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P R E S E N T

GOVERNOR MARTIN O'MALLEY, Presiding;

HONORABLE PETER FRANCHOT, Comptroller;

HONORABLE NANCY KOPP, Treasurer;

SHEILA C. MCDONALD, Secretary, Board of
Public Works;

ALVIN C. COLLINS, Secretary, Department
of General Services;

T. ELOISE FOSTER, Secretary, Department
of Budget and Management;

BEVERLEY Swaim-STALEY, Secretary,
Department of Transportation;

MEREDITH LATHBURY, Land Acquisition and
Planning, Department of Natural Resources;

LUWANDA JENKINS, Special Secretary,
Governor's Office of Minority Affairs;

MARY JO CHILDS, Procurement Advisor, Board
of Public Works; and,

MARION BOSCHERT, Recording Secretary,
Board of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: Good morning, everyone, and welcome to the Board of Public Works. Today is March 24, 2010. It is Wednesday. It is a beautiful day. Spring has sprung and the grass is ris. Mr. Comptroller, Madam Treasurer, any opening thoughts.

TREASURER KOPP: Not really, except I'm thankful to be here.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Well, I want to just follow up on your comments. It's spring, and I'm glad to be here, and at least for the next half hour there will be no snow.

(Laughter)

COMPTROLLER FRANCHOT: But I did want to take a moment and just congratulate the teams at the University of Maryland and Morgan State University. They represented us so well in the NCAA tournament. And I know that they would obviously be, like to be preparing for their next opponent but they had

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tremendous seasons. And I thought both schools should be applauded.

(Applause)

COMPTROLLER FRANCHOT: And, you know, it just got me thinking about another activity that sometimes gets overlooked because now with March Madness behind us we still have all these great college athletic seasons that are unfolding. And so I just wanted to reach out to all the student athletes who are engaging in these sports this season. And you know Maryland, Governor, is the absolute world center for lacrosse. We have women's and men's programs that are nationally ranked in that and other sports. We have strong baseball teams. We have track, tennis and softball championships. I can't forget UMBC's internationally renowned champion chess team, which will be defending its President's Cup title in a couple of weeks. I see a chess fan in the back.

So it has been a great season for, and it is a great season to get outside. And I would encourage everybody to take an afternoon and go out and boost

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local spirit, and bring local communities, and bring some attention to our world class higher education network.

I yesterday was in Salisbury in the Eastern Shore promoting the, the Treasurer knows how important the College Savings Plan is, and she chairs that board that I am a member of. And we are promoting the Maryland College Investment Plan, which is such a great program, and such a help in paying for college. But I would like to just encourage all of us to get out to some of these college athletic events and support their teams. I tried to stop by yesterday at the UMES, University of Maryland Eastern Shore, baseball team game. Not because they have a great record, they are zero and nineteen. But I wanted to root them on, and I figured I would see a couple of good hits anyway, and a couple of good fielding plays. It got rained out, unfortunately. But these are great events. And if you have a chance definitely go and spend a few minutes with them. Thank you very much, Governor.

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GOVERNOR O'MALLEY: Thank you, Mr. Comptroller. Start with the Secretary's Agenda?

SECRETARY MCDONALD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have twenty-nine items on the Secretary's Agenda this morning. We have two reports of emergency procurements. We are withdrawing Item 1, Item 17, and Item 23.

TREASURER KOPP: Number seventeen --

SECRETARY MCDONALD: Number seventeen, the project is apparently going to go forward with a different source of funding. And because of that different source of funding it will not need to be approved by the Board of Public Works. But my understanding is that this project is good to go as described in seventeen with a different fund source.

TREASURER KOPP: Could I just interrupt for a moment?

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: This is what I was looking for, in the midst of congratulate, just to take us back for a moment --

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GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: -- to the Comptroller's outstanding statements. There is a national competition in undergraduate mathematics teaching across the nation. And I would like you and everyone to know that our team from the University of Maryland College Park is the leader in teaching mathematics level.

COMPTROLLER FRANCHOT: Great.

GOVERNOR O'MALLEY: Terrific.

TREASURER KOPP: They have just been given the Putnam Award.

GOVERNOR O'MALLEY: The Putnam Award?

TREASURER KOPP: The Putnam Award.

COMPTROLLER FRANCHOT: Well, I left out that Montgomery College won the national cricket tournament.

(Laughter)

COMPTROLLER FRANCHOT: A sport I haven't played, but hey. That one you have to take several days to go and watch, apparently, but.

GOVERNOR O'MALLEY: Okay. It's spring.

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TREASURER KOPP: Yes.

GOVERNOR O'MALLEY: Any questions, I should have rephrased it. Any questions on this part of the Agenda? No?

COMPTROLLER FRANCHOT: Could I just ask one question on, is it Item 21? Is this --

GOVERNOR O'MALLEY: Item 21?

SECRETARY MCDONALD: Number twenty-one is Morgan State University. It's Mr. Wortherly. Did you want to ask Morgan a question, or did you want to --

COMPTROLLER FRANCHOT: Yeah, I'd like to, because --

SECRETARY MCDONALD: Oh no, Ms. McCalla is here, Kim McCalla from Morgan State University is here.

COMPTROLLER FRANCHOT: Excellent. My question is just, I find this to be difficult to just follow as far as the funding. And maybe you could help me understand what we're voting on today?

MS. MCCALLA: You are voting on the second phase of the construction contract. We came last

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spring for the pre-construction services for Barton Malow. And now we have issued two GMPs, the preliminary GMP for half the project, and the second one which incorporates the first part of the project into the full GMP, with construction of the School of Architecture and Engineering.

It's being split funded. Part of the funding, construction funding, was funded during last fiscal year, and the balance of it is being funded during this fiscal year.

COMPTROLLER FRANCHOT: And who is in charge of the project, I guess? Is there a construction manager?

MS. MCCALLA: Yeah, Barton Malow is the construction manager that we've hired, and then I have a project manager on staff to oversee their work.

COMPTROLLER FRANCHOT: And the material we have here is just guaranteed maximum price bid packages, all of that is --

MS. MCCALLA: Yes that, all the materials that you have there are just what, the different items that make up the total GMP.

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COMPTROLLER FRANCHOT: Okay. And it's coming in for the construction price? Is that what we're --

MS. MCCALLA: It's coming in actually, about \$3 million under budget.

COMPTROLLER FRANCHOT: Okay. Thank you, Governor.

GOVERNOR O'MALLEY: Thank you.

SECRETARY MCDONALD: Governor, I would like to point out Items 7, 8, and 9 have been a lot of work by the procurement advisor, and general counsel to the Board, and the entire procurement community of the State.

GOVERNOR O'MALLEY: The procurement community?

SECRETARY MCDONALD: Exactly. But eight and nine especially, and seven we are getting some regulations proposed for construction management risk and various project delivery methods, such as Ms. McCalla was describing. Perhaps more importantly to this Board right now, though, is eight and nine. And

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nine specifically, they have to do with minority business enterprise. And we worked closely with the MBE community and majority prime contractors on these two proposals. And number nine is to fix some of those forms that we heard so much about at the end of January and February. And you asked, you, Governor, asked that we get these changes out quickly. I think it's going to streamline it. You can ask Ms. Childs for a better description. But it's going to streamline the process and the forms with still giving everybody the information they need, but not impinging on the process too much.

GOVERNOR O'MALLEY: Ms. Childs? Does this truly streamline the forms without impinging upon the process?

MS. CHILDS: Governor, we believe the final product streamlines the forms as much as possible staying within the constraints of the law. The law was changed in 2004 requiring that the MBE subcontractors be identified at the time a bid is submitted. So it was very important to our work group that we maintain the integrity of that identity

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process. But I think we got rid of some of the legalese that perhaps confused folks, and hopefully this is a better product, and will result in fewer bids being thrown out for MBE form abnormalities.

GOVERNOR O'MALLEY: Good. Great.

SECRETARY MCDONALD: And I think that, Governor, Ms. Jenkins was fully in support of --

GOVERNOR O'MALLEY: Secretary Jenkins?

MS. JENKINS: There is another regulation that is significant as well. Item 8 is an amendment to the procurement regulations which encourages State agencies to adopt and promote prime contracting for MBEs, which is a key strategy for this administration to encourage meaningful minority participation at the prime level. So we think that is a very significant regulation change.

TREASURER KOPP: That's terrific. I mean --

(Applause)

TREASURER KOPP: -- good work.

GOVERNOR O'MALLEY: Okay.

COMPTROLLER FRANCHOT: Approval.

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GOVERNOR O'MALLEY: The Comptroller moves approval of the Secretary's Agenda items, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed? The ayes have it. We move on now to Program Open Space.

MS. LATHBURY: Good morning, Governor.

GOVERNOR O'MALLEY: Hi.

MS. LATHBURY: Madam Treasurer, Mr. Comptroller. Meredith Lathbury for the Department of Natural Resources. We have one local side item on the Agenda this morning, and I'd be happy to answer any questions you have.

GOVERNOR O'MALLEY: Any questions on Program Open Space Agenda items? No?

COMPTROLLER FRANCHOT: None for me, I move approval.

GOVERNOR O'MALLEY: Okay. The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

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GOVERNOR O'MALLEY: All opposed, "Nay." The ayes have it. We move on now to the Department of Budget and Management.

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller, good morning. There are nine items on the Department of Budget and Management's Agenda for today and I'll be happy to answer any questions you may have.

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes, Madam Secretary, Item 2-S is something I support, obviously, very much, our participation in the BIO 2010 International Convention.

MS. FOSTER: Right. And Item 2 is a contract obtain 3,400 square feet of booth space for the BIO 2010 International Conference. It's going to be held in May, May 3rd through the 6th in Chicago. And from the Department is Dr. Judith A. Britz to answer any questions you may have.

COMPTROLLER FRANCHOT: Oh, great.

DR. BRITZ: Good morning.

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COMPTROLLER FRANCHOT: Good morning. Such an important sector for our future economic growth.

DR. BRITZ: For sure.

COMPTROLLER FRANCHOT: I take it the smaller presence we're going to have, is that just a reflection of the economy being soft?

DR. BRITZ: I think it's a reflection of our sensitivity to the budget. And so we have reduced some of the floor space and the people participation from the State of Maryland by about 30 percent. Nonetheless, the total project cost of \$125,000, we actually raised from the participating exhibiting companies \$108,000 thus far with a goal of \$110,000. So the State's participation will just be a little over \$15,000.

GOVERNOR O'MALLEY: That's good.

DR. BRITZ: Mm-hmm.

COMPTROLLER FRANCHOT: Excellent. Good work. And I'm sure that I and the Governor, perhaps, and others will be out there to support you.

DR. BRITZ: Absolutely. The forum attracts 20,000 people from more than forty-eight states and

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sixty countries, and in particular over 400 legislators internationally. Usually more than ten governors are present. This particular year, two former Presidents, Clinton and Bush, as well as Vice President Gore will be there as well. So the meeting will get tremendous national attention. And we're expecting the Governor to be there as well, who has been recognized in the past by this organization.

GOVERNOR O'MALLEY: May I ask which former President Bush?

DR. BRITZ: The latter.

GOVERNOR O'MALLEY: The more recent one?

DR. BRITZ: G.W., yes. Correct.

TREASURER KOPP: May I just reflect on the fact that former Senator Hogan and I attended what I think was the second in San Diego.

DR. BRITZ: Yes.

TREASURER KOPP: A number of years ago.

DR. BRITZ: Mm-hmm.

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TREASURER KOPP: Which, when it was just a struggling organization, and we had a few, Human Genome Sciences, et cetera, from Montgomery County --

DR. BRITZ: Mm-hmm.

TREASURER KOPP: -- coming. And subsequently the support given by the State --

DR. BRITZ: Mm-hmm.

TREASURER KOPP: -- and its economic development force --

DR. BRITZ: Mm-hmm.

TREASURER KOPP: -- to our community, encouraging them to participate, I think was a real spur to the whole organization growing. It's now --

DR. BRITZ: I would agree.

TREASURER KOPP: It's now a major international event. It's great.

GOVERNOR O'MALLEY: We have the biggest night down there, right?

DR. BRITZ: We do. We actually sponsor the gala event. Maryland is known for this. And in fact we always look for ways to highlight some of Maryland's strengths, whether they are crabs, or Old

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Bay seasoning, or you know, whatever can highlight some of the unique features of being a citizen of Maryland.

TREASURER KOPP: Well let me just say as a former representative of District 16, and my colleague of 15, we appreciate it very much. And especially the fact that the biotech community in the Washington area and the Baltimore area and around the State have now all come together to coalesce the support. This is a great thing.

DR. BRITZ: Mm-hmm.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: We moved up over these last three years from fourth place to second place --

TREASURER KOPP: Yeah.

GOVERNOR O'MALLEY: -- even in the middle of a recession in terms of our life science, biotech economy. Good stuff.

COMPTROLLER FRANCHOT: Congratulations.

DR. BRITZ: Absolutely.

GOVERNOR O'MALLEY: Thanks.

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DR. BRITZ: You're welcome.

COMPTROLLER FRANCHOT: And I had one other item if --

GOVERNOR O'MALLEY: Sure, Mr. Comptroller?

COMPTROLLER FRANCHOT: Item 9. Is there someone here that can, from the AG's Office?

MS. FOSTER: Yes. Item 9 is a settlement, and from the Attorney General's Office is Charles Butler.

MR. BUTLER: Yes, good morning, sir.

COMPTROLLER FRANCHOT: Good morning. My question is, I followed the news about, this is apparently concerning ACORN?

MR. BUTLER: Yes, Mr. Comptroller.

COMPTROLLER FRANCHOT: And, you know, I follow them from time to time because they got into trouble because of their tax advice to people. And apparently that has led to the disappearance of the entire organization. I read yesterday, I think, that it's been disbanded. So what is this \$60,000 going to?

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MR. BUTLER: This goes straight to attorneys that represented ACORN in this matter, which actually originated in 2007. So ACORN's activities that have been in the news that have led to its dissolution really had no bearing on this matter. And --

COMPTROLLER FRANCHOT: But they no longer exist. So this is going to whom?

MR. BUTLER: This is going to the counsel who represented ACORN, Crowell & Moring, a law firm in Washington, D.C. --

COMPTROLLER FRANCHOT: Uh-huh.

MR. BUTLER: -- and ACLU of Maryland, Foundation. ACLU was the co-counsel representing ACORN in this matter as well.

COMPTROLLER FRANCHOT: Okay, and --

MR. BUTLER: So none of this, none of these funds will go to ACORN.

COMPTROLLER FRANCHOT: Okay. And the hourly rate for Crowell, is that something that you guys looked at and approved? I don't know what it is. What is it?

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MR. BUTLER: Yes, sir. Well the rate that they can charge for which they can recover fees under the Civil Rights Act, Section 1988 of the U.S. Code, 42 USC 1988, that rate is set. So I'm not sure what Crowell & Moring's regular rates are, but they have no discretion but in this case to charge the rate set by federal statute. And --

COMPTROLLER FRANCHOT: And they are, what are they in the range of?

MR. BUTLER: It depends on the level of, of the attorney doing the work. I can in a second provide you with something more specific. The highest in this case would be the guideline rate of \$400 an hour. And the lowest would be the guideline rate of \$190 an hour.

COMPTROLLER FRANCHOT: In your judgment this is a fair amount to pay? We're not, we're not, is ACLU, are we reimbursing ACLU? Or is this all going to Crowell & Moring?

MR. BUTLER: This is going to be divided between ACLU and Crowell & Moring. Yes, sir. They moved originally for almost \$150,000 in attorney fees.

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So we do believe that this is in the best interest of the State and a fair agreement.

GOVERNOR O'MALLEY: Best interest of the ACLU. What was it that they allege we were not doing?

MR. BUTLER: They alleged that the regulations governing free speech activity on property owned by MTA, public property, violated the First and Fourteenth Amendments. There were ACORN volunteers who were registering voters on MTA property in Baltimore, in the subway system. And --

GOVERNOR O'MALLEY: What, MTA ran them off because they didn't get a permit beforehand or something?

MR. BUTLER: Yes, sir.

GOVERNOR O'MALLEY: And so they sued us to get us, we had regulations?

MR. BUTLER: We had, MTA had regulations that had some problems with them.

GOVERNOR O'MALLEY: Mm-hmm.

MR. BUTLER: MTA since, after ACORN brought this action, MTA voluntarily agreed not to enforce

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those regulations and to enforce just a specific set of regulations that both, that the parties agreed on. And MTA has since drafted new proposed regulations that the AELR Committee is currently reviewing.

GOVERNOR O'MALLEY: So as soon as the matter was brought to our attention we corrected it?

MR. BUTLER: Yes, sir. MTA agreed not to enforce the regulations which did have problems.

GOVERNOR O'MALLEY: Did it go to court?

MR. BUTLER: Yes, it did.

GOVERNOR O'MALLEY: And how many millions of hours did they spend on this case?

MR. BUTLER: They claimed to have spent a total of several, about, several, a few hundred hours on the case.

GOVERNOR O'MALLEY: They spent a few hundred hours on a case that we had agreed to address right away?

MR. BUTLER: Well it --

GOVERNOR O'MALLEY: Did it ever go to court?

MR. BUTLER: A summary judgment motion went to court.

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GOVERNOR O'MALLEY: Huh.

MR. BUTLER: Yes, Governor.

GOVERNOR O'MALLEY: Okay, so they had a summary judgment?

MR. BUTLER: And the court, because MTA had already agreed not to enforce these regulations, and they were in the process of drafting new proposed regulations --

GOVERNOR O'MALLEY: Mm-hmm.

MR. BUTLER: -- the court declined to enter the injunctive relief.

GOVERNOR O'MALLEY: So the whopping damages it awarded to the claimant was?

MR. BUTLER: Nominal damages of \$1 each.

GOVERNOR O'MALLEY: So ACLU spent \$60,000 to recover the \$1. Or actually, we're spending it to recover it, huh?

MR. BUTLER: Yes, sir.

GOVERNOR O'MALLEY: To change regs which we already changed as soon as we were told there were problems with them?

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MR. BUTLER: To change regulations that MTA, as a result of this litigation, agreed not to enforce.

TREASURER KOPP: There is no, I assume MTA is not saying they were in the process of conforming their regulations to the Constitution before this happened?

MR. BUTLER: That's correct, ma'am.

GOVERNOR O'MALLEY: When did they sue us?

MR. BUTLER: January, 2007.

GOVERNOR O'MALLEY: Was I in office then?

SECRETARY MCDONALD: You were inaugurated --

(Laughter)

MS. SWAIM-STALEY: For the record, Beverley Swaim-Staley, Maryland Department of Transportation Secretary. I believe the incident took place in 2006. At least, that's what I've been told by the MTA.

MR. BUTLER: Yes.

MS. SWAIM-STALEY: But the suit was --

GOVERNOR O'MALLEY: How long did the regs go back to?

MS. SWAIM-STALEY: Many years, I believe.

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GOVERNOR O'MALLEY: So they were regulations that were implemented several years before that and nobody ever challenged them?

MS. SWAIM-STALEY: Right.

MR. BUTLER: That's correct. When the case came to the Attorney General's Office we agreed that there were problems with the regulations.

GOVERNOR O'MALLEY: \$60,000, do we have to vote for this?

MR. BUTLER: The letter that the Attorney General's Office submitted to Secretary Foster contains confidential information why the Attorney General recommends that this is a fair settlement. I prefer not to go into those issues in public, but --

GOVERNOR O'MALLEY: Did the court order us to do this?

MR. BUTLER: No -- on the attorney fees, Governor?

GOVERNOR O'MALLEY: Mm-hmm.

MR. BUTLER: No, sir. The plaintiffs moved for attorneys fees, moved for an award of attorney

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fees, under 42 USC, Section 1988, which provides for fees to the prevailing parties in civil rights

actions. TREASURER KOPP: As I read this, \$60,000 is a compromise with what the figures show had been documented, technically?

MR. BUTLER: Yes, ma'am --

TREASURER KOPP: For a suit that did not bring the plaintiffs a great deal of money. But on the other hand assured that the State's regulations once adopted by AELR will reflect the First Amendment rights.

MR. BUTLER: Yes, ma'am.

MS. SWAIM-STALEY: That's correct.

TREASURER KOPP: Some things are beyond measure by dollars, I think.

GOVERNOR O'MALLEY: Anybody here from the ACLU?

MR. BUTLER: I don't believe so, sir.

GOVERNOR O'MALLEY: Boy, it just seems like a lot of money for something that was fixed with a phone call to the Attorney General's Office.

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MR. BUTLER: Yes, sir. They did, again, request almost \$150,000, they moved for almost \$150,000 in attorney fees.

GOVERNOR O'MALLEY: Of course they did. Hm. I don't like this one at all.

TREASURER KOPP: Governor, let me just say what I don't like is the fact that prior regulations violated civil liberties of American citizens. I'm sorry that it took a suit by any party to get us to write the regulations, which I hope will be adopted, and that's the cost. Which to me, is a relatively small cost for abridging civil liberties in this obvious way through the force of the State. But perhaps we differ on it.

GOVERNOR O'MALLEY: If we gave them \$10,000 it would be \$10,000 more than they recovered for the plaintiff.

MR. BUTLER: That's correct. That's correct, Governor. Obviously, the Attorney General's Office believes that were we to litigate out the fees issue the State would potentially have to pay more

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than \$60,000. And again, I could, I would prefer to go into reasons of why the Attorney General reached that conclusion in a nonpublic setting. But the recommendation and rationale are in the confidential letter that we submitted to Secretary Foster.

GOVERNOR O'MALLEY: I don't think I've seen that. Have I seen that?

MR. BUTLER: And if the Board would like any additional information we could provide that as well.

GOVERNOR O'MALLEY: Behind Item 9? Can we hold this aside for a little bit? Move to, what item is this?

MS. FOSTER: Nine.

SECRETARY MCDONALD: You can just, yeah, you can just hold it, I mean, hold it in abeyance, and do the rest of the Agenda, and come back.

GOVERNOR O'MALLEY: Yeah. We'll come back to this later at the end of the Agenda.

TREASURER KOPP: Could I just ask before we do this, what is the status, what is the timing on the adoption of the new regulations?

MR. BUTLER: Excuse me?

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TREASURER KOPP: The adoption of the new regulations, are they, you said they had to be approved by AELR?

MR. BUTLER: They are, it was submitted to, MTA submitted them to AELR last week.

TREASURER KOPP: And what is the schedule for approval?

MR. BUTLER: I'm not certain what AELR's schedule would be, but following AELR review and approval there would be a --

TREASURER KOPP: I'm sorry?

SECRETARY MCDONALD: There's ten days at the AELR, and then --

MS. FOSTER: Fifteen, actually.

SECRETARY MCDONALD: Fifteen days, fifteen days at the AELR, and then they will be published in the Maryland Register, the next available Maryland Register after the fifteen-day period has gone by for the AELR.

TREASURER KOPP: Thank you.

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SECRETARY MCDONALD: Mr. Butler, I just want to make sure that you're clear that this item would authorize a payment of \$60,000 to the ACLU?

MR. BUTLER: Yes.

SECRETARY MCDONALD: It doesn't say Crowell & Moring so we'll give --

MR. BUTLER: Yes, that's correct.

SECRETARY MCDONALD: Okay.

MR. BUTLER: The ACLU will receive the money, and disperse it between ACLU of Maryland Foundation and Crowell & Moring.

SECRETARY MCDONALD: Okay, thank you.

GOVERNOR O'MALLEY: Okay, we'll hold this one in abeyance. How about a motion on the balance, therefore, of the, are we still Department of Budget and Management Agenda items?

SECRETARY MCDONALD: Yes, you are.

GOVERNOR O'MALLEY: Okay.

SECRETARY MCDONALD: Items 1 through 8 on DBM.

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GOVERNOR O'MALLEY: The Treasurer moves the approval, except for that previously mentioned item which was, what, Item 9?

SECRETARY MCDONALD: Correct.

GOVERNOR O'MALLEY: Okay, which we'll hold them until the end of the meeting, or later anyway. The Comptroller moves second. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed? The ayes have it. We move on now to University System of Maryland.

SECRETARY MCDONALD: Mr. Evans is here.

MR. EVANS: Good morning, this is Joe Evans representing the University System of Maryland. We have twelve items on the Agenda today. We're here to answer any questions.

TREASURER KOPP: Could I ask a question about --

GOVERNOR O'MALLEY: Okay, sure.

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TREASURER KOPP: -- number seven? Which is the, obtaining from Foulger Pratt ownership of all the documents. What does that include, of these campus projects?

MR. EVANS: I'd like to bring up Ann Wylie, the Vice President for Administration.

DR. WYLIE: Good morning. The documents and the work done by Foulger Pratt was many millions of dollars and all kinds of studies. Civil engineering studies, a traffic study, parking study, steel tank consultants, market studies, hotel --

TREASURER KOPP: And what is the, I assume there's a shelf life for all these --

DR. WYLIE: Yes, there is. But we are moving as fast as we can forward on East Campus. And have with the purchase of the Washington Post Plant Building been able to clear eleven acres. So we are looking right now for a partner to move forward. So we believe that many of these studies, if we didn't have possession of them, we would have to repeat them.

TREASURER KOPP: Thanks.

GOVERNOR O'MALLEY: Mr. Comptroller?

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COMPTROLLER FRANCHOT: Yes. Mr. Evans, the
Item 12-GM?

MR. EVANS: I'd like to bring up Jim
Sheehan, the Vice President for Administration, Towson
University.

MR. SHEEHAN: Good morning.

COMPTROLLER FRANCHOT: Good, hi. This
originally was going to be a public-private
partnership as far as --

MR. SHEEHAN: That's correct.

COMPTROLLER FRANCHOT: -- financing. What
happened?

MR. SHEEHAN: The bottom fell out of the
bond market for the public-private ventures, and we
wouldn't be able to finance it at a rate that would be
affordable for student rents.

COMPTROLLER FRANCHOT: So, and what is that,
how long do you think, what exactly is going on, then,
as far as -- Mr. Evans, I guess I would like to ask
you. Where are we with public-private partnerships
and university construction? If we can't move forward

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here at Towson I take it we can't move forward
anywhere?

MR. SHEEHAN: Mr. Comptroller --

COMPTROLLER FRANCHOT: I mean, I didn't
realize, I thought the financial markets were
relatively stable in the short term as far as interest
rates. But I guess I'm --

MR. SHEEHAN: When this project was planned
everything was predicated on an interest rate of 5.75
or less in order to make it affordable and competitive
with the other on campus housing. When we went to the
market we were looking at rates in the 6.5 to 7.5
percent range.

COMPTROLLER FRANCHOT: Okay.

TREASURER KOPP: You're just saying they are
stable but there's still a significant spread between
--

MR. SHEEHAN: There is.

TREASURER KOPP: -- the private sector --

MR. SHEEHAN: When we, they had dropped to
just slightly below 6.5 percent, but we ultimately
decided to go with system funded financing.

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COMPTROLLER FRANCHOT: And so the impact of moving back to the University's academic auxiliary facility revenue bonds, what is the impact on other projects?

MR. SHEEHAN: I'm sorry, I can't speak to that.

MR. EVANS: I can't speak to that, either. I would have to go back to the System and get information about this. And I would be pleased to report that back to the Board.

COMPTROLLER FRANCHOT: I stopped by Salisbury University yesterday, and as I said I was down promoting the College Investment Program, but I stopped by at the new Perdue Building of Business, I think it's called, which is a fabulous building. It's halfway under construction. And this is a slightly different subject but the construction company that's building it I think comes from Georgia. A very talented group of individuals showed me around. I just asked them in passing, I said, "Do you ever hire local building trade workers?" And they said, "Well,

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no. We have to pay the prevailing wage. But, you know, we have no problem with hiring local, skilled union to build these buildings. It's just that we don't, you know, we bring our people in from out of state, and that's kind of the way we do it." I said, "Have you ever done it with local union help?" They said, "Oh yeah, we've done that all over the country, and we get very highly skilled workers, and everything works like a clock. And we don't pay any extra money because we're paying prevailing wage."

So I'm wondering if there isn't a University project in the Washington area somewhere, where apparently we have 30 to 40 percent unemployment in our building trade unions, our locals. Really, huge unemployment. Where we could do what's called a project labor agreement. Which these folks from Holder Construction, I mean they are, they are not pro-Union at all. They just have a lot of experience. And they said project labor agreements work great. You get terrific work. It's done on time. You don't have to pay more.

MR. SHEEHAN: Well --

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COMPTROLLER FRANCHOT: Could you help me identify, Mr. Evans I guess I'm asking, down the road some project where, you know, here we're basically at the end of the procurement process so it's not really appropriate, I think, to ask about one of these projects that you've put before us. But can you help us identify several projects that would be candidates for project labor agreements so we could hire our local Maryland trades union people?

MR. EVANS: Yes, sir. I will go back, and we'll talk to the systems, and we'll see what we can identify.

COMPTROLLER FRANCHOT: And maybe give me some advice, or the others on the Board, as to how exactly that would be done in a way that would not add to the cost. But would simply tilt the project towards these local skilled labor forces.

MR. EVANS: Yes, sir.

COMPTROLLER FRANCHOT: Thank you.

MR. SHEEHAN: And for the record, if I may, the developer on this project is from Alabama, but the

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contractor is Whiting Turner from Baltimore, and the architect was Design Collective from Baltimore as well.

COMPTROLLER FRANCHOT: Yeah, I think in the Baltimore market there is less unemployment among the trade unions. For some reason, the Washington market there's just a lot of unemployed, highly skilled, Maryland trade unionists who are sitting at home everyday. And if there's a way that we can employ them and get the product of their good work without raising the tab, I'd like to at least explore some options. And so I'm asking you if you could give us a little direction.

MR. EVANS: Yes, sir.

COMPTROLLER FRANCHOT: Thank you.

MR. SHEEHAN: Okay, thank you.

GOVERNOR O'MALLEY: Thank you. Any other questions on University System of Maryland Agenda items? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

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GOVERNOR O'MALLEY: All opposed, "Nay." The ayes have it. We move on now to DoIT. Do it now. Do it correct.

MR. SCHLANGER: Well Governor, good morning.

GOVERNOR O'MALLEY: Mr. Schlanger?

MR. SCHLANGER: Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of Information Technology. We have two items on the Agenda this morning. We will be happy to take your questions at this time.

TREASURER KOPP: What's the other one?

SECRETARY MCDONALD: What's the other one, the Treasurer said.

(Laughter)

GOVERNOR O'MALLEY: Okay, questions? Mr. Comptroller?

COMPTROLLER FRANCHOT: I have some concerns about Item 1.

MR. SCHLANGER: Item 1 is the recommendation for multiple master contract award to the manufacturers of the VLTs. I have my colleagues from

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State Lottery who would be happy to answer any specific questions you have, Mr. Comptroller.

COMPTROLLER FRANCHOT: Great. I first of all have my overall concern that this is the fourth time this year, and we are just in March, that we have an agency such as yours, or the Lottery, whomever you are representing, coming before the Board asking for approval of a contract despite the absence of any active appropriation. And we went through this before with the GTECH award, we went through it with the voting machine contract, and I don't think that the State of Maryland should be entering into unfunded contracts. And what we do, what we're doing today with this contract, and this sticks out because over ten years it's an \$800 million contract, I think it supercedes the budgetary authority of the General Assembly. I don't agree with the Attorney General's effort that this is justified. But frankly, I just think it's a risky, irresponsible way to practice fiscal policy. And I think someday it's going to come back to haunt us.

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In this case, as I understand it, we're entering a five-year base contract with a dollar value of \$600 million, with a five-year renewal option valued at \$200 million to buy or lease, install, maintain slot machines at the VLT locations.

According to my materials that you submitted there's no money in the current fiscal year 2010 budget to back this contract. But we're assured by the Interim Director of the Lottery that there are sufficient funds, or there will be sufficient funds, in the fiscal year 2011 budget to get us started.

Not to state the obvious, but unless I've missed something in the last twenty-four hours, we do not have a fiscal year 2011 budget. So we're initiating a contract with a cumulative price tag of nearly \$1 billion on the basis of a budget that has not been adopted by the General Assembly.

It is probably pretty obvious I am going to vote against this. But I have to ask just for the sake of clarification, how many machines are we buying with this ten-year, \$800 million contract?

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MR. SCHLANGER: Okay, I would ask my colleagues to answer that question. This is Bob Howells, Procurement Officer for State Lottery.

MR. HOWELLS: Good morning, Governor, Treasurer Kopp, Comptroller Franchot. The potential \$800 million figure over ten years is based on the 15,000 VLTs that are authorized by the VLT law. Obviously, at this point we only have two facilities that are approved and under construction. However, we are trying to create here a contract vehicle that covers that entire allocation of machines that have been authorized. We want to be in a position as these other facilities are approved and begin to open to be able to move forward on those in a timely fashion. So to answer your question, the number in the Agenda item is based on the total 15,000 machine allocation. And it is a not to exceed amount.

COMPTROLLER FRANCHOT: Right.

MR. HOWELLS: So if a facility doesn't open then obviously we wouldn't be buying that maximum number of machines. But that is the potential.

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COMPTROLLER FRANCHOT: Okay. Well let's just put aside my first point about the lack of a funding --

MR. HOWELLS: We are well aware of your concern on that topic, sir.

COMPTROLLER FRANCHOT: Okay. Let's just focus on what I think is a really highly irregular procurement strategy. We're essentially, I guess, setting up a purchasing consortium of nine gaming vendors, committing ourselves to buying all 15,000 slot machines from some combination of these nine companies over the life of a ten-year contract. And we're doing it this way despite the fact that we're only going to be purchasing a relatively small number of machines over the next twenty-one months. What is the advantage of doing it your way, this way, as opposed to the more conventional method, and the simpler method, of just going out and buying the machines on an as-needed basis?

MR. HOWELLS: Well, first of all we are not committing to buy all 15,000 necessarily from these

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contractors. There is a clause in the contract that it is a nonexclusive contract that would allow us to buy machines other places if we had reason to do so. However, we have solicited in the marketplace. We are aware of who the manufacturers are. Again, just like on the lottery side of our business there is not a huge pool of contractors out there that do lottery work, that do VLT work. We've got the bulk of the manufacturers in the country, in the world actually, that manufacture VLT machines on this contract. The VLT law indicated, or directed, that the Lottery Commission should contract with one or more licensed manufacturers for the lease or purchase of VLTs and shall establish a process enabling the facility and the Commission to select VLTs from a list approved by the Commission, subject to the availability of funds, obviously.

So we have created this vehicle which runs parallel to all the master contracts that have been done in the past by DBM, and now DoIT now that they exist, to establish a master contract where we've technical qualified these contractors. We have

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evaluated prices. We have come up with a list of contractors and machines that the facility operators can now go to and select. We will then do a secondary level of competition at a later date, in conjunction with those facility operators, to actually place specific orders for specific machines off of this list. That's the vehicle that we've put forward. We think it's a much more efficient method. We think it's much more time responsive to the operators of the facilities. And when we get to the task order level of getting the actual machines we are primarily focused on machine specifications at that point. We've gotten all the contracting vehicle out of the way. We've dealt with all the State contract terms, we've dealt with all of that.

So we felt that this was a good vehicle to give us not only what the VLT law requires as far as preparing this list to pick from, but also obviously staying within the State procurement regulations. It's a well-established procedure within the State. It's been used many times.

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COMPTROLLER FRANCHOT: So your testimony is that this list of nine is, can be added to or subtracted to?

MR. HOWELLS: Not on this contract. However, if another manufacturer went in business that doesn't exist now we could by some means bring them, we could do another contract, we could do another solicitation, we could do a sole source contract with that manufacturer. If it was justified. There are other methods that we could use at a future date if there was that type of case that arose.

COMPTROLLER FRANCHOT: For money above the \$800 million?

MR. HOWELLS: It would, well this \$800 million is our estimate for all 15,000 machines. So if we were going to buy 1,000 machines from some other contractor that is not on this list then that would be 1,000 machines that would be --

COMPTROLLER FRANCHOT: Okay so --

MR. HOWELLS: -- subtracted from the fifteen.

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COMPTROLLER FRANCHOT: -- in fact, yeah, okay, so these nine companies we're locking ourselves into for ten years, they're it as far as --

MR. HOWELLS: Five, potentially ten, it's a renewal option. There's no guarantee that we would exercise that option, but it's a possibility.

COMPTROLLER FRANCHOT: Okay. Let me just ask about the cash flow schedule that you have --

MR. HOWELLS: Yes, sir.

COMPTROLLER FRANCHOT: -- for this contract. It's my impression that of the five sites permitted under the Constitutional Amendment, only two are what I would characterize as active or ongoing. The Cecil County site that will have 1,456 machines on site; the Ocean Downs facility that will have 768 machines. Beyond that we're in it appears to be somewhat uncharted waters. Rocky Gap and Baltimore are stalled highly publicly and on the launch pad, so to speak. Arundel Mills location is heading towards --

MR. HOWELLS: Yes.

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COMPTROLLER FRANCHOT: -- let me put it charitably, an uncertain fate --

MR. HOWELLS: The referendum, yes. It looks like that will happen.

COMPTROLLER FRANCHOT: -- at the ballot box in November. So what happens if we go ahead and approval this contract to buy and maintain machines for all five locations, and some of these locations fail to come to fruition?

MR. HOWELLS: Well, I can't answer for the Legislature. But it would be my understanding, or my impression, that if for instance something happened at Arundel Mills with the current licensee that that would at some point be put back out for a rebid process. It's my understanding that Baltimore City and Rocky Gap will be put back out to rebid those licenses. We are going forward on the assumption that this program is going to move ahead and eventually we'll have 15,000, the maximum authorized number of machines in existence. The road may be a little rocky getting there, but that is the basis of this contract and what we're planning for.

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We need to be prepared if something happens with Arundel Mills, and it does in fact move forward quicker than expected, we need to be ready for that. We don't want to be the one that stands up and says, "We can't open a facility because we the Lottery, we the State, are not prepared to move forward." And as I said --

COMPTROLLER FRANCHOT: Well you can understand --

MR. HOWELLS: -- that's why this is based on all fifteen.

COMPTROLLER FRANCHOT: -- from my standpoint on the other side that, you know, the risk of entering into contracts when they are not funded. That's number one.

MR. HOWELLS: We're aware of that concern.

COMPTROLLER FRANCHOT: Now we've got the other risk on the other side of making a commitment of a large magnitude, I guess, before major elements of the slots plan are even close to fruition. For

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example, let's just take Cecil County and Ocean Downs. That's 2,000 machines.

MR. HOWELLS: It's 1,500 in Cecil and 800 in Ocean Downs.

COMPTROLLER FRANCHOT: Whatever, yeah, 2,200 machines approximately. I mean, how much are those machines going to cost?

MR. HOWELLS: We have, correct me if I'm wrong --

COMPTROLLER FRANCHOT: How much would it cost just to do them? For the next, until the end of calendar year 2011? The next twenty-one months?

MR. HOWELLS: Is it 111? Is this correct?

MS. SMITH: We are projecting around 111 --

SECRETARY MCDONALD: Ms. Smith, could you identify yourself?

MS. SMITH: I'm sorry, I'm Gina Smith. I'm the Interim Director for the Lottery. Right now based on the information that we have, we are projecting around \$111 million. And that would be, that would include the purchase, that would include some

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maintenance, and some machines that we just can't purchase, that we have to lease.

COMPTROLLER FRANCHOT: Okay. So we're going to get 2,200 machines for, what, \$111 million?

MS. SMITH: Well, we don't know that at this point in time. Part of the process is going to be that we will be going out for requests for quotations. And at that point in time we will establish the firm pricing that the Lottery will pay under this contract. So we're basically looking at best and final offers at this point in time.

COMPTROLLER FRANCHOT: Well this raises an issue. So I understand that your testimony is we're going to be purchasing a total of 15,000 machines for \$800 million over the next ten years. What are these machines made of?

MR. HOWELLS: I think you're familiar with a slot machine, or a VLT, and what it involves. As Gina was indicating, and I think I touched on with the master contract, we have at this point prices from all nine of the contractors that are locked into the

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contract. They are maximum prices that the State will pay. When we get to the secondary level of competition, when we go to actually purchase the machines, again going back the same parallel path that we do with all the other statewide master contracts, we will be issuing a request for quotation. And the contractors at that point will have the opportunity to refine those prices and hopefully give us a better price at that time. Why would they do that? Because at that point they will know exactly how many machines we're buying from them at that time. They will know the exact specifications, delivery date, and all the other terms and conditions. So the prices that we've got here, everything that we've projected, we project on a maximum price basis. We're hoping to do considerably better than that going forward. But that remains to be seen as the process works its way through.

As you're well aware, this is a brand new project to the State. It's a brand new contract. We have no experience with the VLT program or industry, and there is certainly a learning curve going on here.

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But this contract will put a limit, an upper limit, on the potential prices. And as we go forward, as I said, we will be making every attempt through the RFQ process to refine those prices.

MS. SMITH: I'd also like to correct what I said for the record. I do apologize. I did not have my glasses on when I was looking at this sheet and I should know better. The number I gave you was projections when we thought Arundel Mills was moving forward. The correct number with just Ocean Downs and Cecil County is going to be about \$48 million. I do apologize.

COMPTROLLER FRANCHOT: And your testimony is that the Lottery has \$8 million in its 2011 budget, which has not been voted on yet, to cover machine related costs. Is that for the next, how long is that \$8 million going to last? Until the end of the fiscal year 2011?

MS. SMITH: Yes, sir.

COMPTROLLER FRANCHOT: Okay. So really what you need, let's take one view which is that these are

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the only two sites that really get up and running in the next twenty-one months, what you need is \$8,047,000 to carry them through the next twenty-one months? That would buy the machines and maintain them, right?

MS. SMITH: Would that --

COMPTROLLER FRANCHOT: Or lease them? Lease the machines?

MS. SMITH: That would just include the maintenance that we would pay on the purchased machines, and it would include some of the machines that we can only lease, that we cannot purchase. We anticipate financing the purchase through the State Treasurer's Office.

COMPTROLLER FRANCHOT: Okay.

MS. SMITH: And those payments would be due in the subsequent fiscal year.

COMPTROLLER FRANCHOT: But in your testimony you've got --

TREASURER KOPP: But this is simply an anticipation because the State Treasurer's Office knew nothing about it until last week, isn't that true?

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MS. SMITH: That is correct.

COMPTROLLER FRANCHOT: Well I'm just trying to find what the right number is.

MS. SMITH: Mm-hmm.

COMPTROLLER FRANCHOT: And you say in your stuff, your memo to us, "in summary, the Lottery has \$8,047,000 in its 2011 budget to cover machine-related costs. Based on weighted average pricing that we derived from the best and final offers from all the qualified manufacturers, it's estimated that we will need \$4.9 million to cover maintenance on purchased machines and to cover the lease fees because we need to finance the purchase through the State Treasurer's Office." And I'm not sure what that all is going to lead to --

MS. SMITH: And that's what I was trying to point out.

COMPTROLLER FRANCHOT: The first lease payment will not be due until July, 2011. So really what your, do you need \$4.9 million? Or do you need \$8 million to get through to July 1, 2011?

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MS. SMITH: \$8 million is the appropriation that is currently sitting in our 2011 budget. We are projecting, based on the information that we obtained from the best and final offers, that we would only need the \$4 million, the number that is in the memo.

COMPTROLLER FRANCHOT: Okay. But you see my concern? That for the next, let's see, July 1, 2011, that's, you know, twenty-one months from now. In the next twenty-one months you need, you know, \$5 million to get those two sites. And you could come back to us at any point and say, "Gee, Arundel Mills is up and running, or going to be, we need to get an allocation for them." And then Rocky Gap is moving forward. But I really balk at this \$800 million contract we're approving. Are we going to, are you going to come back to us with any subsequent requests for approval? Or is this it?

MR. HOWELLS: There have been discussions about that, as to how that should be handled. I think what the Lottery was proposing is that we report back to the Board on a periodic basis as the facilities

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come up when requests for quotations are issued and actual purchases of machines are being made.

COMPTROLLER FRANCHOT: To come back to the Board?

MR. HOWELLS: To report back to the Board. That was our proposal.

COMPTROLLER FRANCHOT: That's not, that's, that's why I think this is a, you mentioned it's new territory. I view it as irregular territory and I don't like it. And, you know, let's just review the bidding out here for our citizens. We've got 125,000 Marylanders who were laid off last year. We've got skyrocketing foreclosures out in the Maryland economy. We've got a commercial mortgage market which is about to, let's be charitable, severely contract if not collapse. And we have a federal debt, which now the ceiling is \$14 trillion, which frankly is terrifying most Marylanders because they are uncertain about the economy. And we're voting today on \$800 million of taxpayers' money for slot machines, and when we could be voting for \$5 million and take care of these two

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sites that seem to be moving forward. I think it's a, I think most Marylanders would say, "Why don't you have the gambling companies pay for these machines?"

MR. HOWELLS: The law is not written that way, sir.

COMPTROLLER FRANCHOT: Yeah, well, maybe --

MR. HOWELLS: I can't comment on how the law was written. We are trying to implement and fulfill the law that was passed by the Legislature.

COMPTROLLER FRANCHOT: Okay, great.

MR. HOWELLS: We did not write it.

COMPTROLLER FRANCHOT: Yeah, I know. But I'm just putting myself in the shoe of some Marylander who's lost their job, or about to lost their home, or some business that's worried about the whole inability to get lending from a bank, and here we are voting almost \$1 billion of taxpayers' money for the gambling industry. In this climate, frankly, I mentioned irregular, I think it's irregular.

MR. HOWELLS: That's certainly within the Board's prerogative to vote yes or no on the item, sir.

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GOVERNOR O'MALLEY: I think it -- if I may, I'm encouraged that the General Assembly appears to be making progress on the mandatory mediation on home foreclosures, the legislation that we had. I'm also encouraged by the fact that we're actually -- we're seeing some movement on the job creation, tax credits, that we have put in. I'm also encouraged by the passage yesterday of health care reform, and the long-term benefits and savings that that will bring to not only State Government, but to business.

On this issue, which has been approved in referendum by every county -- I mean, I think it's important to point out that we are not giving money without expecting a return on the investment. And the way that the legislation was designed, partly in response to the criticisms of opponents was to make sure that the State owned these machines.

What is the return over ten years on the 800 million investment for the service contract from the State's side? Don't we get the largest percentage of any sort of slots proposal going in the country?

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MR. HOWELLS: Yes. The tax rate in Maryland is the highest in the country, I believe. It's certainly right up there.

GOVERNOR O'MALLEY: It's, like 48 percent? I forget now. What is it?

MR. HOWELLS: Thirty -- 67 percent to the State, 33 percent is kept by the facility operators, which is a very high percentage.

And, again, one of the things that we look at in the pricing of these machines, it's not only the price of the machine itself -- the hardware, the nuts and bolts, as Mr. Franchot indicated, but it's the return on those machines. What does a given machine return based on its historical performance in other states and so forth. So, you know, maybe a machine that costs a little bit more money brings in a much greater return. And we have to analyze all that.

GOVERNOR O'MALLEY: And this contract would be for up to this amount. It's not like we're paying this amount. It's not like we're paying the money --

MR. HOWELLS: Yes, sir.

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GOVERNOR O'MALLEY: -- until the machines are actually going, right?

MR. HOWELLS: It is a not-to-exceed ceiling on the contract. Nothing is spent until we actually purchase a machine. And, as I said, this is based on the entire 15,000 allocation, which we certainly hope within the five-year term of this contract we are able to acquire. There's no guarantee of that the way things have gone so far, but we're hopeful that during the term of this contract, we will buy 15,000 machines, and they will be out there making money.

We're asking for the authority to do that. But we are not spending \$600 million. We are asking for the not-to-exceed authorization as these machines are needed to spend that.

GOVERNOR O'MALLEY: Uh-huh.

MR. HOWELLS: And the idea of the master contract is to give us the flexibility to work with these operators, to not be coming back and going through the entire BPW and new contract process every time we have to buy a machine; however, reporting back

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to the BPW is what we have proposed. That whenever we buy a group of machines, we will need to report back to the BPW so you can monitor the progress under this contract.

But it's -- again, it's parallel to what's been done before on other statewide contracts where the Board approves a not-to-exceed ceiling, and then various things are purchased off of that contract over time as budgets are available.

GOVERNOR O'MALLEY: Well, you come back to us -- don't they generally come back to us, though?

SECRETARY MCDONALD: Yes. They would have to come back to us.

GOVERNOR O'MALLEY: I think we'd feel a lot better if we were able to approve this contract and then you came back to us as you did pieces of it.

TREASURER KOPP: Could I just ask, the "pieces of it", do you anticipate that that will be location by location, or are they smaller pieces than that?

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MR. HOWELLS: No. Well, location by location, but each location consists of purchasing machines from multiple manufacturers.

TREASURER KOPP: No. I understand that, but --

MR. HOWELLS: So we could have up to nine potential contracts with each facility as we go forward. Yes. And then once we have the initial purchase of, say, the fifteen hundred machines for Cecil County, there are other things that happen along the way. There are possible trade-ins of machines that are not performing. We have the right to trade in a machine for a better machine. We have a right -

-

TREASURER KOPP: That would be in a contract, I assume.

MR. HOWELLS: Yes. Right.

TREASURER KOPP: But I'm -- it's not machine by machine that the Board would see?

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MR. HOWELLS: Well, things like that we don't know until we get the machines in operation how they're going to function.

TREASURER KOPP: No. No, but all I'm saying is if there is a contract with a machine maker or a location, that's one contract. If a machine phases out, a new machine comes in, et cetera, I assume that's covered in that one contract?

MR. HOWELLS: Well, the way we've structured it here with this task order concept, let's say for Penn location in Cecil, we go out and we buy 500 machines from Manufacturer A. We'd buy those machines on a given task order.

TREASURER KOPP: Right.

MR. HOWELLS: If at some future date we needed to go back to that same manufacturer to buy another hundred machines or --

TREASURER KOPP: That would be --

MR. HOWELLS: -- to trade in some machines, we would do that on another task order --

TREASURER KOPP: Got it. Got it.

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MR. HOWELLS: -- which would be, again, reported back to the Board. So you would be seeing all these things going on, but whether we would come back to the Board as if it was a brand new contract every time, that really defeats the purpose of the master contract concept.

TREASURER KOPP: Got it. Right.

MR. HOWELLS: Okay. Sorry.

SECRETARY MCDONALD: I just want to clarify my remark is that they would be coming back for the renewal options -- the five-year renewal option. But during the first term --

MR. HOWELLS: Absolutely. Yes.

SECRETARY MCDONALD: -- but during the first term of the five years, the way this item is structured now, they would not come back for Board approval during the five years. They're suggesting that they would send in reports -- action reports after they bought the machines to keep the Board apprised.

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TREASURER KOPP: I think I got it. Thank you.

SECRETARY MCDONALD: I just wanted to clear what I had told the Governor.

MR. HOWELLS: And reporting what funds were actually, you know, expended at that point.

GOVERNOR O'MALLEY: Yes. Thank you. Mr. Comptroller?

COMPTROLLER FRANCHOT: Yeah. Now I have more concerns, because you said we do this all the time. How do we get a good deal for the taxpayers when we're sitting here with nine companies asking for all these piecemeal small, relatively fraction percentages of machines? I mean, why don't we have, like when we build a building, we don't have nine companies building the building. We have someone who bids on it.

We have now twenty-two hundred machines that we need in the next 21 months. Why don't we bid that, have somebody come in, present us with the best offer for the taxpayer, have it all be transparent?

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Instead, we're going to be giving you guys, literally, I have grave concerns --

MR. HOWELLS: Because --

COMPTROLLER FRANCHOT: -- not to exceed, thank goodness, but \$800 million --

MR. HOWELLS: Because the law says that the facility operators, with the oversight and approval of the Lottery Commission, get to select the machines that they want installed in their facility. They are the facility operator. They are the experts in the business. They are the ones that select the machines. Although we own them, we are not in a position to dictate to a facility operator what machine they should put in their facility.

COMPTROLLER FRANCHOT: Right. But you're in a position to bid the process, correct, since we don't own them -- or lease them. All I'm saying is let's have a normal bid. Let's not have this huge allocation of authorized spending given to you and then, apparently, you send us a letter from time to time as to how you're doing it.

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That's not normal. And particularly in this area, it's not normal, and I hope that -- I think the Governor made a good suggestion, that at least you bring these things back before the Board so that we can review them. But I would hope that we could figure out some way to give you what you need and what these sites are that are going to open -- I mean, we know that three of the sites are stalled -- and give you what you need for the next two years, and then have everybody -- if you need something on an emergency basis, come back. We meet every two weeks here. It's not like we're, you know, about to go away.

But this really causes me -- I just think it's -- anyway, I'm open to any suggestions from my colleagues.

MR. SCHLANGER: If I could just add a point. So the reason why we use the master contract arrangement -- as a matter of fact it's in -- it's a DoIT's law -- we're charged with having to actually streamline the procurement process.

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When you talk about technology, if you delay the process -- I'm not saying that you forego the oversight, I'm not saying that. But if you delay the process, you miss the opportunity to serve, perhaps, the customer or the citizen.

In the case of VLTs, you know, the public has a lot to say in terms of what they like, how they like to gamble. And the operators are in tune with the technology to know on a daily basis what are the machines that do well, what are the machines that don't do well. And they need to change their landscape to accommodate their customers.

So under the master agreement, if an operator has a need to make a change, either acquire different machines, either to upgrade some that they have, and sometimes when you talk about a machine, you don't replace it, you just open it up. You take out the guts, the computer chips, the process behind that, obviously, you know, is pretty exciting and sophisticated.

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But the master contract allows the flexibility to react to the needs of the customer that brings the greatest payback to the operators of the facilities, as well as the citizens. And I think it's a process that we have -- it's been demonstrated that works, and, in terms of IT, the master contract arrangements have been in place, now, for ten years or so. And so it made sense to duplicate that model for another field, which in itself is highly, I mean, technical itself.

Thank you.

MR. HOWELLS: And again, I tried to indicate that, but we have these facility operators who are spending millions and millions of dollars building these facilities, and they're expecting us to provide them with a vehicle that is efficient and timely to provide them with machines to put into these facilities. That is what we're trying to achieve here with this contract.

COMPTROLLER FRANCHOT: Okay. Just the last question. My arithmetic says we're going to be paying

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\$53,000 for every slot machine -- eight hundred million, fifteen thousand machines.

MR. HOWELLS: There's maintenance in there, too, sir. There's maintenance --

COMPTROLLER FRANCHOT: Okay. So we got some maintenance.

MR. HOWELLS: There's conversions of machines, there's trade-ins of machines.

COMPTROLLER FRANCHOT: What do these machines have on the inside of them? Something I'm not aware of?

MR. HOWELLS: They are electronic devices, yes.

COMPTROLLER FRANCHOT: Okay.

MR. HOWELLS: And, you know, they -- just like buying any other commodity or any other consumer good, they vary. I mean, you have the average run-of-the-mill machine, and then you have the top-of-the-line fancy machine with all the bells and whistles. You have a whole array of different levels of machines at different pricing structures. And, you know, the

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price proposals on these contracts are quite complex. We have a catalog of many, many machines that these operators can pick from, which was the goal of doing it this way.

COMPTROLLER FRANCHOT: Well, let me end the suspense. I'm going to vote no.

SECRETARY MCDONALD: Mr. Wayne Frazier.

GOVERNOR O'MALLEY: Mr. Frazier --

SECRETARY MCDONALD: Mr. Wayne Frazier has requested to speak.

GOVERNOR O'MALLEY: Mr. Frazier, has a request to speak. Secretary Foster, are you all right with this one?

MS. FOSTER: Yes. Yes.

MR. FRAZIER: It's been a long morning.

TREASURER KOPP: Can I just say something.

GOVERNOR O'MALLEY: I'm sorry. Question, Secretary Foster?

TREASURER KOPP: The issue of the lease and the capital debt --

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MS. FOSTER: I did get Howard's note. I think we do need to discuss that. I was made aware that they planned to use your --

TREASURER KOPP: But this doesn't cement anything in that regard?

MS. FOSTER: No. No.

COMPTROLLER FRANCHOT: I'm sorry. I missed that. What is -- what did she say?

TREASURER KOPP: Just point out, this does not cement this contract, a particular process of leasing or --

MS. FOSTER: You know, the only thing that really comes to mind as we discuss this is the Board does meet every two weeks. The Board approves multi-year contracts every two weeks. And for each contract that you're approving, the out-year costs are not budgeted in year one of the project. So the out-year costs for these projects are not in the budget until the budget for the out-year is appropriated.

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So, I mean, what's being done with the lottery's contract is consistent with what we do with all multi-year contracts that come before you.

COMPTROLLER FRANCHOT: Yeah. I just, you know, Bali Gaming, Diamond Game Enterprises, I mean, these people might not even be around three years from now. You know, this is not IBM, Xerox, and other companies we do technology contracts with.

GOVERNOR O'MALLEY: Mr. Frazier, what did you want to add to the high intellectual value of this --

MR. FRAZIER: Well, it's highly intellectual in here today, that's for sure.

I appreciate the honor to address you this morning. I'm here to discuss a very grave concern that my fellow minority contractors have raised with this master contract. And I'm pleased that I heard this morning that the Lottery -- which has done a very good job to date in reaching out to minority businesses in their various RFQ and RFP outreaches, and at least two seminars that I gave.

But I'm puzzled when I heard that the Lottery has very little experience in this gaming

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industry right now. It's the newest industry, the greatest revenue producer for us in upcoming years -- those "out-years" that you're referring to.

But I've been asked by my members to address the group in regards to the master lease where there's two items in there that raise concern. And one is the ability to set goals on each and every procurement. And, to me, that means that the State's standard is 25 percent, and that's a minimum. The State's standard is 25 percent, but to me that means that they can lower the goals. And thirdly, we would like for -- or secondly, we would like for each and every procurement acquisition to come back.

And the reason I'm saying all of this this morning, is because I've had personal experiences with two of the 13 gaming companies that attended the RFQ outreach at Maryland Lottery in Baltimore back in November. Thirteen gaming companies from around the world showed up, and only two reached out to -- on record -- to minority businesses. And I also heard that America is the only country in the world that has

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inclusion, and the State of Maryland is the only state in the union out of all 50 states that have minority business inclusion.

My concern is that the culture of the gaming companies is such that they don't care, because they don't have to, because they operate freely around America, around the world without any participation goals, minority participation goals.

I have examples in here this morning of businesses who have reached out to the gaming companies and they said, "We don't have to, because we're not required around the country to open up inclusion."

I also heard this point about the financing. Now, that's the biggest area that we could achieve minority participation in. I thought it was 600 million. Then I heard 800 million. And that's, like, if we do 25 percent of that, that's \$200 million that the minority businesses can participate in over the next ten years.

But go back to the financing. The financing is the largest. We have four institutions in this

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state that could provide financing, and no one's looking in that direction. Surely, it's not the gaming companies. And now I heard this morning, that the Treasurer just found out about it.

There's solutions to this. We cannot neglect -- let me just deviate a moment. I grew up in a household in Baltimore back in the day when the number wasn't legal. People gambled. They did. Now it's legal, they go to the -- those are black people. I don't want to see my people and the other minority groups blocked out of this opportunity. I think we need to be strong.

The Governor -- I ask you to be strong on this. We support you. We love you, but we can't let these gaming companies come in, run rough shod, and not participate, and not open up inclusion.

It's your time. Governor, 2014, you not going to be here. I'm anticipating that you will win re-election. I'm supporting you to win re-election, but after 2014, you may not -- well, you won't be here. And the others, some of you won't be. Well --

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GOVERNOR O'MALLEY: I think Ms. McDonald will be here.

(Laughter.)

SECRETARY MCDONALD: Can I get that in the record, please. Thank you, Governor.

MR. FRAZIER: Excuse me, Comptroller, you can be here as long as you want.

(Laughter.)

MR. FRAZIER: But we need to set it right with this master lease so that we -- look IBM, when they first started with the computers way back in the '70s, they were selling directly to the State. But someone stood up and said, "Hey, let's establish a distributorship." And that's where the financing come in.

And we have four -- we have Grant Capitol, we have Harbor Bank, we have Advanced, and we have Ideal -- minority institutions in this State that can provide that financing. And you would set a whole lot of families happy with that.

That's what I'm asking you. Not to allow this to -- this master lease to just go out willy-

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nilly. Have them accountable. I heard all of these numbers. I'm saying for any purchase over \$5 million, have it come back here for final approval so that we can ensure that the minority businesses got their fair share. Thank you.

GOVERNOR O'MALLEY: Okay. Thank you. Do you have -- the financing of this, is that part of this lease, Mr. Schlanger? You know, is that issue's not being resolved? I'm not following on that here. The financing. What about the point that -- you know part of the way that these guys -- by the way, I think this may be the first year that the State of Maryland has ever hit its MBE goal enterprise-wide.

MS. JENKINS: That's correct, Governor.
We're on the way to the net goal. Correct.

GOVERNOR O'MALLEY: What's that? On the way to the --

MS. JENKINS: We are at the juncture of hitting that goal. We are mid-year -- fiscal year '10 --

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GOVERNOR O'MALLEY: Which will be the first time in the history of our State's MBE --

MS. JENKINS: It will be the first year in the history of the 30 years --

GOVERNOR O'MALLEY: -- that that has ever happened.

MS. JENKINS: That's correct.

GOVERNOR O'MALLEY: And it is the highest MBE goal of any of the 50 states.

MS. JENKINS: That's correct.

GOVERNOR O'MALLEY: So we do take this seriously. And what about the financing? That would seem to be an opportunity. I mean, I can understand that there's only so many companies that make and construct and build these machines. But what about the financing?

MS. SMITH: I believe Mr. Frazier was referring to the manufacturers obtaining financing through the companies that he mentioned. We're going to be purchasing these machines -- the State -- and we believe that we're directed to go to the Treasurer for all our financing options.

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GOVERNOR O'MALLEY: And then so that piece is resolved by the Treasurer?

TREASURER KOPP: First of all, as I said, the Treasurer's Office first heard of this idea of leasing last week or the end of the previous week? It had not been mentioned at any time when we asked the agencies what leases they have in their plans for the future. It has not been worked in to our projections. And I can't say any more than that.

MS. SMITH: I understand that. Just -- you know, I do apologize if it was late notice to everyone, but the way we structured this procurement is we were trying to get the best value for the State. And we asked manufacturers to bid this in one of three ways: An outright purchase, a daily fixed fee, or a leasing through the manufacturers. We received all the proposals back. We went out and requested a best and final. Prices did come down at that point in time. Then we had to analyze all of the data to determine which would be the most cost effective way for the State to go.

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So when we reached out to the Treasurer's Office, the Lottery had just reached the point where we had gotten all the data in and concluded, based on what we currently have in front of us, it appears that purchasing the machines would be the --

TREASURER KOPP: I have no argument --

MS. SMITH: -- best way to go.

TREASURER KOPP: I have no doubt that that's what happened.

MS. SMITH: Right.

TREASURER KOPP: All I'm saying is that the State, the validity process does not have this.

MS. SMITH: And we understand that.

GOVERNOR O'MALLEY: And does this depend on that contingency, getting the Treasurer's approval?

MS. SMITH: I would assume so.

SECRETARY MCDONALD: The time as it stands now, on Page 3 of your book --

TREASURER KOPP: It doesn't say.

SECRETARY MCDONALD: -- says fund source is the VLT proceeds and General Funds. So she would not be authorized, actually, at this point to get

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Treasurer financing. There's -- right now with this contract, they would have to come back to the Board if they want to get funds from another place.

TREASURER KOPP: This contract is simply an authorization for up to 800 thousand --

SECRETARY MCDONALD: Million.

TREASURER KOPP: -- million dollars.

SECRETARY MCDONALD: And general funds to start with is just in 2011. And then after that I think they think the proceeds from the slot machines will start fending for themselves.

TREASURER KOPP: Well, whatever, it doesn't address the method.

SECRETARY MCDONALD: Right, but there -- so it has no implication for the Treasurer's financing right now. It would not be able to use that. But they could come back.

TREASURER KOPP: It does not address the method of financing.

SECRETARY MCDONALD: Right.

TREASURER KOPP: Right.

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GOVERNOR O'MALLEY: Ms. Childs, what's --
what are you --

MS. CHILDS: I'm sorry. I was just
reiterating what Ms. McDonald was saying. That if it
-- if the Treasurer decided that the leasing was
appropriate, then if it was a million dollars or over,
it would come back to the Board of Public Works for
approval under a separate action.

GOVERNOR O'MALLEY: What's the time crunch
here? I mean, I know we want to get them up as
quickly as possible. I know we've got Ocean Downs.
Are we up against a time clock, here?

MS. SMITH: Yes. In a way, we are. We have
a solid opening date for Cecil County. And we need to
get machines on the floor, obviously, prior to the
facility's opening up. So we've got to back into that
date.

The order process is very complicated.
There's a lot of facets to it. We have to sit down.
We have to work with the facilities. We have to go
out to the RFQs. We've got to bring that back. We've
got to analyze all that data and order and have the

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manufacturers actually manufacture the machines and get them on to the casino floor.

GOVERNOR O'MALLEY: What's their hard date for opening?

MS. SMITH: October 26th.

GOVERNOR O'MALLEY: Oh, good. This year?

MS. SMITH: This year. Yes, sir.

GOVERNOR O'MALLEY: How much of this do you need in order to make sure -- I mean, the Comptroller seemed to have a suggesting that why don't we approve as much -- the "up to" that you need for these first two? Because Ocean Downs is hoping to open this summer, too, right?

MS. SMITH: That's correct. Well, in the fall.

GOVERNOR O'MALLEY: Uh-huh. So how much do you need? I mean, it seems like you all have to do -- I mean, it seems like there's some more conversation that needs to take place here --

MS. SMITH: Yes.

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GOVERNOR O'MALLEY: -- on the financing and the Treasurer's Office and the interactions among many of the people at the table who seem to be getting their responsibilities and their heads around this for the first time. You know.

TREASURER KOPP: What would the impact be of deferring for two weeks?

MS. SMITH: I'm sorry.

GOVERNOR O'MALLEY: What would be the impact of deferring?

TREASURER KOPP: I understand you can't go forward with the -- as I understand it, you want to spend the five million, but you want to spend it under this authority; is that right, or the -- whatever it is. That's why this is important, otherwise you've got money in the budget, but no authorization -- no system for spending it.

MS. SMITH: Or no approved contract. We want to start working with the facilities.

TREASURER KOPP: Right. This would be the system for creating the contract.

MS. SMITH: Correct. That's correct.

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GOVERNOR O'MALLEY: And you have the money to cover what you need to do?

MS. SMITH: Yes. Yes, sir, for the 2011 --

GOVERNOR O'MALLEY: You have the money in your budget to cover what you need to do for the upcoming year?

MS. SMITH: I want to be clear. The money we have in our budget will only cover the maintenance fee that we'll be paying on the machines. It -- the eight million dollars in our budget will cover that; however, we still have the financing that we have to work out. And if we work that out with the Treasurer's Office, the payment will not be due until fiscal year 2012. So --

TREASURER KOPP: But the financing would only be for those machines that are actually being acquired --

MS. SMITH: That's correct.

TREASURER KOPP: -- as they are acquired?

MS. SMITH: Yes, ma'am. Yes, ma'am.

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MR. SCHLANGER: This is, essentially, the seed capital that we need to get this off the ground.

TREASURER KOPP: What about two weeks?

GOVERNOR O'MALLEY: Okay. Do we want to -- can I ask --

TREASURER KOPP: What would the impact be?

COMPTROLLER FRANCHOT: Could I just interject, because I'm getting confused, because in your own statement, you say that the eight million will cover the lease fees of machines.

MS. SMITH: The lease and the maintenance. There are certain machines that we can only lease.

COMPTROLLER FRANCHOT: Well, aren't you -- didn't you just testify that you're planning to lease them, because that's the best deal for the taxpayer?

MS. SMITH: I said we were planning to purchase the majority of the machines. And that's where the financing comes into play through the Treasurer's Office. So the money in our budget for 2011 will cover us to pay maintenance on purchased machines and machines that the Lottery can only lease.

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An example, a Wheel of Fortune game -- everyone seems to be --

TREASURER KOPP: But you're using "leasing" in two different ways.

MS. SMITH: I am, and I do apologize. Yes. It's confusing.

GOVERNOR O'MALLEY: Well, how about then -- let's go -- let's answer the first question first. The Treasurer asked what harm would it do to defer this for two weeks?

MS. SMITH: I need to consult with my team on that.

SECRETARY MCDONALD: April 7th.

GOVERNOR O'MALLEY: I mean, I don't see how you go forward anyway until you have these conversations with the Treasurer's Office.

MS. SMITH: Okay. We will make it work.

GOVERNOR O'MALLEY: All right. So have the conversations and -- all right.

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Treasurer makes a motion to defer for two weeks. Seconded. All in favor, signal by saying, "Aye."

BOARD: Aye.

GOVERNOR O'MALLEY: The ayes have it. All opposed?

(No response.)

GOVERNOR O'MALLEY: Okay. And address for you, if you will, Ms. Jenkins -- Secretary Jenkins, will you please be in on those conversations, too --

MS. JENKINS: Yes. I will.

GOVERNOR O'MALLEY: -- on the MBE score, and the --

MS. JENKINS: Because we have done a lot so far on the MBE. Let me disclose that.

GOVERNOR O'MALLEY: And I know you all are somewhat handicapped by the vacancy there in your leadership, but -- Lottery -- but still, you've got to have -- these conversations are better up front.

And, Mr. Schlanger, you'll make sure that all of this happens?

MR. SCHLENGER: Yes, Governor.

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GOVERNOR O'MALLEY: Secretary Foster, I know you're not busy this time of year, as people take whacks and hacks at your budget downstairs. It just comes at a time when a lot's passing through the eye of the needle here.

MS. FOSTER: It will be fine. And the budget vote should be done by then.

GOVERNOR O'MALLEY: Okay. All right. That one's deferred for two weeks. All right. Thank you.

How about -- is there anything else on the DOIT agenda?

MR. SCHLENGER: There was another item, Governor.

GOVERNOR O'MALLEY: Okay. Any questions on that other item?

(No response.)

GOVERNOR O'MALLEY: All right. So that first item was what, Item 1-IT?

SECRETARY MCDONALD: Item 1 is deferred.

GOVERNOR O'MALLEY: It's deferred for two weeks.

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I assume the second item is called Item 2-IT?

MR. SCHLENGER: Absolutely, sir.

GOVERNOR O'MALLEY: Anybody have any problems with that? VLT solutions, state-wide human resource information system. Looks like it makes sense to me.

MS. FOSTER: It does. Yes. Yes.

SECRETARY MCDONALD: I'm sure Ms. Foster --

GOVERNOR O'MALLEY: Treasurer moves approval, seconded by the Comptroller. All in favor, signal by saying, "Aye."

BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

GOVERNOR O'MALLEY: The ayes have it.

Let's move on to the Department of Transportation.

MR. SWAIM-STALEY: Good morning, Governor, Madame Treasurer, Mr. Comptroller.

GOVERNOR O'MALLEY: And just so everybody here on that last matter understands, we are moving forward, and we're excited about those October

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openings. So don't be discouraged, just have these conversations so we all know what we're doing here.

All right. Thank you.

MR. SWAIM-STALEY: For the record, Beverly Swaim-Staley representing Maryland Department of Transportation. We have 14 items presenting today, and we are available for questions.

GOVERNOR O'MALLEY: Questions on the Department of Transportation?

(No response.)

GOVERNOR O'MALLEY: Hearing none, Comptroller moves approval, seconded by the Treasurer. All in favor, signal by saying, "Aye."

BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

GOVERNOR O'MALLEY: How about the Department of General Services.

MR. COLLINS: Good morning, Governor, Madam Treasurer, Comptroller. Department of General Services has 25 items on our agenda, including one

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(unintelligible). There are revisions to Item 9-GM and 10-GM. And I'd be glad to answer any questions you might have.

Governor, if I could just take one second?

GOVERNOR O'MALLEY: Sure. Order.

MR. COLLINS: The five contracts -- I just want to brag a bit.

GOVERNOR O'MALLEY: Good. That's why I wanted everybody to hear.

MR. COLLINS: Of the five contracts brought before the Board today from DGS of a value of about \$8.3 million, we have MBE participation of over 4.2 million, for almost 50 percent.

GOVERNOR O'MALLEY: Wow.

(Applause.)

MR. COLLINS: And \$280,900 in SBR, Small Business Reserve, as well.

GOVERNOR O'MALLEY: That's great.

MR. COLLINS: And we will create from these contracts approximately 52 jobs in the State of Maryland.

COMPTROLLER FRANCHOT: Very good.

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GOVERNOR O'MALLEY: Great. How about that.

All right. Mr. Comptroller.

COMPTROLLER FRANCHOT: I had a question on
Item 10.

MR. COLLINS: Item 10.

GOVERNOR O'MALLEY: Item 10. I'll be right
back.

MR. COLLINS: Yes, sir. This is the
commencing of the restoration work on the Maryland
State House Old House Chamber downstairs. This
represents the construction work for that particular
contract. We have people here from the Department, as
well as Archives, to answer any questions you might
have, Mr. Comptroller.

COMPTROLLER FRANCHOT: Terrific.

MR. THOMAS: Good morning Treasurer,
Comptroller. The Governor left.

COMPTROLLER FRANCHOT: For the record --

MR. COLLINS: Bart Thomas.

MR. THOMAS: Bart Thomas. I'm the Acting
Assistant Secretary, Facilities Planning, Designing,

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Construction. With me is Mark Schneiderman, Senior Project Manager, and Tom Whitmore, the Executive Project Manager for the Christman Company.

We'll be happy to answer your questions, sir.

COMPTROLLER FRANCHOT: Why is it a non-competitive bid?

MR. THOMAS: Under the historical construction exemption we have, we wanted to make sure we got the best company to do this job so we did not lose any of our historical preservation in this building.

Mark Schneiderman can give you more information on why we selected the Christman Company.

COMPTROLLER FRANCHOT: Sure. And I just looked on the website for the Christman Company. They didn't say anything about historic preservation anywhere.

MR SCHNEIDERMAN: Actually, and Mr. Whitmore could speak to that directly, but they have a tremendous amount of historic experience. They actually have worked on state capitols in Virginia

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and, I hate to say it, but at Michigan State, as well. Those were huge projects -- 88 million, 58 million dollars, respectively. They incorporate all the specialty trades that are common to our project, as well. And we believe that they have extensive experience in this particular type of work.

COMPTROLLER FRANCHOT: Well, I'm going to defer to the Treasurer, because she's, you know, got all this -- you know, she's much more knowledgeable on all this stuff. But it just struck me that I've never heard of the company, but I guess if everybody -- Papenfuss and Rodney Little and everybody likes this company?

MR. COLLINS: Sir, Archives -- State Archives representatives, Mr. Comptroller.

GOVERNOR O'MALLEY: Is this for the Senate?

MR. BAKER: Sir, I'm Tim Baker of the Maryland State Archives. And I'll just briefly say that this procurement authority was sought by the Department of General Services, the Maryland Historical Trust, and the Maryland State Archives

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because of concern that we need to treat this building differently than we treat every other facility. This is an extraordinarily historic building. We want to make sure that we hire contractors who are familiar with working with 17th, 18th century construction techniques. So, yes --

GOVERNOR O'MALLEY: Because if you don't, what happens?

MR. BAKER: Well, the historic fabric of the building would fall apart.

GOVERNOR O'MALLEY: Look at the old Senate Chamber, Exhibit 1.

MR. COLLINS: Yes, sir.

GOVERNOR O'MALLEY: People that were doing low bid --

MR. COLLINS: Yes.

GOVERNOR O'MALLEY: -- weren't working with historic buildings that put the treatment -- the wrong wall treatments and threatened one of the most historic chambers in the nation.

MR. COLLINS: That's correct.

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MR. BAKER: Indeed. And I'll say that, yes, in answer to your question, we're very pleased with the process through which the Christman Company was selected. It was very collaborative between the Historical Trust, the Archives, and DGS. And I think Mark Schneiderman, in particular, is to be commended for his hard work.

GOVERNOR O'MALLEY: Can I ask a question?
I'm sorry. I didn't mean to -- are you okay?

MR. BAKER: No. Absolutely.

GOVERNOR O'MALLEY: These curtains. Is that really how they looked then?

MR. BAKER: In which building?

SECRETARY MCDONALD: Tim, look at the screen.

MR. BAKER: Oh, yes. Yes.

MS. REISBACH: That is an artist's rendering.

SECRETARY MCDONALD: Could you introduce yourself, please.

MS. REISBACH: This is Elaine -- I'm Elaine Reisbach, and I'm director of Artistic Property at the Archives.

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That is an artist's rendering of the design of the curtains -- a rough design based on the original photographs that we have of the room. Unlike the Old Senate Chamber, we have photos from the 1880's that we can exactly reproduce the textiles and carpeting in the space, which makes it such an interesting project.

TREASURER KOPP: That's wonderful.

MS. REISBACH: Horizontal stripes were fashionable.

GOVERNOR O'MALLEY: In the month of March -- you'll indulge me -- I'm reminded of the famous dying words of Oscar Wilde who looked up and said, "Either those curtains go, or I do."

(Laughter.)

GOVERNOR O'MALLEY: That's hideous.

MS. REISBACH: It's going to be an interesting contrast to the austerity of the 18th Century Georgian decor in the Old Senate Chamber to see the Victorian.

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TREASURER KOPP: How was it decided that that would be the era that was captured in this room?

There's a historical reason.

MS. REISBACH: Exactly. The State House has long focused on our 18th Century history with good reason, because of the events of the Continental Congress in 1783. But we have the unique opportunity to explain 400 years of history in this building. The activity of the Legislature in the 19th Century was really not interpreted in any space at all, because there really wasn't room in the 18th Century Chambers. The other rooms were being used for other purposes at the time. This was an opportunity to highlight the legislative activities and the vast history of the 19th Century. And having the photographs that we have to exactly reproduce it and give us the opportunity to share with our hundreds of thousands of visitors the workings of the Legislature in the 19th Century in an authentic setting.

MR. BAKER: And it's consistent with our master plan that we've been working on for a number of

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years now to interpret all aspects of Maryland history.

We have 250,000 people come to the State House each and every year. We should be obliged to give them the best possible interpretation of our history in this incredibly historical structure.

TREASURER KOPP: Well, I guess -- and you can do it, because you actually have photographs and the ability -- and, I guess the House of Delegates just lucked out.

MS. REISBACH: And it will be a multi-purpose space. It won't only be for public interpretation, it'll be used for meetings and receptions, as well, which is valuable in this building where there's so much -- so little space.

TREASURER KOPP: It's just unfortunate -- I mean, it's my personal, it's just unfortunate, because I think it was not one of the highest points in American architecture and design. And so much of the State House is. But that's reality.

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MS. REISBACH: That's the opportunity to -- when you have such an old State House, there are many periods to interpret, and --

TREASURER KOPP: Right. And they chose this one.

GOVERNOR O'MALLEY: So this will be Civil War, sort of?

MS. REISBACH: Yes.

TREASURER KOPP: This is, like, the gilded age.

MS. REISBACH: The War of 1812 all the way through the first of the 20th Century.

GOVERNOR O'MALLEY: I'm sorry. Mr. Comptroller.

COMPTROLLER FRANCHOT: You just might mention to the Christman Company, which apparently everybody's comfortable with and so therefore I am.

MS. REISBACH: Yes.

COMPTROLLER FRANCHOT: But if they have extensive construction experience on historic preservation projects, it sure isn't promoted by the

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company anywhere on their marketing materials and website. And if you're --

MS. REISBACH: Well, Mr. Whitmore could address that more specifically.

COMPTROLLER FRANCHOT: If you're comfortable --

MS. REISBACH: But we are very comfortable.

COMPTROLLER FRANCHOT: If you are comfortable with the company, then --

MS. REISBACH: And, most importantly, they will be acting as the General Contractor hiring in the specialized contractors who will be working on the individual elements of the room.

MR. COLLINS: Their actual role would be the General Contractor, and they would bring all those other specialty people that we need to restore it.

COMPTROLLER FRANCHOT: Okay.

GOVERNOR O'MALLEY: And you talked about their other work that they've done?

MR. COLLINS: Yes, I did.

GOVERNOR O'MALLEY: Okay. All right. Any other questions on DGS?

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MS. REISBACH: I think you'll be surprised.

GOVERNOR O'MALLEY: This is a side view?

MS. REISBACH: I think I would withhold your judgment until you see the final (unintelligible).

GOVERNOR O'MALLEY: Go back to the curtains.

(Laughter.)

MS. REISBACH: That's an artist's rendering. It's computer generated.

MR. BAKER: The slide doesn't really do it justice.

GOVERNOR O'MALLEY: Okay, then. All right.

MS. REISBACH: Thank you.

GOVERNOR O'MALLEY: The Comptroller moves approval of the DGS agenda items, seconded by the Treasurer. All in favor, signal by saying, "Aye."

BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay."

(No response.)

GOVERNOR O'MALLEY: We come back now to the item that we held. And I believe J.B. is here from the A.G., as well as Mr. Butler.

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SECRETARY MCDONALD: Mr. Butler. Item 9.

COMPTROLLER FRANCHOT: I don't like this one.

GOVERNOR O'MALLEY: Okay. What item was this, again?

MS. FOSTER: Item 9 on the Department of Budget and Management.

GOVERNOR O'MALLEY: Item 9 of the Department of Budget and Management. I bet you can't stand it when these items show up on your budget agenda items.

MS. FOSTER: Oh, I love it.

GOVERNOR O'MALLEY: Here's Item 9, was it? I'm sorry.

SECRETARY MCDONALD: Item 9.

GOVERNOR O'MALLEY: Item 9. This one bumped me, and this is -- you know, having read the Attorney General's transmission letter, here, it would appear that the nexus here was a regulation or the interpretation of the regulation? Was it actually in the actual written regulation that "thou shalt not register voters without a permit". Did it say that?

MR. HOWARD: Let me defer to Chuck on that one, and I'll -- if you know, or --

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GOVERNOR O'MALLEY: And if you don't know, you can tell me you don't know, because I've got plenty of other things.

MR. BUTLER: No, Governor. There -- well, there is a requirement to have a permit to conduct those kinds of activities on MTA property.

GOVERNOR O'MALLEY: What kind of activities? Free speech activities?

MR. BUTLER: They call it "free speech activities". So registering voters, conducting a demonstration --

GOVERNOR O'MALLEY: Having a campaign rally?

MR. BUTLER: Yes. Yes, sir. And --

GOVERNOR O'MALLEY: And there's a reason for asking for those permits, right? I mean, it's --

MR. BUTLER: Yes, sir.

GOVERNOR O'MALLEY: And -- I mean, that happens all the time, right, in order that there's proper security, ingress, egress, nobody gets run over by a train and all of that sort of stuff, right?

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MR. BUTLER: Yes, Governor. The problem with these regulations is that they were overwrought.

GOVERNOR O'MALLEY: Sounds like the problems with these regulations was the interpretation by the former administration to hustle people off of MTA property in Democratic areas where they were trying to register voters? Is that -- I mean, it wasn't in the regs themselves, right?

MR. BUTLER: Not explicitly. No, sir.

GOVERNOR O'MALLEY: They were broad, and they did not enforce them properly, right?

MR. BUTLER: In this case it went a little bit beyond enforcing, because even somebody who was wearing a T-shirt advocating some campaign could be viewed as violating the regulations -- the old regulations.

GOVERNOR O'MALLEY: Be viewed by whom?

MR. BUTLER: MTA police.

TREASURER KOPP: And the Attorney General's Office did not feel that the regulations required amendment?

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MR. BUTLER: We did then. That's the reason when ACORN filed suit and the case came to us, we worked out a settlement with the Plaintiffs for MTA not to enforce those regulations. And we outlined in the settlement the specific regulations that MTA would be enforcing.

TREASURER KOPP: So it was the regulations plus the enforcement of the regulations that were -- that required correction?

MR. BUTLER: Yes. Yes, ma'am.

GOVERNOR O'MALLEY: Now, one would --

TREASURER KOPP: And, let me just ask --

GOVERNOR O'MALLEY: I'm sorry. Madame Treasurer.

TREASURER KOPP: And since there is a new administration, it's been done? And this is the cleaning up of the case that pushed it to be done?

MR. BUTLER: Yes, ma'am. And I just wonder if I should clarify that. MTA has not actually submitted the new draft regulations to AELR. MTA has submitted a letter requesting -- a letter that starts

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the process to officially rescind the old regulations and letting AELR know that MTA will be submitting new draft regulations. Do I have that correct?

GOVERNOR O'MALLEY: Now, I'm sorry. J.B., do you want to add something to that?

MR. HOWARD: Well, I do. I don't like this either. I mean, I'll just be candid. Our job in the Attorney General's Office is to get the best possible negotiated settlement we can. If we feel we've gotten the best deal, we bring it to the Board with a recommendation to approve it. And the Board has its role in looking at it.

The attorney -- these attorneys' fees cases are -- all I can say is from my perspective and the perspective of the Civil Division in the Office, there is no one who dislikes awards or -- and settlements of attorneys' fees more than we do.

GOVERNOR O'MALLEY: Especially when the matter was resolved with one phone call.

MR. HOWARD: Yes.

GOVERNOR O'MALLEY: And especially when they didn't even bother to file suit --

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MR. HOWARD: Yes. Yes.

GOVERNOR O'MALLEY: -- in the year that -- when the alleged violation actually came up.

MR. HOWARD: Yes.

GOVERNOR O'MALLEY: And they rushed and probably slapped together a suit --

MR. HOWARD: Yes.

GOVERNOR O'MALLEY: -- to file it six days before a different Governor took office.

MR. HOWARD: Yes.

GOVERNOR O'MALLEY: And now they come in and try to act like, you know, they saved us from ourselves when we worked this out with one phone call, and would have.

MR. HOWARD: Yeah. And I -- I mean, to be -- you know, just be candid about what I think happened here, is these regulations -- the corrected measures probably should have happened very quickly, and they didn't. And I'm not sure to what extent that falls on the A.G.'s Office, the Agency. There's probably some combination there.

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When, you know, we first -- "we", meaning the current Attorney General's Office -- first learned of this, there were -- the MTA had a general counsel who was not within the A.G.'s Office. And this is a problem we see, Governor --

GOVERNOR O'MALLEY: This was in 2006?

MR. HOWARD: In 2007, there was a statutory General Counsel at MTA who was not an assistant A.G., and in that -- that's a problem. And, you know, I'm not going to get on my soapbox about this, but we see this in other parts of State Government.

GOVERNOR O'MALLEY: Are they still there?

MR. HOWARD: No. There is now an assistant A.G. as the Chief Counsel to MTA.

GOVERNOR O'MALLEY: We fixed that?

MR. HOWARD: We fixed that. We fixed that.

GOVERNOR O'MALLEY: Did we create that?

MR. HOWARD: No. No, we didn't. That was -- we got that changed, Governor, in 2007.

GOVERNOR O'MALLEY: So that was in 2006?

That was something that happened in the prior administration --

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MR. HOWARD: Yes. Yes.

GOVERNOR O'MALLEY: -- when they were trying to create their own lawyers within agencies?

MR. HOWARD: Yes.

SECRETARY MCDONALD: No. That came from the Baltimore City Transit Days. So there had been the Counsel in there forever, not just this one.

GOVERNOR O'MALLEY: Got you.

MS. SWAIM-STALEY: Decades.

MR. HOWARD: Yeah, but -- I mean, the problem is, you know, assistant A.G.'s at the agencies talk to the assistant A.G.'s at the Civil Division. We find out that something wrong is happening, we try to fix it. You know, when someone's civil rights are being violated and we see that, we try to fix it. "A", because it's the right things to do. "B", because it saves in attorney's fees in precisely the situation like this.

I mean, I think the Treasurer made a very good point. We could have -- you know, if this had been handled right, we wouldn't be sitting here at

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60,000 in fees. On the other hand, you know, in the years before you took office, attorney general's -- Ganzler took office, you know, there were ongoing violations of the civil rights of persons who wanted to peaceably assemble and petition for redress, all those things that the First Amendment provides.

So we're paying the price to clean something else up again today that we inherited -- that you inherited. And, you know, could we have kept the cost down? Yes. I think between the agency and the A.G.'s Office and, maybe, the General Counsel at the Agency, this all could have been done more quickly at less cost. That's, I think, the unvarnished truth about this whole thing.

GOVERNOR O'MALLEY: But we did agree to fix it with a phone call, right? I mean, as soon as we --

MR. BUTLER: Well, the agency -- the events took place in 2006.

GOVERNOR O'MALLEY: Uh-huh. They didn't get around to suing until six days before a new administration after the election.

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MR. BUTLER: And apparently ACORN was working with MTA to try to work something out. The parties couldn't reach any agreement. And then ACORN brought suit. And then we reached an agreement with them three months later.

GOVERNOR O'MALLEY: Yeah. That's pretty quick. I can't do that with Nationwide on a fender bender where there's clear liability. Yes, sir.

COMPTROLLER FRANCHOT: I guess, just borrowing off of the Governor's question, are you, Mr. Howard, convinced that those lawyers on the other side did \$60,000 worth of work given the --

GOVERNOR O'MALLEY: Good work when you can get it.

MR. HOWARD: I don't have first-hand knowledge of that. What happened here, to my understanding, is what frequently happens with civil rights litigation. You have the public interest group like the ACLU and a private firm who, you know, is doing this supposedly pro bono, but they actually can collect fees at the end. And those fees run up pretty

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quickly. You know, anyone who's had to venture into the world of private law firms knows that the hourly rates get, you know, very high.

GOVERNOR O'MALLEY: Unless it gets resolved with one phone call?

MR. HOWARD: Yes. Yes.

GOVERNOR O'MALLEY: And a new administration. That's why I just find this --

MR. HOWARD: You know, I just want to say, and we're as unhappy about this as everyone is, sir.

GOVERNOR O'MALLEY: Okay. Well, the other interesting thing to note here is that even the judge did not -- at least according to this transmission letter. I mean, he granted nominal damages of one dollar to each plaintiff. Further, he declined to issue a declaration that the regulations at issue even violated the First Amendment. And he further declined to enjoin their enforcement, because we had already agreed not to enforce it in that manner that it was done in the prior administration.

MR. HOWARD: And I guess I just returned to my first point, which is we don't like these fees, but

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we tried to get the best deal we can and bring them down to the Board, saying it's the best deal we got.

GOVERNOR O'MALLEY: There is a --

TREASURER KOPP: I would like to move to approve this item.

GOVERNOR O'MALLEY: Okay.

TREASURER KOPP: Is there a second? No.

GOVERNOR O'MALLEY: There's no second.

Motion fails for lack of a second.

MR. HOWARD: Thank you.

GOVERNOR O'MALLEY: Thank you.

MR. BUTLER: Thank you.

(Whereupon, at 12:01 p.m., the meeting was concluded.)

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