

STATE OF NEW JERSEY
JOINT COMMITTEE ON THE PUBLIC SCHOOLS

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COMMITTEE MEETING

TRANSCRIPT OF PROCEEDINGS

LOCATION: State House Annex

West State Street

Trenton, New Jersey

DATE: Thursday, October 26, 2006

TIME: 10:20 a.m. to 1:05 p.m.

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C O M M I T T E E M E M B E R S :

SENATOR RONALD L. RICE, Co-Chair

ASSEMBLYMAN CRAIG A. STANLEY, Co-Chair

SENATOR MARTHA W. BARK

SENATOR THOMAS H. KEAN JR.

ASSEMBLYWOMAN JOAN M. VOSS

ASSEMBLYMAN BILL BARONI

ASSEMBLYWOMAN JENNIFER BECK

ASSEMBLYMAN DAVID W. WOLFE

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SENATOR RONALD L. RICE (Co-Chair): I'm going to ask my colleagues to start. We're about 20 minutes late. We were waiting to see if others will be coming this morning.

I want to thank my colleagues for taking the time out to get down here. I know that it's been a busy season and summer for all of us, as well as Fall. I also know it's been very taxing on education members' time, given these various committees, but we have to move forward with information.

Good morning. Let me just say we're here today -- we're not going to be that long -- but it's important that the SCC bring the Joint Committee of the Public Schools up to date on where we are in terms of the progress, in terms of funding, in terms of reorganization and everything else.

I want to remind the public that this Committee is the oversight committee for the Abbott Districts. We take that very seriously. We did not promulgate the legislation, but we do, in our collective or individual wisdom, define legislation that would go to both the Senate and Assembly Education Committees for consideration. But we're going to be trying to change some legislation to compel the SCC, or whatever organization takes its place, to report directly to this Committee on a regular -- I believe it's a monthly basis -- and they report to the Governor, so we in turn can report to the full Legislature for accountability.

Having said that, let me see if the Co-Chair has anything to say this morning before we get started.

ASSEMBLYMAN CRAIG A. STANLEY (Co-Chair): Thank you, Senator Rice. It's been a long time since I've seen these two gentlemen in Trenton. Actually, Monday, a very, very spirited meeting.

Let me, again, welcome you again. And I think that Monday sort of shows the challenge of bringing this program back on track, the school construction program for the students of the State of New Jersey. And I think that in the forefront of our minds, we've got to understand that that is our objective and that is our responsibility now. It's been a long time since the Court ordered this, and it's even been a longer time, probably a generation or two, since the case even began that eventually led to the Supreme Court decision that forced, and I repeat, forced the State to undertake school construction in the State of New Jersey.

Now, hopefully, with the guidance of enlightened persons and with the benefit of hindsight, we'll be able to make the corrections that are needed to move the process forward. But the bottom line is that this is what our obligation is to these students. I think it would be very good to focus today, and I know we didn't -- you didn't go into a lot of detail about the changes that the Schools Construction Corporation made over the past seven or eight months, as the Corzine administration has been at the helm and, of course, since you've been there, but I think that's very important.

Senator Rice said this is an oversight committee. It is charged with ensuring that we are compliant with mandates. But even more important than mandates from the Court is our constitutional responsibilities to the kids, because that's where it's all based. And certainly, the Legislature is the best place for that to happen. And hopefully, this can be a continuation of a road that will lead to a school construction process that's going to be acceptable, that's going to reap the results that we need it to. Thank you.

SENATOR RICE: Now, any other members have any opening comments?

Let me say that I think it's our responsibility to ask the tough questions. I do that. I expect my colleagues to do that when appropriate. I don't expect what I call "clown shows" on either side. I understand that, given the frustration, also given the political season, that the Education Committee got to be real active. We're not in an accusatory stage here. We're in the stage of trying to identify where we are going. I want to caution my members on that. Ask the questions you want, but let's keep it sane. If you want to yell, that's fine, but keep it sane.

With that, why don't we have the Chief Executive Officer start to deliver your message to us, and we'll raise some questions.

B A R R Y Z U B R O W: Okay. Chairman Rice and Chairman Stanley, let me begin this morning's discussion. As you know, I'm Barry Zubrow, the Chairman of the Schools Construction Corporation, and I want to thank you and your colleagues for inviting us here today to share with you the considerable progress that has been made in bringing reforms to the Corporation. And Scott and I are going to walk through what a lot of those reforms have been; as well as the program that we have recommended, in the third report of the Interagency Working Group, for moving forward with additional funding; as well as suggested legislative changes in order to get this program back on track in the State.

As I've testified before to your Committee, we were both surprised at the depth of the problems at the SCC when we began working with the organization back in January. Simply stated, the execution of much of the work by the SCC, going back over a number of years, was plagued by a lack of

strategy, by poor management, and failure to put in place basic controls and reporting systems that would have allowed it to execute its responsibilities in an appropriate manner.

As we've looked at this, it's our view that there is no single one cause for the problems with the program or at the agency. There was a mosaic of issues and problems that stemmed from a lack of properly thinking about the long-range implications of how to manage an \$8.5 billion construction program, which as we all know is the largest construction program of its kind in the country.

We've tried to put in the basic comprehensive managerial and operating reforms that will allow the agency to perform its tasks properly; to allow ourselves to recommend to the Governor, as well as to you, that the State provide additional funding for this program going forward; as well as to allow us to complete the work in an appropriate way, which is already on the docket.

Having said that, we recognize that there's still a lot of hard work to be done. This is not an easy program to operate. It has lots of complexities, reflecting the large scale of the program and the number of individual schools that are being renovated and built. And we're working at this day in and day out, and we're happy to report to you today on the progress that we've made.

When we talked about additional funding, and we recognize that this will be something that you all will be considering over a period of time. We bring forward the recommendations for additional funding in the context and recognition of the State's overall fiscal health. We recognize that there's an ongoing, real structural budget deficit in the State that you all have to grapple with. We understand the need to fund real property tax relief. We also

recognize that you're considering the changes to the school funding formula throughout the State, which will also need to have a component which reflects how the State will fund facilities as part of that. But we also have to balance all those competing needs with the fact that we have an ongoing acute need in our communities for additional school facilities, and a recognition that delaying the program is only going to cost us all more money. And it's also going to not allow us to deliver the education to the children of New Jersey that we all hope to be able to do.

Scott and I are going to walk through, with you, a PowerPoint document, that I believe you have in front of you, which will discuss not only progress and changes that we've made at the SCC, but also recommended areas for legislative changes in order to allow the Corporation and the State to best manage the facilities' construction program, going forward.

As you know, the Board named Scott as permanent CEO of the SCC a couple of weeks ago. Scott has done a terrific job as the transitional CEO. And after conducting a national search, it was our belief that Scott represented not only the best individual for the job, but also somebody who brought the type of entrepreneurship managerial skills envisioned for the Schools Construction program that we all seek as we move this forward. Thank you.

S C O T T W E I N E R: Thank you, Barry.

Senator Rice, I'd like to ask a favor. I'm sure it's not intentional. Your light is shining right in my eyes when I look up.

SENATOR RICE: That's a good thing.

MR. WEINER: It reminds me that a questioning is forthcoming.

I want to thank you also for the opportunity to come here today. I see, of course, some familiar faces from Monday. And for those of you who we did get a chance to meet on Monday, a lot of what you'll hear today is similar. We have a presentation to respond to some of the questions that were raised on Monday. And as Barry mentioned, we want to spend a little more time today really presenting some of the changes and reforms that have taken place over the recent months.

This is a 23-page document. I'm not going to go through all 23 pages. I will highlight it. This is really meant as a foundation for future discussions.

In addition to the PowerPoint, we've also distributed a listing of the various projects that represent the universe of approved projects today. These are the various lists. You now actually have the lists in your hands. I'll be referring to them: the List of 69, 59, 315. Hopefully, those lists can all be obliterated with the strategic plan in the not too distant future. But at least you'll know what we're talking about.

The beginning of the presentation, on Page 2, summarizes the eight key findings and recommendation that came out in the third report. Of course, the lead recommendation was that there be an additional \$2.5 billion authorized and appropriated for the Abbott Program, and \$750 million for the Regular Operating Districts and vocational schools.

Consistent with Senator Rice's comments, we anticipate and look forward to a regular reporting relationship with the Legislature. We view this as a collaborative process, and we're anticipating monthly reports. We can work on what that information is and certainly send over information on a monthly basis. We know it -- we need it

to manage what we're doing. There's no reason why you shouldn't have it also. And I would look forward to regular quarterly presentations to this Committee and your colleagues, so we have a chance to talk about the progress and you'll be able to see whether or not, and to what extent, we're hitting the construction milestones that would be anticipated in any future authorization.

The important thing I want to stress is that this authorization will allow, for the first time, the implementation of an integrated strategic and capital planning process. There simply was none in the past. In the past, as I think the Committee knows, there was a big pot of money, and there was a statewide objective to build schools and get kids in desks in those schools. A laudable goal. But there was no real plan. It was first come, first served. It was identification of projects that could move the fastest, all with the best of intents but with a lack of management planning. And as I'll discuss later this morning, we have laid the groundwork to do a real strategic plan and develop a comprehensive Capital Plan that can look out over a number of years.

There is a Capital Plan that we have referred to. It was adopted in July of 2005, I guess about 15 months ago. Many of you are familiar, at that time when the SCC recognized that it was running out of money -- although it still had over a billion and a half dollars that was available -- but that billion-and-a-half would no way be able to fund the almost 400 projects that were on its plate in one manner or another. The fact that there were 400 projects, the fact that there was no strategic plan, the fact that prior to July 2005 there was no Capital Plan for allocation of capital -- are part of the contributing factors that got us to where we were as a

corporation, and allowed for the ineffective implementation of State policy.

That plan, when it was adopted, attempted to identify projects that could be funded and completed with the remaining uncommitted funds. What we have subsequently found out, starting the Spring of this year, is that that Capital Plan was underfunded at its inception. And I'll talk more about that. And that \$500 million shortfall was really born on that July day, because of the lack of information that was then available.

As Barry mentioned, we also believe very strongly that, in addition to money, there is an absolute need for some amendments to the Act. We're all so many years smarter, having lived with the Act. We've learned things, like with any statute that's passed, that to achieve the kind of efficiencies and, most importantly, accountabilities that you and your colleagues and the Governor are looking for, we'll need to fine-tune parts of the Act. And we'll talk about that.

I was very proud that our colleagues, my colleagues on the Interagency Working Group reached a conclusion that the SCC, under its current management and with reforms I'll discuss, is now capable of managing additional construction projects and expanding the portfolio. And an important piece of that was a prioritization methodology that was adopted -- or recommended, really, through a working group that had been appointed by the Interagency Working Group itself, comprised of DOE representatives, SCC representatives, some stakeholders from the Election -- excuse me, from the Education Law Center, and some others. And that report has been previously circulated, and I'll be summarizing it today.

And as Barry mentioned, we believe that additional funding authorization can and should occur in parallel to your discussions about changes in school aid formula.

Page 4 provides a little more detail about the recommended \$3.25 total proposal. Importantly, for the 2.5 billion for the Abbott Districts, again, we want to point out that this funding would enable the completion of the July 2005 Capital Plan. That Capital Plan, among other things, includes the list of 59 projects that were approved in July. If no additional funding is forthcoming in the foreseeable future, we're going to have to begin curtailing that plan, also, and suspending projects. We have not begun to do that. We are allowing projects to proceed at their own pace, and we're keeping an eye out for when a prudent time would be to begin curtailing some of those costs.

The other bullet points that are listed there stress that we are attempting to address priorities in the context of available resources, both now and in the future, should the additional funding be provided. And the underlying component of that approach would be to create some strategic plan, with a five-year planning horizon, that could incorporate the projects that are ready to go now, ready to go into whatever their phase of development would be. And it would thereby support the reactivation of projects that were suspended throughout the 31 districts. And we'd also be able to establish a reserve for unanticipated health and safety projects. By definition, unanticipated health and safety projects will arise without previous knowledge, and the impact now is it erodes what resources we have in the Capital Plan, putting further pressure on our ability to complete the 59 projects that were funded.

There was a recommendation for \$750 million to be provided to our Regular Operating Districts. There are two important recommendations that go along with that. The first is that the aid be provided in the form of debt service aid, as opposed to the current grant program. We recognize that lots of people have lots of views on that. The working group report articulates why we think that's good idea to move in that direction. But we anticipate a long and spirited discussion about that.

And also, and as importantly, we recommend that, whatever form that it takes, that a prioritization methodology be adopted to make sure that the allocation of State resources is aligned with State education policies for those districts. Good projects were built all over the State in the nonoperating districts, but it was allocated on a first come, first served basis, which had two impacts, obviously. One is, those districts that didn't have the internal capacity to get their applications in as fast as some other districts found themselves at the back of the line -- because of a lack of capacity, not necessarily because of the lack of need. Secondly, as we allocate the limited resources of the State, whatever those priorities may be -- and we're not recommending them in these districts -- that we work collaboratively to make sure that we're advancing whatever those policies may turn out to be.

In my comments today, and in the working group's report, and in comments on Monday, I tried to draw a distinction between authorization and cash. And we'd like to point out what we're seeking now is authorization for future bonding, which will provide future cash.

And this next slide -- which is new for those of you who we met with on Monday -- on Page 5, tries to illustrate

what I was trying to say with words. Currently -- if you start at the far left -- without any additional authorization, we have \$1.4 billion committed to projects. That money is not yet spent, and those are projects that are sequenced from 1 to 59, based upon a whole bunch of criteria -- mainly, at this stage, constructability -- they're sequenced according to their constructability. And that's the current Capital Plan. We all know that there are many projects that have laid suspended from the 2000 long-range facility planning process; and there is currently an ongoing review of new, updated long-range facilities plans from each of the Abbott Districts, as well as other districts throughout the State.

In terms of the Abbott Districts, what we'd like to be able to do -- when that long-range facility plan review is completed by DOE, and priority projects have been identified for each of the districts -- is provide funding that could address those projects, many of which we will have already seen as part of the list of 97.

The third column to the far right illustrates what we're trying to achieve, which is to take both our existing resources -- the 1.4 billion that has been authorized and is available to be used for projects -- along with the new authorization, and integrate the two lists. And we reported, in the Working Group report, that some 27 projects in the list of 97, for which design work had been suspended, have a higher priority ranking than some of the projects in the list of 59 that are part of the Capital Plan. Let me repeat that. There are 27 projects that by any measure have a stronger educational priority than projects that are funded in the current Capital Plan.

Now, those individuals who adopted the current Capital Plan were doing the best job they could with the

resources. They were balancing a whole number of criteria. But we need to address those projects. And the way to do that is provide additional authorization, so now we can take those two lists and re-sequence them. And I'll give some further examples.

So the cash isn't needed, and we have enough cash to run the organization; and the work we could do for approximately two years under the current authorization -- current funding. But without this authorization, it would be imprudent at best for us to begin to start new work, not knowing that there are resources to take that work to its next step.

Page 6 details, or lays out, in some bullet points what are the consequences of inaction, what are the consequences if this money is not authorized. Well, we lose the ability to do real effective capital planning, strategic planning. As I mentioned, some of the projects in the Capital Plan will be suspended. And projects that are identified in the new, long-range facility planning process will not commence. And delay can only cause additional shrinking of the available resources in the current Capital Plan, putting additional pressure on the projects that make up the current active list -- for two reasons: One is, we're going to continue to see emergent, unexpected projects, health and safety projects, that require immediate funding. It erodes away the back end of the Capital Plan. And we're going to be impacted by the burden of additional inflation as the process of building these projects gets pushed further out into the future.

And the last bullet point on the page is an important one. And it's one of the unfortunate legacies of some of the agency's prior actions that community

revitalization will be delayed. And whether it's Dewey Street in Newark or other communities in the Abbott Districts, there are communities that are laying foul now where there was an anticipation of a school, there was a need for a school. Not only hasn't economic development been allowed to occur, but, in fact, we have land that is crying out for revitalization.

Page 7 identifies the fact that a lot of work was done, historically, by the program. Sometimes in, understandably, focusing on the problems of the present, we forget about the successes of past. Page 7 identifies that. And there were 599 Abbott projects completed to date. These included 354 health and safety projects, and 32 new construction, and 31 which were substantial additions or renovations. Five of the six demonstration projects that were authorized by the Legislature are currently underway. And another important fact is 1,425 schools in Regular Operating Districts benefited from the program through the issuance of grants. And you'll see that we execute over 2,500 grants, worth over \$2 billion, and that these impacted and benefited 471 districts.

Page 8 illustrates, again, our current state. The left side talks about the current Capital Plan, which was adopted in July 2005. And it's funding three basic activities: What's called the list of 69 -- by the way, one of my personal goals and objectives is to obliterate the reference to lists and change the lexicon. But this is what we have right now. We're really looking forward to helping develop a strategic plan and talking about things in that plan. But the list of 69, with the 69 projects that were authorized for, in construction, as of July 2005 -- at the adoption of the first Capital Plan, by the way -- as you can see from the annotation, 44 are complete, and 25 are actively

under construction. The list of 59 refers to the 59 projects that were approved in July of 2005 to go forward. And of those, 15 are currently in construction; and the demonstration projects. Again, you have a listing of all those projects attached to your materials.

The right-hand side shows the current unfunded projects. These are projects that have been approved by the Department of Education, somewhere beginning or after the review of the 2005 long-range facility plan. There are 315 total, divided into three buckets. And those buckets on the right-hand side indicate the developmental stage that the projects were at, as of July 2005 -- as of July 2005, when the Capital Plan was adopted. These all reflect the output of the 2000 long-range facility plan.

SENATOR RICE: You're talking about the Capital Plan 2005? That's what's reflected in this document?

MR. WEINER: In that document. In this document, we tried to color code them. You'll see the heading up on top. The list of 69, the 69 projects that were in construction. The next group of 59, those are in the current Capital Plan. Everything that follows, in the three different groups -- the purple group, the brown group, and the light blue group -- are the 315 projects that have been approved by DOE, where there was a need, there was an expectation in the community and nothing is being done.

And by the way, as those projects were being approved, there was never enough money to satisfy and address all those projects, and I don't think it was anybody's expectation. And when we look back with the benefit of hindsight, one of the problems from both a management process as well as, frankly, expectation, was DOE was approving projects. They were approving them in good faith, they were

doing the best job they could, and when a project came in, they looked at it, and approved it, and they lateraled it over to the SCC. The SCC would take a look at it and say, "Okay, how do we do this project? Does it need land? Let's get a land acquisition going. We need to remediate the land. Let's start spending money on remediation. Can we begin building or design? Let's do that." But there was no sequencing, there was no plan. So that sometime in the Spring of 2005, the then management of the SCC turned around and said, "We're running out of money. What are we going to do with our last billion dollars?"

It's no way to run a railroad. And I'll be explaining, in a few minutes, the things we've done to address that kind of gap.

SENATOR RICE: Before you move on, you mentioned 27 projects that really had greater priority than some that were approved. Would this document identify those projects, or is it something you need to send to us?

MR. WEINER: I'll send it to you.

SENATOR RICE: We'd like to know what they are.

These are new construction projects, or are some of these health and safety?

MR. WEINER: They could be new construction. Some could be health and safety. They could be health and safety, new construction. They could be health and safety, rehabilitation.

SENATOR RICE: And when you send the list, make it clear to us what we're looking at: School A in this district, health and safety; School B in this district, new construction.

MR. WEINER: Sure. By all means.

SENATOR KEAN: That would be through you, to the entire committee.

SENATOR RICE: Yes.

SENATOR KEAN: Thank you.

MR. WEINER: Page 9 talks about the current state of the Capital Plan, and it gives some of the reasons why we find ourselves in this position. The first bullet point again points out that, at the time of the adoption of the plan, the cost estimates that were being provided to the Board were inaccurately low, resulting in the underfunding occurring at that time. And there are two reasons why that happened. One is, the construction cost estimates were based on incomplete designs. It's a very simple concept. Somebody says, "We need a school that looks like X, and we need a middle school in Community X, and we need a high school in Community Y. We know a little bit about it. The estimate cost is going to be so many dollars." Contingencies really weren't put aside, and it's hard to estimate the cost to build a school with any accuracy unless you know what the design is and all the elements that go into it. Nor were those construction cost estimates updated. So some of the construction cost estimates that were being utilized in July 2005 were outdated already by the time they were looking at it. And going forward to the time of January-February this year, they hadn't been updated and they still hadn't been re-forecast. I'll talk about the things we've instituted to address that gap in planning and in project management.

Now, we did introduce and enhance project forecasting capability in June. And we show, at the bottom of this page, the principal factors that contributed to the shortfall, with inflation representing slightly over two-thirds of the total cost impact. Sometimes new requirements

arise, and they weren't anticipated at the time of the Capital Plan and adequate reserves hadn't been set aside. And to that regard, I draw your attention to the inclusion of new homeland security requirements that have been adopted for schools. Very essential, very important, but not anticipated at the time of the adoption of the Capital Plan.

Page 10 and 11 identifies and summarizes, from the third Working Group report, the areas that we believe need to be addressed in addition to funding, need to be addressed in terms of amendments to the underlying statutory scheme.

This presentation today is intended to be qualitative, not specific in terms of specific sections; but really to set out goals and objectives. I'd like to just touch on a couple of them. One, and the first one, the creation of new authority for schools. We talked about this at the prior hearing that your Committee ran. This is intended to address governance issues, and we have not gone into great detail as to the number of the board, the size of the board, whether there would be any predetermined criteria for board members.

We want to get at two issues. One issue is that, currently, because the SCC is organized as a subsidiary of the EDA, by statute and by EDA Charter, half the board members of the SCC have to be EDA board members. Now, these are great men and women. It's an honor to serve with them, but they don't necessarily bring the kind of backgrounds and professional expertise that you'd like to have on the board of a multi-billion-dollar construction management firm.

Secondly --

SENATOR RICE: Excuse me. Let's have a discussion here.

MR. WEINER: Sure.

SENATOR RICE: What is the kind of expertise you're looking for? Because if people don't know something about the industry and how it works, we have a real problem. Why don't you just elaborate on what you think the characteristics should be for the board, because some of the people I've seen recommended to this new board scares me, in terms of background relating to knowledge of construction and what will take place in the field. Why don't you elaborate?

MR. WEINER: Sure. I think, for any construction management organization the size of the SCC, you're going to find people, Mr. Chairman, like you just identified, who have some practical experience in not just construction but construction management. That experience could come from being an executive in a similar company or a related company. It could be somebody who has been on the owner side or the client side of a major construction project. We'd want men and women who had experience in the kind of corporate governance of the magnitude of this type of organization in terms of audit committee participation, for example, and other governance and oversight issues. Because of the nature of our operation, in addition to specific construction management expertise, I'd like to see the presence of men and women who have had the opportunity to grow, on a very fast pace, large organizations. This is a multi-billion-dollar organization that is in its own design-build category. And I'd like to be able to see board members who have had that experience with other corporations, whether they be public or private. There's a whole array, just to name a few.

The other thing that, what I would call, a traditional State independent authority structure would provide is greater collaboration with the Legislature. Right now, all the appointments are direct appointments by the

Governor. Having been on the executive branch my entire career, there's some merit to that, we think, at times. There's also merit to the collaboration and from the balance that comes from the process of advice and consent, and that process would be inherent with this authority, as with any other authority.

The second bullet point talks about increased district roles and responsibilities. It's important, we believe, to set as a fundamental goal that districts have as active a role as possible and practical, from the moment a school is conceived of in the long-range facility plan to the time, literally, the keys of the building are turned over. Different districts are going to have different capabilities.

One thing that we're recommending is that all districts, if they elect, be authorized to manage their own capital maintenance projects. I'm going to talk more about capital maintenance and funding in the Abbott District in a second. But these are projects which the districts can run and manage themselves. Right now, as you know, the statute has a \$500,000 cap on the size of projects that can be managed. We think that cap should be removed, certainly from capital maintenance projects. We also believe that the new statute could include criteria that could be considered to determine whether or not a district has the internal capacity to manage some or all of a project currently. And most importantly, if a determination is made that the district doesn't have the current capacity, we think that a program should be put in place to build that capacity in the district. The goal should be to transfer the capability of managing these projects, over a period of years, back to the districts where that responsibility belongs.

Now, as long as there are State funds, we understand that there's the issue of oversight, what we sometimes call deliverability risks. These are State funds. But that can be provided in many ways and can be provided in grant oversight. It doesn't have to be provided by doing all the work ourselves. But even beyond the issue of managing the money, I want you to know that we are committed and we are instituting steps now to try to get districts more involved in the design process for those projects that are in the design phase and in the planning process. These are the districts' projects; they're not our projects. It's something we recognize and we think that there are changes to be made to the statute to enhance that.

Related amendments deal with issues of capital maintenance accounts and capital accounts for Abbott Districts. Right now, because of an interpretation of existing law, those accounts remain unfunded in districts. That has a couple of, I think, unintended but very detrimental effects. For example, in Newark, the Superintendent would like to add a new science lab to the new Science Park High School. That money technically exists in the district's budget. They need that laboratory in order to be able to run AP chemistry courses. The Division of Law, doing its job, interpreting current law, says they can't use that money. So that money gets trapped. We are working out ways with the Division of Law and with the district so we can find ways to free that money. It's a very circuitous route. It shouldn't be that difficult.

But even more importantly than funding a specific project is the fact that, without the capability to fund and build capital maintenance projects, we are setting a time bomb for all the new work that we're doing; because how are those

projects going to get funded in the future, how are they going to be maintained? They're going to be maintained by making them come back to the SCC or its successor and have the SCC do it, and we're now transmitting responsibility to where it belongs, back to the community. So we need to be able to do that also. These are two changes, more specific ones we wanted to call out.

SENATOR RICE: Let me suggest -- I'm not going to suggest, I'm going to request -- and we'll look into it too, Melanie -- language for legislation to make that happen. Because it's been a barrier, and we're in very big debates right now where there's this notion -- some of it's more political, based on where the people live and who they represent, their bias. But there's this notion that we build schools -- meaning SCC -- in Abbott Districts, but we shouldn't have music rooms, we shouldn't have the kinds of things that all of us grew up on, at least in our generation, that the generation behind us have in living and studying in Short Hills, and Deal, and elsewhere. And people are saying they shouldn't pay for it. Well, the thing is, the courts said *parity*; and I believe implies, through interpolation, or whatever you want to call it, many of those things. You can't ask a student to learn ABC's and not have some discipline that comes with that through music, arts and crafts, and other kinds of things. So I need language, and hopefully the members of this Committee will support legislation to at least help the districts, once we build the schools, to self-sustain some of those concerns, and they won't be coming back to us. So I just wanted to stop you there, at least to make sure that we all look at some -- and if my colleagues can think of some language that could help, please provide it to me.

MR. WEINER: Page 11, on the top of the page, talks about expanded land acquisition options. Land acquisition has been a challenge, to say the least, for the Schools Construction program in the state. There are lots of areas that we can and should be thinking and talking about, and debating. Should land for school facilities be included in a community's master plan? That has certain implications. There is a legitimate debate that goes on from the point of view of the community who would see available land and say that should be earmarked for ratable development, for the economic growth, the vitality of the community. That same piece of land may be appropriate for a school. That's not an easy choice, but it's a debate that we need to have, and figure out how you deal with that. Because right now, in many cases, the decision that was made-- And one can understand the decision of the governing body would be to say, "Here's a piece of property that's very compelling and it's ready for development. We'll develop that through private sector development, we'll achieve a new ratable," all of which is legitimate and all which is valuable. And here's another piece of property that locationally is good but it happens to be contaminated. So we will have the State clean up the property through the SCC and we will then be able to utilize that for a school.

This is not a simple yes or no question, and debate needs to be had about how we address these policy issues as a broader state community. And to that end, we, along with the DOE, are sponsoring a symposium on land acquisition issues that will be held in late November. I'll make sure the Committee -- I'm sure the Committee is already notified of that. We'll notify you about this. We're bring together the 31 Abbott Districts, as well as other planners, municipal

officials, other stakeholders to talk about this issue throughout the course of the day and see if we can't come up with at least some themes, incentives.

There are things, of course, that can be done. Freezes on the issuance of development permits after a site is identified -- that is not the law right now. Right now, once somebody realizes that the SCC is looking at a piece of property, they can begin to put their shovels in the ground, enhance the value of the property, even in anticipation of condemnation. We see that in many, many communities where we are active.

SENATOR RICE: On the notion of land acquisition, we've always argued that it should be left to the jurisdiction. One of the problems was that everybody came in (indiscernible) the land, which didn't make any sense. I take Newark for an example. Put the Newark Board of Ed and local government at the table, you'd know where the land is. And that bogged our process up, because you could never talk to anyone.

Number two, we don't want anybody into land banking. We don't want SCC holding land forever. If we're going to acquire land, then we need to understand we acquire that and continue to move forward, in terms of getting that school in the ground. I think that's very important.

And the other thing is, recognize that eminent domain jurisdiction right now is under my leadership, and we hold eminent domain hearings. So you need to weigh in with whatever comments you have, because I'll be doing legislation soon to get before the whole Committee and the whole Senate for their consideration. So I want to at least put that in perspective.

You also mentioned acquisition. When you talk about acquisition, always remember, regardless of how much the State argues and bickers, acquisition is going to always mean just and fair. If a piece of property is worth 300,000, you don't go and offer 250,000 because we're State government. That happened. If my colleagues don't like that, then what we should do is put eminent domain on their house and offer them something less than what it's worth. Then we'll get the votes. I just want to be clear about that.

MR. WEINER: Thank you. Let me just respond to let you know how we're addressing two points.

The issue of land banking: Right now, the SCC owns property. In Newark where that land was acquired in anticipation of building a school, which is now not funded, it's not in the current capital plan. Newark is not the only community that faces this. The ability to get the additional authorization will allow us to reactivate those projects we all know can be built, and begin to put school facilities on that land that we've acquired.

Even today, we face development pressures on part of the parcels that are trying to be assembled. So we have projects that are not part of the Capital Plan, work has been suspended, everybody anticipates that when new funding becomes available that that project would become active. The longer we wait to acquire the land, the more expensive it's going to become. And there are opportunities to avoid that, but we can't spend the money now in any great measure because it would erode the current Capital Plan. These are all reasons why additional authorization is needed now.

On the issue of acquisition, as you know and your colleagues know, there are some communities where land is so limited that the price becomes prohibitive, notwithstanding

the need for the new school facilities -- in densely populated urban areas. So one of the other recommendations is to explore opportunities for joint use agreements, for joint development agreements, and begin to find ways of not just building vertical schools, but building a school that's part of a mixed-use development and finding ways to shave costs off the acquisition of the land that way. That's some of the issues that we'll be talking about in November and we hope the new legislation reflects.

Page 12 introduces the list of initiatives that we present for you that the SCC has put in place since January of this year. There are four pages. There are 22 initiatives. Let me just mention some of them, but I urge you to read them.

In no particular order, on Page 13 we deal with issues of governance, ethics and internal controls. I want to point out that the Governor and all the agencies are committed to increasing transparency and public participation. In that regard, we are now posting not only our agenda on the web page, not only the minutes on the web page. But, in fact, prior to every Board meeting we post the advisory memos that go to the Board members, so that members of the public who want to understand what's going on at SCC can get a flavor and understanding of the information and data that's going before the Board members.

We removed the Attorney General from the Board of Directors, not because we don't like the Attorney General, but we recognize that there was a conflict in having the Attorney General be a member of the Board at the same time we were looking for that office to aggressively pursue wrongdoing that may have occurred in the execution of the program.

We have an audit committee, and that is no small fact. We have a fully functioning audit committee that

performs all the functions of an audit committee, in terms of overseeing corporate governance; but we've also expanded the scope of that committee recently to include personnel and compensation responsibilities, specifically.

We've hired the firm of KPMG to conduct the internal audit function. We've created our own Inspector General positions inside the SCC in coordination with and under a cooperative agreement with the Office of Inspector General, Mary Jane Cooper.

Page 14 talks about some of our project management initiatives. If I left you with only one point, it would be this: That prior till, I would say, May of this year, there were no project budgets of the SCC. None. Zero. If you walked into the SCC at any time prior to this administration and you said, "Can I see the budget for Science Park High School, can I see the project for the Irvington School, can I see the project of any school?" you wouldn't be able to see it because it didn't exist. What existed were separate documents that were reasonable attempts at budgeting for different phases. There was a construction budget, there was a design budget, there was a land acquisition budget, there was an FF&E budget, but they didn't talk to each other. Nobody saw the whole picture of what it took to get a school from point 1 to point 2.

One of the things we're going to be working on over the course of the coming weeks, and we look forward to sharing with the Committee, is a presentation of really how does a school get built. From the moment of inception, when a district says, "We need a school," to the day that there's a dedication, what happens? And what have we done in the process to make that process more transparent, more efficient, and more collaborative? But we now have a budgeting process.

We now have a forecasting process. Every month we read the forecast of the projects. We look to see whether or not we're on time and on budget, and whether or not we have identified opportunities to save some of those costs.

We're implementing a process to capture and disseminate lessons learned. Lots of lessons were learned on every project, but they were never shared. They weren't even shared in the same region, let alone throughout the organization. And importantly, we're looking to prevent and eliminate a term someone's used called *institutionalized waste*. I'm going to talk about our cost recovery efforts.

But institutionalized waste is that waste that emanates from inefficient management. It can find its source in inadequate or inappropriate contract provisions, the lack of enforcement of contract provisions. Land acquisition itself can be viewed historically for this program as institutionalized waste. We paid more for land than we should have. We bought land sooner than we should have. We tied up capital sooner than we should have. Your point, Senator Rice, that's waste. It was institutionalized, it wasn't the result of any bad actors.

SENATOR RICE: Well, a question. When you say -- I'm talking about land banking, I'm not talking acquisition for need. But when you say you bought land sooner than you should have, I'm not sure what you mean by that. Let me tell you why. There are areas in the State we have maybe only one property you can get. If you don't get it right away -- so land banking is now holding the property for a lifetime. That's what I'm talking about. You have to hold for a period time. The question is, what do you mean when you say you bought land when you should not?

MR. WEINER: I'll give you an example. Because of the lack of holistic planning at the agency, we have these (indiscernible) projects coming over to the SCC and the DOE. And a project would be identified, but there was no consideration given to when that project would be built or if it would ever be built. But they said, "Okay, here's a project that's been approved. It needs land. Let's go out and buy land." So land was acquired for a project that, I don't know, may never -- right now we have a project behind that land, we're holding it longer than we should have. What we want to be able to do, under the strategic planning process and capital planning process, is understand -- and I'll describe this in a minute -- understand what would a list of projects look like on a five-year planning horizon, without regard to money; what is the work that the State should be doing over five years? Then once we figure that out, and we work with you and your colleagues, you'll provide a certain level of the funding and we'll be able to do some of the work there. What we want to do in a formalized and thoughtful way is look at a project and say, "We know that this project isn't going to be ready for construction for two years. But we need to get land or we need to do a little remediation. So let's just fund that. Let's not earmark automatically." We know that that's going to be built. Once it gets into strategic plan, that project is going. And we also want to be able to come to the Legislature much more frequently than in the past, which is why we've only asked for \$2.5 billion. Two-and-a-half billion dollars is a lot of money, but as we all know, it is only a small fraction of the total need throughout the state. This is a multiyear -- multi-, multi-, multiyear program that's going to go on sometime long after, certainly, I'm around.

So we want to build in a much more strategic process. We want to be able to allocate money to acquire land where we know what the timetable is for development. So this is one of the legacies of a past practice, well-intended, to take everything that was approved and try and do as much as possible, without any planning, sequencing, or anticipation of what a real schedule might look like.

Page 15 talks some more about some more project management reforms. I want to draw your attention to the first bullet, where you discontinue the practice of bidding on incomplete designs, and restricting the opportunity for project scope change during the design or construction phase.

What does that mean? In the past, the SCC, again with the best of intents -- in order to speed up the process -- would put a project out for construction bid before the designs were done. So essentially, there'd be many a contract that said, "We want a school, it's going to look generally like this, and we'll figure out the price together as we go forward."

There are advantages and disadvantages to that. But in terms of managing a limited amount of funds and really understanding what the cost exposure is, it's not good. You can't let out a construction contract and try and freeze your costs. And there's been a lot of concern about change orders and the role of change orders in the organization. When you let out a contract to construct something before you know what you're contracting, that contract is going to be changed frequently as you figure out what it is you're constructing. Well-intended initiative; not very good management, under the circumstances. We've ended that process.

We're reviewing and renegotiating the PMF contracts. We're seeking additional project delivery options that I

mentioned, how we can get a project into to the ground. We don't always need a PMF. We don't need to pay for all those services. The fact of the matter is that over a period of years, some of the services that we were paying for we weren't getting -- we weren't getting sometimes because the agency didn't ask for it; sometimes we didn't get it because the PMF wasn't provided. There's plenty of responsibility on all sides, and what we're doing now is going back to each of those contracts, identifying areas where we believe we can recover some costs because of the way the contract was administered, and try to bring those dollars back into the program.

The next page talks about some business efficiencies. And again, I just want to generally draw your attention to the fact that we recognize that there's been a historic problem with accounts payable. We were slow in paying. That's not good. It's not good for the construction industry. It's not good for the reputation of the State. We have significantly reduced that backlog.

At the hearing on Monday before the Assembly Education Committee, there was information requested about the number of change order, the total value, and the like. We will be providing that, not only to the Assembly Committee but to this Joint Committee. And we'll just wait to see what information requests come out today, and we'll be doing a comprehensive submission in response to all of that.

SENATOR RICE: Let me put you on notice that I have a complaint in my office about subcontracting. The completed work hasn't been paid yet and nobody is getting back. I'll get back to you with information. They're going to give that, and I'll give another week. Then I'll find out what's happening.

MR. WEINER: Page 17 identifies the initiatives that have been instituted to recover resources that were lost to waste, fraud, and mismanagement. I think about this in three categories. I've talked about institutionalized waste. Then there is criminal behavior or the potential criminal behavior. And I wanted to assure this Committee, and we assured the Committee on Monday, that we are proactively working with law enforcement agencies to provide information, to offer information. We have identified some situations which we have raised with law enforcement agencies and asked for their help in investigating it, to both identify opportunities for recovery, but most importantly, to identify people whose conduct may have risen to the level of criminal behavior, to identify them and to prosecute them to the fullest extent of the law. And we are absolutely committed to that.

We have also instituted a number of cost mitigation recovery efforts. That's the second bullet point on Page 17. There are four categories of them. And the next pages talk about those four categories in greater detail.

The first that we talk about is errors and omissions. This is essentially professional negligence by design and other professionals. Mistakes happen. But when mistakes happen, they cost us money. We shouldn't be paying for those mistakes. And we have instituted a very aggressive procedure to identify it. That was not done in the past. Simply stated, at no time in the past, prior to a few months ago, was there any concerted effort to go after potential error and omissions claims on behalf of the State. We have started doing that. The task is enormous. As pointed out in the text on Page 17, there are over a thousand change orders where a potential error and omissions claim have been identified. There are almost 3,000 additional transactions

where a first review has to be done to see whether or not there's even a potential claim. The presence of a potential claim, of course, doesn't mean that we'll ultimately collect, it doesn't mean that we'll ultimately file the claim. There could be reasons why the claim became stale or that there was fault to go around on all sorts of parties. But we are looking at this aggressively. We have started chronologically with the most recent potential claims and, as pointed out, we have already filed three claims. We have three more in queue to go. And so far, we're seeking return of almost \$5 million. That number will grow significantly with each passing month.

Page 19 identifies another category of cost recovery efforts, in the area of environmental cleanup costs. As we all know, the State, through the Schools Construction Corporation, has paid millions upon millions upon millions of dollars in cleanup costs. Some times those cleanup costs are the responsibility of prior owners or with third parties. We have begun, and I want to underscore the word "begun," for the first time the process of identifying those parties that might be responsible and seeking cost recovery from them.

Page 20 identifies the two other significant categories, builders' risk insurance claims. These are routine -- routine in the sense that we have a process to file them and collect them, as any company would in the same business we are. And we're also aggressively seeking recovery of overpayments, as I mentioned previously.

Page 21 provides a visual presentation on the question of the prioritization methodology that was developed on behalf of the Working Group. I want to spend just two minutes pointing at a couple things on this. There's a detailed report that's attached to the third Working Group report that spells out how this methodology was adopted. It's

still a work in process. Part of the input to this was the symposium that was run in July where all 31 of the Abbott Districts attended, including -- I think it was 16 or 17 Superintendents came. Now, I'm not going to say that everybody came to the meeting and left it saying, "This is great. I love it. Great job." But we did get a lot of input. Some people liked it; some people are afraid of it -- understandably, until they see it in operation; but it is a collaborative effort, and this will continue to evolve.

Here are the primary things I want to mention today. The first and most important step in deciding how do we approach projects is to look to educational priorities. And those priorities come from the act that you and your colleagues previously enacted, and it also comes from the Supreme Court decisions.

In order to provide a little more robustness to decision making, for example, we've distinguished different categories of health and safety projects. There are some health and safety projects that need to be started immediately. The other health and safety projects might be able to wait a little bit of time. Some are code violations, some are imminent hazards, some are deferred maintenance. They all don't have to be treated the same, particularly in the allocation of finite capital for resources. But that's one of the primary categories we look to.

Early childhood centers, whether they're stand-alone facilities or they're integrated into other facilities -- how do we address overcrowding? These overcrowded early childhood centers, and health and safety, are the three driving criteria of the State's policy as reflected in the statutes you enacted in the Supreme Court decisions. That is and should be the first level of prioritization. It was always considered, but

as I mentioned earlier, it didn't necessarily set the foundation for decision making.

Then there are secondary considerations in trying to develop a strategic plan, which are: is the land developed, and is there a need for temporary swing space? What costs have already been invested -- because we have over \$300 million of some costs that have been previously invested in some of those projects that aren't part of the Capital Plan, and to the extent those projects remain a priority for a district, we should look to utilize some costs and not just abandon them.

Then there's what we call *other considerations*. We really use the phrase *district fit*. And there we want to be establishing a process that brings the district together with the governing body in the community, as well as other stakeholders, and say, "How does this work? Are we addressing all the piece parts?"

And the example I'd like to give is Newark where, Senator, as you know, there is an elementary school plan. This elementary school was planned in two pieces, an upper school and a lower school, and they're going to share the land that fell in between those two schools. They were submitted as two separate projects for procedural reasons and administrative reasons. And one of the projects, one-half of them, already had the land available. It was the site of an existing school. That one was included in the list of 59, in the current Capital Plan. However, the other one wasn't. The dot was never connected. So what's happening? We're going to have half a perceived elementary school. There's enormous development pressure on the other land. In fact, somebody started building some townhouses on some of the available parcels. It's something that we're looking at and dealing

with. But because the district fit wasn't considered, because this -- by all the best intents of our predecessors -- that dot wasn't connected. So we have really half of a school being approached now. Until additional authorization comes about, that other half of the school isn't going to be built.

SENATOR RICE: I would suggest respectfully, very seriously, that how the project fit be pulled out of the other the other consideration, and put upon the list of priority consideration so there's not an oversight. Because if you look at the situation in Phillipsburg, you have a situation there that dealt with where they built the school, number one, based on capacity; then the cost at the insertion versus the cost now; and the expectations. Because there never really was an expectation as to, is this an Abbott District, a non-Abbott District, part of an Abbott District? Do we get part of that money? So the expectation was everything would come from Abbott, and we probably proceeded that way -- I'm being honest about that -- for a lot of reasons. But once again, the dots weren't connected there either. I don't think it should be other. To me, that's extremely important, because it's not just the land acquisition connecting those dots. I get tired hearing the debate that states, especially in an Abbott district, that "You don't need an outdoor track." Well, maybe you think I don't because you have one. Or maybe you think I don't because you live in Caldwell someplace and you can use the park. Maybe you think I don't because you live in Lavellette and you can go to the beach. Well, I need my pool -- in some cases; not all cases. But if no one is paying attention to how it all fits in to the overall construction plan and scheme, there will be no space in the future to add it even if you bought it separately.

A good example is with Central High School. They bickered like crazy. We had a pool in that school for years, one of the few schools that had a pool. I don't know about other folk, but when I first went to school in the '60s -- I'm not a great swimmer, but I went to Howard University. They had a swim team. Howard University is a predominately black school. I did not know that black folk could swim and get scholarships. You see what I'm saying? There are relationships here. So just change --

MR. WEINER: Your point is taken. I take your point. Thank you.

Page 22 illustrates the strategic and capital planning process, just in diagram. Again, the point is that there is an ongoing review by the Department of Education of the new long-range facility plan. That will generate a list of approved projects. That list will go through the prioritization process that we just talked about. That will yield a sequencing of projects based upon all these criteria and considerations. And then we'll be able to apply available funding against that list for a Capital Plan that will, of course, grow and change over a period of time.

Lastly, on Page 23, we make the point that we believe that authorization for additional school construction funding can and should occur in parallel with your consideration of a new school aid formula; and the reasons for that.

That's the end of my formal presentation. I thank this Committee and, particularly, those who sat through this presentation on Monday, sitting through it again. I hope we've answered some of your questions. And needless to say, we'll be happy to respond to any questions now, or in the course of the next few days in writing.

SENATOR RICE: First of all, you don't have to apologize. We sit on committees that we decide to be on.

Number two, I'm going to open it up to my members to ask questions, and I have some. But before I do that, I just want to back up on your diagrams.

The AG was removed from the Board of Directors. I understand why. We need to take a look at possibly putting a member of SCI over there. Totally different function, but it gives us kind of the investigatory mind, and some of the skills and experience over the years of investigation, construction in general, some of the things (indiscernible) need to keep their eyes on in terms of school construction, where the shortcuts are and things like that.

Also, I believe that we need to take a look, if they're not on the Board yet, at DCA -- looking at the enforcement area where Bill Connolly is, because it's nice to bring in contractors, engineers, and architects. Traditionally the Governor likes to bring in architects and professional service people. That's more politics than anything else. I'd like to see good field people there -- people who actually ran projects from -- not corporate America, because those are a bunch of academic folk -- you know, they're Yale people, MBAs. But someone who learned construction from the streets, you know, in an informal way, and actually learned it so well over the years that they built companies and they ran projects 30 and 40 years. They know what a superintendent is, construction manager, they know specs, they know what the codes actually say and what's required. So it has to be a combination of those folk, too. I think DCA becomes very important from the construction code side.

I think it was one other comment I made here.

We need to talk more in the future about the roles of the PMFs and how you're really defining that, because there is a role for the PMFs. But I do think that some of the PMFs left people hanging, like in East Orange where they did business.

I also know that when you go into Union County with Bovis, given some of the politics over there, Irvington was always excluded. And I had to read them the riot act just because they come out of Union County and Irvington was affixed to them. They are not going to be left hanging when they need questions and people to respond. So we need to look at how we can set those areas up, in terms of what schools come under who for participation.

I think on the bullets those are my comments. I'll come back with some questions. Let me let the members raise questions.

MR. WEINER: With your permission, I'd like to address a couple of the points you made. We certainly agree with that. So just to give you and your colleagues comfort: Bill Connolly is an active member of the Board. And our day-to-day working relationship with DCA has been enhanced dramatically. We meet regularly with them. We solve problems, and they solve problems collectively with us. Bill is a designated representative of the Commissioner, who is an ex-officio member of the Board.

Your point about including somebody from the SCI is taken. Currently, the Executive Order which structures the Board of the SCC, calls out the requirement that one of the members have law enforcement background. And the person who's sitting in that chair is Matt Boxer, who also happens to head up the Governor's Office Authorities Unit. As you know, Matt has extensive law enforcement background.

Lastly, on the role of PMF, we certainly agree with you, and we have commenced a significant internal review of the role of PMF. PMF, as I think the Committee knows, stands for Project Management Firm. When the SCC was created, the proper role of Project Management Firm was created to really do everything from soup to nuts on behalf of the agency. We believe that those allocation of responsibilities can be made with much greater precision. And some projects may require PMF. Other projects may be appropriate for a construction manager. Other projects may be appropriate to have the district manage the project. And we're building in a process now that will have a team of people who will take a look at a project and collectively determine what the best delivery mechanism is. So we concur with your view of the PMF, and we need to evaluate that.

SENATOR RICE: Executive Orders are very wonderful pieces of documents, so are regulations. The Constitution permits that. (indiscernible) We will talk to the Governor. And Melanie, take a note for the Chair -- and hopefully my Co-Chair agrees -- send the Governor a letter indicating that we'd like to see an Executive Order for SCI on the Board.

Law enforcement is one thing. I come from law enforcement. I don't know a damn thing about construction or construction investigation. They're all the same -- investigations -- but I'm comfortable with an organization that already investigated the construction industry, knows who these contractors are, who they represent, their relationship and integrity. Also, prepare language for legislation to make sure that happens, okay? We'll give the Governor his just dues to expedite this. But it's the Legislature, which is my job. I'm going to legislate and hopefully get enough support.

There was another page I overlooked, which is very important. To me, it's one of the most important elements of this whole piece. To my colleagues and others, it may not very well be. But SCC was given a mandate to have minority and women participation. It's my understanding that something like 21-plus percent of the contracts that went out to contractors and subcontractors, up to 2003, went to women and minority businesses. I don't know what businesses and how many, it could have all gone to one -- but we've got to spread that stuff. And 9 percent went to women. But somebody played games, and the Legislative Black Caucus was very much concerned about the game playing by the administration, not SCC. Because we felt that the best way to prove discrimination -- which is obvious in the state and our colleagues know too, and acknowledge and support us on -- in these industries was through SCC. What I did not know until recently, until recently, that because of the Consent Order that the Attorney General signed, that SCC stopped tracking women and minority participation.

Let me be very clear, very, very clear, that the Supreme Court, number one, never ruled on this case, because we never went to court to challenge it the way it should have been challenged. The Attorney General made a very bad mistake by putting the burden on us rather than putting it on those four guys from Giard (phonetic spelling), who are part of the national movement to knock out Affirmative Action, being funded by the Leonard (phonetic spelling) Foundation, coming out of Atlanta -- the far right wing of the Republican party. And we can document that. That's fine. We should have never gone to court to deal with the Consent Order, but we did. But that had nothing to do with participation. In other words, if we're not going to say that a percentage has to go here and

there, that's one thing. But to say we're not going to continue to identify, on someone's own volition, or for whatever relationships, the number of women and minorities participating in the program contractually and benefiting from it, that's wrong. And I'm saying today -- I'm requesting as Chair, Co-Chair, that you start that tracking if it has stopped. If you tell me it hasn't stopped, and the letter I got said that it had, give me my updated information. If it has stopped, fine; it's not your fault. Start it now. A bill is being drafted to mandate it. Because we should have that, regardless of what's happening, so we'll know what's going on, on the people in this industry. That is a very important provision. Project labor agreements wipe out everything. And let me be quite clear. I support the intent of project labor agreements, because I support labor. But project labor agreements are not us. Us meaning just us, not justice, that means minorities and women. So I'm being honest with that. People don't like to hear it. I get beat up politically for it. I'm called a racist. I'm not a racist. But I know what inclusion is and I know when people play games. And I'm really angry, when I got that letter, to see what the McGreevy administration really did during those years with that Consent Order and how they treated it in SCC. I'm sorry, if my colleagues--

Craig, take over for a moment.

MR. WEINER: Let me give you some statistics that we have currently. And we are tracking, and we can provide this in much greater detail as part of our written response. But just some points. The total work hours, to date: 26 percent of total minority work hours, almost 2 percent have been women work hours.

In terms of the SBE statistics since July 2003, SBEs have received almost \$839 million in contracts, almost \$840 million. And this is 38 percent of the total contract value of 2.1 billion since 2003.

So there is work going on. It's a very important initiative. I think it was the first meeting I attended this year, in my prior capacity as the Governor's Special Counsel, and there was a Councilman from Elizabeth who came, who talked about, I think, a shared concern throughout every community, which is communities and school facilities go up and they're not connected to that facility. They see buildings where their children are going to go to school and the families can't get jobs to help construct that building. And there are lots of technical answers that you know and that I can give as to why it's difficult to get a job training program to a specific school, and the need. But the fact of the matter is, that expectation that families have -- that that building is going to be more than just a place to educate their child, it's going to be part of their community and they're going to connected to it -- it's our job, and we're accepting the responsibility to figure out ways to draw that connection. And if somebody can't work in that school down the block, maybe they can work in another school in another part of the State.

We understand your point and we share it enormously.

SENATOR RICE: Let me just finalize this by making it clear. I don't like to bite my tongue. When I talk about minorities, I'm talking about all minorities.

MR. WEINER: I understand.

SENATOR RICE: But I'm also particularly interested, because of ratios, and the largest percentage of blacks and

Latinos. We need to be clear, when we get those documents, who's getting what.

I'd also like to know geographically. Because if someone tells me a minority can't get a contract, I don't know, say in Phillipsburg, I want to know why, when (indiscernible) get all the contracts in Newark, and Camden, and Irvington, etc. So it's not racism; it's reality. And I don't want my colleagues painting me -- if they do, I don't care, because it's not real. But they need to support me on this. I'm tired of it. They talk about giving out free needles to junkies, gang banging. And then the other fathers and mothers are walking the streets wonder how come they can't get jobs in these cities. I have a real problem with that.

ASSEMBLYMAN STANLEY: Thank you, Co-Chair Rice.

Just to follow up a little bit on that issue, which I think is critical. One of the issues that comes up concerning how we go about ensuring participation, local participation and small business participation, was that the contractor, or perhaps the subcontractor, had a certain obligation under SCC to provide a certain amount of -- percentage of jobs or subcontracting. But the fact of the matter is, it had been intimated to me that that was not necessarily the case, that the contractors who did business with the SCC weren't really held very accountable for their performance with respect --

MR. WEINER: They are now. They are now.

And let me also mention that Monday of this week we are hosting another symposium. This one we sent out invitations to the contracting community, both large and small, both minorities and otherwise, throughout the tri-state region, New York, New Jersey and Pennsylvania. We have over 500 participants registered. And this is an attempt on our

part to reintroduce the SCC, but most importantly to try to increase the bidding pool for our projects, which will help drive the cost down through competitive bidding. And also to make the connections between the smaller businesses and the larger contractors, and to let both groups know the kind of work that's in the pipeline today. Without any additional authorized funding, we're going to be putting a billion dollars out into the street on new projects. That's a lot of work. That's a lot of opportunity. And we want to make sure that everybody understands how to get it, and facilitate connecting prime contractors with subcontractors. We want to be able to do that. And the first major initiative we're undertaking in that regard is this Monday.

ASSEMBLYMAN STANLEY: Just another quick issue on that point. A lot of people were kind of left out in the cold when some of the these projects perhaps were stopped and contractors were no longer continuing on the job. Now, there were other businesses that were impacted by that as well. And even if a contractor might have been -- even if a subcontractor, maybe not a prime contractor with SCC -- the major contractor was paid; work was done by a smaller contractor, but that contractor was not paid. How does the SCC reconcile that?

MR. WEINER: Well, we are actively involved in a number of those situations and we assert all the rights we can. We want the contracting community, and in your example, the subcontracting community, to know that we will stand behind them and make sure that they don't get left literally holding the bag. And there have been some cases that we've intervened on. There's been other cases where we have reason to believe that a prime contractor was at best going to delay

payment to a subcontractor, and we've been able to intercede sometimes by going to court.

ASSEMBLYMAN STANLEY: The last question I'm going to ask you right now, because I know my colleagues are chomping at their bits to ask some questions.

And that concerns the prioritization and long-range facility plans, and how they -- the role they play with respect to the prioritization, and also who actually is making that determination. Will that be -- I imagine that will be the Department of Education?

MR. WEINER: Yes.

ASSEMBLYMAN STANLEY: And where are we now with respect to long-range facility plans and the prioritization process?

MR. WEINER: I know, unless he ran out, sitting behind me somewhere is my colleagues Commissioner MacInnes, who's sitting on that process. So I hesitate to speak for him and would invite him up to discuss that process.

G O R D O N M a c I N N E S: Thank you, Mr. Chairman. We are in the process now of having received, from most districts, complete long-range facilities plans. We're meeting with the districts and identifying those areas where there is either a shortage of information or evidence required to deal with the two basic questions that we're trying to answer here, which are: First of all, is the enrollment cited by the district a realistic one? Against our experience over the last five or six years, this is something we didn't have the benefit of when the first long-range plans were approved in 2000, because it was a projection. Now we have a projection against actual evidence, and we can measure how credible the enrollment forecasts are of each district and have a discussion with them about that. That's terribly

important, because we don't want to build schools when there aren't going to be kids.

The second part of this is the capacity of the district, in terms of physical capacity to accommodate the students that are projected to be in those schools, and whether there are opportunities within that to -- for example, in redistricting of schools, to cover what might otherwise take the form of a new facility, by using available and existing space more wisely. Those are fairly complicated questions, as simple as they are to describe. And we're in the process now of taking the districts where their information is complete and meeting with them. I think we've done that with probably a third of the districts, and we have meetings scheduled on a pretty intensive basis. And the result of that will be, in some cases, additional conversation and maybe additional documentation. In other cases, it will be an approval of a long-range plan, which will make possible the development of the strategic plan that Scott mentioned in his testimony.

ASSEMBLYMAN STANLEY: CEO Weiner said that there were some districts that were -- well, most of the districts had gotten their long-range facility plans. Have all the districts now done their long-range facility plans?

MR. MACINNES: We were missing two districts. That question came up a couple weeks ago. Let me just see if that has changed.

We're missing two districts. They have not yet even filed electronically the information that was due statutorily by October last year, and then with the revised software package this Spring. So we're still missing two districts. But otherwise, everybody has the first phase in. And in

almost all cases, they've completed the documentation which cannot be provided electronically.

ASSEMBLYMAN STANLEY: Okay, thank you.

Let's start with Senator Bark.

SENATOR BARK: Good morning. It's certainly good to see you again. I have enjoyed your presentation very much.

I do have some questions which are totally different than anything anybody asked. I want to ask dollars and cents, and exactly how do you mean to go forward with the \$2.5 billion?

Now, what I mean by that is, if you intend to go for approval for this on the ballot, you can't go until next year. Is that what you intend to do, I hope?

MR. ZUBROW: I think that if you look at the \$2.5 billion that you're referring to, that is funding for the facilities in the Abbott Districts. And we would not propose seeking a ballot for that funding. That is funding that is mandated by the Supreme Court. As in the past, that's not funding that would require a ballot referendum.

SENATOR BARK: Well, I disagree with that, but -- because I do believe it ought to go to the public. Of course, in the last time we did this, the 8.6 billion, the 40 percent for Regular Operating Districts -- I really don't want to call them RODS. (indicating pronunciation); somehow that offends me -- was put there primarily so that everyone would vote for it. And I still think that that would be very, very appropriate. And the amount of money that is there -- in 2.5 billion -- certainly does not represent 40 percent of 2.5 billion. And I know that we're -- I guess we're primarily here to see only that the Abbotts get money. I represent one Abbott District; but most of my districts are R-O-Ds. And it seems to me that I'm not really watching the money that's

going to any of my districts. I'm only watching that which is going to Abbott Districts. And I don't even think my Abbott District is going to get a whole heck of a lot out of this.

I have concerns about, we're raising a tremendous amount of money and R-O-Ds will get a pittance. And I do believe that that ought to go in front of the public. And I would hope that you might reconsider that, although certainly it is not my request. It certainly is the Chairman's request; and I have -- I can only tell you that I don't think that's right.

One more think thing. When you sell bonds, how do you sell them? I mean, you sell them through EDA, right?

MR. WEINER: Correct.

SENATOR BARK: And you sell very small amounts or you sell a significant amount? If you sell a significant amount, you must place that somewhere and it must have some interest, I hope. If so, what do you do with the interest?

MR. ZUBROW: As you've referenced, the funding -- the raising of the actual capital for this program is coordinated and organized by EDA, so actually the Schools Construction Corporation is not directly involved in the sale of the bonds. It is -- the sale of the bonds -- that's done by the EDA under the existing State programs for raising debt and raising capital. To the extent that there is excess cash after the EDA sells bonds for school programs, there's obviously a period of time before that cash is spent down. That cash is managed through the State's cash management programs. And the interest that accrues on that excess cash goes to the benefit of the program.

SENATOR BARK: It does. I was very much afraid it might go into the General Fund.

MR. ZUBROW: It does not.

SENATOR BARK: I'm glad to hear that.

Now, I would really like to go back to the science lab a little bit. Are you saying to me that Newark has the money, their own money, to do the science lab, and they don't have to have SCC money, and they can't spend it? Is that what you're saying?

MR. WEINER: That's what I'm saying. And the interpretation given by the Division of Law is that any Abbott District that has money, not only -- we deal with capital reserves, capital maintenance accounts. It's also true for operating funds. But the view is if a district has money and something is a school facilities project, the only entity that can do a school facilities project is the SCC. It is logic that makes my head explode. So we are working with the district. We're working with the Division of Law to create a pathway so that that money can be applied to the project they need. It may be by giving the money to the SCC and then having the SCC do the project. It is cumbersome, it is bureaucratic. I don't think it's what anybody intends. And hopefully, it is one of those items, as the Chairman mentioned, that can be addressed expeditiously through legislation.

MR. ZUBROW: I think to clarify or emphasize one point, that requirement comes not from the AG's Office as a requirement, you know, put forward, but it's reflecting what the statute says. So again--

SENATOR BARK: So it has to be corrected by legislation.

MR. ZUBROW: Right. Again, this is an area where we feel that correcting it legislatively is going to be necessary, and that will be part of the package of legislative reforms.

SENATOR BARK: I would hope so, because it seems to be all that should be needed is the DOE saying that this is an addition to their program that is very good and why not go ahead with it.

MR. WEINER: I think everybody agrees.

MR. ZUBROW: I think everybody agrees on the substance.

SENATOR BARK: That really is too bad, honestly.

I think that's, for the moment, all my questions. I will probably think of something later.

SENATOR RICE: Following up on a question. You mentioned in the presentation that 1,425 schools and 471 districts grant benefits -- benefited. Could you get a list of the breakdown to us, what the benefits were?

MR. WEINER: Sure.

SENATOR RICE: I would suspect those benefits went outside of Abbott Districts as well; is that correct?

MR. WEINER: Yes.

SENATOR RICE: Okay. We need to know that so that -- let me make it clear, this Committee has been on record from day one, we support the Supreme Court mandate for the Abbott Districts but we also support the needs of other school districts. We know, those of us who represent Abbotts and non-Abbotts, there's a tremendous needs out there. We also know that the legislation was set up in such a way the non-Abbott districts can apply. And we also know that some Abbott Districts chose not to apply and others did. Those that did apply, we need to know that their projects are completed, or there is funding available or we made available to complete those projects.

Let me say to my members of the Committee something I've said 20 years to local government and others. The others

argue equity and fairness; and I always tell people, "In the real world equity and fairness doesn't mean if I get \$100 someone else gets it. What it means is that I get what was necessary to meet my need." My need may be \$25, but when I get 15, I have a problem. Someone else's need may be \$75. When they get that or come up short, there's no fairness. But that information that you talk about, the 1,425 in terms of the schools, we need to have those locations and identify what the dollars were used for. This way it's a clear record to the public that when we say Abbott -- we don't even like the name *Abbott*. But when we say Abbott, that we are talking inclusion, we're not talking exclusion, because that's the impression that's being given. And the public don't understand how the non-Abbott districts -- number one, they don't understand they receive money, and how they receive it. They think they're not getting anything, because that's the political stand. And we want to try to avoid that on this Committee and make sure that all the districts that participate have funding available to meet the needs and the criteria.

MR. WEINER: We'll provide that.

ASSEMBLYMAN STANLEY: Just to add to what the Senator was saying. And Senator Bark, I'm not sure whether -- I just want to make sure we're clear. Seven-hundred-and-fifty million out of the 3.25 billion -- in other words, 750 million would go to Regular Operating Districts, and 2.5 billion go to Abbott Districts. The original appropriation was 8.6 billion in total. Six billion went to Abbott Districts and 2.5 billion went to the Regular Operating Districts. So the ratio is about the same with this particular project as it was with the last project. I just wanted to clarify that.

I'm sorry. Assemblywoman Voss.

ASSEMBLYWOMAN VOSS: I have a few questions. I speak to a lot of educational groups. And every time I mention SCC, people just cringe. If I could just make a cosmetic suggestion, if we could refer to the SCC by perhaps a slightly changed name, there is a new beginning and a new leadership, and more scrutiny as to what's going on. I think that might be a good thing. The connotation of SCC at this point in time is not a very positive one.

The other thing I wanted to bring up. I got in my office the other day something that dealt with subcontracting. And I know the Chairman referred to this. And pardon my naiveness, but when someone bids on a contract and they get it, and then they subdivide the contract or, you know -- do they, the person who bid, get money, and then they can pay whatever they want to the subcontractor? Is that the way it works? And who oversees whether or not the subcontractor is actually doing the job that the original bidder was supposed to do?

I'm not that familiar with construction, but I know about subcontracting, and I'd like to clarify that for myself.

MR. WEINER: That question may have been prompted by a recent decision in the Appellate Division.

SENATOR VOSS: Yes, I got it yesterday. I perused it.

MR. WEINER: That dealt with the authority of the SCC to substitute or permit the substitution of subcontractors. And the Appellate Division concluded that a prior practice of the SCC was inappropriate. What happens is, most of the SCC contracts, if not all, are for the entire job.

SENATOR VOSS: I'm sorry?

MR. WEINER: An entire job or a larger component job. And the prime contractor will disclose, as part of their

bid, who their subcontracts are, and they will bid a competitive price. They've made whatever deal they want to make with their subcontracts in order to bid that price, and the public is protected through the competitive bidding process. You pick the lowest most qualified bid.

So the problem comes up now, as the Supreme Court says, a contractor can't just, at will, decide to switch a subcontractor out. One of the reasons the court gave was that if that decision was made, it's possible that the contractor could negotiate a better deal, a lower price, with a different sub, and keep all the money for themselves without the public benefitting. And that that wasn't always contemplated by the public bidding law.

Organizations or owners in a position with SCC will say, "Well, what happens in the event that the subcontractor can't perform, and they can't perform because they say 'I'm not going to perform, I want to do something else' or they can't perform because they no longer have the capability?"

The Court said that the contract and law provides a vehicle to declare default and then remove it. So there's an attempt to protect both the subcontracting community as well as the public interest at-large. It's a decision that we concur with. We understand that we have sufficient tools to make sure that when a subcontractor can't perform that that subcontractor can be replaced. Those tools are sometimes cumbersome, but that cumbersomeness is needed to acquire the protections which I just mentioned.

SENATOR VOSS: Well, we have sat at many committee meetings where -- the subcontractors have done very shoddy work. And I hope they are some of people that you're intending to go after to get some of the money back.

MR. WEINER: Yes.

SENATOR VOSS: The other thing is, on Page 10 of your presentation, you talk about qualified districts being able to assume responsibility for the -- who is going to determine what qualified district is? And therein lies the rub, as they say.

MR. WEINER: It does. And this is an approach that, I think, everybody concurs in. And the challenge has been to articulate what that criteria is. I believe that in the process of developing a legislation that -- will come along that a group of people -- some from the SCC, some from the DCA, some from the contracting community, from school districts, and your colleagues or staff of your colleagues -- will lock ourselves up in a room and we will come up with criteria. I can't tell you what it is. But that criteria, or the elements of that criteria, I think should be embedded in both statute and regulation so it's clear. And I think it requires a group of people to sit down and really focus on it. It has to be determinable. There are other similar situations where this kind of criteria is determined. It can be based upon past performance. It can be based upon the capacity or the demonstrated capability within a district, for certain professionals, and the like. It can be done. It has to be done, because a goal of the program should be to invest as much responsibility as possible in the community. And our job should be to manage that and oversee that, not necessarily to do all the work ourselves in exclusion of our community.

SENATOR VOSS: I have a problem with these ambiguous terms like "highly qualified professionals," and that really needs to be clarified.

One more short thing. You mentioned the joint use agreement. How would that work in terms of funding? Who would -- would this be a municipal office in tandem with the

school, or a library in tandem with the school? What would that be?

MR. WEINER: Let me give you first a simple example on the current law. What is often thought about is building joint parking lots, a parking lot that could serve both the school as well as a downtown commercial area within a city. Because of the way the current law is written, that our funds can only go to support school facility projects, that garage has to be developed as a condominium garage, so the SCC and the district would own specific spaces in that garage. It could be done, but it's very cumbersome, as you can imagine. And it's deterred a lot of the joint use projects like that. Parking is a major, major challenge, as you can appreciate, in highly densely developed areas.

There's another possibility. The possibility is a community could be looking at a commercial or mixed-use development and maybe a school could become part of that development. So when you look at the land acquisition cost to build a school, that land acquisition cost is being shared by a municipal building, it could be shared by a commercial building. The placement of schools as part of a mixed-use development is not new. There has to be safeguards, you have to be able to think about it, but it's a way to look at the question -- this is a question, when we talk about land use, land acquisition, particularly Paterson -- Paterson is not alone -- will say, "Where is the land going to come from?" There isn't enough money at today's prices to be able to acquire land, through condemnation or otherwise, to cost-effectively build schools. So we're looking at other approaches that have been taken around the country. We're looking for the authorization to explore those with appropriate safeguards and criteria, whether it's a garage

that can facilitate both commercial as well as educational use, or it is placed in a school facility inside the mixed-use structure. Those are things that we need to be thinking about.

SENATOR VOSS: Can we make some kind of legislation that would say that, if it was going to be a mixed use, that there had to be a developers agreement to put money toward the construction of education facilities?

MR. WEINER: Absolutely.

SENATOR VOSS: I think that many communities don't use that option when they allow development in communities. But there's also a movement afoot to make a school almost useable 24 hours a day for different things, so that you can have education taking place during the day and some community activities in the evening; which would really be, I think, very financially prudent.

MR. WEINER: One thing that's important to the Governor -- not just the Governor, I know you and your colleagues -- is, we have invested, and we're about to invest, billions of dollars into the community, and it should be viewed as an investment. And the return of that investment needs to be more than just the school facility. And I think we haven't developed that opportunity historically as much as we need to. We're reminded constantly by the Governor this is an investment. It's an investment in the community, it's an investment in children, and we have to look what return we're getting on that investment.

SENATOR VOSS: Thank you.

ASSEMBLYMAN STANLEY: Thank you.

Senator Kean.

SENATOR KEAN: Thank you, Mr. Chairman.

If I can follow up on a question that both Senator Bark and Chairman Stanley alluded to. It's regarding the spending. Specifically you said -- the case you brought up now is the new Science High School that wants to have science labs in it, and we have to change the law specifically. In the past, over the last couple of years, these schools have been blocked from doing what they would prefer to do with the money, going within the mission. Is that what you're saying?

MR. WEINER: No. No, that isn't what I was saying.

SENATOR KEAN: Clarify.

MR. WEINER: What I was saying is that in the case of Science High School, after the design was completed, a determination was made by the district that they'd like to add an additional lab, outfit a lab. And the key point is that they had the money to do that and were willing to spend the money to do that. And the way the current law is structured, they're prohibited from using that money.

SENATOR KEAN: Under the current law they would not be able to proceed with this additional lab?

MR. WEINER: Right.

SENATOR KEAN: What I'm asking is, is this the first time something like that has happened, or is this a pattern that has happened before?

MR. WEINER: It's -- I'll have to research that for you. There are other situations dealing with capital maintenance accounts, which is a universal problem. One distinguishes between a capital maintenance account and a capital reserve. A capital maintenance account, as you know, is intended to maintain capital equipment going forward. We are funding today, through the Schools Construction program -- I'm going to just easily say -- millions upon millions of dollars of projects that are the result of inadequate

maintenance because of a lack of funding. And I've been told, and I certainly wasn't around for the enactment of the original legislation, that when the program was started, everybody knew that there were health and safety problems, some of which came from the lack of ongoing maintenance, but that the program was really to look at new facilities and major rehabilitations. But in recent years, since the enactment of the law, because of the lack of capital maintenance accounts, those capital maintenance projects are now coming to the SCC as a school facilities project, eroding the available capital for the more major projects.

SENATOR KEAN: The second thing, or the final question, is the authorization of the additional school construction funding, your PowerPoint slide No. 23. We do know that the school construction formula is obviously different than the school funding formula?

MR. WEINER: Sure.

SENATOR KEAN: Although there would probably be implications, going forward -- because either the definition or the scope of those districts, currently under Abbott School Districts, are changed, that could have significant implications. And you are saying -- your recommendation that there would be a statutory process, going forward, that we say -- regardless of the change in school formula, should such a change be made in the relatively near future -- that the construction formulas should go forward using the current plan for the next two-plus years?

MR. WEINER: Two years is the estimate. So I just want to make sure that -- what we're trying to communicate is that this is an interim approach. And the reason for that is that, assuming a new school aid formula is adopted, it's going to have some kind of construction component to it. It needs

to. And whether you call the districts Abbott Districts or No Names, there will be a determination made, through the application of formula, providing funds to support construction of school facilities. If the school aid formula is changed next month, just to pick a current month, it is going to take time to implement it, to develop the rules and regulations, and to develop other criteria. Our point is that there is a pressing need now for school facilities projects in both the Abbott and non-Abbott districts now. So we can use the current scheme now as we've laid out. And during that intervening two years, while we use the additional funds to fund the projects, we can work laterally and say, "How do we evolve the school construction program to become a component of a more comprehensive school aid formula change?" So it's viewed as happening in parallel.

Also, because of the pressing need for school facilities funds, as we tried to point out here, we felt it's important that that consideration occur on its own merits, and not wait for a final determination, that may or may not happen in any particular period of time, in the change in school aid formula. But that by enacting this 3.25 billion, it's really not impacting the implementation of a changed school aid formula, because that can be done during the transition period.

SENATOR KEAN: So what you're saying is that that would be -- should there be a school aid formula change in the very near future, this would be for applications continuing for the next two years. So under your recommendation, if somebody applied for a project essentially two years from today, let's say, regardless of the change in place --

MR. WEINER: It might be. For the Abbott Districts, we have a definition. We have identified needs. We have a

prioritization. We have a long-range facility planning process. Under one scenario for the non-Abbott Districts or Regular Operating Districts, one might say, as you just suggested, for the next two years you apply to the SCC under the criteria that will be adopted. And starting in the year X, it will be inventing a new formula.

It might be that we subsequently decide that when the formula is eventually adopted that it can be implemented sooner. You know, we're dealing with the uncertainty of a program that is yet to be drafted and enacted.

SENATOR KEAN: You would be open to the consideration if -- whatever definition of Abbott, going forward, is -- if there is a shift in school districts, so therefore there are some that step out and some step in -- how would you recommend dealing with that step into a characterization that may--

MR. WEINER: I guess the decision has to be made, when does that occur and are -- I mean, there are lots of options. This is the work that you and your colleagues are doing. You are going to maintain the Abbott definition and then you are going to recast the universe of districts that are called Abbott Districts. That has certain implications.

Would we eliminate the category of Abbott Districts and just say we have districts, until the application of a new formula is imbedded in? That's why it's impossible to answer the question now. But I would say that whatever school aid formula is ultimately adopted, we would anticipate working to expeditiously integrate the school construction program into that new formula.

SENATOR KEAN: Thank you.

Thank you, Mr. Chairman.

ASSEMBLYMAN STANLEY: Assemblyman Wolfe.

ASSEMBLYMAN WOLFE: Thank you, Chairman.

I want to congratulate Mr. Zubrow and also Mr. Weiner. Their enthusiasm is very obvious. They've been very forthcoming. I heard most of the testimony on Monday, and you've already provided some more data which we've asked for.

I was out of the room earlier. I understand you did mention, in response to a question I had asked Monday, about the change orders that you will be providing?

MR. WEINER: Yes.

ASSEMBLYMAN WOLFE: I just have a couple of things other than what I asked you the other day.

When a project is prepared or proposed, is there any review or criteria used to determine whether it's actually necessary, is it an adequate request, or is it just a frivolous request?

The reason I'm saying this, Asbury Park Press -- again, this happened before your stay there -- had a very interesting series of articles. And they indicated, in Long Branch the superintendent wanted either new windows or air conditioning in one school, and he was basically required to make rather extensive repairs that went beyond that. He didn't want it, but that was done.

Also, in another committee we heard testimony that in Union City, where there are two high schools, they're going to make those high schools middle schools or something, and they're going to build a brand-new school on some property that the school owned, and then sold to the town, and then the State gave money back to the town. I'm not sure how that worked out. But they're building a school that's down in the ground, basically below street level, and they're going to put a football field on top of the school. I mean, these are the kinds of things that we in non-Abbott Districts hear, and we

think we're not getting the full story here. So our district is saying, basically, what the "H" is going on?

MR. WEINER: Let me address those two. One I'm more familiar with than the other.

First, the situation with Long Branch and windows. I have two observations. I'm not familiar with that. In fact, I'm going to offer, dangerously, some conjecture. One is that window replacement is exactly the kind of project I was referring to that should never come as a school facilities project. It should be something which the district could do through the development and the growth of a capital maintenance account. They decide it's time to replace the windows, they replace the windows. They don't need us to do that. But the other thing is, when a school facilities project gets identified, one of the problems we have seen is that a project will be identified -- that a school needs a new HVAC system or it needs new windows -- and when we go in there we find out the project is, in fact, much bigger than that, because the reason they need new windows is that there's rot along the window frames. So if you don't replace rot, what's the point of replacing the windows? The HVAC system is more than a boiler. You need to get at the duct work for some reason, because it's 30, 40, 50 years old. So that also was one of the causes for the construction cost system that's in a project to be perilously low.

With Union City -- and we'll provide you some more details about Union City. The way you described Union City -- and I know you're not describing, you're describing the way other people have -- take certain facts -- and I know it's not intentional. I know this is a common misunderstanding. And it paints a picture that would send a chill up anybody's spine. The school is not below ground. There may be part of

the school that's below grade, and some parking may be below grade. And yes, they are utilizing the roof as the athletic field, which is a very innovative design, which admittedly costs more money than if you put the athletic field on the ground. The problem is, there is no ground in Union City that could be used for an athletic field. So this is a design that has gotten a lot of recognition. And when you add up the fact that this new high school consolidates two or three previous high schools into one facility, net/net the community and the State has a very cost-effective project.

And I caution us all to be careful of singling out any single factoid and jumping to a conclusion around that factoid.

ASSEMBLYMAN WOLFE: Well, that goes back to my original statement. Is there some criteria that is being used to judge a plan that comes in and says, "We want"--

MR. WEINER: There are two things that we now do. There are two things. The first: I think the kind of criteria you're talking about is embedded in the long-range facility review process by the Department of Education. They're the ones who determine educational adequacy. Again, Gordon will probably give a much better explanation than I could, but that's where that first decision is made. Then what happens is, we have now created a mechanism and a process at the SCC that when a project is approved and the Department of Education says this community should have this kind of project instituted, we then put a team together to go out and understand: what does that really mean, what does it mean to build a middle school, what does it mean to do a major rehab, what does it mean to do a HVAC system? So we can get handle on it. But the educational adequacy is determined by the DOE, not by us.

ASSEMBLYMAN WOLFE: In response to a question a long time ago by Senator Rice, you said that when you -- you've just gone out, you've advertised in New Jersey, Pennsylvania, New York for projects, I guess. Is there any requirement that a certain percent of the work must be done by New Jersey firms? I mean, I would hope that we are trying to encourage all the work be done by New Jersey firms. Why do we go to Pennsylvania? Why go to New York? Are we excluding people from New Jersey?

MR. WEINER: Well, we do that in order to increase the bidding pool. In fact, some contractors come from out of state. Nothing would make us happier than to have all New Jersey firms giving the lowest prices. But it is open, and our goal is to increase the bidding pool and to create economic opportunity inside the state. If we were to limit ourselves just to New Jersey contractors, not only would it probably violative of law, but we'd be limiting the bidding pool and artificially increasing the price of the project.

MR. ZUBROW: Assemblyman, if I could just add. I'm told that, to date, roughly 90 percent of the work on the schools projects have gone to New Jersey firms.

ASSEMBLYMAN WOLFE: Now, the issue today is -- and we talked Monday about the school that was kind of stranded, and also the school that there was money available but really involved a certain type of transfer.

MR. WEINER: Right.

ASSEMBLYMAN WOLFE: I know we asked for it on Monday, but is it possible you could give, either from a legal staff, either to our Committee or the Education Committees, a list of all the statutory or legislative changes or issues that are impeding you from doing what you need to do, so we can kind of clear the way for you?

MR. WEINER: Sure. We're working on that, and we anticipate that to be collaborative. We're working now with our colleagues and executive branch to pull that together.

ASSEMBLYMAN WOLFE: My last question. I asked this Monday. I have to say -- and I didn't say it then. I don't mean this in terms of disrespect. But I don't really know how long the organization has been in existence -- five years, four years?

MR. WEINER: About five or six years.

ASSEMBLYMAN WOLFE: Now, it's my understanding -- and I asked this on Monday. The person who is the Chief Operating Officer was there for the last five years, almost five years, basically doing the same thing when a lot of these problems occurred. Why is he still the Chief Operating Officer?

MR. WEINER: I'll give you the same answer I gave them. I've had a chance work with him in the eight months I've been here. I've run three other agencies in my career in State government. I haven't worked with anybody finer. I don't know what the situation was in the past. I know that sometimes we all know situations where recommendations can be overruled by people of more senior authority.

The job of Chief Operating Officer, as I've structured it, has a different portfolio of responsibility than in the past. There were two periods of time when this individual, unfortunately, was out for extended medical leave. So we have made extensive organizational changes in the past eight months. I'm going to continue to make extensive organizational changes now that I've been honored with the opportunity to be here on an other than transitional basis. And I certainly hope that this gentleman continues to work with me.

ASSEMBLYMAN WOLFE: Again, I'm looking from the corporate view. We have all kind of national examples of corporations that really have not been run properly and problems. It's basically the person at the head.

MR. WEINER: But he wasn't the head.

ASSEMBLYMAN WOLFE: He was running things there. He was the head.

MR. WEINER: No, no. But let's be careful. And I'm saying this respectfully also. Titles in organizations and titles in government are sometimes handed out without connection to what is being done, without taking anything away from the individual.

When I was asked by then-Governor Corzine (*sic*) to take a look at the organization, I took a look at the executive side of the organization. The portfolio responsibility that this gentleman had didn't warrant him being called COO. And there have been at least two instances -- and I'm trying to be cautious in my words, not to embarrass anybody -- where, in fact, he was isolated organizationally and given no responsibilities despite having a very fancy title. There have been other instances that I verified where he made recommendations to people who were really running the organization. Those recommendations, for whatever reasons, were ignored. I only can go by what I do. And I think when you look at the organization today and you compare it to where it was 18 months ago, certainly where it was 10 months ago, we have new senior staff, we have new division heads, we have new functioning divisions. I spent a lot of the Committee's time detailing some of our initiatives. We have a level of accountability and transparency that didn't exist before. We have a new board and, I'm proud to be the new CEO of the organization. And if six months from now, or three months

from now, or years from now I don't live up to the expectations of this Committee, certainly call me in and ask me about how I'm making decisions on who I'm investing responsibility with. All I can tell you is the team I'm putting together -- and there are some people who aren't working there now who were working there some months ago -- is a team I'm very proud of.

SENATOR RICE: In other words, the buck stops with you.

MR. WEINER: Yes, sir.

SENATOR RICE: And we will hold you accountable, and we will hold the Governor accountable.

Let me also say that I think that the Assemblyman's question was very valid, but I think your response was equally valid, primarily because I know of an individual that I truly believe, from working and watching -- who is no longer there -- had a capacity, but because he didn't have the political support. He took the brunt of what was taking place over there. He was isolated from meetings, including in my own area, which I used to mandate "Bring him up," given the role he had. So I'm glad you restructured, but the accountability has to come from you, because I think that the Assemblyman's very much correct.

ASSEMBLYMAN STANLEY: Also, I've been informed by Counsel that we may be going down a dangerous slope by trying to deal with personnel issues in a public forum.

But having said that, many of us have been in the Legislature for a number of years, and things haven't gone that well and we're still here.

Assemblywoman Beck.

ASSEMBLYWOMAN BECK: Thank you.

Good morning.

I looked through your presentation, and I think there are many interpolations. Mine is that this is the obliteration of the suburban, non-Abbott districts if we enact this proposal. We've spent 8.6 billion. There indeed was corruption, there indeed was fraud, and the investigations aren't complete. And when you talk about this being an investment in our community, what you're really saying is this an investment in 31 school districts, not our entire community. This is not the entire New Jersey, State of New Jersey community that's benefiting.

I think when you talk about inclusion, this is not an inclusive proposal. I have school districts that have people of color, that have people that are in need that are not having their needs met educationally. And it's drastic. It's bad. I think this proposal is a disservice to the State of New Jersey.

I know the Commissioner of Education agrees with me in the fact that, by separating out school districts into Abbott and non-Abbott, you create this inequity. There should not be any such thing. It should be school districts and it should be children.

So that said, looking at your proposal -- and maybe I just could lead with this one question about the investigations, because while I know you're trying to move on, I will tell you that the general public is still stinging at the thought that 8.6 billion was still spent and now we're going back to ask them for more in the wake of a lot of corruption.

There has been some speculation that, indeed, organized crime may have played a role. And if that is the case, have you reached out to the State Police? Have you asked for their information, analysis, and review of the

contractors that were involved in this construction project? I think that would be critical, not only to know what happened in the past, but also knowing for going forward.

MR. WEINER: Well, let me address that question first, and assure you and the people of the State that we are actively working with, at our initiation, law enforcement agencies at all level of government to look at past practice. And as I'm sure you know, there is a whole unit in the Attorney General's Office, the Office of Government Integrity, that's devoted to the process of prequalification of bidders and contractors in order to get at precisely the problem you're talking about; and that there is an active enforcement mechanism, by the SCC in conjunction with the Attorney General's Office, to debar and disqualify contractors for a whole host of reasons. That's a very active, ongoing process.

Let me say, again, that the SCC, over the past eight or nine months -- is the only things I can report to you -- actively and regularly meet with law enforcement officials at all levels of government. We provide information. We provide questions. And we rely upon them to do their job. My job in this accountability is to build schools in an efficient manner and to draw upon all the resources possible. The Attorney General's job is to rout out criminals and bring them to justice. I don't want to -- I want to make sure we're not mixing responsibilities and accountabilities on that.

In terms of going forward --

MR. ZUBROW: Can I just add? As I'm sure the Assemblywoman would do -- if, as you allude, you're aware of specific instances in which criminal activities have occurred in the program or specific areas of fraud which you don't believe are currently being under investigation through the Attorney General's Office, we certainly hope you would bring

that to our attention or the Attorney General's attention, so that in partnership we can all make sure that those things don't occur.

ASSEMBLYWOMAN BECK: It's my understanding that the resources that the State Police have at their fingertips have not been tapped and, indeed, that they have knowledge that could be helpful in the investigation. And that you cannot abdicate responsibility as the head of this organization--

MR. WEINER: No, no.

ASSEMBLYWOMAN BECK: --who is part of the investigation. You should certainly be--

SENATOR RICE: Through the Chair.

MR. WEINER: I'm sorry.

SENATOR RICE: I control my meeting. If there's going to be a debate because we on this Committee disagree, I would let you answer questions. My colleagues can debate me. I have no problem doing that. I do have something to say about this when you're finished.

MR. WEINER: May I?

SENATOR RICE: Yes.

MR. WEINER: I will assume -- and we don't know each other very well. I will assume all the responsibilities of this job. I will not assume the responsibility of being a law enforcement official. And to impose that upon me is unfair and inappropriate. And if the State Police -- if anybody in the State Police tells you that they are being handicapped in the investigation of activities of the Schools Construction Corporation, I would urge them to go directly to Gregory Paul (phonetic spelling) or to Stuart Radner immediately. Immediately. We want nothing but their help.

My job is to deliver information to them, which we do on a regular basis. I confer with them on a regular basis.

I confer with the Office of Inspector General on a regular basis. It is not my job to investigate criminal activity. If I was doing that, they should and you should yank me out of my job. So I don't want to have anybody suggest that I'm not doing something that I should be doing. I want to be very clear about that.

We are very proud of the work we're doing in working with law enforcement officials. It is unfortunate that some of that has not come around as quickly as we'd all like to see. And without wanting to pass the buck, I suggest that you ask that question of the Attorney General. Ask it of the Superintendent of the State Police. And you can check with them about our level of cooperation. But it is not my responsibility, and I will not let you impose that responsibility on me here through rhetoric.

ASSEMBLYWOMAN BECK: Through the Chair.

If you're meeting with these people regularly, and the simple question of whether or not they were involved, I'm not sure that that imposes much more than a single question upon you. And you know that there's the potential that maybe they're not involved as they should be -- and maybe I'm wrong. Maybe I misunderstood. But it's one question, and you're holding regular meetings. And, to me, I don't think that's a lot to ask.

And I have further questions, and we can move on.

MR. WEINER: I'm confused. I certainly want to meet your expectations, but if I'm meeting with the Attorney General and Director of the Division of Criminal Justice, who both supervise the State Police -- and the State Police is their tool -- until this moment, I didn't know that there was anybody in the State Police -- excuse me -- there is on the State Police who felt that they were impeded. I can assure

you that when I get to my office today, I'm going to be calling those two individuals and I'm going to suggest that they call the State Police and find out if anybody feels impeded; and that they call you, if you haven't already called them, so you can disclose who the human being is in the State Police who is feeling impeded. And to do what you're doing here is a disservice to the State and it's a disservice to the program. If you know of somebody who is impeded, I would hope that you would have called the Attorney General also.

ASSEMBLYWOMAN BECK: Through the Chair.

SENATOR RICE: Go ahead.

ASSEMBLYWOMAN BECK: That is my interpretation, by the way, of the conversation I had. So I would take responsibility for that interpretation.

You mentioned that there really was no management of the last million dollars, and now we've begun to implement a new program. And as part of that program, on Page 12 of the report, it mentions that there are going to be a series of new requirements linking construction and educational purpose. But it's really only targeting the RODs. And I just want to be certain that those same requirements and that same scrutiny is going on for all school districts.

MR. WEINER: In fact -- and I'm sorry if I wasn't clear. That scrutiny and that prioritization process exists, with the criteria that I detailed, for what we now call Abbott Districts. That criteria, which in the past wasn't applied as stringently as everybody would like to see -- principally the criteria of health and safety, overcrowding, early childhood education centers -- emanates both from your statutes as well as the Supreme Court. What we've been saying is that for the Regular Operating Districts there had been no criteria. And

as you know, it was a first come, first served allocation of grants. There are certain reasons why that can work.

One of the concerns that the Working Group had was that if we're going to be spending money in Regular Operating Districts, then clearly shouldn't they have the same kind of alignment that currently exists in the Abbott Districts? That's what's intended.

ASSEMBLYWOMAN BECK: So similar standards for all school districts?

MR. WEINER: Well, it could be similar, but what we want to do is, through you and your colleagues, facilitate a discussion that says, "Are the criteria of health and safety, overcrowding in our child centers the best criteria in a Regular Operating District?" Maybe it's something else.

In my talking to the Garden State Coalition and superintendents of Regular Operating Districts, it's clear that every district that has participated -- I gave the percentages before. An overwhelming majority of Regular Operating Districts benefited from the grant program in the past. They all went to meritorious programs. None of it was wasted. All of it brought something positive to the communities. The question for everybody to debate is, should there be a criteria? And if there's a criteria, what should it be for Regular Operating Districts? Maybe it's not the same. The issue is, there should be alignment; not that every school has to look like every other school.

ASSEMBLYWOMAN BECK: Thank you.

Just a couple other questions, which is -- I noticed that, on Page 22, the long-range plan comes in, there's a review, and then a budget is struck. And I'm just curious how we could arrive at the 3.2 billion number if we're going to be reviewing plans and coming up with a budget after the long-

range plans. How did you get the 3.2? Is that based on the 2000 long-range plan? How do we know that number is accurate?

MR. WEINER: I don't now how one defines accuracy. So if accuracy is defined as, "Is that enough money to do the job?" the answer is no. By definition, it's not. And I would respectfully suggest that this Legislature wouldn't want to and shouldn't appropriate all the money that would be necessary to do the entire job.

The 3.25 billion was come up with as a recommendation, and it has two components. First, we took a look at the Abbott Districts, and we said, given the projects that have been approved in the past, given the amount of work that could be done over a two-year planning horizon, how much money, what's the -- frankly, the smallest amount of money that could get the most material and amount of work done. And we came up with the number of around \$2 billion as a starting point. And then we also have the shortfall, which we've articulated, and we've come up with \$2.5 billion. We can do a little bit more. But frankly, if the Legislature said, "You know what? We want to allocate twice as much money to you," at this point, I don't think that's the best approach. I think it should be smaller bites than in the past, and there should be a higher level of accountability than in the past. So we structured that number as best we could. And I'm sure when we get into active discussion over legislation, we'll look at different models together, we'll look at different planning horizons together, and we'll come up with a number that makes sense. We think this one, on its face, makes sense.

We then took at look at the Regular Operating Districts and said, "There's a lot of uncertainties. There's uncertainties of 'What does planning criteria look like?'

There's uncertainties if there's going to be a debt service program or a grant program." We have a point of view, but it's not our decision; it's going to be, ultimately, your decision as to what that program looks like. And as Assemblyman Stanley pointed out before, we tried to stay the same general ratio as in the past. So \$750 million is not as much money as 2 billion, but it's certainly not a pittance. Again, we anticipate that's going to be one of the many subjects for discussion and debate as this legislation moves forward.

ASSEMBLYWOMAN BECK: Through the Chair.

Of course, I disagree that it's not a pittance. It is a pittance in comparison to 580 districts that are out there.

But really, what I was trying to get at is -- I got close to the answer, but what I was really looking for is the fact that you've got new long-range plans coming in -- things have been changed; the requirements have changed. But yet we have a budget number here. That budget number had to be based on something. Was it based on old information?

MR. WEINER: No, no, it wasn't. In fact, it was based on the fact that new information is coming in. If you look at that chart again, on Page 22: the last line, all the way to the right on the bottom, is the strategic plan. That would emanate a list of all the projects that could be done without regard to money over a five-year horizon. Then it's really up to you and your colleagues to say, "How much are we willing to invest in this. How much are we willing to allocate?" If you said a billion, for example, we go this far down the list. If you say 2 billion, we go this far down the list. If you were to say something greater than 2 billion, we'd go further down the list. The number 2 billion, based

upon what we estimate the needs might be, is enough to materially allow us to do a real strategic plan; because some of the projects that will be funded are projects that were identified in the year 2000 and remain in need. Some of them are those 27 projects I referred to before that have higher priority. That is, give or take a hundred million dollars, a little over a billion dollars right there, just to do those 27 projects. So we triangulated in on a number. And then it will undoubtedly not fund an entire strategic plan. And then we'll come back some two years later and say, "We said we'd accomplish this. This is what we accomplished. Now to move to the next level, we need additional money."

The thing to remember, and I know you know it and I know your colleagues on these committees know it, is that this is a program that's going to take years and years and years, and much more than \$2.5 billion in the Abbott Districts. And the need in the Regular Operating Districts is also one that's ongoing and doesn't go away with a particular influx of money, no matter how large that number is. We are talking about fundamental questions about how we fund the construction of school facility projects throughout the State.

ASSEMBLYWOMAN BECK: No questions.

Thank you.

One other thing, which is: I noted in the course of the report that it seems that the aid, the 750 million, would be tied to the wealth of the district. And I know, as the Chair knows, that is not always an accurate reflection of the district. And I cited, the last time we were together, with Red Bank, 92 percent are on free and reduced lunch, 70 percent of our students are Latino, 20 percent are African-American, 10 percent are Caucasian. And it is a district with enormous needs, and it's not an Abbott, and is not wealthy. Even

though some of the residents there are, the district is not wealthy.

In this case, that would not make a lot of sense. So I question whether that is the best way to approach the distribution of the aid.

MR. WEINER: I understand.

SENATOR RICE: Let me make a couple of comments here.

ASSEMBLYWOMAN BECK: I just have one-- I just have one last--

SENATOR RICE: We've just got to change tapes, Assemblywoman.

ASSEMBLYWOMAN BECK: Sure, no problem.

SENATOR RICE: While she's doing that, let me assure everybody that, one, we'll conclude. I know that my members had some very long weeks here, and the rest of you are impatient. But this is important to those of us who have the oversight. Don't take the questions personally. You are doing good in this round. (laughter)

MR. MacINNES: We'll be back.

ASSEMBLYWOMAN BECK: Thanks.

Just my final question/comment, which is back to my original. I think there is a lot of agreement in the State that by our separating out one school district from another, it's created inequity. And maybe at the time it was done, that made sense; now, it really doesn't. And I would just ask for your opinion on that, as someone that's now structuring this program for just 31 school districts, when indeed you've got so many in need in the State, whether or not you think this is an equitable distribution of State dollars?

MR. WEINER: First, let me just give a clarification on perspective. The school construction program which I'm

responsible for is not just 31 districts; it's all the districts. And we have been responsible, as you know; and I'm now picking up responsibility for what remains of \$2 billion that went to what we call the Regular Operating Districts. Our recommendation-- And people may, of course, quibble with the money; and I don't mean to minimize it, but disagree with the amount of money that was recommended -- was for every district. Some people might want to see more or less. So I do view a responsibility for all districts.

I also recognize that a change in the school aid formula is something that might make a lot of sense. It's something that the Governor has called for. It's certainly something that we support. And eventually, I believe at some point in time there will be a change in the school aid formula, and that will address many issues that deal with other issues that your colleagues have raised. And when that happens, I am confident that we can build in an effective component as part of that formula to address school construction needs for all the districts, and how do you allocate finite resources among 500-some-odd districts.

Our point is, until you and your colleagues figure that out, we can't stop the current program, for either the Abbott Districts or the Regular Operating Districts, hence the recommendation at the level it's at. So that assuming that a timely change does an occur, we're in a position not to have committed yet another billion, two billion on top of the recommendation, but can take any future funding and integrate it into a new formula.

ASSEMBLYWOMAN BECK: Thank you.

SENATOR RICE: Thank you.

Let me just make a couple of points here, whether my colleagues agree or disagree. But I've been around long enough to know some of what I'm talking about.

First of all, you're correct, and the program is for everybody.

Secondly, and I think most important, whether we agree, disagree, like or dislike, the 31 Abbott Districts is a clear court mandate, Supreme Court mandate. People had something to say in arguments prior to *Brown v. Board of Education* and *Plessy v. Ferguson*. And so we can accept those realities. I also respect the fact that we all represent different populations with different needs, some populations with the same needs. I respect that. I also said earlier that fair and equity is not always the amount you get; it's meeting your needs.

If there's any member of this Committee or anyone in the Legislature who has a district such as the one that the Assemblywoman was describing, we need to know about it and the State needs to know about it. What I'm asking you to do, through the Chair, I'm asking you to go back -- I want to know, clearly, every district, not only dollars they receive, but every district that did not apply for funding who had an opportunity to do so, and I want it broken down by legislative district. Because if, in fact, colleagues, out of 120 Legislators, are not connecting and communicating with their superintendents -- except for the cry letters that they get and the cry phone calls -- and not asking the kinds of questions -- "How come you didn't apply?" -- to find out why they did not, then they're never going to get the kind of results they want based on what "those districts" claim their needs are. It is just that simple.

The other thing is that I do disagree and will always disagree with any colleague, or anyone else outside of government -- what we do in government -- as long as we have the proper checks and balances in place -- we have commitment and integrity in the process. And that's what we're trying to do now by restructuring and redirecting. Anything we do benefits New Jersey. No one is ever going to tell me -- and I'm going racial here, not from a racial mode, but to identify, and I won't get tough with it. But if anybody tells me that minority and women, little boys and little girls in those urban districts who receive an opportunity to get a good quality public education -- because it's not our job to privatize education in the State, regardless of what legislation is coming through; the Constitution is clear. But if one of those kids succeeds and someone was excluded in the process, even though they shouldn't be excluded, they're not going to tell me that's not a benefit to New Jersey. I'm reducing gang bangers, and I'm educating. And maybe we make a rocket scientist. So there is a benefit to New Jersey. The cause is tremendous. If anybody put it in perspective, if you weigh the cause of incarceration, and look at that population, and then lay that down and overlay it with the this 8.6 billion and the breakdown of it -- it becomes very clear that this is one of these necessary evils.

I'm never going to argue, as a Legislator, that a district in need -- that I clearly know has a need -- outside of my district, shouldn't receive because another district is. I'm going to support the district that has the need; and I'm going to argue the case, without stymieing legislation that's going forward, to help those districts on things that make sense, with the dollars and cents necessary to make it happen.

What is starting to happen, and has happened for a number of years in New Jersey, there are those in New Jersey -- not the general public in general, but elected officials at all levels of government -- who have never wanted these dollars to be spent, because there are other needs that need to be met economically. I respect that. I spent 16 years on the Council. So there are representatives who have become a barrier, rather than educating the people on the needs of why this should happen; and we collectively get together to try to address those other needs economically, recognizing it's tough. So that needs to be put in perspective.

The other thing that disturbs me is, every place I go there's nothing but talk about corruption. Right now there's a presidential election -- an election in Brazil, and they say there's not much difference in the candidates, but it's this issue of massive government corruption. The corruption is in corporate America. Corruption happens to be in some of the things taking place in our churches. And I get really upset when I hear anyone, but particularly local government officials, indicate the potential of corruption and not go to the proper authorities. I get angry with citizens coming to me with information and I direct them and they don't want to go. I'll take it, but this is no different than the housing construction industry, which I'm doing legislation on now, that was investigated and looked at by SCI in the housing industry.

There's been a lot of allegations, and that's what they were. The question is, they should not go to DCA, they should be going to the Attorney General. As a Legislator, I raised the question with the Attorney General recently to look into the fact whether or not this entity is investigating; and if so, fine. If not, we can maybe think about doing some

investigation. That was my responsibility, not to go to the Commission of DCA but go to the executive authority. That's why we have these separations of powers. That's why we have these different departments and agencies.

And I'm telling you, as a former investigator or one who runs different things, certain information I'm not going to provide -- regardless of how much people beat me up -- unless I provide it to the proper authority. And there are some cases where there are laws that bar me from providing it publicly.

So it's nice for us to come and demand information on who is being investigated. That's the wrong question. The question should be whether or not an investigation is going on. But if the authority says they can't let anyone know there's an investigation yet because there's linkage to what they have to do to fully investigate, or to start the investigation, you can't even really say. So you sit before a body like this and feel like you're handcuffed when you want to be cooperative.

I think your responses were correct. I think the questions by the Assemblywoman were correct. But I also think if any members -- in fact, I'm thinking, from listening to that line of questioning -- because I think the law is clear now. But I'm thinking about putting legislation in to make it very clear if any Legislator out of 120 or any department personnel that works in this government have information, factual information -- not a bunch of hearsay, because the media gives you hearsay -- and they don't report it, either be removed from office or held highly accountable for that. Because I think that's our first responsibility when we talk about integrity, and things of that magnitude.

All of us get painted with a bad brush. Twenty-one years, never had a problem -- I got painted because of politics. That's going to happen. But where it's factual, if organized crime is involved with this process, I'm sure it's not something that the State Police and the Attorney General will sit back on their laurels -- or the U.S. Attorney's Office -- if they have information. They'll do the preliminary investigation; they're not going to tell you anything about it. You may think nothing is going on, but a lot is going on.

I don't really believe that every law enforcement agency, you know, has a monopoly on integrity either, in terms of that. Some of those agencies also lack some integrity, depending who you're dealing with.

I need to be clear on that, because I know it is very important for the public to believe, and understand, and know that we are tightening this system up for accountability. I think when the media write that we can't get certain responses, the media doesn't write why we can't get them. And the public reads that line that the Legislators -- in this case, whoever asked for so-and-so and won't get it -- that makes the perception of moving forward with SCC, and things we have to do to help the school districts throughout New Jersey, even more problematic.

And so our leadership needs to be going back to the districts and being honest with the people -- those who receive, those who do not receive -- as to why we have to do things, and build public schools, and not privatize.

The final thing. I can count the number of people on one hand throughout New Jersey who were in the Legislature during the course of this time and who are here now that called for investigations on the City of Newark when the State

came in and basically, for lack of a better word, ripped off or mismanaged \$70 million and never replaced it. I can count the number of people on one hand that raised a question for investigation on \$20 million-plus out of Paterson -- the State, not the guard they removed, the State, which was more than the local people "allegedly" had ripped off. And I didn't see anybody in New Jersey beyond those districts yelling, "Replace the money because it created a bad deficit." So I don't want people outside the districts of Abbott yelling that we shouldn't build schools. We should be yelling for accountability. We should also be yelling we've got to do this process very rapidly and get things in place, because the cost is going up. And it will be done. If the people in New Jersey don't understand that it will be done because of the Supreme Court mandate, it may take 10 years back in the courts. It's up to the leadership to express to them that, "Look, as much as you regret this, it's something that's got to get done. It's going to be done, it's a mandate. And the longer we wait, the more it's going to cost us. But as your elected official, here's what I can do for you. Let me go back and get the accountability. I don't feel in my heart, as a person -- rich or poor or middle class, young or old -- that you want to deny any resident in New Jersey an opportunity of a quality life and a better education. I don't believe that's in your heart. I do understand your concerns with the spending. I also understand your concern with meeting your needs that are not being met. It's my job as Legislator to try to balance that." That's what the message should be.

So I want to be on record with that. If the media is here, print that and quote it right. Because New Jersey needs to start hearing from us as leaders, and not get behind

these doors, and read stuff based on our frustrations and the way we say things.

With that, I'm going to give it back to the Co-Chair. And if there are no other questions, we'll conclude the meeting after that.

Thank you.

ASSEMBLYMAN STANLEY: Any other questions? (no response)

Let me just commend Co-Chair Rice for a very good summation, I thought.

I just want to ask a couple of things of the SCC. One is that I understand that you have monthly meetings, Chairman?

MR. ZUBROW: Yes.

ASSEMBLYMAN STANLEY: There is information, you said, that is provided on the Web site regarding the monthly meetings?

MR. ZUBROW: That is correct. We have monthly Board members. The different committees of the Board also meet monthly, if not more frequently. And the agenda's minutes, as well as all of the public Board materials for the Board meetings, are posted on our Web site.

ASSEMBLYMAN STANLEY: If there is no objection by any member of the Committee, if all members of the Committee would like a copy, I would certainly like you to send a copy to the members of the Assembly Education Committee, the Joint Committee, sir, and perhaps the Senate Education Committee as well. If you could send that information out to them as opposed to just having it available on the Web site, because some of us are not as technologically savvy as others.

MR. ZUBROW: I'm sure that you're very savvy technologically. Why don't we coordinate with Melanie and

staff. It is an enormous volume of information. And without wanting to kill more trees than are necessary, let's figure out what would be helpful really for you to be able to do your oversight.

ASSEMBLYMAN STANLEY: If we have to kill some trees to save kids, we'll do it.

The other issue is with respect, I guess, to the Department of Education. If you could direct those districts who have not submitted their long-range plans -- to reiterate, and directive to do so. And if there's anything that's necessary in order to have assistance from the Department of Education, from the Commissioner, I'm sure it's within the Commissioner's powers to do whatever is necessary to make sure they get those in, because, after all, if we don't have those plans, their plan doesn't go into the mix of what we're trying to do.

MR. MACINNES: Just for the record, we have done that in the case of both districts. And I think more than once. In one case we have an extension. I think in the other case we have no movement.

ASSEMBLYMAN STANLEY: Is the DOE there now? Because if they're not, that's what I would recommend -- that they do everything that they can do, even if it requires going into the district, etc.

ASSEMBLYMAN WOLFE: Can Commissioner MacInnes let us know who those two districts are? Would that be appropriate?

MR. MACINNES: Irvington and Harrison.

ASSEMBLYMAN WOLFE: Okay.

ASSEMBLYMAN STANLEY: The third thing is, going forward, that I think Senator Rice, my Co-Chair, has really put it in very good perspective. We understand that there is an ongoing track of litigation, etc. But we also have to

focus -- and I'm, as Senator Rice is, and I know Assemblywoman Voss is, certainly concerned that we prosecute and go the whole nine yards with respect to what hasn't been done correctly in the past and so forth. Our main obligation really is moving ahead to the future and making sure that we do what is necessary, that we give people the type of assurances that they need to feel comfortable with the investment that we're making. But the fact of the matter is that it's our Constitutional obligation to do that.

The other thing I want to attach to that is, none of those kids had anything to do with what's happening now. So we can't penalize the kids for the omissions or the transgressions of those in the past. All we can do is move forward.

I think that basically sums it up.

If there's anything that anyone would add to that.

SENATOR RICE: Yes. Are the students from Keansburg still here? I apologize to them. They were here this morning. They said come see Keansburg for yourself. They have needs down there, and we need to address those needs. I just want to commend them for taking time to come to the State House to lobby on behalf of their fellow students.

At this point and juncture, we're going to conclude this meeting. Let me thank you. I feel a lot better about where we're going. I'm not satisfied with the time frames under the leadership that we have, and in terms of things being put in place -- there's a lot more work to be done, as you know, from the comments of my committee members.

Thank you very much. The meeting is adjourn.

(Meeting adjourned at 1:05

p.m.)

