
Committee Meeting

of

JOINT COMMITTEE ON THE PUBLIC SCHOOLS

*“Discussion on the Interdistrict Public School Choice Program;
and update on the New Jersey Schools Construction Corporation”*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: April 11, 2005
9:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Ronald L. Rice, Chair
Senator Byron M. Baer
Senator Martha W. Bark
Senator Thomas H. Kean Jr.
Assemblyman Patrick J. Diegnan Jr.
Assemblyman Joseph Vas
Assemblyman Bill Baroni
Assemblyman Joseph R. Malone III



ALSO PRESENT:

Melanie M. Schulz
Executive Director

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SENATOR RONALD L. RICE (Chair): Okay. If I could have some silence, please, we're going to start the meeting.

First of all, let me thank my colleagues for coming. I suspect that it's a possibility that throughout the break I may be calling meetings of this Committee. So I just want you to be prepared to do as I did for many years as a Marine -- ready to respond to action. A lot of things are taking place and our school construction programs are very important to this State. There's a lot of criticism and lack of understanding of the programs. So we're going to have discussions on that this morning and be brought up to date.

By the same token, the New Jersey Statute 18A:36B-11 requires the Commissioner of Education to report annually to this body and to the Legislature, as well as to the State Board of Education, on the effectiveness of the Interdistrict Public School Choice. And we've, kind of, been remiss over the years in actually getting the study done, which by statute we must get done, because the Interdistrict Public School Choice law includes a mandate for this Committee to undertake the study of the first two years of implementation.

And so what we're going to do this morning is get a roll call. Other members will be responding, but we're not going to wait on them. And at some point in time, hopefully we'll have enough members here to make a decision on how we're going to undertake this study, because there is a cost factor, which is already budgeted for us to do it. Given the state of the economics, I asked the Commissioner to come in to, kind of, indicate to us his concerns and how to best get this done so we won't be in a violation of our mandate, as well as our statute.

And if, in fact, we don't have enough members here to take a vote, then I'm going to ask the staff to pull that vote, if we legally can, by phone. If we cannot legally do it by phone, then I'm going to call another meeting of this Committee to take that vote. We've got to be serious about our charges and our responsibilities.

With that, I'm going to ask the Commissioner of Education to come up with his staff and to discuss the Interdistrict Public School Choice.

We're going to have a roll call first.

MS. SCHULZ (Executive Director): Senator Bark?

SENATOR BARK: Here.

MS. SCHULZ: Senator Kean?

SENATOR KEAN: Here.

MS. SCHULZ: Senator Rice?

SENATOR RICE: Here.

MS. SCHULZ: Assemblyman Diegnan?

ASSEMBLYMAN DIEGNAN: Here.

MS. SCHULZ: Assemblyman Malone.

ASSEMBLYMAN MALONE: Here.

MS. SCHULZ: Assemblyman Vas.

ASSEMBLYMAN VAS: Here.

MS. SCHULZ: Six members are present.

SENATOR RICE: Thank you.

Commissioner, you can proceed.

COMMISSIONER WILLIAM L. LIBRERA: Good morning, Mr. Chairman. Good morning, members of the Committee. It's always a privilege to be here, and we look forward to telling you what we think

are the salient things about our interdistrict choice program, as well as talking to you about some issues that are connected with that. And certainly, the Chair just made reference to that, in terms of the study.

What we brought with us today is a report on interdistrict choice, which is what we annually provide to the State Board, as well as to the Legislature, and certainly to this Committee. We apologize for not getting it to you sooner, in advance of this meeting. But what I thought we would do instead was just give you a brief summary of what's in that, so that, at your leisure, you could read further.

The interdistrict choice program has been very successful in this state. It is limited in scope, as you know, but those school districts that participate, and certainly the families that choose to participate, are very supportive of it. And it continues to give us very positive results. And so we hope that we'll be able to continue it, at least; expand it perhaps at another time -- that might be an option. But it is something that is very important, we think, to public education in this state.

We are very supportive of public school choice, because we think that there are significant benefits that come to students, as well as teachers and families and communities, when they have an opportunity to make a choice between their neighborhood school, or their community school, and another school.

Now, we have some examples, in this state, where districts themselves have used choice. And there are many variations in that. But what we're talking about in the interdistrict choice is when there is a district that's been designated and in accordance with the legislation, and then parents may

opt for their students to attend them so long as there's room. Now, that has been a successful program.

Now, with the flat funding -- and we certainly all know the pressures that have produced the need for the budget to have flat funding, and we also can appreciate how that has been applied consistently across all areas -- that has had a significant effect on interdistrict choice programming in this way: Any new interdistrict choice district will not get any additional funds because the flat funding for choice doesn't allow that. So for them, it is really not -- doesn't contain any of the financial incentives because they're new. For places that have had interdistrict choice, if their enrollment was exactly the same next year, proposed, as it was this year, then it wouldn't have an impact. That's almost never the case. In most cases, we're talking about an increase. So therefore, if it increases, they are suffering, with flat funding, some consequences of being a part of this program.

Those who are with a smaller enrollment get a benefit. But flat funding has problems as it's applied across all of these areas. And we don't say that because we understand that there aren't problems with flat funding in every area, but we think that as we're talking about interdistrict choice you need to know the specifics of that and how it applies. Now, under ordinary circumstances -- that is, under the circumstances where additional enrollment were to be supported in this program, the difference between flat funding and what that would involve is about \$2.4 million. That's not by way of us coming today and asking for that; that's by way of giving you information about what the differences are between this program as it has been in the past and as it will be if flat funding does hold.

The third thing that I would like to mention is, we feel there is a need to study the scope of choice in this state. And I know that the Joint Committee has a similar obligation. I have been in conversation with the Chair about the possibility of us doing this on a shared basis, so that we don't do a study independently of a study that you might want to do. And I think that there would be significant benefits for us to look beyond the issue of just interdistrict choice. Because choice has different forms in this state. Certainly charters are a part, we see, of the public school choice possibilities.

So what I wanted to do is give you a brief overview and then to talk about the issue of funding. And the third thing was to ask that you consider that we serve as partners in a study of choice. We have already developed a scope, and I think you have as well, because I think you've discussed this. Our ability to do this together would give us a more comprehensive approach to choice, and I think would help us answer a number of questions about how we would improve this. Certainly also, to the degree that we could get some preliminary information, it would help on the matter of reauthorization of choice, which we certainly hope will happen.

Joining me today, to my left, is Richard Ten Eyck, who is Assistant Commissioner for Educational Programs. And in that Division, he and the gentlemen -- two people to my right -- Michael Klavon now work, and have had significant involvement with choice. And the gentleman immediately to my right is Richard Rosenberg, Assistant Commissioner of Finance. And Michael Klavon is the Assistant to the Commissioner for Innovative Programs.

So having covered those three things, which I think are the salient issues in and around choice, we are now able to -- and would welcome an opportunity to respond to your questions and/or comments.

SENATOR RICE: Any questions from the Committee members?
Senator.

SENATOR KEAN: Thank you, Mr. Chairman, and through you, Mr. Commissioner, it's good to see you on this gorgeous day.

A question. You said that flat funding has hurt interschool choice. Is that because you've -- have you ever seen a dropoff in participation in the program, or is it -- your comment -- more a theoretical comment saying that because of less funding each school district is impacted more significantly when it participates in this program, because it can't pay for additional students? Have you noticed schools not offering the program that previously had offered? Or on the ground, can you give me some examples?

COMMISSIONER LIBRERA: I can tell you that we have not seen that in the past, because in the past we haven't been funded that way. The flat funding is a prospective issue for next year. And so we have districts that are raising those questions and saying, "This has this impact on us." And if we're getting flat funding in aid also, and we are not getting some additional money for the students we get through choice, we see ourselves, they say, as being penalized twice on this. So it's not so much what we've seen, it's what they talk about.

Richard, would you like to add to that, please?

SENATOR KEAN: And the flat funding-- As part of the question, is the flat funding -- the school districts of the last three years, four years -- has that played into this at all?

ASST. COMMISSIONER RICHARD C. TEN EYCK:

Good morning.

SENATOR KEAN: Good morning.

ASSISTANT COMMISSIONER TEN EYCK: Yes, it has. There have been several districts that have been negatively impacted by the fact that their funding for new students, when there has been an enrollment change, has been less than it had been in a previous year. In some instances, that's compensated for during the second cycle of enrollment figures. But probably the more specific issue is new choice districts that have been approved, which have indicated that they will not be able to move forward in this coming year with their current funding.

COMMISSIONER LIBRERA: The other thing, Senator, is that we have had some conversations with participating school districts who wondered now whether they would want to continue, given the prospects of this. But it is so much more prospectively than it is in terms of what we have seen in the past.

SENATOR KEAN: And the difference in the amount you're talking about -- is that 2.4 million?

COMMISSIONER LIBRERA: I believe so.

Richard, 2.4 million?

ASST. COMMISSIONER RICHARD ROSENBERG:

That's correct, Senator.

COMMISSIONER LIBRERA: Yes.

ASSISTANT COMMISSIONER ROSENBERG: Yes.

SENATOR KEAN: So we should take that back to the Budget Committee, as well.

COMMISSIONER LIBRERA: Well, again, because we represent a large part of the budget -- and we certainly understand that flat funding and the reasons for flat funding, as they are a part of this budget -- we don't want our comments to be construed as advocating any particular amount. But what we wanted to do was tell you what the difference was between where we've been and what this program would look like if it was funded as it has been in the best years that we've had.

SENATOR KEAN: We just assume that you're giving us fact-based statements and not advocating one thing or the other, sir, but--

COMMISSIONER LIBRERA: Absolutely.

SENATOR KEAN: --information we can bring back to the Budget Committee, if we so chose?

COMMISSIONER LIBRERA: Yep. Said it better than I.

SENATOR KEAN: Thank you.

COMMISSIONER LIBRERA: Thank you.

SENATOR KEAN: Thank you, Mr. Chairman.

SENATOR RICE: Assemblyman Malone.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

Commissioner, welcome.

How many students are involved in this program?

COMMISSIONER LIBRERA: I'll ask Richard to answer that question.

ASSISTANT COMMISSIONER TEN EYCK: Michael, do you have--

MICHAEL K. KLAVON: Eight hundred.

COMMISSIONER LIBRERA: I would have thought 750, approximately 800.

ASSEMBLYMAN MALONE: Okay. And do we know specifically what schools these individuals have been going to, and how many students-- What is the most impacted school that the students have gone to?

COMMISSIONER LIBRERA: Excuse me.

Michael, would you please answer that question.

MR. KLAVON: Yes. I'll answer the second part first. I think the one school district that -- well, two -- that would be impacted significantly, as the Assistant Commissioner indicated -- Lower Township in Cape May -- was a perspective new school to the program; and then the Englewood School District also, because of the number of students that they accept annually into their program to deal with the issues unique to Englewood. Those would be the two that are most impacted, in my opinion. As far as the number of choice districts, there is a chart in here that gives the schools by county--

ASSEMBLYMAN MALONE: But do you know specifically what schools are accepting the largest number of students?

MR. KLAVON: Yes. Again, Englewood would be the one that accepts the most. But I'll be happy to supply the Committee, through the Chair--

ASSEMBLYMAN MALONE: Do you know what that number is?

MR. KLAVON: No. In Englewood?

ASSEMBLYMAN MALONE: Yes.

MR. KLAVON: I'm guesstimating approximately 40 to 50 students.

ASSEMBLYMAN MALONE: And how big is the entire school district?

MR. KLAVON: In Englewood, I would say around 200 to 250 students -- choice students, not total students -- involved in their programs.

ASSEMBLYMAN MALONE: But how big is the school district, the number of students?

MR. KLAVON: Oh, I'm sorry.

ASSISTANT COMMISSIONER ROSENBERG: What's the number, total number?

MR. KLAVON: In Englewood, about 2,000, I think.

ASSISTANT COMMISSIONER ROSENBERG: Of choice?

MR. KLAVON: Of choice. About -- I'm doing the numbers in my head.

ASSEMBLYMAN MALONE: No. I'm just saying the whole school district. How big is the entire school district in Englewood -- the number of students, total students?

COMMISSIONER LIBRERA: Approximately 2,000.

ASSEMBLYMAN MALONE: Two thousand.

COMMISSIONER LIBRERA: The other thing is that I believe most of the choice students come there in the high school, with the Academy program, which is a part of special circumstances. And so what Michael was talking about -- 40 to 50 -- that is per year. So, over a four-year period, we're talking about approximately 200. And that's, by far, the largest.

ASSEMBLYMAN MALONE: Okay. Thank you very much.

COMMISSIONER LIBRERA: And the reason for that is, that's a countywide choice system, building on a choice system in that county, in Bergen County. A little different than other counties.

SENATOR RICE: Any other questions from any of the members?
(no response)

Commissioner, one of the priorities of this particular meeting this morning with you is the need to satisfy the statute and the mandate to this Committee in reference to doing this study. The issue-- We sent letters out to the members requesting their preference on the study. And there were one or two members -- I don't know if they're here -- that felt that we should have a RFP out and do an independent study. But I know regardless of how we do it, versus having it done somewhat inhouse, you mentioned the word *shared*. Could you elaborate on the differences and the cost factors? And I know that, I think it was 2002, we did go have a RFP, and I understand that maybe one person showed up and everybody bid it, and then there was another company. Can you just, kind of, talk about that?

COMMISSIONER LIBRERA: The first thing I'd like to do is make sure that what I'm saying about this approach is correct.

Michael, when we're talking about our proposal to study this, we're talking about a Memorandum of Agreement -- a Memorandum of Understanding--

MR. KLAVON: That's correct.

COMMISSIONER LIBRERA: --which we are able to do with public institutions of higher education, which is different than a RFP process, but it is entirely permissible. I think that it's always hard to tell what the cost would be on a MOU versus a RFP if you don't go and actually conduct the

RFP, except that I have found that our Memorandums of Understanding have produced, in very timely ways, studies that have often been representative of fewer overall dollars than a RFP, because public institutions already have people on staff. And so, in part, what it is that we get in their participation is somewhat offset by the contributions of the public university or the public institution to them. So, in this instance, the benefits are -- I think that the costs would be under what the RFP would be for you. And I also know that our ability to move quickly is without question. A RFP would take you much longer. You'd have to spend time in terms of how you were to craft this. And since we would regard our part of the choice to be larger than your part of what needs to be studied, the lion's share of the cost in this would come from the Department.

Naturally, if you would like to reverse that fraction, we would be interested. (laughter) But we don't think that that would be necessary, and we think we'd probably be talking about something on a three-to-one basis. Where, that is, we take 75 percent of this, and that you would need to take 25 percent, and that would be approximately on \$100,000.

We have already spoken with people who would do this for us. So it would be simply a matter of reviewing our Memorandum of Understanding -- that's in draft form, not executed yet -- seeing what it is, seeing what we're doing, seeing what you need to do, and then asking if you could join in on this. If you did, there would be value added to our work and ours would add value to yours, and we would get a comprehensive view about choice in all of its -- or in most of it anyway, most of its forms. So we think that it is a smart move for us to do this together.

ASSEMBLYMAN VAS: Mr. Chairman, in light of the continuing budget crisis that this State finds itself in, it would seem to me that the Commissioner's proposal would make both economic sense and, I think, practical sense. We're under a statutory mandate to conduct this study. We're at the tail end of the statutory period under which this interdistrict program was established. And I think it behooves us to move as quickly as possible. And if the Chairman would agree, then I would be pleased to make a motion to move forward in that fashion.

SENATOR KEAN: Second.

SENATOR RICE: I have a motion. I have a second.

Any questions from the membership? (no response)

Okay. We'll entertain the question on a roll -- all in favor say yea, all opposed say nay. (yea votes)

Roll call?

MS. SCHULZ: Senator Bark?

SENATOR BARK: Aye.

MS. SCHULZ: Senator Kean?

SENATOR KEAN: Aye.

MS. SCHULZ: Senator Rice?

SENATOR RICE: Yes.

MS. SCHULZ: Assemblyman Diegnan?

ASSEMBLYMAN DIEGNAN: Yes.

MS. SCHULZ: Assemblyman Baroni?

ASSEMBLYMAN BARONI: Yes.

MS. SCHULZ: Assemblyman Malone?

ASSEMBLYMAN MALONE: Yes.

MS. SCHULZ: Assemblyman Vas?

ASSEMBLYMAN VAS: Yes.

SENATOR RICE: Okay. We have an approval from the bodies here, but we are short of one vote. I will do what I can to get that vote as the members come in, and we will notify you whether or not we have a majority vote. Okay? And if, in fact, we do that, what time frames are we talking about?

COMMISSIONER LIBRERA: Well, I think because we are in April, and because you do have a requirement by the end of June, I think we could get some preliminary information sufficient to satisfy your requirement. People who are going to do this work for us from Rutgers have done outstanding work for us, and they are prepared to start. But they can't do something this comprehensive and get this done in a month and a half. But they will be able to give us -- that is, the Joint Subcommittee, with that additional vote that I would anticipate you would be able to get, and the Department of Ed -- some very useful information, probably within two months. I will tell you when I speak to them about when they could complete it, exactly what that date would be on the completion of the whole report. And we would share with you the MOU that we have been working on, so that you'd be prepared to respond quickly.

SENATOR RICE: If you'd just wait a moment, I see Senator Baer coming in, and that may be the possibility of a vote to give you.

COMMISSIONER LIBRERA: We'll be pleased to wait for that one additional vote, as Senator Baer arrives -- a man long-known for thinking on his feet as he's walking to the Chair.

SENATOR RICE: Let the record reflect that Senator Baer is here.
Good morning, Senator Baer.

SENATOR BAER: Good morning.

SENATOR RICE: We have been going over Interdistrict Public School Choice, and I know that you chair our Choice Committee. And I believe you may have some questions you may want to ask the Commissioner. We took a vote -- preliminary -- relating to trying to get this mandatory study, which you are aware of, done, that should have been done some time ago. And then we're on a tight time frame. And we have the majority of votes here. We need one more vote. Whether it's you or someone else, I would like to give you an opportunity to raise any questions you have to the Commissioner, first.

Senator Baer.

SENATOR BAER: Thank you, Mr. Chairman.

I do have a couple questions. The questions are: what districts have had Interdistrict School Choice funds totally withdrawn -- as you know, my hometown district has had that experience -- and what criteria was used in withdrawing those funds?

MR. KLAVON: Basically, the criteria, Senator, were the flat funding of all of the school districts in the state. And so, therefore, the Interdistrict Public School Choice schools were impacted by that. And the two in particular would be the new one, Lower Township in Cape May, and of course Englewood, your hometown, with regard to the fact that new students coming in would not receive the additional aid.

COMMISSIONER LIBRERA: Senator, I would add that because the special circumstances in Englewood draw additional aid from the State of New Jersey beyond interdistrict choice money -- the flat funding used as a

base, their aid as a district without this special money -- so Englewood has had a negative impact on two sides of this. And so that sum of money is substantial. The criterion, again, has been flat funding. And as that was applied, Englewood is the school district most severely feeling an impact on flat funding as it applies to choice districts.

SENATOR BAER: Englewood would be glad if their experience was flat funding, but they have had flat nothing in interdistrict school choice. (laughter) Because they have had experience on loss of other funds, it is particularly difficult for them.

COMMISSIONER LIBRERA: I understand that very well. And it is because of a difference of opinion as to what flat funding means and how it's applied that Englewood has had this impact. We, too, would be delighted if they were facing flat funding under this special circumstance. But because flat funding has been defined as source of basic aid, not the special circumstances in Englewood, that's what has Englewood in that particular category most negatively effected by that definition. And it is not a definition of ours.

SENATOR BAER: I will not pursue further questions, since you've explained the definition was not created within your Department.

COMMISSIONER LIBRERA: That's correct.

SENATOR BAER: I assume that other interdistrict school choice programs have not gotten flat funding by whatever definition--

COMMISSIONER LIBRERA: I don't believe that's true. All--

SENATOR BAER: Excuse me. When I say other, I mean all other.

COMMISSIONER LIBRERA: What flat funding has meant in the other districts -- correct me, if I'm wrong, Michael -- but if-- They're getting a level of funding they got last year. So any districts getting additional students in interdistrict choice will have a consequence, because their enrollment will not rise proportionately. Any newly selected interdistrict choice district who has had no students in the past will also be affected because flat funding applies to funding that they would have had under this fiscal year.

So you have two levels of impact here: You have the special circumstances of Englewood, and we agree in the way that you've characterized this. We're troubled by that, as I know you are. But also, in terms of other districts who are getting additional students through choice, there is a negative impact to them because they are involved in flat funding across the board, as all districts are, and they are getting additional students because they elect to be a part of this program. So there's two sides to this impact that we have described before, in terms of how it affects districts.

SENATOR BAER: Commissioner, I assume that many of the interdistrict school choice programs operate as Englewood was operating -- on the basis that the choice was being extended to an additional class each year. I assume, when you speak about flat funding, you mean that that choice is not extended to an additional class each year.

COMMISSIONER LIBRERA: Well, it could be an additional class. It could be that an incoming class replaced an outgoing class. If, as an example, you are an interdistrict high school and you were a fully interdistrict high school -- that is, you had students grades 9 through 12 this year -- at the end of this year, the 12th graders would leave, the 9th graders would come in. If there was more 9th graders coming in than 12th graders going out, then you

would have a negative impact. On the other side of it, because there is no differentiation on flat funding, just one of limitations doing that, you have no ability to adjust based on having fewer students. So if you ended up with fewer students, you benefitted through flat funding.

So this is -- and I didn't mean to complicate this. This really-- Flat funding is not sensitive to enrollment issues. And since interdistrict choice is largely about enrollment issues, they -- all those districts are feeling an impact by flat funding. Which I said, we understand the issues connected with flat funding in this budget. Know that all of us are grappling with that. So this is not an appeal for changing this only in flat funding. It's a fact-sensitive issue that we want your understanding.

SENATOR BAER: Commissioner, when it comes to the functioning of flat funding, has your legal department analyzed what effect that would have where there is a Supreme Court order requiring funding of the system to relieve problems?

COMMISSIONER LIBRERA: Not done yet, but the questions are obvious in this. That when it is connected with a Supreme Court decision, that would seem to raise particular issues. And they haven't resolved that yet, although those issues are pretty well-known -- about what is the origin of this in the first place. And now you're talking Englewood, the special circumstances of Englewood.

SENATOR BAER: Yes, I am.

I would appreciate it if you could accelerate that determination, since Englewood is in a pretty desperate situation.

Thank you, Mr. Chairman.

COMMISSIONER LIBRERA: Well, thank you, Senator.

I will do what I can to see if that can be expedited.

SENATOR RICE: Senator Baer, we took a vote. Is your vote in the affirmative on proceeding with the statutory mandate to do the study on interdistrict?

SENATOR BAER: Yes. I'm voting affirmative for this study to do--

SENATOR RICE: Let the record reflect that it's passed.

You have permission to move forward with--

I also want to encourage you to get back with the representatives of that district, where Englewood is, because there were special circumstances. And at one time, we thought that that district was down south someplace, pre-ground (indiscernible), for instance, Board of Education. Sometime we think it still is, but I think they're doing better. But also--

COMMISSIONER LIBRERA: They are doing better, sir.

SENATOR RICE: What I'm going to do is, we're going to be asking the Chair of the Choice District Subcommittee to maybe take a look at, during the break, holding some more hearings, which he has a subcommittee, and maybe even holding some hearings in some of those choice districts so that we can hear those problems as we go through our budgetary deliberations. I think that's important, and why I'm here, and why I see these Schools Construction people, as well as your office here; and I also see a representative from Ms. Cooper's office, whom I guess we're going to get to see quite a bit. I'm going to just let the members of this Committee know that if you need the Joint Committee to respond to your districts for hearings -- formal or informal hearings -- just let me know, and we'll try to entertain you with that. And also, I know that the chair of the Early Childhood Education piece, Assemblyman

Vas, had attempted to put together a meeting a couple of months ago, and I'm going to encourage him to do that, too.

I know we're very busy, but I think this whole budget, as related to education, is very important. And I've got a feeling that we're not going to strike a budget by June 30. I'm saying that on the record, because all of us have concerns about a lot of things. But education has got to stay in the forefront. We've got to know just what it means as to what we're doing. Okay?

Thank you very much.

COMMISSIONER LIBRERA: Thank you very much for this opportunity, and certainly thank you very much for the continued support. And I think that the decision made today, that we would work as partners in this study, will prove to be beneficial to the State and, in particular, to the districts, and will certainly support teaching and learning, which I know is always in the forefront of your minds, as well as ours.

I want to thank you, again, for all of the help that you continue to give us. Thank you.

SENATOR RICE: Thank you very much.

Committee members, do you want to take, maybe, a two- or three-minute break before we go on to SCC? Let's break for three minutes. I'll be liberal. Let's make it five.

RECESS

AFTER RECESS:

SENATOR RICE: Okay. I'm going to ask everyone to take their seats, please, or to step outside.

Okay. We're going to start the second half of our agenda, which deals with the Schools Construction program. This is to give an update to the members as to where we are with the program, and to be quite frank, to get an update on the responses to all of the controversies and contradictions that we have actually witnessed in the media. I always tell people, don't always believe what you read in public papers. But I think it's important that we know exactly what's going on, and what changes are being made.

By the same token, I think the Committee members, by now, know that we have an Inspector General, Ms. Cooper, who has been brought on board by Acting Governor Codey. And prior to the Schools Construction Corporation, with EDA, we had a whole maze of oversight, which is very important, and one of the concerns that I remember reading when the Supreme Court made its decision that we have to address the Abbott districts. Number one, that's a very serious decision, and we're going to abide by it. And there may be legislative fighting, an administrative fight over that decision, but there are those of us who are going to hold the State accountable, regardless of deficits, to meet those mandates.

But the concern that State government had was that the organized crime may move into school construction and other areas of the state, with so much money in development -- not just in school construction, but housing, highways, etc. And if you recall, reading the papers, some of the experts from the State Police, and others who were organized -- who were experts in organized crime-- But then the State also said something else -- that the job was going to be a tough one, primarily because they were also concerned -- had

to monitor “unscrupulous” developers and contractors who liked it below prices and things of that magnitude, or skimmed the work. And so this oversight was very necessary. But I don’t understand why oversight has to be such a maze when we have attorney generals and the State Police and other agencies to help us with the process. And so I understand that the Inspector General was a response to the ethic concerns of government, even though we have agencies that are supposed to be looking at those things. And I understand that there had to be a response to the media. And so immediately the Inspector General decided to cease moving forward with contracts and some implementation of programs, which I have a very serious problem with. And I will be talking to the Governor and Ms. Cooper about what that means.

But I want an opportunity, before any of us talk to the Governor or Ms. Cooper and others, that we’ll at least understand from you, Mr. Spencer, where we are and what it means to you. I can say this for the public record: The community I represent, which reflects mostly the Abbott districts, right now are ready to mobilize against government if, in fact, these programs don’t get started and there are barriers. And I also have enough sense to know that we can oversight and we can review contracts and keep momentum going. And if the person in charge of overseeing can’t do that, then the government is going to have to help us regroup.

So with that, I’m going to open the floor to you for your comments, and then we’ll open up for Committee members to raise any questions that they may have concerning this issue.

Thank you.

JOHN F. SPENCER: Thank you, Mr. Chairman and members of the Committee, for allowing me to appear before you this morning.

Joining me, I've asked Jerry Murphy, my Chief Operating Officer; Barbara Bohi to my left, who does my Policy, Planning, and Legal Affairs work; and Kellie Drakeford, to my right, who does my Diversity, Small Business and Government Affairs work.

I'd like to address a number of critical issues facing the Schools Construction program, as well as correct a lot of misinformation that's been spread recently about how the programs are managed. There are three areas I'm going to cover: First, there needs to be a better understanding why there is a difference in project costs between SCC-managed and non-SCC-managed work. Second, I'd like to talk about change orders and requirements for additional work that have been mischaracterized as cost overruns. And finally, I want to identify a significant number of items that were not considered when the original \$8.6 billion allocation was established. And then I'll address the status as to where we are with the Inspector General's independent review.

First, why is there a difference in building costs or talk about bricks and mortars between SCC- and non-SCC-managed projects? In a recent media analysis, a limited comparison was made between 19 suburban schools mainly located in the south, and six urban schools mainly located in the north. The analysis said that it cost \$145 a square foot to build the suburban schools, and \$184 a square foot to build the urban schools. The analysis made it very clear to me that the average citizen needs to understand why bricks and mortars will always be higher when building a school in an urban setting than in a suburban setting.

First, the old real estate saying: location, location. Over 60 percent of the SCC's managed work are in four counties: Hudson, Essex, Passaic, and Union. Labor costs are higher -- 5 to 10 percent higher for certain trades.

Increased labor costs can account for an additional \$6 a square foot on a school project.

Second, SCC is faced with numerous site restrictions on urban sites. When you build in a densely populated area, there are things that add to the cost of a project. We estimate this can add 10 percent onto the cost of a school. Delivering construction materials, lay-down areas, the complication of limited staging areas, security are all higher on an urban site. Urban sites are often built right up against sidewalks and property lines where scaffolding, pedestrian protection, retaining walls, rerouting utilities, and underground shoring of adjacent buildings is often required. Urban districts are also limited in land, unlike suburban districts, so the SCC builds vertically, as opposed to horizontally. Multi-story facilities are more expensive because of such items as elevators, mechanical shafts, and more stairwells.

For example, the two elevators for the Newark Science High School is going to cost over \$800,000.

Third, for SCC-managed projects, we exceed Federal and local code standards. I require fire sprinklers in all our schools; we have radon detection; and because we're building community schools, we have emergency power generators, so those schools can be used as shelters in time of need.

We also mandate higher safety for our sites, in order to assure that our children and the teachers are given or afforded the best possible safe environment as this work goes on in those schools.

Fourth, we're building schools that are long-lasting and low-maintenance. To that end, we use materials that may have a higher up-front cost, but have long-term sustainability and lower maintenance, such as block and brick, as opposed to sheetrock and vinyl siding.

Lastly, recent comparisons on building costs didn't take into account inflation. It's clear to say that schools were built in a three- to four-year time frame, but you need, when you compare schools, schools that were built in the same year. In 2004, as an example, the cost of steel skyrocketed. The *Engineering News Record* reported an average annual inflation in the construction industry at 3.5 percent each year. This could increase our cost by 5 percent.

Just to recap: location, site restrictions, safety standards, material sustainability, and multi-story construction will always result in bricks and mortar costs in urban sites costing more per square foot than in suburban sites.

Aside from the bricks and mortars, I'd now like to explain some other project costs that SCC must consider when building a school in a densely populated urban setting.

First, land acquisition: Once a district identifies a site, that site is approved by the DOE, the SCC is charged with purchasing that site. As you well know, land in New Jersey is very expensive. Suburban districts, on the other hand, a lot of times own the property that they're building their schools on.

Second, relocation: Once we acquire the property, the SCC is required to relocate the tenants, homeowners, and the businesses that are on those properties.

Third, environmental remediation: Let me be clear where I start this one. The SCC does not build a school on a site if it is not safe. The whole point of this program is to provide students and teachers with safe and healthy schools.

As I indicated before, Trenton does not pick the sites. Districts working in municipalities identify the sites that we need to look at. After those sites are given to the Schools Construction Corporation, we only consider them if they adhere to strict DEP requirements for site remediation. The SCC thoroughly tests every site. If the site is unsafe and not suitable for a school, then the school does not use it -- plain and simple. If it is suitable, the DEP requires that every school site must be cleaned to what would be acceptable for residential development. This cleanup level assumes occupancy of a family with children 24 hours a day, seven days a week, 365 days a year.

Demolition is another cost. Urban sites are almost always previously occupied sites with two or three generations of buildings. Often those buildings contained heavy industry. In contrast, suburban sites are often rural farmland or have fewer buildings that require less remediation or demolition.

Another cost associated is preserving historically significant structures. That issue exists right here in Trenton. We have the Trenton Central High School, a classic structure. Do we spend additional money to save a classic structure, or do you demolish the structure and build a cheaper replacement school?

As you can see, the challenges in urban settings regarding bricks and mortars, as well as relocation, remediation, demolition, and historic preservation, are important factors when it comes to realizing the differences in project costs between SCC and non-SCC managed work.

A lot has recently also been written about project management firms and the architects and engineers that we retain to do our work. Let me go back a little bit in history. We retained project management firms directly

after the mandate from the Supreme Court and the Facility Act was put in place. We needed project management staff on board immediately. It would not have been the right decision to hire all permanent SCC staff to perform that work. Recent reports have questioned why we pay PMFs more than suburban districts pay construction management firms. It's very simple. We demand much, much more from them. Their scopes of work are not comparable.

For example, in every school, our PMFs are on board from planning to predevelopment to school opening. Our PMFs also assist with site identification and feasibility studies, as well as managing the architect and preparing construction contracts, cost estimates, and code review. Finally, we asked them to do construction management. Districts typically only utilize a management firm during the construction phase of their projects.

Moving forward, now that I have resources in place -- and we've been at this for two-and-a-half years -- we at the SCC intend to rely on my inhouse staff for more of that up-front, predevelopment work. And we will retain professional firms in the future to do the construction part of the job for us. This will reduce the work scope for the PMFs and reduce costs moving forward.

I'd like to briefly, now, talk about the role of architects and what we ask our architects and our engineers to do. This was another point of a recent debate. And I'd like to set the record straight by explaining why our architects may be paid more than a district architect. Let me preface this by saying that a 3 percent fee that had been reported did not include a lot of engineering services -- civil site design, site survey, soil borings, geothermal,

and environmental design, to name a few. It also was the cost to design two schools in which the only difference was the color of the brick and the block.

A 6 to 6.5 percent architectural and engineering fee is appropriate for a new greenfield site in suburbia. On average, the SCC's architectural and engineering fees are around 8.5 percent. But again, we need to compare the scope of services.

I bring our architects on board at the predevelopment stage, which means they're responsible for developing program educational requirements, as well as schematic design, design development, contract documents, and then providing shop drawing support during construction.

Second, our architects provide all required engineering services, including services such as testing, surveying, civil design, etc.

Third, our architects typically have to design multi-story buildings, which are more complicated than designing single-story schools.

Lastly, to make our program as inclusive as possible, our architects and engineers are given single assignments. The SCC prides itself in that we are trying to make this program as inclusive as possible. We want to make as many opportunities available to small, minority-, and women-owned businesses as possible. We don't want large architectural firms to monopolize the program. As a result, in 2004, nearly 60 percent of my \$80 million in design awards went to small, minority- and women-owned firms, something we're very proud of. In contrast, districts usually lump their projects together, which means that their architects will handle multiple assignments. I will only package an assignment when there are multiple schools on a particular site.

But these are just not my opinions. In a letter to the editor published in the *Philadelphia Inquirer* on April 1, 2005, Bruce Turner, President of the New Jersey Society of Architects, said the following:

“Chief among the inaccuracies is comparing the school projects with other projects. This is like comparing apples and oranges. It makes no sense. Projects run by the Schools Construction Corporation mandate that the architect include a host of services generally not included in a standard architectural contract. In a SCC project, the architect is responsible for and must provide the costs of all permit fees, construction testing, soil testing, civil engineering, landscape design, E-Rate consulting, acoustical design, cost estimating, and environmental assessment. These are in addition to the normal services provided by an architect on most projects, school or otherwise. Simply put, architects must provide much broader services on a school construction project, which gives the appearance of higher costs. In truth, only the distribution of costs is changed. The total cost of the services provided is not substantially different.”

The following was written by Scott Prisco, of The Prisco Group Architects, which is the firm that designed the schools in Howell Township, the schools that were mentioned in the recent media.

“I read the article and was quite disconcerted how the facts were comparing apples and oranges. First of all, the architectural fee did not include site survey, site design, soil borings, soil/environmental consultants. We designed two sister schools. Our fees were reduced significantly because they were the same design except for the colors. We used metal studs and gypsum board interior construction, probably not appropriate for Abbott districts. We used vinyl siding at the middle school at areas 10 feet above grade.”

I'd now like to talk briefly about change orders -- another misconception -- and the inappropriate use of the term *change orders* and why they are clearly not cost overruns. In my opinion, to characterize a change order as a cost overrun is just intellectually dishonest.

The SCC uses the change order to do a number of things: First, we use a change order to assign new projects to PMFs. Project management firms are assigned projects, as they are moved forward by a district and approved by the DOE, and they are paid established rates for the services as those projects are assigned. To date, 288 million worth of new assignments have been issued as change orders. There was a \$532 million number of alleged change orders in the paper. Of that, 288 million was for additional school assignments.

There are also three types of changes that the SCC cannot prevent: We issue change orders to do site remediation when we believe that a site is clean, only to find out that there, in fact, is soil or asbestos contamination we're not aware of. On unexpected site remediation, we've spent \$34 million.

A case in point: The Anastasia School was selected and bought by the Long Branch School District. However, it cost us \$6.4 million to remediate the site once we started construction.

We also use change orders to perform additional health and safety work as required by the state. This was the court-mandated, number one priority -- health and safety work. Again, there's nothing more important to us than assuring the health and safety of our children. To date, we've spent \$69 million performing required emergent health and safety work to our schools.

Third, changes become necessary as the DOE approves educational model changes requested by local school districts or for IT/technical or security work. This cost us approximately \$48 million.

If you add those three categories up, it's around \$151 million worth of work. Subtract the 151 and the 288 from the 532, you come down to \$93 million of what I consider is true project changes. We have a process in place where every change is reviewed for appropriateness and negotiated before they are approved. Ninety-three million dollars worth of changes, on an activity level in design and construction of \$2.5 or \$2.6 billion dollars, equates to around 3.5 percent. You must remember that changes are a normal part of the design and construction process, and that 3.5 to 3.7 percent is well within any acceptable industry experience.

I'd finally like to deal with factors that were not considered when the original \$8.6 billion allocation was established. It's important to note that when the act was first drafted back in 1998, the \$6 billion for the Abbott districts was based on a construction cost estimate of \$125 per square foot. The price was completely unrealistic. In 1998, the Department of Education estimated that for 30 Abbott districts, even calculated at the \$125 a square foot, the price is \$8 billion to deliver those facilities.

Second, the land acquisition and the relocation of homeowners and tenants and businesses were not included in the funding. The cost of historic preservation, remediation, and demolition were also not considered.

Third, the reallocation did not include the cost of building stand-alone, pre-K facilities that operate all day, as opposed to half day.

Fourth, temporary classrooms and swing space were not considered. That's space that's needed before you can begin to work on a particular school.

Fifth, the allocation did not take into account inflation. As I said before, the *Engineering News Record* talks of inflation in the construction industry being on an average of 3.5 percent each year. In '04, it was astronomical, due to the rise in steel.

Sixth, the original allocation did not foresee the addition of new Abbott districts. We now have 31 Abbott districts, not 30.

Seven, the allocations did not take into account for regulation requirements set by DOE, such as providing computers and associated technologies in the classrooms we build.

And lastly, the cost of our programs or administrative costs -- like DEP, DCA, Attorney General, and the OGI -- were not considered.

Clearly, the conclusion was apparent before the program even got up and running -- the school construction program was not going to have enough money to fulfill its obligation to New Jersey's children. While the original funds were significant and helped us make tremendous progress, more money is needed to complete the court's mandate.

I hope that, in this brief period of time, I have dispelled some of the inaccuracies about the program. I'm proud that in the last two and a half years since the SCC's inception we've made tremendous progress to build schools for our children, as well as build opportunities for businesses and communities. Last year, we opened 50 schools, 22 of which were in the Abbott districts. This year, we intend to open 110 schools, 80 in the non-Abbott districts, 30 in the Abbott districts.

I'm also proud that we're tackling the challenges I've detailed today, and we've kept our program's cost per square foot on par with other comparable programs, like those of New York City, Los Angeles, Philadelphia, and Boston. We, at the SCC, take our mission to build high-quality, safe, state-of-the-art schools in a cost-effective way very seriously, and believe we're doing just that.

We've already taken numerous steps to become more effective and efficient. I'll just tick off a few: We adopted a triad approach to identifying and looking at sites that we intend to purchase to get a better real-time understanding of the environmental condition of those sites. Triad is supported by the U.S. EPA, and we have brought on board NJIT, with a Memorandum of Understanding, to assist us in its utilization. We also funded an AG Task Force to help recover remediation costs from responsible parties. The SCC Board also created a Land Acquisition Task Force. One of its key recommendations was that the SCC become more proactive in the identification of school sites and help municipalities and districts identify cost-effective sites to build schools. We also changed the regulation where the excess district-owned property would revert to the SCC for continuance of the program, as opposed to being used to fund ineligible cost items.

And most recently, I put in place a change order review unit to be absolutely sure that every change order that gets approved is appropriate and needed. Our citizens certainly deserve to know that we're investing their resources wisely. They deserve a fair and full accounting of the efforts that we've undertaken on all levels, and we welcome, the SCC, the independent review by Inspector General Mary Jane Cooper.

Over the past months, my staff has been developing future recommendations, which I will share with the Inspector General, that will help us build schools even more cost effective. I'll identify a few. Standardization of classroom design to yield cost savings. An art room, be it in Vineland or be it in Newark, should have the same features. We need to standardize the requirements across all districts. I'm seeking a prohibition against district-initiated model changes after we begin the design of the school. It's disruptive and it causes change. And finally, we're looking at bulk purchasing of standard construction materials to take advantage of economies of scale -- things like doors, windows, lights, hardware.

As you know, the SCC is fully cooperating with the independent review being conducted. As the Chairman said early on, there are many questions and concerns about this process, and it is important to clarify what the status is of current and future school projects. For school projects currently underway or under design, the activity will continue as normal. Any future financial obligations presently are on hold pending the IG review.

As I stated, we welcome the opportunity and this examination because we're all working for the same goal -- to build 21st century schools for the children of New Jersey. I want to thank you for this opportunity to share my thoughts with you, and I continue to look forward for your support for the moving forward of this program.

Thank you very much.

SENATOR RICE: Thank you for your presentation. It's well done and it's well read. I have a couple of questions, and I'll ask my members to raise questions as well.

I am very concerned. I'm glad you enlightened us. I've talked to a lot of contractors. I understand a little bit about the industry myself. I also know when this project started that a lot of contractors had -- went out for pricing and, because of delays, faxes came over and memos came over indicating that the cost of sheetrock and concrete have gone up. And most of the steel is going to China, who is booming over there; and that, in itself, increased costs. But those who don't understand the industry, including some of the media folks, wouldn't understand those indicators and what they mean.

I don't believe that the Supreme Court was naive. They didn't give us a dollar amount per se. They just said, go out there and fix the problem and tell us what they want. Because I think that some of those justices understood that, as time goes on, inflation and other things -- variables come into play -- it's going to increase costs. But their decision was very clear: The mandate that we will have quality education, we will have new schools.

When you talk about school projects under design, I think we need to understand the process, because you indicated that those activities will continue as normal. But then in the next breath or sentence, you said that any financial obligation is on hold, pending an IG review. Now, I'm real concerned about that. We have projects here where a guy is going to go into bankruptcy, Chapter 11. It's been going on for over two years or so. I believe your office is working with him. I won't call names. A grammar school became a middle school, so there was an amendment -- I use the word *change order*. I hate to use that word these days, but there was a valid amendment, because it's a middle school and that's not what the scope was initially. And so, when an inspector general said, or whoever, is putting dollars on hold, there's got to be a process to pay these people. A small business person will go out of business and ruin

their whole reputation and credit lines with banks. They'll never build again, based on what we are doing. They came into the process in good faith with approvals. And so, can you explain projects that are in the works versus projects that need to be put in the works?

For example, and I'll use the city of Newark. I know a lot about what takes place in that district. Recently, the city council was holding up some land acquisition to try to make sure that minority and women in small business is a part of the process with the big contractors and the unions and project labor agreements. But it reached a point where they recognized that this land had to be approved -- limited land, number one -- and they approved those. But I explained to them that once we approved the land, we could start to do some other things, which means the dollars would get locked in for those school projects.

I don't know what it means now, with those four or five schools that should be processing and ready to go into ground, say in maybe 206 (*sic*), or maybe even this year; versus something that's already with the shovel in the ground; versus something where we haven't done the acquisition yet at all. We need to understand the stages in the process, because it needs to be clear to me, and hopefully my Committee members, as I dialogue with the Governor -- and I intend to dialogue with the Governor, and Ms. Cooper, and anyone else who wants to hear our plea -- where we are. And I'm going to emphasize over and over, there cannot be a barrier to getting these programs moving forward. If certain things aren't done now, and it's April, in your house, it means that we're going to get so far off the timetable to start construction. You don't build in cold weather -- you can do things in cold weather if, in fact, the structure or the frame is up and certain things are done -- which means they'll

be moving to another year with costs going up. Then someone is going to say, when you amend the contract, that you're creating a change order that's not necessary, which is not true.

And so we really need to get a good, clear understanding of these different phases -- where we are, how do we get there, what is the oversight doing to you and to these projects?

MR. SPENCER: Let me try to clarify the statements I made, as it applies to designs and construction that are underway and will continue, and what it means that the commitment of new obligations are on hold. Construction contracts that are under construction, right now, continue. If a change to one of those contracts is necessary, that change is put forth by my staff, now reviewed by my independent change order group, and then will be passed on to the IG for consideration.

Current designs for schools that are intended to go to construction this year are continuing. Changes to those designs would go through that same process. What we have been told to put a hold on is the commitment to new construction contracts, to take bids, and to award a new construction contract; or to start the RFP process for a new design, a RFP consultant, which would lead to bringing that consultant on board this year with a construction commitment sometime out in '06. There are many items that we need clarification, and we're working with the IG on, as it proposes, to changes to existing design contracts, closings on properties, continuation of negotiation, and signing of agreements where we're in the process of dealing with homeowners or businesses in finalizing offers for their particular properties. There are a host of items that we're meeting this week with the IG to get

clarification on, so we, in fact, can make some of those obligations that are necessary.

So this is a process-- It's not a black and white. There's a lot of gray areas here that we need clarification from the IG as to where we can move forward and where we can't move forward. And we're in the process of, hopefully, resolving a lot of those issues this week, Chairman.

SENATOR RICE: All right. In the process itself, projects that's going on -- you're talking about shovels in the ground, that's one phase. Is the second, current designs, mean that the architecture and all that's already done, the soil stuff is done?

MR. SPENCER: Yes, we're continuing that work.

SENATOR RICE: You're continuing that--

MR. SPENCER: We're continuing that work. Architects that are underway or continuing with their designs, and construction that's underway -- we're continuing with construction.

SENATOR RICE: Then there has to be a review process by your agency, as well as the Inspector General?

MR. SPENCER: If there is changes to either of those ongoing projects, before I can commit to that change, we now have-- I established a group to review the change, to see if the change was absolutely necessary, and then to send it to the IG for her review.

SENATOR RICE: Okay. Now, the piece dealing with the RFP process for new designs, what does that exactly mean? Does that mean the land has already been assembled and committed to and, in some cases, passed by a local government with the commitment, expectations, in terms of the

community and the school boards where these schools are going to be built, or just an RFP before that takes place?

MR. SPENCER: No. The RFP for an architect and the process of acquiring land go simultaneously. And we did that a number of years ago, and not made them sequentially, so we could produce schools within three years, as opposed to the five years it was typically taking to do a school. So I bring the architect on board. I'm acquiring the land. The clarifications I need now from the Inspector General is that I can continue that process of acquiring the land, of going to the closings where I have signed agreements, and in entering in agreements to buy property, where I am trying to capture enough sites to, ultimately, this year award a construction contract to build a new school. So it's a clarification that I need with the IG after a discussion, hopefully, this week.

SENATOR RICE: Well, that's important, because a lot of cities are getting landlocked and properties gone. It's difficult to get some local government to even hold some of the properties. The list of questions that you need clarification on, through the Chair, I need a list of those questions right away. I'm almost at a point -- I'm going to invite myself to your meeting. But I'm going to be kind enough not to do that. I'll introduced myself to Ms. Cooper another way, after I speak to the Governor. But I would like that list forwarded to us, if possible today, no later than tomorrow. When is your meeting expected?

MR. SPENCER: Hopefully this afternoon, or Tuesday or Wednesday. We met just last Friday, and we said we'd reconvene earlier this week.

SENATOR RICE: Okay. I would like that list right away. And if, in fact, some clarification is done prior to receiving the list, just indicate what the clarifications was. I still intend to have some discussion based on what I know.

Let me hold questions now and let my Committee members have an opportunity to raise some issues.

Any member have--

Here's how we're going to do this, okay. We're going to go Assemblyman, we start over here. And then we come to the Senator, and then we go Assemblyman, come to the Senator. How's that?

SENATOR BARK: That's fine with me.

ASSEMBLYMAN VAS: That's the right order.

SENATOR KEAN: The wrong order, I was going to say.
(laughter)

ASSEMBLYMAN DIEGNAN: Thanks for your testimony, and I know you got a tough job. But there's just certain things in your report that jump out at me. And I'm not looking at this as a criticism. I just want you to brainstorm with me.

I get the impression, on Page 2 of your report, that either there's an explicit or implicit statement that these schools are being built better than suburban schools. When you have a finite amount of money, is that necessarily the correct approach? I mean, I understand, for example, you saying that you're putting in emergency power generators. I have no idea what the cost of that would be. But clearly, if I'm building a house and I have a certain amount of money available to me, sometimes I make choices. You're indicating that rather than going with vinyl, you're going with brick and

mortar because they last longer. I'm just asking that maybe you should rethink that and determine what's the best that we can avail all urban districts, based on the amount of money that we have available. I don't know if that's necessarily the right approach. And if you want to respond as I go point by point--

I mean, clearly, we would all like to-- If I was building a house, I would love for it to be 100 percent brick. But if I have a certain amount of money available, I go with vinyl siding. I'd love to have a backup generator. But if I don't have enough money, I don't put that in. And it just seems that there could be -- and I'm sure that the suburban districts are not putting their students at risk by not having these bells and buzzers in. I don't know why, necessarily, it needs to be put into these projects. If you want to respond, you can.

MR. SPENCER: Yes, Assemblyman.

It's paramount that we build the schools cost effectively. And what we've done is establish a cost that we believe is the appropriate cost per square foot for every type of school throughout the state, based by region. And as we go through that design process, ask that architect to design to that school, and choices are always made-- Schools, administrators would love to see terrazzo throughout the schools, because that was what was in vogue 100 years ago and it lasts forever, but it's just out of the question from a cost standpoint. So tough decisions are made every day as to that pallet of materials that can go into that school. And that's why two of the recommendations that we have put in place, where we try to establish standards for each classroom across the state, so in one district they ask for something different than another, we standardize and say this is an acceptable

level of pallet of materials for your classroom and for your school. If you want more in that district, you need to come to the table with the money for those additional costs, and put it similar to the way it's done in a suburban district. That if you want a higher level, a pallet of materials, then that cost should be born by the local district. We're trying to establish, if you would, standards that are cost-effective across the state, and stick by them.

ASSEMBLYMAN DIEGNAN: Okay.

If I may, take a couple more?

SENATOR RICE: You can. But I'm going to move in the back.

Just on that issue, for the record, let me state from my own experience -- schools in cities like Newark, Camden, other places, are 100-plus years old. In fact, one school is an historic building, in the historic society. When we build schools, we need to have the expectations that long after we're gone, just like we passed through these schools and some of our chairman have come through the same schools, the generations behind need to go. We did not need them, in 50 years, to knock down schools if they're built correctly. But I think your point is well taken. It's nice instead of vinyl, but the problem with that is eventually you're going to come back and take the vinyl off and put something else on. If you got wood, you're going to put something else on. The cost is up. Then the question becomes then, who in government assist municipalities throughout the state, regardless of whether it's rural, suburban, etc., with those costs? Are they going to be as concerned as we are or as understanding of the hardships? They need to be solid schools, particularly in those urbans. And I think that's what the court was getting at when they did the mandate. And I know that's a hard pill to swallow because it costs more. And we have to figure out how to come up with the more.

And the final thing is, there are some areas to be looked at because school construction can't give directions in certain areas, because as a result of that they come under scrutiny. For example, there was some people who met with me, from New York, I believe they were, who raised the issue of steel boilers versus cast iron. It's my understanding that cast iron is what traditionally gets used. However, if there's a problem with cast iron, there's only one dealer or manufacturer, or whatever, you can go to. Whereas, I understand that steel may be just as cost-efficient, energy efficient. But a lot of people can maintain them if that was the problem. But if SCC was to go out and say, "You will use this product," then all of a sudden there is a question and a scrutiny. But if you only have those two or three choices out there, how do you make them all available? If you say, "We'll go to the district," it becomes a district decision. And if the district does not want to look at that objectively -- depending on what district you're in, and who's scrutinized, and what the relationships are -- then it's not going to be a savings on the decision, but then they have to make a decision -- overall project. So I just wanted to, at least, put it on the record.

The main thing I wanted to put on the record is that these schools have to be built to last as long, as close as is long -- at least in urban areas -- that the ones we have. And that requires bricks and mortar and concrete.

ASSEMBLYMAN DIEGNAN: But if I may continue, and I don't want this to become statements, but I just don't philosophically embrace the fact that urban schools should be built in a superior fashion to suburban schools. I think all schools should be built adequately, based on the dollars that we have available. And I just don't understand why there would be any dispute about that. But that's just my observation.

I also want to zero in on Page 4 of your report, the architectural piece. I mean, if we're talking about a \$100 million school, which some of these have indicated, you're looking at an additional architectural and engineering fee of \$2 million in a urban school, as opposed to a suburban school. That's a lot of money. And I understand there may be additional services involved, but that's a significant input. I just, conceptually, can't understand why there is that difference, and maybe you can explain it to me?

MR. SPENCER: I'll explain the process on, Assemblyman, how we bring an architect on board, if you would. We do a RFQ; RFP is a two-step process. The RFQ goes out, publicly advertised. On any one of my projects, 50 to 60 architectural and engineering teams throw their qualifications against that project. We have an evaluation committee that evaluates the qualifications of those teams, and short-lists six to eight of the most qualified teams. Those teams are then asked to submit to a RFP. It's a two-step process -- technical evaluation, cost evaluation. That same team, made up of two SCC members and one district member, evaluates the technical proposals submitted by the six to eight firms and ranks them. Then, the cost proposals are opened up, and we begin negotiations with the highest technically-rated firm to come up with a cost that we believe is appropriate for that school.

So there's a process in place, and we typically have been averaging around 8, 8.5 percent for the architectural and engineering fee to provide all the required services, including soil testing, borings, site survey; and through shop drawing support during construction.

ASSEMBLYMAN DIEGNAN: So when the request goes out, it does not indicate a fee?

MR. SPENCER: Absolutely not. Absolutely not.

ASSEMBLYMAN DIEGNAN: What's the highest fee that has been awarded, percentage wise? Do you know off hand?

MR. SPENCER: For a rehab job, you may be at -- this is new construction -- maybe 10 percent.

ASSEMBLYMAN DIEGNAN: That would be an acceptable fee, industry standard wise?

MR. SPENCER: Yes, it would, Assemblyman.

ASSEMBLYMAN DIEGNAN: Seems like an outrageous fee, 10 percent.

MR. SPENCER: I'd like to say, you get what you pay for in this world, Assemblyman. You don't go out and you don't haggle with an attorney or a doctor for the price of services. We do the same thing for engineering. We do a technical evaluation. The highest technically-rated firm is then -- we look at all the costs and negotiate that price for the highest-technically rated firm. And if we can come to a negotiation that we're comfortable with and we believe is appropriate for that type of building, we enter the agreement. If we can't, we go to the next highest technically-rated firm and start the negotiation. But our prices have been averaging 8, 8.5 percent for new work.

ASSEMBLYMAN DIEGNAN: Respectfully, I would suggest you may want to reexamine that process.

And last, the change orders, on Page 6. And I know that you defined change orders. Of the 48 million that was requested by the districts, was any of it denied?

MR. SPENCER: This would be changes that were approved. I don't know the figure about -- if districts had advanced models to the

Department of Education, or how many of those were denied by the Department of Education.

ASSEMBLYMAN DIEGNAN: How many projects would this 48 million have? How many schools?

MR. SPENCER: I'd have to get back to you on that exactly.

ASSEMBLYMAN DIEGNAN: Ballpark?

MR. SPENCER: But we're dealing with-- We're in design or construction on over 200 schools, as I speak.

ASSEMBLYMAN DIEGNAN: And overall, the change orders? What's the process? I'm looking, let's say, at the true change order figure of 93 million. How does that process work?

MR. SPENCER: Okay. Usually what happens in all the cases is, a contractor or an engineer or an architect, doing a design or doing the actual fieldwork, puts in a request and says to my management staff that there's something, a field condition, or something -- an inconsistency in the drawings -- that a change is required. My staff, then, evaluates that information, looks at the contract drawings and makes a professional determination if, in fact, it is a change or it's not a change. That it's the contractor's or the design engineer's responsibility. If we believe it is a change, we then ask and do an independent estimate. The contractor comes forward with his costs to do the work, and a negotiation ensues. And we come to a figure -- what we believe is reasonable to move forward with that particular work.

After that recommendation is made by a project management firm, it is signed off at a certain dollar level by SCC staff. Ultimately, for large changes over a million dollars, it requires the Chief Operating Officer signature or myself. Every change goes through that process. What I've just put in place

is a separate, independent look that will look at those changes. An independent contract review group -- not within my design and construction arena -- that will look at those changes and decide, yes, it is a case -- a change is necessary, because it was outside the original scope of the work, before it moves forward.

ASSEMBLYMAN DIEGNAN: Typically, is the request for change orders submitted before the work is performed, or after the work is performed, or is it a combination of both?

MR. SPENCER: Usually a combination of both. Most of the time, it's brought before the work is done. On some, the process of the paperwork -- not be consumed (*sic*) -- but the decision is made that it truly is a change, this is the right price, and we give verbal -- to proceed with the work as the paperwork catches up. But the approval is approved before any work goes forward.

ASSEMBLYMAN DIEGNAN: Do you have any sense of -- and I know this is probably an unfair question -- of change orders that are submitted after the work is performed -- how many are denied?

MR. SPENCER: I'm not aware of change orders being brought up after the work or if they're denied.

ASSEMBLYMAN DIEGNAN: Okay. Again, it seems to be a significant amount of money. And I would just-- And, again, I don't want to be overly critical. I don't even necessarily agree with your refinement of definitions. To me, a change order is a change order. But if you're talking about just those two items -- change orders totaling \$150 million -- that's a significant number. And I just think that, possibly, a clear signal has to be sent out that they're not going to be approved, except in exceptional circumstances.

I just can't understand why that significant a number would come about after a project has been designed, approved, and under construction.

MR. SPENCER: I'd like to address that, Assemblyman, because it concerned me also. Two areas that concern me the most were DOE model changes approved after we had design underway or construction underway, as well as unexpected site remediation requirements.

We put in numerous improvements over the last year to address those areas. One was the triad, where we are doing a much thorough and real-time evaluation of what the conditions are at a site, so we don't run into unexpected site remediation issues. And what we've asked DOE -- and we have agreement -- is that districts are not allowed, now, to initiate a model change after we have gotten the design to schematic design. The Act, as it's written, allows a district to initiate a change even when that project is in construction. They can change their mind and want to go from a three-to-five, K school to a five-to-eight school. We have made agreements with the DOE that a district cannot initiate a change after they've agreed to schematic design, which is around 30 percent design document development. And we're now moving it back and saying we will not entertain a change once the district initiates a project to the DOE, the DOE approves that, gives it to me, to implementation. We're saying it's frozen. There will be no more changes moving forward. Because I agree with you. To spend that much money for changes after the fact is unacceptable.

SENATOR RICE: We're going to go to Senator Bark.

You mentioned the Act. And there's some clarity here, because you're job is to oversee construction based on what you're given. And you work with the numbers. Is that correct?

MR. SPENCER: Yes.

SENATOR RICE: But DOE has a hand in the process, also. Is that correct?

MR. SPENCER: Absolutely.

SENATOR RICE: And I think that's where people in the public don't understand where some of these directions are coming from, if you will. For example, the grammar school I mentioned -- and middle school.

But you mentioned the Act. Are you saying that the DOE has the authority to concur with you to not make -- have changes made after we're going so far in the process? Or do we have to look at changing "the language of the Act?" What Act are you referring to? Are you talking about regulations?

MR. SPENCER: We have -- we believe that we have the authority, as the Act is written, to -- working with DOE, through regulations -- to prohibit these changes that are initiated by districts that go to the DOE for approval. We believe that, statutorily, a clarification would help solidify that position.

SENATOR RICE: Okay.

Could you, Melanie, pull the -- get with them and get the language, get the Act, and the area so we can scrutinize it to see exactly what that language says, and see if we, in fact, need to amend that? Because school construction should be going for the next 10 years. Will you take a look at that now?

But be rational or reasonable about some reasonable degree of flexibility, okay?

Senator Bark.

SENATOR BARK: Thank you, Mr. Chairman.

It's certainly good to see you, again, sir.

Do you have any idea how long review by the IG is going to take? I mean, do we have this set that it's going to take a week for them to review a project, two weeks, a month, six months, or is it just going to be at their pleasure, I guess?

MR. SPENCER: I had a conversation on Friday with the IG, and she would not give me a time frame as to when she believed her review would be complete. I would hope it would be sooner than later though, Senator.

SENATOR BARK: I would too, because there are some things that, it would seem to me, are already built in there that extend the ability to get a job moving. You've already added an IG commission. I don't know what their time frame is. I don't mean an IG commission -- change order commission. And each of these things add time. And in some cases, time is critical, not only to building the school, but obviously to the students who would inhabit it. And I would hope that we do not get too bogged down in the length of time for review. And that really is critical, in my opinion.

And I want to make one more statement. Having been on a school board a long time ago, one of the things that we did in one of the schools that we built -- and I always thought it turned out to be the best school. We looked to what it would cost to maintain, not only to build. And sometimes, if you do that, it costs a little more to build, but, oh, do you save the money in maintenance costs year in and year out. And the school -- that school, today, looks as good as it did when we built it. And I'm not going to tell you how long ago that was. (laughter)

Thank you very much.

SENATOR RICE: Assemblyman.

ASSEMBLYMAN BARONI: Thank you, Mr. Chairman.

Mr. Spencer, I know you have been working very hard to prepare for today. And I'm grateful for your time, and the time of your staff -- the commission itself.

I've got some questions. I will tell you that there's been a lot written about the Schools Construction project. There's been a lot said about it, there's been a lot of discussion of it. I will have to tell you, the most offensive thing that I have read about the Schools Construction project didn't come from anyone in this room -- at least I don't think he's here. I certainly hope not.

There's a principal of a school in Hudson County who described -- and this is credit to the *Star-Ledger* -- who described his new school-- "You come in, it looks like a penthouse or the lobby of a hotel," said Principal Anthony Ferrainolo.

Mr. Spencer, I'm absolutely not asking for you to address those comments. But he's describing the fact that his school had some changes. One of which was \$50,000 to inlay the school logo and yard markers on an artificial turf football field, and terrazzo floor in the lobby. How could this happen?

MR. SPENCER: Decisions and change orders, as I said, go through a process where they are advanced, either through a field condition that becomes obvious, a design issue on the drawings, or a district request. Those changes are brought through the process and agreed to at levels within operating authority that have been delegated down.

To address issues like that-- That's why I've put in a contract review, or a change order review unit, moving forward, to say, "We need to

spend every dollar we have in the right way. Are those changes absolutely necessary?" And that's what that group will be doing. It will be a check and balance to see that, based on the need-- Is the need absolutely necessary, before we move forward on those changes?

ASSEMBLYMAN BARONI: Is it fair to say that there's ever, going forward, a need for terrazzo floors?

MR. SPENCER: Yes. I'm a big believer in terrazzo -- terrazzo, in certain high-occupancy areas. Right in front of an auditorium, I think, is an appropriate use of it. Is it appropriate in the second-floor classrooms? Absolutely not, BCT works there. In the corridors on the second floor, BCT works there. But in the appropriate uses, terrazzo is still the material of choice.

ASSEMBLYMAN BARONI: In your comments, you make -- on Page 6 in your speech, and it's also on the -- you made the comment, in the \$93 million-- You're describing the ways that could happen. Your words: "These are issued when the architect needs to make design changes, when there are unexpected field conditions." The first two make sense to me. "Or if required by third parties" -- who would be the third parties, and what would they be requiring?

MR. SPENCER: I'll give you an example on that -- could be-- DCA, Department of Consumer Affairs, is my code reviewer and my code inspector. DCA may come to the field when I'm looking for a permit to open a building and take a difference of opinion as to sprinkler layout. That's a third party. And it would be a code interpretation. And we say yes, and we have a change necessitated by that. That could be a third party. The district could be a third party.

ASSEMBLYMAN BARONI: Mr. Spencer, on Page 8 of your speech, you come up -- you list three recommendations. And they are good ones. And I give you credit for them. It is a necessary action. And it's not limited to your Department in State government. All of our Departments in State government need to be addressing budgetary issues. These are very smart ideas.

I have had discussions with people who were there at the beginning of this process. The standardization of classroom design was something that the school construction project, not the SCC -- but when this was original -- and the legislation -- that was part of the idea. In fact, Former State Treasurer DiEleuterio spoke of that -- of having a set of predesigned schools. That was at the beginning. The prohibition against district model change-- I think that's come out of experience.

Finally, bulk purchasing-- These are all good ideas now, and they were good ideas when the Act was passed. What happened in the middle? I'm certainly not saying it's your fault at all. I give you great credit for coming up with the recommendations to clear it up. What happened? These are, sort of, common sense ideas. It started this way. How did we get to this point?

MR. SPENCER: On the standardization and where we are right now, every district has their own thoughts about the models that they use to educate their children. I was a proponent saying that, maybe, we should standardize the educational models across the state. But I find it hard to work with 31 Abbott districts, as opposed to 613 districts that say that everyone should have a pre-K, three-to-five, middle, and then to take it to the next step as to standardize what goes in each one of those classrooms, facilities. Only working over the last two years have I seen the great variance there is -- request

by districts as to what they want in their labs. Simple example, an art lab-- You may have one district say, "I want six clean-up tables, because that gives me the ability to teach art longer. And I don't need to put five minutes for clean-up," as opposed to say, "Well, it's a lot cheaper if I give you one clean-up table." But it impacts the educational process.

But looking at the way the money is being committed, and to keep the cost per square foot to a minimum and still provide a high-quality, long-lasting facility, we need to begin to standardize the requirements for what goes in the classroom and the materials, and get closer to-- I don't believe you can come up with models -- standard school design models. But I believe we can tackle this a different way by standardizing the construction materials, as well as what goes in each one of these classrooms, to a greater extent.

ASSEMBLYMAN BARONI: And I give you a lot of credit for that effort. I know with all the different districts, and all the different stakeholders, it is difficult to try and make some standardization in this program.

But coming from a district where we don't have art classrooms, we do it on a cart in most of my schools -- I'm grateful that you're putting the time in to try and provide some standardization. And I wish that maybe your predecessor had thought the same way and had continued that effort.

Again, I think your recommendations are very good. I will say this, and I say this tongue planted firmly in cheek: You made a comment that people don't haggle -- please start (laughter), because we all support the work that the Schools Construction Corporation is doing. We know we need to build these classrooms, we know we have a moral commitment to make sure children attend schools in safe, long-lasting -- as my colleague from Burlington County said -- long-lasting classrooms. And your recommendations go a long

way to starting to convince people that this is a worthwhile -- continues to be a worthwhile investment, and we need to continue to do it.

But every once in a while, haggle a little bit. Certainly most of my clients like to, when they talk to me. So thank you very much.

MR. SPENCER: Thank you.

Just one comment. I will be -- continue to say -- firm but fair. And I will haggle.

SENATOR RICE: I'm going to take prerogative of the Chair, and every once in a while I'm going to interject a statement. That's the advantage of being the Chair. (laughter)

ASSEMBLYMAN DIEGNAN: One of the many, sir. One of the many.

SENATOR RICE: That's right.

But I just want to say that I'm listening, and I'm thinking about New Jersey. Sometimes I believe -- I don't believe, I know that I know a little bit more, from interaction, if you will -- and participation -- because I get over the state pretty good -- about some of these needs than maybe some of my colleagues in the Legislature. And I'm not speaking about anyone here, in general.

But I want to remind everybody, for the record, we may not like the realities, but the Abbott decision came down based on inequities in the system of providing a quality education, which meant resources: financial directly and financial indirectly when it comes to school construction. We're not going to have 30 kids sitting in a classroom if we can avoid that. But we're not going to have 30 kids sit in a classroom and you have three or four

computers. In another district, regardless of how it's paid for -- whether it's the district or the State -- have a computer for every student.

We can't have programs taken out of the schools and expect to eliminate gang activities throughout our cities, as well as our suburban communities. It may be a little quieter there, but it's there. Call it what you want to call it.

We have to have supplemental education to arts, to music, etc. You can't do music in a room where the acoustics are bad, and you can't do music in a room with 10 people playing on instruments, because that's the way it's set up -- because a suburban or rural district don't have the same population as that district and only needs space for 10.

So when you start to standardize, make sure that you're doing "standardizing" and not necessarily cookie-cutting. That needs to be made clear. And all those have a cost to it.

But I'm going to interject every once in a while, because I want to keep the record straight for the media, I want to keep it straight for the administration. I want to keep it straight from my perspective, which is joined by a lot of taxpayers and voters, and maybe opposed by others -- but taxpayers and voters who are part of the Abbott district, to remind you why Abbott came about in the first place. The issue is not one of parity per student now in our districts, but it is one of parity or equitable relationship in school construction -- what a school should look like and what should be in those schools.

Senator Kean.

SENATOR KEAN: Thank you, Mr. Chairman.

Sir, it's good to see you today.

I'm glad that Assemblyman Barroni brought up the issue of haggling. As an ardent haggler myself, I'm sure we'd both love to work with you on your haggling skills.

The question I've got-- I guess I'll start out with the thing that I've focused on over the last several years -- perception of pay-to-play within the way government and other contracts are awarded. We've heard of late, on tapes and according to -- in press -- where those people who were best qualified did not win the bid. That's been the allegation.

Can you talk to us, as a Committee, about what steps you have in place? I know you talked a little bit about the change order component -- about where you-- Can you talk just a little bit -- how you ensure that pay-to-play activities don't exist within the billions of dollars that get spent by your organization?

MR. SPENCER: It would be my pleasure, Senator.

We have numerous rules, regulations, and responsibilities that dictate all of my procurement practices. On the construction front, every construction contract is publicly advertised in newspapers throughout the state and on my Web site, as to the availability of the solicitation. Sealed construction bids are received at my office and are opened in front of the Attorney General's staff. The award is always made to the lowest responsible bidder. It's rip and read. There is no subjectivity. Subjectivity comes early on, where we evaluate contractors' capacity to do the work and the type of work before we even allow them to bid. But every construction contract is awarded to the lowest responsible bidder. It's rip and read.

SENATOR KEAN: I appreciate that, and I'm sure the members of the Committee appreciate that. I just wanted to confirm that, because we've

heard, on the floor, about candlelight bidding processes and everything else. And I just wanted to confirm, for the members of the Committee, that's a clear way that's getting done. I appreciate your activity in that regard.

The question I've also got is in the area of real estate. As you said, that was essentially precluded in the first land acquisition -- it was essentially precluded in the first area of the 8.6 that we talked about. How has this impacted the cost of new schools, and what can we as a Legislature do to help reduce costs associated with that purchase process?

MR. SPENCER: The land acquisition, the relocation costs, the demolition costs are substantial, Senator. We are currently identifying a number of future or -- opportunities we have to improve that process, working with the AG, whether it's in the way the condemnation laws are applied to the school construction program, to come up with recommendations as to how, in fact, we can get more for our money on the land acquisition and the relocation side of this business.

One of the main things we did was -- as part of our Land Acquisition Task Force that the board had put in place -- was come up with a series of recommendations for my staff to become more involved in the site identification process. Early on in the program, districts identified sites that they thought were most appropriate for their schools, moved that project through the DOE, DOE would approve the project, it would come to me, and we would look at those three sites. I thought that there were possible opportunities that were missed, sites that could be identified for potentials for that school -- may have not been the best site, but may have been a more cost-effective site. And now we're much more heavily involved in the up-front identification of school sites to be used for potential schools. And as I was

saying, we're looking at all the recommendations we can. Are there things we need to change to make the system work better for us?

SENATOR KEAN: To get you into looking at potential alternate sites, or involved in the area -- within the entire sending area of the district for these new locations-- Does that need any further statutory change at all? Can you do that entirely in-house in the administrative fashion?

MR. SPENCER: We don't need any statutory change on that.

The big issue a lot of times is, within a district-- A district is just interested, from their perspective, from the sending area -- they want the ideal sending area. A lot of times, the impact on ratables, development plans within that municipality is not as large a concern of theirs as it should have been. We spend a lot of time dealing with the municipalities and the districts, trying to identify sites that are acceptable to both, before we move forth, as well as myself going out there more proactively now, identifying sites, and bringing it forth to them and saying, "Here's a potential site. Have you considered this one?" But we have the authority, right now, to do that level of involvement.

SENATOR KEAN: In that area -- you talk about it -- maybe -- whether in this area or beyond-- Have you found examples where the Schools Construction Corporation has been asked to go for heavily tainted land, for clean-up costs than -- any of those areas in which you construct schools?

MR. SPENCER: There have been numerous sites that we have been asked to look at. And after we have done our environmental assessment, we have thrown -- discarded those sites, and said that they're inappropriate to build a school on it because of what was found or, potentially, what a neighboring industrial process is -- would not be appropriate to put a school on a site, even though the site itself was good.

SENATOR KEAN: And then the final area of my questioning is, frequently you're not building on the same site as a previously existing school. What happens, in that type of instance, to the land that previously was used as a school? Does that go to SCC? Where's the-- What happens to that property?

MR. SPENCER: We call that *excess property*. The answer is yes, Senator. The change we just put in place this year was that if I buy land to build a replacement school, I construct the replacement school -- if that existing school-- If there's no further educational requirement for that school, the school reverts to the SCC so the SCC can sell that school off to a developer, and then take those funds and put it back into the program. So I capture the excess school property, and sell it off, and put the funds into the program.

SENATOR KEAN: And you're able to do that without statutory change and new authority?

MR. SPENCER: We have it in our 13C agreements, which is the agreements that we have signing up with the districts. We need a statutory amendment to strengthen that position.

SENATOR KEAN: You say you do need statutory position -- authority to strengthen that ability.

MR. SPENCER: Yes.

SENATOR KEAN: And this just started within the last year?

MR. SPENCER: Within the last year, we sent the 13C agreements out with that stipulation, those agreements. The 13C agreement is an agreement between us and the district as to each one's responsibilities,

the Corporation's and the district's, as to the building and the operating of that school after it's in place.

SENATOR KEAN: And how many--

If I may. This is my last question.

SENATOR RICE: It's a contractual quid pro quo, right?

MR. SPENCER: Yes.

SENATOR KEAN: How many school sites have been impacted by this change so far?

MR. SPENCER: We believe that there will be approximately 50 sites, if the entire Abbott program is built out in all the 30 Abbott districts.

SENATOR KEAN: Fifty from here out.

MR. SPENCER: There will be 50 educational facilities that would be excess.

SENATOR KEAN: And before the process changed last year, what was the process with that excess school property?

MR. SPENCER: The process was, the-- At that time, the policy was that the school district would have the ability to sell that property and to use the funds to fund ineligible costs for parts of their school program.

SENATOR KEAN: Can you define ineligible costs?

MR. SPENCER: The most famous price of ineligible cost is a natatorium, or a pool, or grandstands for an athletic complex.

SENATOR KEAN: Through the Chairman, if you don't have this information here today, can you get to this Committee how many instances of that such -- of that process happened before the change in your--

MR. SPENCER: There were two instances, Senator.

SENATOR KEAN: Okay.

MR. SPENCER: There were two schools that that was the process in place before the new procedure was put in place within the last year.

SENATOR KEAN: Through the Chairman, can you get those schools for us?

MR. SPENCER: We'll provide that for you, Senator.

SENATOR KEAN: Thank you, Mr. Chairman.

Thank you, sir.

SENATOR RICE: Sure.

Question: Let's follow up on that. I'm building a school, and there's a need to have a field. Some people don't think we need fields, because where they live, they've got all kinds of fields, even around the neighborhood they live in, there are tracks, and they can afford to--

But the point is that, if, in fact, it's not locked into the school construction -- or you want to prove it -- why would you not want the school, if there's a need, to do that?

My point is that, I don't have a problem with the land on a contractual deal -- coming to the SCC because we want to keep costs down -- that's going to recoup some of the costs. But we need to make certain, if the field is required -- not what we think individually as legislators, or what some of the public thinks -- but the idea of education is plugged in. After you plug it in, the question is, are you going to get it cheaper or less? Maybe it's cheaper, so I don't know. But my point is, if you're going to take the land back, and you're going to sell the land, at least make sure that -- and we can do it statutorily -- that whatever that dollar amount is -- it may be in your budget, but it may have to be used by you to complete some of those projects.

Do you understand what I'm saying?

MR. SPENCER: Yes, I do, Senator.

SENATOR RICE: Understand -- and I think one of those may have been Newark. I'm not sure -- when we were fighting over pools. Then we went and got money for some pools anyway. And people were saying, "Well, why did you spend the money on pools?" I mean, we can never win in Newark. That's one thing I can say about that part of my district. The State don't give money for the arena. And we get our own -- "Why you use the money?" Can't get a pool -- we use our own -- "Why did you use the money?" So we're not supposed to have swimmers and have people, academically, getting scholarships.

But the point is, I need to raise that with you. And we need to look at the statute -- getting some support. But the statute, when you look at it, needs to give you some room to make some decisions that you have control. But you may have to use that value, if you will, to make certain that some of those needs are met, whether it's bleachers, whatever, in these school districts.

I want to go back a little bit and ask, do you have data on how many projects have actually been changed, or stalled -- even though I know it's been a short time? But I'm getting faxes like crazy as it relates to the community disagreement with sites, or project designs. And also the dollar amount and how many projects may have been delayed most recently with the intervention of the IG's office?

MR. SPENCER: I have those lists, Senator. And that's part of the discussion I'm going to have with the Inspector General, as to my ability to move some of those projects forward. Those projects that we have -- already bids in hand. We've gone through a competitive open bid process. We have the selected -- we know the contractor we want to award the job to. My ability

to potentially move those forward, as well as to continue where I have contracts now, currently, publicly advertised out for bid, that I put on hold -- can I move them forward? Because, in my opinion, whatever changes we do make, it would be, I believe, inappropriate to make those changes to the existing schools where I have bids in right now. It may be counterproductive for the ones I intend to bid within the next month or so.

SENATOR RICE: Okay then, we'll wait until you get that information to me.

The other concern-- If I don't raise it, it's not going to get raised. It's no reflection on my colleagues. It's just something that doesn't get thought about enough. And we're expected to raise these issues. That's minority and women participation.

Now, it's my understanding that at least one school district, all of a sudden, because Ms. Cooper put everything on hold, minorities and others -- but mostly minorities -- who have finally got some training, we got them off the street corners, they're working in construction. And because the dollars aren't coming down to pay them, they've already been laid off. That takes us right back to where we were trying not to go, particularly in urban cities.

Do you know of any other districts-- Do you know how many districts have been impacted like that, or how many are calling you, telling you they're getting ready to be impacted, in terms of the people that have to feed their families? I just don't think the process should be a process to do harm to people -- of scrutiny. I think a process of doing scrutiny can move simultaneously to a project going forward.

MR. SPENCER: I haven't heard of any other districts, Senator. But there was a lot of concern from a lot of contractors, when the notice came

out that the Inspector General was going to be doing a review. And there was a lot of misinformation as to what that meant to the ongoing construction process stopping or not being able to move forward. I think we've gotten through most of that. And then most contractors are aware now that, in fact, work is continuing as planned, and can continue, and will go concurrent with the Inspector General's review. I haven't heard of any others.

SENATOR RICE: Would you check on the Central High School project?

MR. SPENCER: Sure.

SENATOR RICE: Understand, I'm going to get flooded real soon with workers of color, if you will, and Latinos, and women. And that's fine. But someone will have to explain to them why they're not working. And I understand it's because the order came down. And I know Ms. Cooper is going to eat every day, because we pay her well.

On the other side of that, how are we doing with minority, and women, and small business participation from the State of New Jersey, given the project labor agreement?

MR. SPENCER: From a business standpoint, Senator, last year we awarded \$930 million worth of new construction contracts. Thirty-nine percent of that dollar value went to small business enterprises. On the design side, we awarded \$80 million worth of consulting fees. Sixty percent of that dollar value went to small, women and minority-owned businesses.

On the labor force side, we assure that all our contractors are monitored, that the workforce that's on those sites meets the requirements for minorities and for women. They're monitored on a monthly basis. And if we

find they're short on their minority or women goals, action is taken against them.

SENATOR RICE: Okay.

I just want to pass word to you. We had this discussion. I have a problem with out-of-state contractors getting work before New Jersey contractors getting it. But I understand you have to bid, you do all your different things. But tell the other states, when they come in here, on emergency jobs in particular, they complete the job. They don't go home at 3:00 and then leave our kids out. Because then the district gets slapped in the face with these problems, and they think that everybody's doing something wrong, and we don't care. And that hits us politically, too.

Question: I need to raise two issues. And this way we can get it out of the way. I think you responded to it when you met with others. On the March 7, 2005, *Star-Ledger* article -- in reference to the East Side High School project, where there was a relocation of a business. And \$5 million was paid, I believe. Then there was a determination that the business person wanted to increase costs. And you said no to that, which was the right thing to do. But we need to know, number one, what's in place to prevent that? And, number two, is there a means to recoup? Because if, in fact, the business is doing well, and if, in fact, the understanding was that *A* would happen and *B* happens, regardless, it seems to me that somebody owes us \$5 million. Whether we can get it or not, I'm not sure. But it just seems to me, if a business actually left a location, and we help them relocate, and they're doing well, I suspect there's an obligation back to us. But can you at least explain that situation and what we have done to correct it?

MR. SPENCER: Let me explain a little bit about the circumstances on-- This is the East Side High School project in the Ironbound section of Newark.

We in the SCC follow the standard Department of Transportation land acquisition process. On that process, when the notice was sent -- or an offer to the owner, a letter is also sent to the tenants, telling them that they need to think about relocation. What we have done, moving forward now, is we have changed that process. Because in that particular case, we gave the go-ahead to the tenant to move. We were not able to come to an agreeable price with the owner. In fact, we were faced with the thought of going to condemnation. We had a risk assessment done. And we believe that we were in a very precarious position, where the property could cost us double what we had anticipated it costing.

The decision was made to move away from that site and to look at an adjacent site, which I'm happy to say is moving forward and will cost us substantially less. But we had made the commitment to the tenant.

Moving forward, we will not make or send out those letters of relocation until we have an agreed upon price with the owner, or have done a risk assessment, and I'm comfortable that I can go to condemnation and my price will be upheld by the judge.

SENATOR RICE: Do you know whether or not that business intended to move, regardless, prior to you approaching them?

MR. SPENCER: I don't know. I can get back to you on that, Senator.

SENATOR RICE: All right. So we could have very well taken out a business -- after paying payroll taxes, parking, employee tax, and all that stuff

-- and then gave them five. So it was really, in one sense, a loss to the city of Newark and what comes in.

The condemnation piece -- Senator Kean was raising that issue. The concern, in terms of some of the costs is, if we don't move forward-- You know, you go in with the expectation of condemnation. You're talking to residents. You build. You get consensus, if you will, which is difficult many times. You've got expectations. People just like the business of starting to make arrangements to go. Then you change a project, and the people can't go, and they have a real problem.

But even on the cost side of that, real estate values in some of these cities have gone up tremendously. I mean, in a matter of no time. Newark is hot. Other urban cities are very hot right now, because we're finally turning the corners of people and home ownership.

And so my concern is that if, in fact, we know that a condemnation process, under the Fifth Amendment, says we have to give just compensation for the taking of land and property-- And we do the appraisals where \$100,000 today is just, regardless of where you compare -- give or take five or 10 here or there. But when it goes up to \$200,000, we still have to meet those obligations in the condemnation process.

And that's why, when the question was raised, I wanted to make certain that we understand, and we review condemnation -- that there's not but so much you can do. Because if you have to take 20 homes, and you've got consensus, and you negotiate with one or two, then you're going to be tied up in court to (indiscernible). If you have to negotiate 10, you're never going to build that school and maybe own the land for it. And so all these variables, if you would, have to be taken into consideration.

Finally, from me-- And my colleagues may have some additional questions before we let you go.

You may be able to comment on this, you may not. But do the best you can, because it was brought to my attention that there's a building in Paterson known as the Fabian (phonetic spelling) building. And my understanding is that -- the information I've received anyway -- is the building is being sold by a party to a developer, who, in turn, wants to lease it to the Paterson School District. And it's my understanding that the Superintendent is not interested in this site, but that others in the town are. I suspect that the others are probably some of the residents, etc. Are you aware of any of that at all? Is that on the drawing board?

MR. SPENCER: No, the only time we get involved on a school project is if, in fact, the district advances that project. In this case, if they were interested in the Fabian building, they would advance that project to DOE and say they were interested in this particular building as a school. Once DOE approves the need for that school and sends it to me, then and only then would this Corporation get involved in looking at the Fabian building as a potential site.

SENATOR RICE: Okay.

And, finally, going back to the piece of -- the conversation we had with maybe-- You have the building now -- but changing the statute-- Senator Kean raised this, in terms of making sure that the land from a school district becomes SCC property. And then you indicated that, in terms, you could probably sell it back to a developer. Now, we need to make sure that if we're going to acquire land that the State's going to wind up owning, and we're going to sell it to a developer, we need to make sure that the language makes it very

clear that you don't sell that land until you work with the municipality -- based on our rule, their master plans, their area plans -- so that not just any developer who can meet your numbers, even double your numbers if they want to, will acquire the land with expectations that they're going to come in and build something that we're not going to allow them to build in our cities. That needs to be-- That shouldn't be guess work. That needs to be clear in language if it's not already.

MR. SPENCER: Absolutely, Senator.

SENATOR RICE: Any other members?

Assemblyman.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

Mr. Spencer, I don't envy your job. You probably have one of the most difficult jobs of anybody in the State of New Jersey, trying to wrestle this dinosaur into some kind of operational sense, and getting it under control so it will work to the best interest of the school children in the state.

The Chairman led off this morning with something that I had not heard before. And I just want you to be able to clarify it quite clearly and loudly to everybody in the room. He mentioned something about organized crime. And I just want to know, flat out -- because he mentioned that. I had never heard that mentioned in any way, shape, or form with the Schools Construction Corporation. And I just want you to echo that 1000 percent -- that there's no smell -- any kind of thought process that anyone should have that that is, in any way, shape, or form, involved with this organization.

MR. SPENCER: I don't know how I can say it more emphatically -- absolutely, absolutely not.

ASSEMBLYMAN MALONE: Thank you.

MR. SPENCER: If that's the right answer.

ASSEMBLYMAN MALONE: That's the right answer. Thank you very much.

The concerns I have, given the large amount of money we're spending with this school construction project -- that there seems to be a little bit of a disconnect between your group and the Department of Ed in granting changes after the fact. If there's some process here, where, in fact, construction has started, or substantial construction drawings have been completed -- and then they're asked to go back to the drawing board. I just think that is something that should be brought to the Legislature's attention immediately. Because that is so fraught with cost overruns, problems, that I can't even imagine how you deal with that without pulling out substantial amounts of hair.

I would urge that when that happens, or if that happens again, that you stand on the top of the tallest building in Trenton and start screaming, because that will create, in my opinion, an unworkable school construction process. I don't know how strongly you feel about that, but I hope you feel very strongly about having some type of veto authority, immediately, as soon as it comes out of the box. So I don't know what your feelings are.

MR. SPENCER: I couldn't agree more, Assemblyman. What was most frustrating to me was seeing these changes in the year-and-a-half that I've been here, saying that this is something that is just not acceptable. You can't have that much design breakage and now have to go back and start from

scratch, go out, retain additional architects, and throw those design costs out. It's just inappropriate, it's not a good use of the money that we do have.

And I'm with you 100 percent. As far as I'm concerned, once a district advances a project, DOE approves that project, that's it. It's locked in granite. We build that project. If they want to make a change, let them make a change 10 years down the road.

ASSEMBLYMAN MALONE: Would we be better off having an educational component as part of your jurisdiction so that it changes due command? They go through your educational wing of your group, get squashed or approved as a normal process, not going from department to department and going through a large bureaucracy. If that were something that had to be done through legislation, how would you feel about that process?

MR. SPENCER: I have enough on my plate right now, Assemblyman. We work cooperatively with the Department of Education. I'd like to continue that level of cooperation with Commissioner Librera, as opposed to having that responsibility within my shop. I think we can make it work.

ASSEMBLYMAN MALONE: The issue of standardized design was something, when I originally put this bill forward -- was something I was stressing, probably ad nauseam. There was a lot of opposition to that -- to a standardized design formula. And for those who were here during that process--

Whatever you have to do, and whatever I can do to help support your efforts to standardize the construction of school buildings, should absolutely be done. And I'm not saying standardized to the point where it

restricts educational endeavors. But for us to be able to honestly believe that school construction cannot be standardized throughout the State of New Jersey, I think, is foolhardy and plain stupid. Because all it does is increase, significantly, costs, because every school building has to have a signature on it. Everybody has to know who designed that building, because it has to look like the Taj Mahal. And the point that Assemblyman Barroni made earlier today, about walking into a lobby of a fine hotel, is unacceptable. It's unacceptable to the Legislature. I think it's unacceptable to the public who are paying these bills.

So, again, I would urge, if anything comes to your desk that looks as though it's some kind of corporate world headquarters, that that also be brought forward to the public.

I've known you for a while. I've known Jack Kocsis. Both of you have taken a beating over the way this thing is being run. And I can honestly say that I have the utmost respect for both of you. I think you're trying to do an admirable job. I would just urge--

I think you probably have to be more public in your criticisms about the way some of these things are being done. And if you're going to stand back and let people bash you about the head with two-by-fours, or pipes, or whatever you want to do, that's up to you. But I think it's about time that you, Jack, and everybody else, and Mr. Murphy stand up and start saying what you're doing, why you're doing it. And if there is unnecessary political pressure, or other kinds of pressure being put on you to do things that are not technically and construction proper, that you have to let the public and this Legislature know about it.

Right now, there is a cloud over the school construction, which may be, largely, perception. But it's a cloud that has to be removed. And I think the people to do it are sitting before us. And I don't know if Jack is in the room. But I think that each and every one of you have an obligation to the Legislature, and to the public, to really let it all hang out, get the job done, so we can move on. Because as we all knew when we first started the school construction, \$8.5 billion wasn't going to be enough to take care of all of the problems. But if we don't clear up that cloud, the public won't stand for spending additional moneys until they're sure that every penny is being spent appropriately, straight forward, honestly, with the taxpayers in mind, and with good, sound, educational principles as the underpinning of what we're doing.

So I think that the responsibility on you, and Commissioner Librera, and Jack, and Mr. Murphy are absolutely paramount to make sure that we can move forward and do the job that we have to do to straighten out the educational facilities in the State of New Jersey.

I commend you for your work. I think you've got some PR work to do. Spend some effort in doing that. But, please, in all honesty, speak out, speak the truth, because a lot of people are depending on what you do, day to day, to make sure that this has gotten done.

Thank you very much, Mr. Chairman. (applause)

SENATOR RICE: Next, we're going to hear from Assemblyman Vas.

But I just want to echo what Assemblyman Malone said. We're here to oversee. It's our statutory responsibility. Nobody wants to do it for us. We'll work with everybody. This whole Abbott district scenario, from charter education, choice, school construction--

I want to be clear on the record -- and you can go through the computer waves -- I'm not a computer guy -- and pull the archived newspaper. I did not say organized crime was involved with school construction. I said we welcome the scrutiny of all the agencies, including Ms. Cooper, because I recall that the concern of State government -- at the time that the State made its decision -- the Supreme Court made the decision -- is that it's the kind of area that organized crime will come into. And they want to make sure -- that's what the newspaper said -- that that did not happen. They gathered the experts and that.

But they also made it public that they were concerned about other things, and that was unscrupulous contractors and developers. And that whole conversation came about when we started to talk about this maze of overlooking, because the concern was that if you were going to have to have approval here, and approval here, and approval here, and approval here, you're never going to build a school. So I want to keep it clear that we welcome--

I also want to make it clear for the record -- and I'll say it again, because I know the Inspector General, in person, is here -- is that, whatever is happening cannot be a barrier to -- slowing these projects to the point they don't meet potential time frames that were set up for them throughout the State of New Jersey.

The EDA did a good job starting this program. The SCC component, I think, was a good idea. And you know what? It's like anything else that starts out new. There are bumps in the road. But there are other states, now, that have court decisions going, or preparing to go to court, to have what you call an "Abbott-like" decision. When we finish this process, and

you stand up and do what's right, we'll support that. New Jersey will be the model for how you do school construction under court mandates.

So I, too, want to commend you.

With that, Assemblyman Vas.

ASSEMBLYMAN VAS: Thank you, Mr. Chairman. And thank you for your comments. It's probably a good segway to some of the comments I'd like to make.

First of all, let me express my thanks to Mr. Spencer and his entire management team that is here today: Mr. Murphy, Kellie Drakeford, Jen Crea, and Barbara Bohi, who I've had the opportunity to meet both in my role as Assemblyman and member of the Education Committee; but also as Mayor of Perth Amboy, an Abbott school district, and really have discussions with all of them about school construction as it relates not only to the Abbott school districts, but particularly as it relates to many of the non-Abbott school districts. Because one of the most important misleading statements that always needs to be clarified is that the Schools Construction Corporation is not here only to serve the Abbott districts. And, in fact, a great part of the work that they're doing is done in non-Abbott school districts. And that work is equally as important, and work that needs to get done.

And the other issue I believe that's important to clarify is-- My colleague, Mr. Malone, said that the efforts of the SCC may not be finite, in terms of the time frame, but they'll be serving the people of New Jersey -- or even finite in terms of the dollars that they will be investing in our state, on behalf of our young people in our communities throughout the state -- that their work may have to continue for many years. And it is an important part of the work that needs to be done in New Jersey.

And the standards that we've set for education here in this state are higher than anywhere else. The eyes of the nation are upon us, in terms of how we've taken on school construction. And while there may be some growing pains, and some mistakes that have been made by both Abbott and non-Abbott school districts, they're part of the learning process and part of the process to get the SCC mobilized full force, which it has been now in these last several years -- these last two-and-a-half years. We see-- We talk about 30 new schools opening up, another hundred schools in the hopper. That's important, because this is a race with time. Time's not on our side. It's not on our side as it relates to the needs of students throughout the state. Because if it takes five years for an elementary school to get built, and you have a youngster who is in Kindergarten or first grade, they've moved on from elementary school to a middle school, or perhaps even to a grammar school. And so time is not on our side in terms of the cost for construction, the cost of land. All of those points that you made in your presentation that are adversely affected and, in many ways, are a product of the success that we've enjoyed here in New Jersey because of the strength of our economy, because of the strength of real estate and values in New Jersey. And when we look at the SCC, we should not necessarily be looking only -- or solely at the cost, but rather the value that it adds to New Jersey. And we need not -- and hopefully none of us do -- look at these issues in a parochial way -- looking at it from our own individual district's perspective or our hometown. It's easy to do. And that's how the debate about Abbott and non-Abbott begins. And it's that debate that starts here, perhaps, in Trenton, goes right back down to the small towns. And we start to polarize boards of education from local governing bodies, boards of education from the community. And we disengage the stakeholders that need

to be at the table to make this work. And so the work that you've done, and some of the problems that are -- we're experiencing today are, in fact, a product of our own success.

My concern, more than the issues that the Inspector General will be looking at -- and I have every confidence that those issues will be looked at by the Inspector General; and those are some of the cost overruns, some of the inappropriate expenses -- is that, instead of looking backwards, that we really look forward at how it is that we continue to move forward with the projects that are currently being planned. Every day we pick up a newspaper, we read about a non-Abbott school district approving a referenda on new school construction. When that happens, they qualify for up to 40 percent of the construction costs. I know there aren't -- not all the costs are allowable, so generally, what they do is they get a check for about 30 percent, we'll say -- about 30 percent of the total cost. But they get a check. They don't go through the SCC and go through the review process that Abbott school districts have to go through.

SENATOR RICE: That's right.

ASSEMBLYMAN VAS: And that review process is a different standard than the standard for non-Abbotts and, in and of itself, will add costs. The idea is to minimize that cost. So hopefully we will achieve that.

My concern today is that-- I know that, at some of our prior meetings, we talked about the breakdown of dollars that were originally authorized by the Legislature, going back to 1998 -- that \$8.6 billion, and the amount of money that's been committed to projects, and what is available, or unencumbered, if you will, for future use.

Can you speak to that point, for a moment, please, Mr. Spencer?

MR. SPENCER: Assemblyman, of the \$8.6 billion, there were three buckets of money: \$6 billion for the Abbott districts, \$2.5 -- as you say, this is a statewide program for the other districts throughout the state -- and \$100 million for county vocational schools. We have committed the \$100 million on the county vocational schools. We have out there a commitment of \$2.3 billion against the \$2.5 billion on the referenda pot for the non-Abbott districts. And 4.3 of the \$6 billion is committed on the Abbott side. So a total of 6.7 has been committed against the 8.6.

ASSEMBLYMAN VAS: Okay. So approximately \$1.9 billion is remaining.

MR. SPENCER: 1.9 total State money.

ASSEMBLYMAN VAS: From the bulk of those dollars, about \$1.7 billion that's available -- that would be held back in the event that there are delays to new projects and new approvals -- are almost exclusively to the Abbott school districts--

MR. SPENCER: That's correct.

ASSEMBLYMAN VAS: --where the courts ruled the State had a responsibility to build these schools and that the Legislature decided to authorize the creation of the SCC and to make available, funding. Is that correct?

MR. SPENCER: That's correct.

ASSEMBLYMAN VAS: Is it fair to say that?

MR. SPENCER: Correct, Assemblyman.

ASSEMBLYMAN VAS: So most of the remaining dollars that are going to be frozen or unavailable today are not going to affect the suburban school districts, but rather are going to affect the Abbott school districts.

That's a pretty serious problem for New Jersey. In fact, it may be violative of the Supreme Court decision. The fact that the State had an immediate responsibility to build schools, to meet the gap -- the difference of educational quality in the poorer school districts of New Jersey, versus the more affluent and wealthier school districts of New Jersey. What can we do, then, Mr. Spencer, to make sure that while this review process is going forward that we don't further jeopardize the quality of education in these poorer school districts of New Jersey?

MR. SPENCER: I have a meeting, as I mentioned earlier, either this afternoon or within the next two days, with the Inspector General, where I'm going to lay out a couple hundred million dollars worth of projects that I have already bids in hand, or those documents are out on the street, that I would-- I'm looking for approval to move forward with them right now, pending the outcome of her review. I hope the outcome of that review comes within a reasonable amount of time, because I have construction schedules right now that show me putting out \$1.2 billion worth of new construction awards for Abbott school districts by January of next year. If the review is done expeditiously, I would be in a position to keep as close to that schedule as possible.

SENATOR RICE: What's expeditious?

I'm sorry, Assemblyman.

What is a good time frame for you? That's important for us to know. What's the latest you can have those decisions?

MR. SPENCER: You mentioned it before, Senator. The time to award construction contracts is now. I want the construction awarded now so we can get the benefit of the summer months. If I begin to take construction

awards into the late part of the summer, I run into the winter. And I virtually lose a school year. What I need is the ability to begin to take bids and award construction contracts as early in the year as possible. So the later it goes into the summer and beyond, you virtually lose the year, because you're not going to get much out of a contractor because he gets stuck with winter.

SENATOR RICE: Go ahead, Assemblyman.

ASSEMBLYMAN VAS: The other issue here is that we are a very -- clearly moving into an inflationary period. What could be borrowed at less than 3 percent maybe two-and-a-half years ago -- and, in fact, a month ago at 4 percent -- is now at 4.6 percent, in terms of the issuance of the debt that's been authorized by the Legislature, again that was authorized in 1998.

And while we may think that spending a lot of time holding back on these projects works in our favor, it only adds costs. And we're not talking about pennies, we're talking about millions and, perhaps, even billions of dollars. And so to the \$200 million that remains for the non-poorer districts, or districts that have taken it upon themselves now to approve, with voter approval, referenda -- does that \$200 million cover the up to 40 percent for those school districts that have done that? Because I think we have to look at this with both eyes open, not just one eye towards the poorer school districts of New Jersey, but mediate the need in your non-Abbott school districts, and look at New Jersey as one place for schools as opposed to in the urbans and Abbots, and then in the non-Abbotts and suburban school districts.

Is there sufficient funding available, right now, for the referenda that have been approved just this year? Because I know there are four times of the year that school boards can go out for referendum on school construction projects. Do we have sufficient funding for those projects today?

MR. SPENCER: Once the referenda pass, I commit the money. So within the 2.3, that covers the referenda that passed most recently in March. There are referenda that go forward, as part of the annual budget processes. But there's not many of them because, historically, districts concentrated on getting their annual budget passed, not new construction programs.

The next referenda are scheduled for September and, I believe, December. Looking at past history, my guess is, by September, referenda will pass that commit the remaining \$200,000. If not September, it will be December. By December, money for the remaining districts throughout the state will be unavailable, because the entire \$2.5 billion will have been committed, based on past experience.

ASSEMBLYMAN VAS: Just one final statement, Mr. Chairman.

Again, having the benefit of sitting both on the Education and Budget Committee, I think it's been obvious to me the correlation between the progress and the success of the SCC, and that cost that can be correlated directly to the cost of education. And when we look at \$8.6 billion, we think it's a lot of money. But, in fact, in our annual budget, we're expending an excess of \$9 billion just for this year's public educational needs of New Jersey.

And one of the things that has been interesting that's occurred over the last couple of years, and I think can be traced back to the SCC, is that we're beginning to see, over the last two years, the per pupil costs of education come down -- and, in fact, over the last two years, an average of about \$300 per pupil. I think, in part, that's because we are building new schools. There's more efficient space -- I think it's Senator Bark's comment -- that we should be looking at the cost of maintaining schools into the future. And there are

tremendous costs that are associated with many of these inefficient buildings that have dilapidated mechanicals in them: heating, and air conditioning, and all those other costs that are sometimes considered administrative costs, and hidden costs to education. But with the thousands, and thousands, and almost millions of students that we have in schools, these dollars add up. And another reason to move forward and to look at school construction not myopically for the short haul, but looking at it into the next generation and making sure that we can build our schools well, not necessarily just quickly -- because part of the problem is that we put such a strain on our trades. There's so much construction going on at once that if we could spread it out, even over another six, or 12, or 18 months, the quality of construction would improve. Because we have contractors coming to the State of New Jersey, specifically to do school construction work, who weren't here before. And our trades are being challenged to put quality people on job sites. And when you don't have quality people, and you have companies that have just started up specifically for the purpose of school construction, you have some that don't make it, that choose to go bankrupt in the middle of a job. The surety has to step in. There's a cost involved in that delay. There's a cost involved in selecting a new contractor.

And so we should really be looking at, "Is the \$1.9 billion that remains -- 200 million for the non-Abbotts, 1.7 billion for the Abbotts, 1.3 you said -- you're going to look to get approval-- What are we doing into the future? How do we plan for the construction of schools in New Jersey in the most cost-effective and best manner, in partnership with the boards of education at the local level, with the State Department of Education, and local governments? Because as was stated earlier today, because of limited space in our urban environments and because of our own public policy going back to

the late '90s, we've been trying to redirect growth in our urban centers. The State plan that was approved by Governor Whitman-- The major focus of that plan, which was -- which resulted in the term *Smart Growth* -- was to have investment in our urban centers so that we could stop the drain to the economy of our state by strengthening those local economies, by attracting investment and redevelopment of those communities.

And this is all part of a bigger matrix that we have to look at. I don't think we can just sit here today and look at -- or dwell at some of the problems that have existed -- but look at the benefits that have resulted from the overall work of the SCC. And I personally want to commend the SCC for what they have done. And I think the work that they need to do in the future is even more important, because school districts now know -- particularly the non-Abbott school districts -- they now know that if they want the State to be their partner, they have to put up 60 percent, 65 percent of the money. And they're all out there doing it. And it's not fair to them, that they should be out there before the voters, planning for expansion of the school districts that is sorely needed in New Jersey, and not know whether the funding will be available and whether the State's going to continue as their partner.

Thank you.

SENATOR RICE: Mr. Spencer, Mr. Chairman, there's information I want you to get back to me, through the Chair, that we can share. And as I said before, the most important piece is the questions unanswered about how we're going to move this. The worst that could happen today is that we slow the momentum of school construction. It took a long time for people to buy into it. It took a long time for people to accept the fact it was going to happen. The courts have mandated it. We cannot stop the

momentum. If we want to talk about the dollars spent, we need to talk about the dollars that will be saved if we continue to move forward while we do the oversight. That becomes very important to us.

I still didn't get a definitive answer, as it relates to how many projects we're talking about -- and maybe that's a list you send us too -- that are on hold right now, that you really need some concurrence with, or at least some agreement to move forward with, from whoever in the State government that should be giving you the okay, and the time frame.

My question is, do we need to have an answer by the end of May? Do we need to have an answer by the end of next week? I know we can't go into June, July, and all that kind of-- I need to know some time frames. If it's something that you're not comfortable with right now, pull me aside and tell me.

And I can say this to the Committee members, as the Chair, I want to take the liberty of waiting to hear from you. And when I hear from you, if, in fact, I'm not satisfied with the time frames, then I'm going to put together a bipartisan delegation from this Committee, that I'm going to lead, to sit down with the Governor's Office and work with the Governor and Ms. Cooper, to make sure that we're getting the time frame that we know-- All of us up here are not naive about construction. We know it's necessary for construction. We'll figure out the mechanics -- how to make that happen in some kind of way.

Okay?

I want to thank the members, once again, for being here. I think it's a very important day for us -- to hear this.

I want to thank the SCC for the job you are doing, recognizing there are always problems. Anything we do, there are problems -- you're never denied that -- but for tightening them up -- and we're going to tighten up more. But school construction must go forward. It's a Supreme Court mandate. As Chair of this Committee, I'm going to continue to push that. And we are going to scrutinize and oversee.

Thank you very much.

This Committee meeting is adjourned.

MR. SPENCER: Thank you.

(MEETING CONCLUDED)