

5 MR. NESS: Well, I can maybe give you some
6 background. The -- Tom is accurate. The old program created
7 opportunities for contractors and such to bring the State
8 Allocation Board in because the old program created an agency
9 relationship between the state and the school districts and
10 also had this lease-purchase program which actually required
11 the state to lease the facility to the school districts.

12 All those things have been taken out of this
13 program and it is truly a grant program. We're simply giving
14 grants to school districts to fund construction.

15 There is a provision in statute, however, that
16 talks specifically about liability and indicates that funding
17 decisions made by the Board shall not in and of themselves
18 make the Board liable for any tort, breach of contract, or
19 any other action for damages caused by the school district
20 arising from new construction or modernization by the
21 district.

22 So I think the Board is pretty well protected with
23 respect to that statute in terms of any contractual liability
24 that might arise from a district's construction contract.

25 ASSEMBLY MEMBER DAUCHER: So then if we start

1 advising districts or telling districts how they should let
2 their contracts, does that statute still protect us or is it
3 cloudy?

4 MR. NESS: Well, I still think that it's fairly
5 good protection. I mean -- it would depend upon what the
6 Board's direction was.

7 I mean in this situation, the Attorney General has
8 advised the Board what the state law and all the Board would
9 be saying is you've got to follow the state law as it's been
10 opined by the Attorney General.

11 So I don't know that we're telling the districts
12 that they have to do one thing or another. It's just that
13 the state's legal advisor has advised this Board that's what
14 the law is and so that's what the Board would look for the
15 school districts to do to follow.

16 That doesn't mean that this statute has been
17 tested in court. The Attorney General's opinion is an
18 opinion of a lawyer. It's not, you know, precedent setting.
19 It has to be followed as a matter of law.

20 There still could conceivably be a different view
21 announced by a California Court if they looked at it, but I'm
22 not aware of any litigation over it and I'm not aware that
23 anybody's going to challenge it, but it also means that
24 contracts that were let contrary to this provision
25 conceivably are subject to challenge and would, if

1 successful, be -- the contract could be found to be void and
2 unenforceable and that would put the district and contractor
3 and potentially state bond money in jeopardy.

4 ASSEMBLY MEMBER DAUCHER: So then if a district
5 were to choose to -- if they were in the middle of this
6 process and they were to choose to go forward for, you know,
7 maybe it's the only way they can get classrooms up by
8 September -- and I'd be interested if there's a case like
9 that. I'd like to hear about it -- then are you saying to
10 the best of your knowledge, we would -- could rely on the
11 statute where we would not be at risk, but it would be the
12 districts who would be at risk. Is that what you're telling
13 us?

14 MR. NESS: That's my belief, yes.

15 MS. PARK: In addition --

16 CHAIRPERSON SHEEHAN: Go ahead.

17 MS. PARK: Just in addition, when a district
18 applies for a state funding, they certify compliance to all
19 laws and regulations and this section is in the Education
20 Code as part of the public contract.

21 So they have certified that they are complying
22 with all the requirements of the law.

23 MR. DUFFY: And we don't -- we're not arguing with
24 this at all. We say -- we believe you have to follow this
25 and in fact we'll be working with our districts to make sure

1 that they know.

2 We're asking you for further clarification and
3 CASH will be sponsoring a workshop next month on doing this
4 to make sure districts know what they need to do to stay
5 compliant with what you want them to do so you can give them
6 money to house kids. Thank you.

7 ASSEMBLY MEMBER GOLDBERG: Just send more
8 grants -- higher grants.

9 MR. DUFFY: Say it again.

10 ASSEMBLY MEMBER GOLDBERG: Just send higher
11 grants.

12 MR. DUFFY: Thank you very much, Ms. Goldberg,
13 yes.

14 CHAIRPERSON SHEEHAN: Ms. Girard and then
15 Ms. Moore has a question.

16 MS. GIRARD: I just have a question. You know,
17 looking to make sure you get the best price because obviously
18 money is the issue, if it doesn't go out to bid, are you
19 really getting the best price? How do you know by not going
20 out to bid that you're really getting the best price because
21 that's exactly what this is all about?

22 You don't have enough money, so you want to make
23 use of the most money that you have. If you're not going to
24 bid you don't know if you have the right -- the best price.
25 So how are you coming to that conclusion?

1 MR. DUFFY: Thank you for the question because
2 it's a seminal question. There is a bid in the beginning.
3 So District A bids a project and because modular buildings or
4 portable buildings are built in a factory very much like a
5 car is built, they're -- in the main, they are a reuse of a
6 plan, districts know what exists and they've seen them.

7 So District A puts out a bid and competitively
8 bids it and one of the manufacturers receives that bid.
9 District B then says that's a good price and I can get those
10 now without the period of time for bidding and I can see
11 exactly what I'm going to get, and so what they've done is
12 they have used that bid themselves as another public agency.

13 General Services does the very same thing and they
14 do it today. So your question is a good question. If the
15 bid would be an old bid -- as a superintendent, I did this.
16 If it's an old bid, I wouldn't want to use that. I would
17 want to use something newer.

18 But the idea of cost -- if you compared the state
19 grant program today with what it really costs to build a
20 school, there is not an equality there. So districts have
21 been able to say I know that I can pay -- now I can pay for
22 these modulares because I know what that price is -- or the
23 portables. So hopefully I answered your question.

24 CHAIRPERSON SHEEHAN: Ms. Moore.

25 MS. MOORE: Tom, can you explain exactly what

1 isn't clear and what needs to have further clarification?

2 MR. DUFFY: Thank you, Kathleen. What I'm
3 speaking to is the opinion -- the question asked is may
4 modular components be utilized and the answer is no, they may
5 not.

6 But there is --

7 ASSEMBLY MEMBER GOLDBERG: Without a bid.

8 MR. DUFFY: Without a bid. Yes. Thank you.
9 There is subnote 4 on page 4 that identifies that those are
10 distinguishable from portable classrooms, and portable
11 classrooms are basically two pieces of a building that are
12 trucked out to a site and put together and put on a site.

13 I believe that the intent -- and I think it was
14 the intent of your bill, Senator -- was to say those are okay
15 for piggybacking. What we don't want are pieces that get
16 trucked out and get put together on the site. And -- just
17 make sure that districts are -- if that's what the intent is,
18 that that is very clear, and I would appreciate your -- staff
19 being able to put that in some written form so districts know
20 what it is because every building isn't the same.

21 Some manufacturers build buildings that are seated
22 differently and the question in the opinion also is answered
23 by talking about a permanent foundation.

24 Individual portables are placed on concrete.
25 They're placed on asphalt. They're placed on dirt. But they

1 are affixed to the site because of seismic issues.

2 We just want to make sure that since it appears
3 that portables are okay, modular components are not, that we
4 know exactly what those are. That's --

5 MS. MOORE: And there is a question about
6 permanent foundations --

7 MR. DUFFY: Because the -- because the opinion
8 talks about a permanent foundation and we have talked to our
9 friends at DSA. They can tell you what a permanent
10 foundation is, but individual portable classrooms are placed
11 on different kinds of foundations.

12 Some of them are placed on concrete piers because
13 it's an efficient way to put them in place. They're movable
14 and they may be moved, but they're put on concrete piers.

15 Is that permanent? We want to make sure we know
16 since we do not want to have the district interrupted in the
17 process and you tell them that we're not going to give you
18 any money because you violated our directive.

19 MS. PARK: Under staff comments, I think we have a
20 pretty clear description of what the difference is.

21 CHAIRPERSON SHEEHAN: Any other questions --

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

23 CHAIRPERSON SHEEHAN: Sure. Thanks.

24 MR. DUFFY: Appreciate your patience.

25 CHAIRPERSON SHEEHAN: Yeah. I think we had some

1 other individuals who would like to testify? Can you just
2 identify yourself for the record.

3 MR. BRADLEY: Madam Chair, members of the State
4 Allocation Board, my name is Karl Bradley. I'm the Chief
5 Facilities Officer for Vista Unified School District. We're
6 a district that serves about 24,000 students in the
7 northwestern corner of San Diego County.

8 And we passed a local bond measure in the amount
9 of around \$140 million in March of 2002, and our aim was to
10 end the terrible overcrowding we had in our district. We had
11 kids at both the middle and elementary school level on the
12 Concept 6, Multi-Track Year-Round Schedule, and our goal is
13 using our local bond funds as well as state matching funds to
14 build more elementaries, build another middle, build tons of
15 stuff.

16 Even at the -- early on in our bond program, we
17 realized that the state match really wasn't ever 50 percent,
18 but we kind of kept plugging along. But a few years back, we
19 started seeing unprecedented escalation of construction
20 costs.

21 And the state grant fell farther and farther below
22 what actually constitutes a 50 percent match of the actual
23 costs of construction.

24 We continued as best we could with our program and
25 now we're at a point where we need to build our largest final

1 and most important program which is a high school facility.
2 We've got two high school in our district that are at nearly
3 double their capacity, and looking at our budget, looking at
4 how much local money we have left, predicting what the state
5 grant would be, we realized there was no way we could create
6 the classroom space we needed, not on out permanent --
7 conventional permanent construction with the remaining funds
8 we had.

9 So we determined that we would go with modular
10 construction and we elected to utilize the piggyback bid
11 because that way we could quantify that amount. That way we
12 could -- within budget and so forth.

13 But at this point -- you know, now -- I feel we
14 were sort of backed into a corner where we couldn't afford
15 anything. We didn't want to build modular schools. No
16 facilities administrator wants their legacy to be modular
17 construction. We love to build permanent schools with
18 beautiful architectural features. We can't. We don't have
19 enough money.

20 I think I speak for a lot of districts here and
21 I'm here to ask that this Board at the very least postpone
22 any action that will reduce school districts' ability to
23 obtain modular building components via piggyback contracts
24 and I also ask that you take immediate action to increase the
25 grant amount so we can go back to the schools we really want

1 to build. And I thank this Board for your time.

2 CHAIRPERSON SHEEHAN: Hold on. Senator Lowenthal,
3 did you have a question?

4 SENATOR LOWENTHAL: Yeah. I -- no. I just wanted
5 to comment on that. I think that grant issue is a separate
6 issue and I think that's a reasonable issue to ask us to
7 address. That's one issue.

8 The second issue, I -- kept getting back to --
9 that you -- you know, this is not a new issue. This -- you
10 were notified that this is -- to proceed with caution, almost
11 a year ago.

12 The law is really clear. We can't authorize you
13 to go ahead and break the law. I mean that -- we -- unless
14 you're saying you want us to delay the law -- you can't do
15 that. You can't -- we can't delay the law.

16 And you can still do what you're doing with -- if
17 you go out to bid. We're not stopping you. No one is saying
18 that there's anything wrong with what you want to do. You
19 don't want to do that. You would rather have the grants
20 modified and we understand that.

21 But since you now what to go out, you want --
22 you're not precluded from doing that. We're talking about
23 piggyback contracts and the law is real clear now. And we've
24 known that and that's why we asked for the AG's opinion.

25 We were concerned about that and conveyed that to

1 you almost a year ago.

2 MR. BRADLEY: Respectfully, Senator Lowenthal, we
3 believe there's a great potential for cost increase if we go
4 through the bidding process. We believe there's a potential
5 for project delays if we go through the bidding process.

6 CHAIRPERSON SHEEHAN: Any other questions? Thank
7 you. Oh, Senator Scott?

8 SENATOR SCOTT: I don't quite know how you want us
9 to violate the law. I mean that's the problem. I mean we
10 all find certain laws onerous, and we don't particularly --
11 we don't like them, but most of us have to say, well, you
12 know, that's what's there.

13 And so we -- you know, we think maybe if you went
14 out to bid there's the possibility, as was pointed out by one
15 of our members, that you might even come in lower than this
16 piggyback bid.

17 But I think for us to ignore what the Attorney
18 General has said to us the plain implications of the law are,
19 I personally have never been comfortable doing that.

20 MR. BRADLEY: Once again with all due respect,
21 sir, I heard your own counsel state that the Attorney
22 General's opinion is merely an opinion and does not
23 necessarily --

24 SENATOR SCOTT: Well, do you have an opposing
25 opinion other than yours that has any legal basis?

1 MR. BRADLEY: No, sir, I do not.

2 SENATOR SCOTT: Okay.

3 CHAIRPERSON SHEEHAN: Ms. Girard.

4 MS. GIRARD: I'm just having problems with -- on
5 construction delay on a modular. If you take it out to bid
6 and you've already stated that you're going to build modulars
7 because you can't afford to do the other. So you're taking
8 it out to bid. Where is the delay on the modulars going to
9 come in? You're putting it out for modular bid; right?

10 MR. BRADLEY: Ma'am, we were ready to take a
11 contract to our board at our February school board meeting
12 for ratification, you know, and we basically -- once we heard
13 statements made at the February -- or excuse me -- January
14 State Allocation Board meeting this year, we basically put
15 things on hold until we were going to hear what you said at
16 this meeting.

17 At this point, if that's the direction, of course
18 we're going to bid. We're going to obey the law. But
19 there's already the time that has been lost since that last
20 meeting and there's also the issue of the time frame for
21 legal advertising and so forth.

22 And -- you know, one thing that was proposed I
23 know -- I saw a letter that was written to you by one of the
24 modular manufacturers was that at least the Board consider
25 some sort of a grace period rather than abruptly depriving

1 districts of their ability to do this.

2 CHAIRPERSON SHEEHAN: I guess one observation I
3 have, you are a member of CASH, I assume, Tom's group that
4 was just up here?

5 MR. BRADLEY: Yes, ma'am.

6 CHAIRPERSON SHEEHAN: And I think both CASH --
7 when this issue came up last year and this was one of my
8 first Board meetings and I think the staff -- people were
9 aware that we had requested this opinion.

10 So while I understand January when we received it,
11 you know, may have come as a shock, but I think the people
12 who had been tracking the work of the Board were aware that
13 the request had been made and as with -- you know, the answer
14 could come in any time.

15 So I think as someone said, it had been out there
16 for close to a year that we had made that request and that
17 there was, you know, at least 50-50 chance that that could
18 have come in.

19 So if you did not -- were not aware of that, you
20 know, we can certainly work on communication in the future,
21 but I think most people were aware that that request had come
22 from the Board to the Attorney General's Office.

23 Any other -- Ms. Daucher.

24 ASSEMBLY MEMBER DAUCHER: This is an opinion. It
25 isn't law. It is an opinion and it has certain weight to it,

1 but it isn't necessarily right or wrong. I think the
2 Legislature would do well to fix this.

3 We still have districts at risk in this situation
4 even if we follow the Board recommendation of January 25th.
5 We still have -- some districts will still have an issue.

6 And if we're saying this January 25th, there's a --
7 you know, we're making an opinion as to when to implement
8 this. And really who skates in under what you seem to
9 believe is going to be a lower cost -- do you believe the
10 cost will be higher? I mean is that -- I presume -- delay
11 and --

12 MR. BRADLEY: I believe there is a good -- I think
13 the district --

14 ASSEMBLY MEMBER DAUCHER: You believe it's a risk.

15 MR. BRADLEY: -- good risk that it would be more,
16 yes.

17 ASSEMBLY MEMBER DAUCHER: Okay. So I mean I guess
18 what I'm saying is we have a -- you know, we're picking a
19 date with no real rational reason to pick one date versus
20 another date, and I guess what I would like to see is a date
21 that's a little bit more in the future, a date -- legislation
22 that maybe we could all agree on that would protect districts
23 who -- even if we were to follow the Board's recommendation,
24 there will still be districts at risk and I don't want to see
25 any district at risk here.

1 And I don't know if it would be possible for us to
2 get urgency legislation through that would give some
3 protection to districts that are caught in this problem, give
4 them a grace period, and then -- I don't know if we could all
5 agree on legislation. I don't know if that's possible or
6 not.

7 But if we don't, we're going to have a fait
8 accompli, so it might be a good way for us to agree on
9 legislation. But to protect districts who would be at risk
10 and to give a longer grace period so that we don't see
11 schools that are delayed.

12 I mean we have overcrowding now and what this is
13 really going to mean is even if it were to come in cheaper,
14 you're talking of -- about a delay of going out to bid which
15 what's the minimum time you can go out to bid and get an
16 answer?

17 MR. BRADLEY: It generally takes at least six
18 weeks.

19 ASSEMBLY MEMBER DAUCHER: Six weeks and then you
20 have to award the bid. What's the end of the process when
21 you can --

22 MR. BRADLEY: Award the -- the bid, whatever, the
23 appropriate board meeting would be, and then there's a five-
24 to ten-day notification process before notice to proceed can
25 be issued.

1 ASSEMBLY MEMBER DAUCHER: So I guess I'd like to
2 try and help these districts out and recognizing that not
3 very district is a big district that might have people who
4 regularly read and pay attention to all the notices and
5 paperwork that we send out.

6 I mean I know I come from a very small school
7 district that, you know, the person wears lots of hats who
8 does this and, you know, maybe they should have, could have,
9 would have, you know, paid attention a year ago, maybe they
10 didn't. And grant adequacy probably worked into that.

11 But I think it would behoove us if we could agree
12 legislatively to protect -- you know, give some protection to
13 these districts. I don't know if that's possible
14 legislatively -- a grace period and do an urgency bill.
15 That's what I would like to have a discussion about.

16 CHAIRPERSON SHEEHAN: Okay. Senator Lowenthal.

17 SENATOR LOWENTHAL: Well, I would like, as Tom had
18 mentioned, to just remind us that we did have legislation
19 last year about this very issue. It was passed by the Senate
20 and the Assembly, went to the Governor, was vetoed
21 prohibiting piggyback.

22 Every district was part of that. You know, CASH
23 was, as Tom said, they opposed it. All the members knew this
24 and Governor's veto message said wait until the AG. It's
25 real clear. Everyone has known about this.

1 CHAIRPERSON SHEEHAN: Senator Margett. Oh, and
2 then -- sorry.

3 SENATOR MARGETT: Were you ahead of me, Jackie?
4 Go ahead.

5 CHAIRPERSON SHEEHAN: Ms. Goldberg, sorry.

6 ASSEMBLY MEMBER GOLDBERG: I just wanted to make
7 sure I got on the list sometime. Did your board discuss this
8 possibility when they talked about going to this modular --
9 since this has been a year ago now? Did they discuss the
10 possibility that the decision might go the other way? Was it
11 presented to them?

12 MR. BRADLEY: To my knowledge, I don't believe it
13 was. Because there was -- in our minds -- at least in my
14 mind, there was no certainty as to which way the decision
15 would go.

16 ASSEMBLY MEMBER GOLDBERG: If I was on a board --
17 Ms. Daucher was on a board, I would want the staff to come to
18 me and say we're recommending this, but you need to know we
19 got this warning and at any time that decision could come in.
20 Nobody told that board that? Right? Is that what you're
21 telling me?

22 MR. BRADLEY: To the best of my knowledge, no,
23 they did not.

24 ASSEMBLY MEMBER GOLDBERG: I have a real problem
25 with that. I have to tell you that. You know, if the board

1 then said that they'd like to take the risk, then we're in
2 one situation, but we're in a very different situation if the
3 board was never informed -- well, that's my view. Thanks.

4 CHAIRPERSON SHEEHAN: Senator Margett.

5 SENATOR MARGETT: Yes. I can certainly empathize
6 with where you are and what you're doing -- what you're
7 trying to do. There's no question about that.

8 May I ask just a few questions about divulging
9 bids and so on and so forth. Approximately what is the
10 amount of the contract that you're looking at here for this
11 modular?

12 MR. BRADLEY: I believe it's roughly \$11 million,
13 sir, because it was based on the piggyback pricing we had.

14 SENATOR MARGETT: \$11 million and how long have
15 you known that it's been \$11 million? Is that just the
16 salesman came in and said we can do it for \$11 million if you
17 piggyback?

18 MR. BRADLEY: We've been in negotiations with the
19 modular manufacturer for several months since I believe
20 November of last year.

21 SENATOR MARGETT: And did he give any deadline or
22 any -- say, hey listen, you have to buy this within this next
23 six months or this next year to be able to get this
24 \$11 million price?

25 MR. BRADLEY: Well, typically the piggyback things

1 do have an expiration date. I do not know exactly when the
2 expiration date is.

3 SENATOR MARGETT: You don't know when the
4 expiration is on this particular --

5 MR. BRADLEY: Not off the top of my head, sir.

6 SENATOR MARGETT: I mean just -- well, just off
7 the top of my head, I would think that an \$11 million deal,
8 that's not -- I mean that's not peanuts. I got to tell you
9 that's a nice contract for somebody.

10 I would think that you could probably go ahead and
11 bid that. I'm not saying you're going to get it less, but I
12 would say that they would still be interested in performing
13 under that contract going through the legal aspects of this
14 thing and you could very well get your buildings in at your
15 \$11 million -- budget.

16 MR. BRADLEY: Absolutely, sir. We're very well
17 aware of that and we do have two and perhaps three modular
18 manufacturers that we know are very anxious to bid this work
19 with us should it go --

20 SENATOR MARGETT: Oh, I think this whole
21 competitive thing is -- really works in America, believe it
22 or not, today. I mean it's there and I'm happy for it.

23 May I ask counsel one question also? Mr. Ness, if
24 there's a consortium that comes together of school districts
25 that know in their planning that they're going to want

1 modular buildings and they want -- could that consortium
2 group of school districts form a consortium to be able to do
3 that and escape this business with regards to piggybacking?

4 In other words, that's an entity that's buying as
5 opposed to --

6 MR. NESS: I think I know what you mean and quite
7 frankly I don't know what the answer is to that. I'm not
8 that familiar with the school districts public contract code
9 requirements to give you a good answer on that. So I guess
10 I'd have to duck your question and say I don't know the
11 answer to your question.

12 CHAIRPERSON SHEEHAN: Ms. Girard.

13 MS. GIRARD: My concern is that it gives the
14 appearance of favoritism when you start to do that. When you
15 do put something out to bid, the reason -- not just the
16 lowest cost or whatever, but you've opened it up for more
17 people to bid.

18 When you go to one distributor, it just doesn't
19 appear to look good. It looks like there's something going
20 on. If it's wide open and everybody could bid it, then you
21 feel everybody that's involved -- the Board giving money
22 here, the taxpayers, everybody else is getting the best price
23 and that it's a full and open competition.

24 When you limit that, you make it look ugly, and I
25 know. I'm a contractor. So I know. I'm speaking because I

1 know this, that you should always have more than one bid to
2 know that you're getting the best price.

3 MR. BRADLEY: Ma'am, we actually did have a
4 request for a proposal process that was competitive. It
5 was -- our bid contract, but we had request for proposal. We
6 had criteria specification. There were two modular
7 manufacturers who looked at the pricing on this and we
8 were -- yeah. We were basically finalizing the contract with
9 the manufacturer who had offered us the best price on that
10 basis.

11 CHAIRPERSON SHEEHAN: All right. Thank you for
12 your comments.

13 MR. BRADLEY: I thank the Board.

14 CHAIRPERSON SHEEHAN: Anyone else? Yes. Please
15 come forward and identify yourself.

16 MR. BUCKLEY: Thank you, Madam Chair, members of
17 the Board. My name is David Buckley. I'm the Chief
18 Executive Officer of ModTech.

19 ModTech is the largest provider of modular
20 facilities in the State of California and in the country.
21 Each year we provide approximately 2,000 classrooms for the
22 State of California which equals about -- 60,000 -- that's
23 probably me. Let me turn that off. I'm sorry.

24 Approximately 50- to 60,000 students are housed in
25 our buildings each year in California.

1 I want to address Senator Lowenthal's question
2 about why aren't these publicly bid. Quite frankly we prefer
3 public bids. We prefer public bids because we are always 15,
4 20, 25 percent cheaper than on-site construction and we're
5 typically 50 to 75 percent faster.

6 So we aren't afraid of the public bid.
7 Approximately 30 or 35 percent of our revenues come from
8 piggyback type revenues. One of the reasons that we're
9 hearing from the school districts that come to us on that
10 basis is the fact that they don't have the internal
11 capabilities to put together a bid document.

12 A typical bid document is 600 to 700 pages long.
13 It takes a lot of experience to put something like that
14 together and it takes a lot of wherewithal to know how to go
15 out and publicly bid one of those documents.

16 Half of the reason for the piggyback in our eyes
17 is so that school districts that don't have that internal
18 capability can piggyback off of a school district that does
19 have that capability, that has that expertise in-house.

20 So for those school districts that don't have that
21 capability, what do they do now? Where do they go and how do
22 they do this because it's our opinion that there's not enough
23 people in the State of California with enough mileage to fill
24 that gap right now.

25 So by forcing the cutoff on January 25th, it's our

1 belief that there's going to be quite a few school districts
2 that are left out in the cold and quite frankly we think a
3 lot of children that will truly be left out in the cold as a
4 result of this.

5 We are not the answer to everything. We provide a
6 need that can be quickly fulfilled by schools that need space
7 quickly.

8 I live down in Southern California where it's
9 growing like mad and quite frankly if you started a project
10 today on traditional construction, three years from now,
11 you'd have a school.

12 With modular construction, you can typically fill
13 that much quicker. So our position is that we think there
14 does need to be an extension to allow for these school
15 districts that don't currently have the wherewithal or the
16 capabilities to put out a bid to go and find the expertise
17 that will allow them to put a bid out, and secondly, we think
18 that there needs to be some legislation that clarifies this
19 because we happen to be one of those manufacturers that
20 builds a complete unit in the factory.

21 We bring it to the site and we bolt it together to
22 form a classroom or we can bolt 2 together or we can bolt 200
23 together. And where's the definition? Where's the
24 distinction between 2 bolted together and 200 bolted together
25 because it's not fair to us and it's not clear to three

1 lawyers that we've gone out to and gotten opinions on.

2 So I think there is still some ambiguity and I
3 think there's about 35 percent of the school districts in the
4 state that are going to be in real trouble here if there's an
5 immediate cut off.

6 MS. MOORE: Can I just ask --

7 CHAIRPERSON SHEEHAN: Sure.

8 MS. MOORE: -- staff, in his -- in that example,
9 is it in or is it out?

10 MS. PARK: Is what in?

11 MS. MOORE: The example that he gave of the type
12 of portable construction.

13 MR. BUCKLEY: Two fully complete units that are
14 brought to a site and bolted together.

15 MS. PARK: That's a relocatable classroom.

16 MR. BUCKLEY: But most of ours are attached to
17 permanent foundations. Now, they can be relocated at some
18 point in the future, but most schools do not. So where's the
19 definition and where's the defining line?

20 MS. PARK: The relocatable is defined in law and
21 the definition for a relocatable is that it does travel in
22 two pieces. They come onto the site. Yes, sometimes they
23 put them on temporary foundations. Sometimes they put them
24 on permanent foundations, but in essence, it's just putting
25 the two pieces together and sealing them.

1 MR. BUCKLEY: So that's okay?

2 MS. PARK: Yes, sir.

3 MR. BUCKLEY: Regardless of whether it's 2 or 50?

4 MS. PARK: Yes, it is.

5 MR. BUCKLEY: Okay. I'm done.

6 CHAIRPERSON SHEEHAN: But you may want to meet
7 that gentleman from Vista because --

8 MS. MOORE: However, doesn't our definition talk
9 about a permanent foundation?

10 CHAIRPERSON SHEEHAN: Um-hmm.

11 MS. MOORE: And in that instance, you said it
12 could be on a permanent foundation. So --

13 MS. PARK: We have found that some districts will
14 put a portable on a permanent foundation.

15 MS. SPEAKER: And that's what the AG is
16 prohibiting.

17 MS. MOORE: But then isn't that a prohibited
18 piggyback because it's on a permanent foundation?

19 MS. PARK: I do not believe that that is the case.
20 I mean these buildings are being transported and brought to
21 the site basically complete with the exception of being
22 placed on a foundation.

23 MS. MOORE: So the foundation --

24 MS. PARK: And the modular comes in pieces, single
25 walls. They have to be put together on site and -- and so

1 that type of construction is different than a relocatable.

2 MS. MOORE: So it can be located on a permanent
3 foundation and perhaps that's where clarity needs to --

4 ASSEMBLY MEMBER DAUCHER: I have a question.

5 MS. MOORE: -- to be because I think it states --

6 MS. PARK: In here on the bottom of page 224, the
7 opinion does not address portable or relocatable classroom as
8 defined in the Education Code Section 17070.15(j), which
9 typically -- the word typically -- are factory built as two
10 complete building modules that are simply connected on site
11 and placed on a temporary foundation.

12 There are times that they are placed on permanent
13 foundation, but they come in in two pieces.

14 And, Garry, do you want to read that -- do you
15 have that section with you?

16 MR. NESS: Find it right now.

17 CHAIRPERSON SHEEHAN: Okay. Ms. Daucher, did you
18 have a question?

19 ASSEMBLY MEMBER DAUCHER: I just want to follow up
20 with what you said.

21 MR. BUCKLEY: Yes, ma'am.

22 ASSEMBLY MEMBER DAUCHER: You didn't think you
23 were talking about relocatables based on what you provide,
24 but based on that definition, you could -- is what you're
25 saying you could set them up that way and bring them in two

1 pieces and then they're now instantly poof.

2 MR. BUCKLEY: Yes, ma'am. All of ours are built
3 in that manner. We do not build on site. We do not assemble
4 on site. Nothing -- when our units go out to site, they are
5 typically 80 to 90 percent complete. The only thing that's
6 necessary on site is to seal the modular line where the units
7 are brought together, to complete the cross-connects, and to
8 seal the roof.

9 Sometimes there's some stucco work that's done,
10 but we don't do that. We let the local contractors do
11 that -- general contractors or people of that nature. The
12 only thing that we really concentrate on is those modular
13 units.

14 ASSEMBLY MEMBER DAUCHER: So does that change -- I
15 guess I'd ask Mr. Ness if that changed the definition.

16 MR. NESS: We have a definition in the school
17 facilities program that defines what a portable classroom is.
18 It means a classroom building of one or more stories that is
19 designed and constructed to be relocatable and transportable
20 over public streets and with respect to a single-story
21 portable classroom, is designed and constructed for
22 relocation without the separation of the roof or floor from
23 the building when measured at the most exterior walls has a
24 floor area not to exceed -- not in excess of 2,000 square
25 feet.

1 ASSEMBLY MEMBER DAUCHER: Does that -- just as
2 follow-up. Does that -- your units would fit that
3 description or they could?

4 MR. BUCKLEY: Well, it depends on what size unit
5 you're looking at. This project for Vista is a project that
6 we bid. And we say bid because the school district's --
7 there's many, many modular manufacturers in the state.

8 All of those modular manufacturers -- the majority
9 of them have gone out and received a contract with a school
10 district that is then piggybackable. So when a school
11 district comes to us for a job, they are also going to each
12 of those other manufacturers and in essence they're holding a
13 public bid on top of a public bid.

14 So when they come to us, it's already been bid
15 once and then it's in essence being bid a second time,
16 although it's not a formal public bid.

17 The issue with the Vista project is that it's a
18 large project with multiple school pods where there's four or
19 five classrooms per pod, and for those pods, we are
20 connecting --

21 ASSEMBLY MEMBER DAUCHER: So does it fit the
22 definition --

23 MR. BUCKLEY: -- units. I don't know.

24 MS. PARK: I don't think so.

25 MS. MORGAN: To amend our answer earlier, the

1 definition as Garry read into the record would need to be met
2 in order to be exempt from this opinion. If it does not --

3 CHAIRPERSON SHEEHAN: Relocatable --

4 MS. MORGAN: -- meet the definition, then it would
5 not -- then it would be subject to the AG opinion.

6 CHAIRPERSON SHEEHAN: Ms. Goldberg, did you have a
7 question?

8 ASSEMBLY MEMBER GOLDBERG: Actually no, just a
9 comment. I think at some point it isn't just a matter of
10 whether it's 1, 2, 50, or 100. One or two or three or four
11 is not a whole school without a bid. I mean that's the
12 difference. We're talking about building a whole school
13 unbid.

14 MS. PARK: Yeah.

15 ASSEMBLY MEMBER GOLDBERG: That's a big
16 difference. That's \$11 million versus a few hundred thousand
17 dollars.

18 The reason we want people to bid is so that we can
19 guarantee the public that their tax dollars are going to the
20 lowest bidder and it isn't negotiating. These are sealed
21 bids in which everybody knows what the specifications are and
22 you're trying to bid the contract so you're going to try to
23 get the cost down. That's why we ask there to be bids.

24 I'm sorry that this interfering with some folks.
25 I'm fighting for higher grants. That's how I think we solve

1 this. It is not to try to say that a whole school is the
2 same as a few portables being put on because the public's
3 going to look at us and say are you guys nuts.

4 You just built a school without a bid.

5 MS. PARK: Some of these schools are complete
6 schools with core facilities built in this manner.

7 MS. GIRARD: Can I just interject here?

8 CHAIRPERSON SHEEHAN: Yeah, oh. Ms. Girard.

9 MS. GIRARD: I never -- you brought up -- you had
10 mentioned that some schools don't have the ability or the
11 staff to --

12 MR. BUCKLEY: Currently the --

13 MS. GIRARD: -- put together a proposal and get it
14 out. Okay. And you're telling me they don't have
15 construction management companies that work in their behalf
16 because that's part of the cost of construction is
17 construction management company --

18 MR. BUCKLEY: Sure.

19 MS. GIRARD: -- that puts the bid out. So who are
20 they using?

21 MR. BUCKLEY: I don't know.

22 MS. GIRARD: Because I cannot believe that the
23 school district is running a construction job on themselves
24 so there's -- somebody's running this project. It will be
25 the -- the first person you bring onboard is the construction

1 management that works on your behalf as the school district
2 or whoever's building the school.

3 That is the person who handles the project, gets
4 the bids out, and takes care of it. Cost of construction.

5 MR. BUCKLEY: You may want to ask some of the
6 school district --

7 MS. GIRARD: Well, now you brought the project --
8 you brought it forward, so I'm asking you.

9 MR. BUCKLEY: Yes, ma'am. Typically we do not
10 deal with construction management firms on a case-by-case
11 basis. On the larger schools, we do. On the smaller
12 schools, we do not. So it depends on the size of the project
13 and it depends on the school district in question.

14 I heard a lot of noise back here. I'm sure
15 there's people with opinions about this. I don't have the
16 overall answer for each school district, but what I do know
17 is that there are school districts that are now purchasing
18 from us the two-unit, fully-portable schools and they're
19 doing it because they have no other way to get schools by
20 September.

21 And so what you're doing in effect by not
22 extending this piggyback out but by forcing action now is
23 causing schools to go out and purchase additional portable
24 units that are just going to be there four or five years from
25 now and need to be replaced with permanent again.

1 So you're extending a problem that already exists
2 in that there's a ton of portables out there that we might
3 have to dispose of. And this is going to come right back for
4 those schools that need space for September and cause another
5 problem.

6 CHAIRPERSON SHEEHAN: All right. Any further
7 questions? Thank you for your comments.

8 MR. BUCKLEY: Thank you.

9 CHAIRPERSON SHEEHAN: Is there anyone else who
10 would like to address the Board on this? Did you want to --

11 MR. HANSEN: Just a brief statement. Jay Hansen
12 with the State Building Construction Trade Council. We
13 thought that the Attorney General's opinion was quite clear
14 and I think that the Board took a courageous action at the
15 last meeting and by giving an extension, all that's going to
16 do is continue to put school districts in jeopardy. If
17 they've received faulty legal advice that told them that
18 piggyback contracting was okay to do, now that's between them
19 and their law firms.

20 They should follow the law. It's affecting a very
21 small amount of school districts. The vast majority of
22 school districts are doing things properly.

23 You know, our organization is advocating put it
24 out to bid. That's all we're asking for. It doesn't prevent
25 someone from using modular facilities, but it prevents

1 problems from happening when things don't go out to public
2 bid.

3 There was a company that went under called Turnkey
4 Construction that some of you might be familiar with earlier
5 this year -- or last year. They wasted millions and millions
6 and millions of dollars of taxpayer dollars because probably
7 part of it was they failed to put these projects out to bid
8 and it was a company that was not financially solvent.

9 And they left school districts holding the bag and
10 the school districts probably came here asking for you to get
11 extra money to pay for portable or modular facilities that
12 were never constructed.

13 And by letting these kind of companies continue to
14 do it, you know, sure, they've got a financial interest in
15 it. That's why they're asking for an extension.

16 You know, but you have a responsibility to the
17 taxpayers that you step forward on and took that action last
18 month. And we'd ask you to keep to that commitment and let's
19 just do things the right way.

20 All we're asking is for a modular facility be put
21 out to bid and I think the Attorney General's opinion was
22 very clear and school districts that want to continue to do
23 that same thing of putting themselves in legal jeopardy from
24 folks from who'd like to see things go out to public bid.

25 So I think the action that was taken last month

1 was the appropriate one and we'd like to ask that the Board
2 just stand by that. Thank you.

3 CHAIRPERSON SHEEHAN: Thank you, Mr. Hansen. Any
4 questions? Any other comments from Board members?

5 MS. MOORE: Anne, I just have a final comment.

6 CHAIRPERSON SHEEHAN: Sure.

7 MS. MOORE: I agree that the Attorney General has
8 provided their opinion. However, I'm still not clear as a
9 Board member what constitutes the type of portable or
10 relocatable or modular building that is considered in the
11 Attorney General's opinion and that is considered outside the
12 Attorney General's opinion.

13 And if it is that it's a permanent foundation that
14 is part of the definition, and yet I heard that it could --
15 the type of building could be on a permanent foundation. So
16 is there need for clarity or do you --

17 MS. PARK: I think the law is clear on what a
18 relocatable is.

19 MS. MOORE: And so the foundation doesn't matter.

20 MS. PARK: I do not believe that that is the big
21 issue here.

22 MS. MOORE: Okay.

23 MS. PARK: It's that definition that Garry read.
24 The fact is that the relocatable has to be able to move again
25 and even if you put it on a permanent foundation does not

1 mean that that building can't be moved again. And size.

2 MS. MOORE: And the definition that is referenced
3 here does not talk about a foundation.

4 MS. PARK: I do not believe that it was specific
5 to the foundation in the law, Garry?

6 CHAIRPERSON SHEEHAN: I don't recall that. He's
7 going to look that up and then we'll see. The classrooms
8 were small.

9 MR. NESS: The definition contained in the school
10 facilities program of what a portable classroom does not
11 address a foundation.

12 MS. MOORE: Okay. Good. Thank you.

13 CHAIRPERSON SHEEHAN: Okay. Did you have
14 something else you wanted to add? Okay. This is an action
15 item? All right. So is there a motion?

16 SENATOR LOWENTHAL: I so move to accept the
17 Attorney General Office's opinion and direct staff to provide
18 additional notices to ensure that school districts are aware
19 that all contracts for permanent modular construction signed
20 after January 25th, 2006, must be competitively bid in order
21 to receive funding consideration by the Board.

22 CHAIRPERSON SHEEHAN: Which is the staff's
23 recommendation. Is there a second on that motion?

24 A second. One question that I would have is that
25 the staff is, in response to Mr. Duffy's concern in terms of

1 any further clarification, as you get questions to be able to
2 post that information to people so that we can get as much
3 information out there so that people are not inadvertently
4 making --

5 MS. PARK: We have had some questions and we have
6 responded to those --

7 CHAIRPERSON SHEEHAN: Okay.

8 MS. PARK: -- as they've come in. And we've also
9 tried to put further clarification on our Web site.

10 CHAIRPERSON SHEEHAN: Yeah. It may be helpful to
11 put -- you know, FAQs or some sort of question and answer on
12 the Web site to clarify for some of the districts who may
13 have questions about this, you know, like the questions
14 Ms. Moore had and what are the definitions. It could be
15 helpful.

16 MS. PARK: Most of them that -- you know, they --
17 when they've described their facilities, they have been
18 relocatable.

19 CHAIRPERSON SHEEHAN: Okay. Okay. So we have a
20 motion and a second to accept the staff recommendations. All
21 those in favor say aye.

22 (Ayes)

23 CHAIRPERSON SHEEHAN: Any opposed? Any
24 abstentions? That motion carries. All right. The final --

25 MS. PARK: The next item on Table 14, page 236,