

May 4, 2011

1

STATE OF MARYLAND  
BOARD OF PUBLIC WORKS  
GOVERNOR'S RECEPTION ROOM  
SECOND FLOOR, STATE HOUSE  
ANNAPOLIS, MARYLAND

May 4, 2011

10:15 a.m.

HUNT REPORTING COMPANY  
Court Reporting and Litigation Support  
Serving Maryland, Washington, and Virginia  
410-766-HUNT (4868)  
1-800-950-DEPO (3376)

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;

DARRELL MOBLEY, Deputy 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.

C O N T E N T S

<u>Subject</u>	<u>Agenda</u>	<u>Witness</u>	<u>Page</u>
Approval of MDE Capital Construction Grants	SEC Item 6, p. 7	Sheila McDonald Neal Roop Jag Khuman	12
Public School Construction Capital Improvement Program for Fiscal Year 2012	SEC Item 18, p. 21	Sheila McDonald David Lever Candice Kelly Al Collins	24
Contract to Administer National Uniform Examinations	DBM Item 4-S, p. 12B	T. Eloise Foster Harry Loleas Elizabeth Harris	57
USM Agenda	USM	Jim Stirling	73
DoIT Agenda	DoIT	Elliot Schlanger	73
DOT Agenda	DOT	Darrell Mobley	74
Construction Contract Modification for New Courthouse in Rockville	DGS Item 1-C-MOD	Al Collins	75

---

P R O C E E D I N G S

GOVERNOR O'MALLEY: Good morning, everyone. Today is May 4, 2011. And I note that this is State Employees Recognition, is it month? Is it week? Is it day? I think it should be the whole year. We have terrific State employees in the State of Maryland. Our State and local government bureaucracy ranks in terms of per capita size eighth from the smallest among the fifty states. And that is because of the hard work that so many State employees do. And you see it here at the Board of Public Works. It's a shame more citizens don't have the opportunity to see the people come and present and who master their subject matter and are working very hard. And in years where quite frankly we have not been able to do what we would like to be able to do by way of COLAs, raises, or other things. And in fact we have instead had to reduce our total number of positions by something in the neighborhood of 5,500 positions over the last few years. So hats off to the dedicated public employees in the State of Maryland, at the State level, local level, also the federal level, who do an outstanding job for us.

And also I know that this is the first meeting since the completion of the very dangerous mission in Pakistan by that team, a special op Navy SEALS. Young men, many of whom no doubt walked these streets of Annapolis for some formative part of their life. And we salute them for their courage, their bravery, and their valor.

And with that, Comptroller, Treasurer, any opening thoughts?

COMPTROLLER FRANCHOT: I concur completely with you about the, Governor, about the military, and President Obama, and everyone that was involved in that. It couldn't have been done more precisely. I think it's brought our country together. And I'm delighted with that, the success. And I concur completely with you about all the wonderful public employees in our State and our country and the hard work that they do.

I'm very pleased to be here for this particular meeting, Governor. Because as you know it's the public, Board of Public Works IAC final recommendations for the 2012 School Construction Program. And I want to thank the Treasurer, and the Governor, and the General Assembly for their shared

commitment to the investments that we're making in this area.

I've traveled, frankly, since the initial recommendations in January all around the State to see firsthand some of the school construction projects that are in the appeal process for additional funds. I do this because I think it's important that we ensure taxpayer dollars are going to projects that are absolutely essential and that we're getting the most for our money. But I also go out there because I'm, frankly for selfish reasons, nothing picks my spirits up more than to meet with students, teachers, administrators, support staff, maintenance staff, who have worked together to make Maryland's public schools the very best in the country.

They have a shared commitment to learning and dedication that just, frankly, always makes me optimistic about our State's future. And it's very important that we support the IAC projects that help keep that spirit alive and encourages them, although they are well aware that it's a very competitive process.

But I've seen a variety of projects such as a brand new replacement school in Cabin John Middle

May 4, 2011

7

School in Potomac, and Ruth Ann Monroe Primary in Hagerstown, both of them in the appeal process, both using geothermal heating and incorporating other green building techniques. I saw much needed renovations being made at Henry Ferguson Elementary in Accokeek, Hampton Elementary in Lutherville. And new energy efficient HVAC systems, heating and cooling, replacing old, worn out money pits, frankly, at Glen Burnie High School.

All of these projects incorporating much needed green building technology and energy efficiency strategies as possible. The pleasure of visiting those schools, hearing firsthand from the community how the projects are benefitting and would benefit students and staff.

I am very pleased that their feedback has not gone unnoticed. I commend the IAC and Dr. Lever and his staff for recognizing the needs of the schools I mentioned by providing additional support for those schools in the final recommendations that we're voting on today.

I'm also very glad that through the Board's leadership and IAC support the message is getting out across Maryland that we want to build schools that will

last. That will save money in the long term, that will help the environment as much as possible. And let me just take a moment to recognize some of the unsung heroes of this process. Those schools that help us out by making the most of our finite school construction dollars by a tremendous commitment to superior maintenance and upkeep.

Over the past several months I've been visiting schools nominated for my new Silver Hammer Award, an award that honors schools for their superior maintenance and results. These schools have been diverse, from Beall Elementary in Frostburg, to Lettie Marshal Dent Elementary in Mechanicsville, to St. Michael's Elementary and Preston Elementary on the Eastern Shore. All different sizes and shapes but with a common denominator. All have a shared commitment and sacrifice from students, teachers, administrators, strong involvement from parents, all focused on keeping the school facility in a superior maintenance mode. It's a complete team effort to preserve and improve the school facilities in order to keep the kids in an environment that is safe, healthy, and one that promotes learning. It doesn't always take a massive

investment in time or money. It's the little things that matter.

So whether it's a brand new school or an older one that's better cared for, studies show that students perform better in schools that are clean, safe, and well maintained.

Just as the school districts have heeded the guidance on green building and energy efficiency, I hope that if we continue to spotlight and highlight the schools with superior maintenance, local systems will continue and increase the amount of effort they put into preventative maintenance. And think of the money we could save if we simply deferred where appropriate - - obviously new schools are needed. In many instances if we just extended the useful life of the existing facilities, tens of millions if not hundreds of millions of dollars could be preserved in these tough economic times. And the thing that appeals to me here is that these schools where for whatever reason, I think it's the synergy of the parents and the faculty and the administrators, they have the data to show that there's an improved academic performance. Yes, it's an older school. But yes, it's better preserved and the kids do better. It maintains a positive

learning environment for our kids, and I just want to applaud the efforts of everyone involved because it's really outstanding and it needs to become part of the, I guess the mind set throughout the State.

Obviously our schools are ranked at the top. Obviously we have a need for new facilities. But this concept of better with less that we, that is exemplified by superior school maintenance, I hope it's something that we can inject into the body politic and with Dr. Lever's help and hopefully the support of the Board really take care of what we have. And help the kids and the budget. Thank you very much, Governor.

COMPTROLLER FRANCHOT: Thank you, Mr. Comptroller. We mentioned it was Public Employee Month. One great public employee was recognized yesterday at the White House, in the Rose Garden. She is the Teacher of the Year from Frederick, Michelle Shearer. Big round of applause.

(Applause)

GOVERNOR O'MALLEY: Now she's no doubt in her classroom, but now she'll be able to pull this up on the video. We do look forward to having a celebration of her accomplishment and achievement here in Annapolis at some date in the future. I left her a message

yesterday on her cell phone, and I'm very, very proud of her. Madam Treasurer?

TREASURER KOPP: No, I was just going to add my commendation and thanks to the Teacher of the Year.

I am envious of her students. What a wonderful experience they have, and have had. And also my hats off to our great State employees. We are recognizing their hard work and achievement by next year not cutting their pay. And I'm sure that's something for which we are all most appreciative. There are fewer of them and they are each working harder and harder, and better and better. And I think that we, all of us taxpayers and citizens who are their employers, are in a great deal of debt to them. And we had better care and nurture our State workforce or we are not going to be able to provide the essential services to our communities that are required in these difficult times.

Things don't happen just by themselves. They happen because very good, hardworking people are spending a lot of their time and effort in the public interest. Thank you.

GOVERNOR O'MALLEY: Well said. Okay, let's go to the Secretary's Agenda.

SECRETARY MCDONALD: Good morning, Governor, Madam Treasurer, Mr. Comptroller. We have twenty-five items on the Secretary's Agenda. Two reports of emergency procurements. We are withdrawing Item 20, and we are prepared to answer any questions you may have.

GOVERNOR O'MALLEY: And we have Mayor Neal Roop of New Windsor?

SECRETARY MCDONALD: Exactly. He is here --

GOVERNOR O'MALLEY: Is here on Item 6? Mayor Roop?

SECRETARY MCDONALD: Right, Item 6. I don't know if Ms. Terri Wilson is here from MDE, or Mr. Tablada, or --

GOVERNOR O'MALLEY: Come on down.

SECRETARY MCDONALD: Mayor, come up. But I would appreciate it if MDE also came up?

GOVERNOR O'MALLEY: How are you, Mr. Mayor?

MR. ROOP: I'm doing fine. And you all, I appreciate this opportunity to be here.

GOVERNOR O'MALLEY: Sure. Tell us what this is, Mr. Mayor?

MR. ROOP: Well, the State has provided a grant of up to \$550,000 to help offset our \$4.53

million loan for the new wastewater treatment plant that we just built in New Windsor. Actually it is probably about two weeks away from being ready to go on line.

GOVERNOR O'MALLEY: That's great.

MR. ROOP: This is a tremendous help to us. And on behalf of the Council and the citizens of New Windsor I want to express our great appreciation for this grant. Having said this, I would like to appeal to you for allowing me to address our ongoing financial hardship.

GOVERNOR O'MALLEY: Sure. We're all experiencing it.

MR. ROOP: Yes. The Bay Restoration Fund, which I support 100 percent, unfortunately does not help the small municipalities in the State of Maryland.

GOVERNOR O'MALLEY: The what restoration fund? I'm sorry.

MR. ROOP: The Bay Restoration Fund. Unless you're putting 500,000 gallons of affluent into the Bay everyday you're not eligible to --

GOVERNOR O'MALLEY: This is the flush tax?

MR. ROOP: Yes.

GOVERNOR O'MALLEY: Okay.

MR. ROOP: Yes, sir. And because we put about 90,000 gallons of affluent into the Bay we're not eligible. And we had to fund this, actually the Maryland Department of the Environment was very grateful to allow us to have a loan with zero percent interest. However, we still have that loan to pay back.

If you would, and I'll try to be brief here, I'll show you a little spreadsheet.

SECRETARY MCDONALD: Mayor, could I have a --

MR. ROOP: It shows a loan comparison of, the first one is, I used Westminster because they are going to be facing a plant upgrade of approximately \$25 million. They have 9,200 users, or give or take, and the annual cost per user would be \$135.87. Whereas New Windsor, our \$4.53 million loan with 533 users comes out to \$424.95 without any grants or any forgiveness. Westminster is to receive \$17.6 million through the Bay Restoration Fund which drops their quarterly payment down to \$10.05. Even the \$33.97 is a lot less than what our citizens are facing. And after we receive the grant, if you are so kind to approve that, we are still facing \$93 per quarter.

It just, you know, I guess the one thing I would like to ask is for continued working on this issue. We're not the only ones facing this issue. I'm sure you have received letters, emails, phone calls, personal contacts about this issue from other smaller municipalities. Just to let you know, in our past efforts we haven't left any stone unturned. Last year I submitted an appropriation request to Senator Cardin, Senator Mikulski, and Congressman Bartlett. And of course, which year do they turn down earmarks? The year I'm asking for money there.

Senator Brinkley this past session submitted Senate Bill 131, which would allow for loan forgiveness. But it received an unfavorable report by the Education, Health, and Environmental Affairs and I believe the Attorney General's Office ruled that that wouldn't really apply to us from a previous bill that allowed for loan forgiveness.

We have met with the Bay Restoration Fund Advisory Committee Chairman Greg Murray to discuss options. You know, whether or not the flush tax will be increased this year or any time in the future. We would like consideration of maybe the fund to be

restructured to allow for funding of our loan and other municipalities.

GOVERNOR O'MALLEY: So is this a prescription in law, that you have to, that it has to be of a certain size in order to qualify for grants now?

MR. ROOP: 550,000 gallons per day.

GOVERNOR O'MALLEY: And that's in law?

SECRETARY MCDONALD: Jag here --

GOVERNOR O'MALLEY: The gentleman here from MDE --

SECRETARY MCDONALD: Jag, do you want to introduce yourself for the record?

MR. KHUMAN: I'm Jag Khuman of the Department of the Environment. Essentially what we've done for the flush fee is allocate the money, since they are not sufficient, to the largest facilities which are the largest sixty-seven sewage treatment plants in the State of Maryland. And they start at half a million gallons a day flow and above.

TREASURER KOPP: And that's because of the impact on the Bay?

MR. KHUMAN: That's how, the intent was that if the largest facilities did nitrogen and phosphorous removal the smaller ones would not have to do it to

meet the Bay TMDL loading. In the case of small sewage plants like New Windsor they have to upgrade not because of the Chesapeake Bay cleanup. They have to upgrade because there was problems with the local streams where the discharge was happening. And these are very old things.

GOVERNOR O'MALLEY: Although they all go into the Bay.

MR. KHUMAN: Correct. But mathematically if the largest folks did their cleanup the smaller ones wouldn't have to do it.

GOVERNOR O'MALLEY: Was this in law? Or was this from reg?

MR. KHUMAN: No, this is purely by policy.

GOVERNOR O'MALLEY: Purely by policy established by MDE?

MR. KHUMAN: MDE.

GOVERNOR O'MALLEY: And how old is this policy?

MR. KHUMAN: Since 2005 when the flush fee first came into being.

GOVERNOR O'MALLEY: Okay. All right. So --

TREASURER KOPP: So is there a matrix somewhere that shows the impact on the Bay of these various projects?

MR. KHUMAN: Yes. There is a mathematical calculation that shows how much each plant would reduce in terms of total nitrogen.

TREASURER KOPP: So if the goal is the impact on the Bay, you are picking off, it's not low hanging fruit, but the things that make the biggest difference?

MR. KHUMAN: Absolutely.

TREASURER KOPP: But there still are plants that must be upgraded, both for the streams which flow into the Bay and because they are old and are not going to work forever, right?

MR. ROOP: We were required to lower our nitrates and ammonia, and --

TREASURER KOPP: And the question is how that is paid, is paid for in an equitable fashion?

MR. ROOP: Yes. That's what we're asking. And, you know, I think I can speak on other small municipalities. I want to not get off topic, but I deal with a lot of State employees and I have a great relationship as Mayor, and also as my other job. And Jag is tops.

TREASURER KOPP: Oh, Jag is a treasure.

MR. ROOP: I know. He's very helpful. Not because he's the money man. But he has, I mean, he came forward when we, we've been pleading our case. Delegate Don Elliott has been relentless with MDE to help us out. And you know, Jag called myself and our town manager about a month ago, maybe a little less, and gave us this opportunity for this grant. And we are really indebted to him and his staff.

TREASURER KOPP: Well Jag, the one thing Jag can't do, nor can we, is print money. Almost everything else.

GOVERNOR O'MALLEY: And we do have an, we have a problem with the underfunding of the, of the Fund. I mean, in essence the need is greatly outstripping the available funds on an annual basis. And as you see here, I mean, you can't eat cake and lose weight. If we don't pay it collectively by way of an updated flush fee, we end up paying it individually by the example of New Windsor paying \$93 and Westminster pays \$10.

MR. ROOP: Right.

GOVERNOR O'MALLEY: So we are wrestling with this as we look also at the halting the proliferation

of major septic housing developments, and that all kind of goes together. I mean, we'd like the growth to happen --

MR. ROOP: Sure.

GOVERNOR O'MALLEY: -- in the towns and in our municipalities. So your point is well made and well taken.

MR. ROOP: Thank you. And you know, there is a couple other future efforts that I would like for consideration. Senator Cardin last year introduced a bill, the Water and Infrastructure Financing Act. And that would have, to my understanding, given the State of Maryland \$102 million. And some of that could have been used for loan forgiveness. However, to my understanding there needs to be language in there that would allow for that. I talked to Senator Cardin's staff this morning and they are well aware of that. So whatever your assistance on that, if that's an option that would be greatly appreciated.

Then of course my favorite is to ask for loan forgiveness. So, but again I want to express my appreciation for this grant and thank you for listening to my concerns, and helping me with the tremendous

financial burden the citizens of New Windsor are facing.

GOVERNOR O'MALLEY: Mr. Mayor, thank you. And many of the names you mentioned are people that we could use your help in being persuasive with as well. Because while they are decent and fine people, they have of late been voting for the sort of cuts, reductions, self-defeating sorts of things that are not fiscally responsible and simply shift costs in other ways. And most notably, to future generations. And so I do appreciate your coming down.

MR. ROOP: Thank you.

GOVERNOR O'MALLEY: Thank you.

MR. ROOP: I greatly appreciate your time.

TREASURER KOPP: Just one --

MR. ROOP: Yes?

TREASURER KOPP: The other thing is, I agree with everything you have said. There is another cost. And that is if we don't properly fund these changes the next generations are going to pay in a wasted environment and an inability to continue to prosper.

MR. ROOP: And these figures are just for the loan. That's not including the increase in operating costs that we are going to be facing. We are facing

sewer bills two and a half, three times what they've been used to. So again, we greatly appreciate all your help.

GOVERNOR O'MALLEY: Thank you. Is it increasing your capacity as well?

MR. ROOP: It will eventually, yes. I think to my knowledge we're going to be around 125,000 gallons per day, and then we have to --

TREASURER KOPP: See the lights are going on already.

GOVERNOR O'MALLEY: Thank you.

MR. ROOP: Anything you can do to cut the expenses here for New Windsor, we greatly appreciate it.

(Laughter)

MR. ROOP: But over I think a period of a year we'll have to give data to MDE, and then they will evaluate to see whether or not they can increase it I believe up to 177,000? Or 166,000? Somewhere in that range. We're just at about 90,000 gallons a day. So I don't think we'll ever see that capacity hit, but we also have designed the wastewater treatment plant to double in size if we, capacity if we ever need to. But again, thank you.

GOVERNOR O'MALLEY: Thank you, Mayor. Okay.

Anything?

TREASURER KOPP: I do think, I mean, this is a good argument for your, for smart growth.

GOVERNOR O'MALLEY: Mm-hmm.

TREASURER KOPP: For not spreading, you know, we shouldn't have a lot of little plants all over that can't be maintained.

GOVERNOR O'MALLEY: Right. I mean, the Mayor's trying to do the right thing and upgrade his water treatment so that they can, people can live and you can develop in New Windsor. And meanwhile we have no prohibition against people jumping the municipal borders and going out and finding a cornfield and slapping in a 300, you know, McMansion septic development. It's a problem.

MR. ROOP: Thank you.

GOVERNOR O'MALLEY: Thank you. Anything else on the Secretary's Agenda? Comptroller?

COMPTROLLER FRANCHOT: Item 20.

SECRETARY MCDONALD: Okay. Item 20 is the one that was withdrawn, but I'm sure Dr. Lever could answer about that.

COMPTROLLER FRANCHOT: Oh I'm sorry, 18?

SECRETARY MCDONALD: Item 18 is the Capital Improvement Program.

COMPTROLLER FRANCHOT: I'm sorry.

SECRETARY MCDONALD: That's all right. Item 20 was withdrawn. That was the Qualified Zone Academy Bonds. But Item 18, I'm sure, is what you want to discuss, is the Capital Improvement Program for fiscal year 2012, and Dr. David Lever is here.

DR. LEVER: Great. Governor, Madam Treasurer, Mr. Comptroller, we're presenting the Capital Improvement Program for fiscal year 2012. In the worksheet that you were given there are some points I'd like to note. Generally all the jurisdictions are seeing increases of funding --

SECRETARY MCDONALD: -- you do have it now? Yes?

DR. LEVER: I'll wait until that's distributed. We are seeing the most unusual situation that I've encountered in my career in this position, that the local governments as they've assessed their revenue projections for the coming year at this time have had to withdraw projects. And in some cases they've had to withdraw projects that were approved by the Board of Public Works in the January meeting,

January 26th. So this has resulted in some last minute changes, and the spreadsheet that you're seeing reflects decisions made by the IAC in special session as of yesterday morning. While we got in additional information, we had to call the IAC together again to be able to develop these recommendations.

And in particular I'd like you to note if you have the spreadsheet on page six for Carroll County, the rescission of \$450,000 that was approved on January 26th for the Charles Carroll Elementary HVAC project. We're told that the school will be completely renovated and so the HVAC will be taken care of at that time. We were asked to put that money into the Mt. Airy Middle School project instead.

On the next page as item number seven, priority seven, the rescission of the planning approval of the Taneytown Kindergarten and Pre-Kindergarten addition because the local government will not be providing the architectural engineering fees at this time. That will be deferred.

The full day kindergarten program, by the way, is fully implemented as of the Fall of 2007. This would be the facility that would simply help that program.

And then Wicomico County, on page twenty-two of your worksheet, you'll see that the \$5.2 million that was approved in January for the Bennett Middle School replacement project, we have received a letter from the county government asking for those funds to be rescinded. The project we hope will move forward in the next fiscal year. But architectural engineering design has been put on hold and that will have to be resumed as well.

And then you'll see that for Charles County Public Schools, this is on page seven, again. Charles, St. Charles High School, priority number one, was approved for \$4,120,000 in January. We're showing a blank there with an asterisk. The asterisk points you to a note, which is actually on page eight. It says, "A\$6.861 million held in reserve for the St. Charles High for 120 days pending award of contract." The reason for this has to do with local finances and the desire to extend the opening of the school from the Fall of 2013 to the Fall of 2014 because of operating budget considerations. We have here today the President of the Board of Commissioners of Charles County, Ms. Kelly. And if you have any questions about that process and what the strategies that are being

approached, I think Ms. Kelly would be in a position to answer those questions.

GOVERNOR O'MALLEY: Madam President? If you are here, do you want to come up and explain to us what is going on with this one?

COMPTROLLER FRANCHOT: Could I just ask Dr. Lever, you said that this was unusual?

DR. LEVER: Extremely.

COMPTROLLER FRANCHOT: Has it ever happened before?

DR. LEVER: Only in small ways. Two years ago we had two projects that were approved for Kent County and we learned just after the Board of Public Works meeting that the local government was not going to support those projects. We held fire for a year and then we did ask the Board to rescind those projects because they were not moving forward with them. At least one of them will be done under a different funding program.

We think this is the repercussions of the economic downturn. That it's begun in a serious way to affect the local fiscal picture, and the government simply cannot support as many projects or as large projects as they did in the past.

Ms. Kelly?

MS. KELLY: Thank you. Thank you, Dr. Lever.

Good morning, Governor, Comptroller Franchot, and Madam Treasurer. Let me just say that originally this school had been scheduled to open in 2014. The past board, when the economy was a little better, you know, had tried to move it forward. Obviously we've seen a slowing in the economy. We believe that we are on track with 2014. Dr. Lever and his staff have worked closely with us and the Board of Ed and he's asked us for a plan and for assurances. And I can assure you that we are working very closely with our elected Board of Education.

Governor, we know that this is your priority.

This school is really going to be a showcase school. It's going to do amazing things and we're so very proud of it. We are committed to it. But as all elected officials right now we are in the midst of some very tough times. We wanted to proceed with the utmost responsible manner and make sure that we had the operating funds. Because you, when you build a school like this, you want to make sure that we have everything in place to fully staff it. To make sure that our observatory and everything that we're doing

there to promote the STEM programs and space study is in place.

We know that this is unprecedented and we know that these are unprecedented times. I come to you today, again, with assurances. We have an excellent rapport with our elected Board of Education. They are working now with Dr. Lever and his staff, as are our fiscal staff, to make sure that we are proceeding in a way that's going to ensure that we have an amazing school that you will be so very proud of, that our students will thrive in. And we're going to do it in a way that assures our citizens that we can fund it fully.

So I'm happy to answer any questions. I have with me our County Administrator Rebecca Bridgett. I bring greetings from all of our Board of Commissioners.

And we thank you for the support that you have shown us in the past. We are so appreciative, again, of Dr. Lever and his staff. We need you to help us through this tough time and just have faith in us that we're going to do the right thing.

GOVERNOR O'MALLEY: Will you have it next year?

MS. KELLY: Yes, we believe we will. We have restructured, we met yesterday, restructuring some of our debt. We understand that tax increases are probably in our future. We're working through our budget right now. And we are comfortable as a team that we're taking the steps now to make sure that we're ready to go with this in a very meaningful and positive way, opening it in 2014.

TREASURER KOPP: So this is a question of the operating funds for opening the school?

MS. KELLY: It really is. That was where our real dilemma --

TREASURER KOPP: So assistance in capital, somehow paying down the cost of capital, really wouldn't --

MS. KELLY: We need that to be able to go forward, as well. But the reason why we backed it up the one year was so that we would be certain that we could support the Board of Ed with the capital. I mean with the operating.

TREASURER KOPP: And what have we, we have already spent a significant amount of money.

MS. KELLY: We're ready to go. The site is protected and safeguarded.

TREASURER KOPP: That was my question.

MS. KELLY: Yes, ma'am.

TREASURER KOPP: How are we protecting our investment?

MS. KELLY: We've worked very aggressively to make sure that that site is maintained, that there will be no requirement for additional engineering. It's, actually it's right across from, or right in the same area as the stadium. So it's, you know, we had a lot of support from that local developer to help us with that site. So we're confident that we have that covered. And as I said, the Board of Ed actually is meeting today in executive session, considering the bids. And so we're moving forward. Of course, like any governmental agencies we're going to have our challenges as we move through this. But we're confident that we can make it through. We just need you to hang in here with us.

TREASURER KOPP: Do you have any idea of what the cost impact is of the delay?

MS. KELLY: We have some ideas. Until I get more information from the Board of Education today I'm a little hesitant to put those numbers out there. But we know that that could be one of the results of this.

But we believe that we can work through that as well.

I mean, it was sort of, you know.

TREASURER KOPP: It's very difficult, I know.

MS. KELLY: It's very difficult.

TREASURER KOPP: But I assume that the State's share is, is the State sharing in the increased cost of this delay?

MS. KELLY: To the best of my knowledge the numbers that we're expecting won't change. And of course our issue is that we get the money over time back, reimbursement so to speak from the State, and we have to pay our contractors right away. So we hope that that won't change.

TREASURER KOPP: Well we'll be watching, I think. Because it is a very difficult situation and I'm personally very sympathetic. But on the other hand there are schools all over the State which need construction, renovation. Money has been set aside, as I understand it, for this school. And meanwhile, not unlike NASA, the longer things are put off, obviously the contractors bear a heavy cost for which they need to be reimbursed, too.

MS. KELLY: And that is why our willingness and interest in being engaged every step of the way so

that we can continue to work with our contractors, with our Board of Ed. And let me just say, I absolutely appreciate that there are needs throughout the State. This school is really something special.

TREASURER KOPP: It's going to be a wonderful school. No question.

MS. KELLY: Mm-hmm. For those of you who may not know, it has been endorsed and we have been working closely with the Space Federation. There will be an observatory. We have a lot of the military presence. And so the importance of building a significant STEM program is really one of our focuses, so. Comptroller?

GOVERNOR O'MALLEY: Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. Commissioner Kelly, thank you for being here. I think it's very helpful. And you demonstrate a lot through your personal leadership that everybody down there is, obviously gets it that we want to have school progress, and we want to have social progress. But we've got to be fiscally responsible. And I think, you know, as uncomfortable as this is, because this was one of your top priorities, to hold it off, is I think following up on what the Treasurer was saying, it's a reflection of tough times. I guess I have a question either for your

or Dr. Lever, how much exactly has the State already paid in and how much has the county put in?

DR. LEVER: The State has put in \$3.5 million, which has gone into the site work.

COMPTROLLER FRANCHOT: And the county?

MS. KELLY: \$8 million.

COMPTROLLER FRANCHOT: Has put in \$8 million?

MS. KELLY: Mm-hmm.

COMPTROLLER FRANCHOT: And is there someone from the, perhaps the school system that can talk about what the impact of delaying the construction?

MS. KELLY: They did not attend today. Obviously, their concerns are the same as yours. You know, is this going to cost, continue to make the cost escalate? Securing the property. One of the concerns initially would have been overcrowding but we have seen such a slowing down of our growth that we don't see that as quite the same issue. You know, their biggest concern of course was would we be able to fund it? Would they be able to continue to give our teachers raises, and to have a, and we want to make sure that putting a school so exceptional in our county we wanted to make sure that that is not going to diminish our ability to do great things at all of our schools.

Because I believe that great schools and, you know, these little specialty schools are wonderful, but all of our children deserve a good education. And we don't want any of our other schools to suffer.

So these are some of their concerns. And we certainly are working with them to make sure. And that is why the operating piece was so important. We didn't want any of our other schools to suffer, and we didn't want our teachers not to be able to be adequately compensated.

COMPTROLLER FRANCHOT: But just to clarify that comment, because I know you made it earlier to the Treasurer, we are not talking about your inability as a county to help with the capital share of this.

MS. KELLY: No.

COMPTROLLER FRANCHOT: It is your concern about the operating expense?

MS. KELLY: Right. We are committed to this school. We are going to build this school. And we are hoping that you will make sure that that happens.

COMPTROLLER FRANCHOT: Is it, I know this is a particular favorite of everyone, all, everyone, including myself. Did Dr. Richmond, is that your --

MS. KELLY: Yes, Superintendent Richmond.

COMPTROLLER FRANCHOT: I know he speaks very passionately about this. Is there some possibility that the request that you come forward with will be changed in scale, or in concept because of the fiscal conditions that are holding you back right now?

MS. KELLY: Do you mean the school itself? That we will scale back on the school? We're hoping --

COMPTROLLER FRANCHOT: Exactly. I mean I know we have, for example, an observatory that we're going to build.

MS. KELLY: And a swimming pool, and lots of great things. And I know in these fiscal times to some that may sound a little extravagant. But, you know, we've made a commitment in this State and in our county to education. And of course the STEM program is such an important piece of that.

We believe that if there are savings to be derived we can do them in ways that will not diminish the overall mission of that school. And that is to introduce students to learning in such a way that we have lifelong learners that are going to achieve, and that are going to be our future engineers, and our future astronauts, and so forth.

DR. LEVER: Could I just make a remark about that?

MS. KELLY: Yes.

DR. LEVER: This project has gone through a very intensive value engineering exercise.

MS. KELLY: Okay.

DR. LEVER: And there probably are not many more ways in which the cost could be reduced. The swimming pool was presented as an add alternate in the bid and it was an item, as I understand it, that was not being considered at this time. But it could be accepted later on if revenues are found.

COMPTROLLER FRANCHOT: Well it might be something you consider as you look at this, because I think the testimony is that the impetus, the overcrowding, has temporarily receded a little bit. But you might want to take some value engineering reexaminations of this, albeit I take it it is an operating budget problem that is holding you up here.

MS. KELLY: And may I suggest also that, one of the theories, you know, I'm a believer in looking for innovative ways to address it. For example, the swimming pool could obviously be looked at, it is off the table at the moment, but could be brought back

somehow as part of a parks and rec program. And whereby we, you know, it's more than just for the school. So we are interested in keeping amenities to the extent that we can. Obviously, making sure that we value engineer is important. But, you know, we're looking at the big picture in this as well. How these amenities affect, could be useful to all of our citizens.

COMPTROLLER FRANCHOT: And then Dr. Lever, what are the implications for other jurisdictions? Obviously, Charles County is not all by itself. This is, this is a big deal as far as your universe. And I guess I'd like your impression of what we might anticipate.

DR. LEVER: Well with this specific project we feel that 120 days is a very reasonable amount of time. It gives the school board and the county government time to consider alternative approaches, to actually solicit under those various alternatives, and to establish a contract. We think that it's reasonable in that it doesn't tie up money for too long if in the final analysis it has to go to other projects. And we would come back with an amendment to the fiscal year 2012 CIP in that case.

We're, looking ahead I think we're going to be seeing some very tough times. And this will probably be reflected in a reduction in the number of requests and the value of requests next year, this coming fall. We have already seen this year a four-year trend, that the number of requests and the value of requests has continued to diminish. We think it's going to be even more severe next year. And unfortunately what this means is that very much needed projects are going to be deferred, with the consequence that the buildings themselves may deteriorate. That educational enhancements that are needed are not going to be done, that really are needed to implement the educational programs. We simply cannot achieve, I think, as a State everything we would like to achieve right now.

COMPTROLLER FRANCHOT: Well let me, I do agree with you. I think we are in relatively uncharted waters here and we are not quite sure what is going on.

I'm particularly taken by the fact that it's not a capital impediment, a funding impediment, it's the operating budget. I see Wicomico County, you mentioned I think, is giving, are they giving back \$5.2 million in funds? Or --

DR. LEVER: Well, it's not giving back. It was approved in January by the Board of Public Works. They are just simply asking for that approval to be rescinded. They will request again next year, the same amount or more.

COMPTROLLER FRANCHOT: And that was for a new middle school?

DR. LEVER: A replacement middle school.

COMPTROLLER FRANCHOT: A replacement middle school.

DR. LEVER: That's correct.

COMPTROLLER FRANCHOT: And then Frederick County is shifting \$200,000?

DR. LEVER: Yes.

COMPTROLLER FRANCHOT: As far as the renovation?

DR. LEVER: The request was for two systemic renovations at Frederick High School, which we were very supportive of. And as I understand it, the County Council asked the Board to make a decision between an addition project for capacity purposes that would relieve overcrowding or the systemics, because they simply didn't have funds to support both. And so the Board of Education made the decision to support the

addition for enrollment purposes and asked us to remove these recommendations. These projects had not been approved by the Board of Public Works. They had been simply recommended by the IAC at that point. So we simply shifted the recommendation from those two projects to the Lincoln B Elementary School, which is underway in Frederick itself.

Now I do understand that Frederick High School will be renovated in the future. So this roof project and the HVAC project will be taken care of at that time.

COMPTROLLER FRANCHOT: And if I could just, while you're there, continue my thought. Because if this becomes a larger issue because of the fiscal distress at the local level, do you anticipate the IAC reassessing its guidelines for awarding funds for new school construction? Obviously, new schools we support but they also are enormously expensive. And frankly, as the Treasurer noted, they are not getting any cheaper. The longer we wait, the more expensive they become. So are there opportunities where we could, and I know St. Charles is a brand new school so I'm not necessarily referring to that. But other instances, perhaps, we could simply expand and overhaul the

existing school. And yes, do I love to visit shiny new schools? Yes, they are terrific. But I also noticed the same academic improvement in new schools, where kids are excited about the new facility. I see it in older schools that are renovated.

DR. LEVER: Absolutely.

COMPTROLLER FRANCHOT: And well maintained. And I guess given what we can afford, do you anticipate any adjustment in your guidelines?

DR. LEVER: Well the IAC has always had a fix it first policy. Meaning that if a request is submitted for a replacement school, the replacement has to be very well justified through a feasibility study on a number of bases, including cost, educational benefit, impact on the community. And the IAC does have a record of denying replacements on those bases. So that the funding was allocated for a project that would be a renovation addition project rather than a replacement. Now, the school system can go ahead and replace if they want to. But the IAC will only fund to the level of renovation and addition.

And I agree completely, and I have said this repeatedly as an architect and as a facility planner in Prince George's County, that a good renovation is just

as good as a new school. And sometimes it takes a bit of convincing for communities to believe that, that they will be getting a high quality for the renovation.

But generally when you show photographs or take them on a tour of a renovated school and show them what it can be like, they are completely convinced of that.

COMPTROLLER FRANCHOT: Mm-hmm.

DR. LEVER: And it can be done at generally less cost. Not always, but generally less cost than a new school.

COMPTROLLER FRANCHOT: Do you at all associate your approach to funding new schools, or renovating existing schools, is that at all connected to a jurisdiction's record of school maintenance?

DR. LEVER: Yes. We have a number of ways that we do make that connection. Some of them are rather technical. For instance, a roof replacement project has to be supported through submission of inspection reports that show that they are doing the required inspections twice a year. We always ask about the age of equipment. And we will not fund replacement of equipment or a portion of a school which has been renovated or upgraded recently. We have had some particular instances where even though one project was

technically eligible we thought it was just too early to be replacing a boiler. And we asked them about that. "Why is it coming in so early?" And they provided us with additional information that showed why that particular boiler did need to be replaced. We've had other instances where a roof was being requested, what we thought was early, and they also provided us with some very important technical information.

We also meet with the maintenance managers in October of every year. They have an annual conference and pull together the maintenance managers from the school systems from around the State. And we're given about forty-five minutes at the beginning of that meeting. And we reinforce the whole concept that good maintenance is critical to the capital program, and there is a relationship between the two. And we also are, our maintenance inspection program is very much linked into capital. What we found is that the reports that we received from our inspectors, we reviewed them as we were reviewing capital improvements. And in some cases we have come back to school systems and said, "Why don't you address this particular issue?" For instance, an electrical upgrade. Correcting an electrical problem at the same time that you're going

to do HVAC work. You can do it more inexpensively, the contractor is under one contract. And you will get a much better school out of that. And in fact, school systems have responded to those kinds of requests from our side.

COMPTROLLER FRANCHOT: Well I appreciate the way you and your staff balance the need for new schools and renovation of existing ones. But I'm also encouraging all of us to look at in addition to renovation just good maintenance. That would further mitigate the problem, in my opinion. But how many replacement schools are on this list of approved projects before us today?

DR. LEVER: We have fourteen schools that are being recommended for funding, and four schools that are being recommended for planning approval that are replacements.

COMPTROLLER FRANCHOT: And the average age of the existing facilities?

DR. LEVER: I would have to research that, sir.

COMPTROLLER FRANCHOT: If you could get back to us, or me on that?

DR. LEVER: I will.

COMPTROLLER FRANCHOT: And what is the average age of the existing school buildings in our State? And is there any way to measure that against the national average?

DR. LEVER: The average age of the square footage of our school buildings is twenty-seven years.

Any particular school, especially an older school, might have square footage of several different years. Built in 1958, addition in 1978, another one in 1994, and so forth. But the average is twenty-seven years now. And I have to say it's been holding at twenty-seven years now for I believe it's three years running, which is a testimony to the investment that has been made. Because if no investment were made it would be getting older by one year continually. So we actually are seeing, it may not be very glamorous, but we are seeing a positive result from the huge investment that's been made into school facilities. I don't have an idea about the national average. There are some sources we can check. I don't know if those statistics are kept consistently from state to state.

COMPTROLLER FRANCHOT: And in your opinion the buildings we're putting up now are as durable as the ones that are out there?

DR. LEVER: Much more durable than the schools that were put up in the sixties and the seventies. Which were built essentially to handle the baby boom. They thought it would be a one-time baby boom and would be over in twenty years, and then the buildings could come down, or be used for other purposes. Of course we are still using those schools fifty, sixty years later.

The older schools, before the sixties, are extremely durable. Often with load bearing masonry walls. But they are also extremely inflexible. They are very difficult to implement modern educational programs in. So the objective now is to build schools that have a very high level of durability but also are flexible to address different educational needs as they develop.

COMPTROLLER FRANCHOT: And schools that are abandoned because of inflexibility, what happens to them? Or how many are there?

DR. LEVER: They, I don't have the number, sir. But there are not that many. Generally they are repurposed as, within the school system, or they are surplussed to the county government and sold. Many of them are used for private schools or used for public

services. I'm not really familiar with schools that are boarded up in the State and I do get around quite a bit. So I just don't know of any schools that are boarded up.

COMPTROLLER FRANCHOT: Well thank you again for your leadership, and for working with my staff. And I look forward to information that I was discussing, and also continued focus on not just new construction or renovation, but maintenance --

DR. LEVER: We will.

COMPTROLLER FRANCHOT: -- that would preclude this. Commissioner Kelly, I'm sorry. I noticed you standing back there. I didn't mean to have you be there through all of this, but Dr. Lever thank you --

DR. LEVER: You're welcome.

COMPTROLLER FRANCHOT: -- for your responses.

TREASURER KOPP: I have one more question of the commissioner. Commissioner Kelly, my understanding is that you opened new bids last month, the end of last month, and they were high. One of the concerns is that they were high because of this deferral. Are you thinking that if somehow you get to a point where you've got the deferral, but it's very firm, that some

of that added cost that is new to uncertainty, I guess, can come down?

MS. KELLY: Yes. We, part of the issue is we just don't, they just opened the bids. You know, the whole bid proposal piece is done through our elected Board of Education and we are not privy to that. They are meeting today and unfortunately we were scheduled to actually have a strategic planning meeting with the Board of Ed today. We'll know a little bit more next week. You know, like many things we're going to have to figure this out. We need this bit of a delay, you know, as Dr. Lever has recommended, if we could just have that additional time. We're committed to this school. We're going to do everything possible to build this school and to have a school that we all can be very proud of. But you're absolutely correct. I just don't have that information.

TREASURER KOPP: Because sometimes it's just uncertainty that leads to --

MS. KELLY: That's correct.

TREASURER KOPP: -- to cost. And not the building per se.

MS. KELLY: As a new board we found ourselves

--

SECRETARY MCDONALD: -- clarification.

TREASURER KOPP: Pardon?

SECRETARY MCDONALD: I need to seek a clarification from Dr. Lever. Excuse me, I'm sorry.

MS. KELLY: No, I --

SECRETARY MCDONALD: Dr. Lever, I'm sorry. Are you saying that you'll come back to the Board in 120 -- okay. Let me just clarify, then. The September 7th meeting of the Board of Public Works is 127 days from now.

DR. LEVER: Okay.

SECRETARY MCDONALD: The meeting before that is August 10th. Would you like to have until the September 7th meeting instead of a 120-day timeline? Is that what sounds good?

DR. LEVER: Well we're giving the local government and the board 120 days, that would be September 1st.

SECRETARY MCDONALD: This is you, that, okay.

DR. LEVER: Yes.

SECRETARY MCDONALD: So you're saying that at any point you could come to the Board of Public Works with this?

DR. LEVER: We can come back before then.

SECRETARY MCDONALD: So, or after?

DR. LEVER: My, the intention was that if it goes right to September 1st we would go to the IAC at the regularly scheduled meeting on September 22nd, then come to the Board of Public Works at the, probably the first meeting in October.

SECRETARY MCDONALD: So the part that the Board is approving, a statement that says, A\$6.861 million held in reserve for St. Charles High School for 120 days pending award of contract," you want that to mean 120 days that Charles County has to get back to you and the IAC?

DR. LEVER: That's correct. Yes.

SECRETARY MCDONALD: Okay, thank you for the clarification.

DR. LEVER: You're welcome.

COMPTROLLER FRANCHOT: Could I also, Madam Treasurer, do you, if I could just ask at that meeting that the school board be here, or represented? I find it pretty unusual for their top priority project that they don't have a representative here. Or maybe they do, am I mistaken?

DR. LEVER: No, they were not able to come. But we will ask them to be at that meeting.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: Well and the fact is the problem is the county's funding.

DR. LEVER: All right, thank you.

MS. KELLY: Thank you. Thank you, all.

GOVERNOR O'MALLEY: Thank you. Anything else on the school construction things?

TREASURER KOPP: Can I just ask one?

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: Just to follow up something Peter said in general. We're working our way through the schools from the sixties, the flat roofs, and all that. Once we get through that generation of not great schools, do you anticipate that in fact we will be seeing more long lived schools because they will be built better --

DR. LEVER: Well we certainly hope so.

TREASURER KOPP: -- starting in the late seventies, early eighties?

DR. LEVER: We certainly hope so. But we normally expect that a school which is built for say the forty-year-term, which is a typical expectation, it will be renovated at least once within forty years because of changing educational needs.

TREASURER KOPP: Right. But you can't make them, I mean some of them were just not well built schools.

DR. LEVER: They are, and many of them also have so many additions, uncoordinated additions, that they really are almost an impediment to learning rather than an aid to learning. I've visited schools that are so difficult to manage, because of the corridor system and the surveillance issues, student movement issues, that they really stand in the way of education. They are not helping education.

GOVERNOR O'MALLEY: Do we know how many of our schools are structurally capable of supporting solar panels on the roof?

DR. LEVER: I would guess that almost all are capable. That they do have roof structures that can support the type of solar panel that I think you're thinking of.

GOVERNOR O'MALLEY: And how many do?

DR. LEVER: Not too many. Montgomery County has taken the lead in developing the PPA arrangements, where the vendor is actually responsible for the solar ray. St. Mary's County has just implemented one that unfortunately I couldn't go to just the other day which

is on a tracking system. And it's something of a demonstration project which is tied into student learning. But in Montgomery County they are achieving substantial returns on the energy, a reduction in their actual energy usage because of the solar energy.

GOVERNOR O'MALLEY: Al, shouldn't they all be doing it?

MR. COLLINS: Yes, sir. We are certainly supporting that through the IAC and the work that we are doing with them.

GOVERNOR O'MALLEY: Yeah, maybe we send them a message. In addition to, and I appreciate what you've done by reg on requiring that all new schools or even substantial renovations be equipped with the ability to receive back up power generation. But we should also, I mean, we're one of only a few states that actually, seventeen states that still does school construction. We should be leveraging this to force them to be more proactive in pooling their rooftops. If you ever fly over the State you just see --

MS. KELLY: We'll give you solar power, we promise.

DR. LEVER: There are some technical barriers to implementing them at every school. In some cases

the size, the footprint of the school roof is too small to make the investment worth the return. In other cases the school is still responsible for the roof itself. So you wouldn't want to put solar panels on a roof which is about to be replaced. You want to put it on a roof which has just been replaced.

TREASURER KOPP: Yeah, what you want is common sense.

DR. LEVER: Yeah. So over time you can roll this kind of thing out at the larger schools. Middle schools and high schools tend to be the best target for this because of the acreage of their roofs.

GOVERNOR O'MALLEY: And I would think if you pooled them together so you get enough acreage?

MR. COLLINS: Right. We need to have our own strategy on it. For instance, we looked at all the facilities that Department of General Services controlled and we actually ended up with six where we're putting panels on where it made economic sense. The other ones it did not. So that's --

GOVERNOR O'MALLEY: Made sense because of the acreage?

MR. COLLINS: Acreage, and the age of the building, and all of that. You work with the

contractors to make sure that the payback is sufficient at least, so it works.

GOVERNOR O'MALLEY: Mm-hmm.

MR. COLLINS: Montgomery County is a great leader here, though. I will admit that. They have done great work there.

TREASURER KOPP: Well have we looked at, I don't want to sound off the wall, but the United States Secretary of Energy is urging us to look at the color of roofs.

MR. COLLINS: We are beginning to look at that in some of our construction projects, yes.

TREASURER KOPP: When it's his, one of his --

MR. COLLINS: Yes.

TREASURER KOPP: -- top priorities for simple ways to save energy and make buildings more comfortable.

MR. COLLINS: Yes.

DR. LEVER: That's right. Thank you.

GOVERNOR O'MALLEY: Thank you, Dr. Lever. Anything else on school construction? Anything else on the Secretary's Agenda? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye" All opposed, "Nay"

(No response.)

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

I'm sorry, Program Open Space. No?

SECRETARY MCDONALD: They have no items today.

GOVERNOR O'MALLEY: They have no items? Okay, so I was right.

SECRETARY MCDONALD: You were correct.

GOVERNOR O'MALLEY: Eloise, you looked at me like I was. So much confidence do I have in you that even when I'm right when you look at me like that I feel I must be wrong.

(Laughter)

MS. FOSTER: Sorry, Governor. Governor, Madam Treasurer, Mr. Comptroller --

GOVERNOR O'MALLEY: -- my wife --

(Laughter)

MS. FOSTER: -- good morning. There are six 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: Any questions, Department of Budget and Management?

TREASURER KOPP: This is a generic question based on number one. But a generic question about the presentation on the Agenda thing. Could you put in a line or two, when we have programs, and this is General Services, too, that are based on intergovernmental cooperation?

MS. FOSTER: Mm-hmm.

TREASURER KOPP: A sentence or two attesting to the fact that either the process follows a process similar to ours, or goals similar to ours, or it doesn't, where it varies from?

MR. COLLINS: Sure.

TREASURER KOPP: This is, so we all keep asking that question.

MS. FOSTER: Certainly. We'll be happy to do that.

GOVERNOR O'MALLEY: Any other questions, Department of Budget and Management? Mr. Comptroller?

COMPTROLLER FRANCHOT: Yes. Item 4 I notice is a, that's a Department of Labor, Licensing, and Regulation. Is there a representative here?

MS. FOSTER: Yes. Harry Loleas is Deputy Commission of Occupational Licensing Boards. This is a contract to administer twice annually two national

exams for candidates who have been approved by the Maryland State Board of Professional Engineers.

COMPTROLLER FRANCHOT: Right. I don't have any problem with this item. But I would like to take advantage of you being here to ask you about legislation that was passed four years ago called the Taxpayer Protection Act that my agency supported because there's -- you guys don't have to be there during this. But sadly there is in these bad economic times increasing efforts by people that are criminal to take advantage of fraudulent tax returns for profit motives. Most of the year they have signs outside their door saying they are palm readers, or fortune tellers, or pawnshops. And then around tax time they open up as tax advisors. Returns are submitted to us that are fraudulent. We have a big effort to try to detect that and we find lots of it.

But the taxpayer protection act that was passed four years ago was designed that all paid taxpayers in the State register with the State and show a basic working knowledge of the State's tax code. Your agency was charged with implementing the regulations. I guess similar to professional engineers that we're looking at with this item. Could you please

update us on the status four years later on whether or not these fly by night criminals are in fact at least being asked to register?

MR. LOLEAS: Yes. Mr. Comptroller, Governor, Madam Treasurer. We turned the system on coincidental to your question today. The public, the ability of individuals to register as individual tax preparers in the State is now online and available for individuals to undertake that process. We received approval for our core regulations by the AELR committee in mid-February. We could not proceed until those regulations had been put in place, and that was all held up by the fact that unexpectedly the federal government entered into the area of regulation of income tax preparers. And that raised a whole lot of issues with respect to what our powers and abilities would be under the State law. We have resolved all that and are modeling what we are doing on what the federal government has provided. They have preempted a lot of our role by unexpectedly moving in and beginning to regulate at the federal level.

The bottom line we have started registering individuals, issuing them Maryland license numbers as of today. And it is our intention to do that in

preparation for the next tax season so that when individuals begin the process of filing taxes next year they would have to have individuals who are both regulated by the federal government and have a federal PTIN number, as well as regulated by the State and have a State license number.

COMPTROLLER FRANCHOT: So it's mandatory that everybody who was preparing taxes at the State level register with you?

MR. LOLEAS: That is correct. In order to prepare State taxes you will need this license. We can no longer with the federal preemption have a role in controlling who prepares federal taxes.

COMPTROLLER FRANCHOT: Okay.

MR. LOLEAS: But our license will, since State taxes are derived fundamentally, the process, from federal taxes, individuals who are preparing State taxes, which will be the same people who prepare federal taxes, will need the State license, will fall under State regulation. And in fact, we expect the State board to become the major complaint center for individuals who have complaints because it's close in, it's here, it is not remote in Washington and more difficult to access. So we think that the investment

is still wise to regulate at the State level and it will be borne out once the door is closed to practitioners who aren't regulated.

COMPTROLLER FRANCHOT: Well -

GOVERNOR O'MALLEY: Can I interject and ask?

COMPTROLLER FRANCHOT: Sure.

GOVERNOR O'MALLEY: I know you've been working very hard on this issue.

COMPTROLLER FRANCHOT: Yeah, thank you, Governor.

GOVERNOR O'MALLEY: So am I to understand now that the federal government requires a license? Or they preempted us in which way?

MR. LOLEAS: They started, the Internal Revenue Service unexpectedly determined a year ago that they were going to get into the business of regulating tax preparers.

TREASURER KOPP: Why?

MR. LOLEAS: That was, they had never regulated individuals other than enrolled agents and certain specified individuals. CPAs were regulated locally. The federal government chose to do this. They got into it. And very rapidly promulgated and

adopted regulations. They didn't even seek authority from Congress to do this.

TREASURER KOPP: Is it, did national -- can I?

COMPTROLLER FRANCHOT: Sure.

TREASURER KOPP: National groups like H&R Block, etcetera, would they prefer federal regulation if there's going to be regulation?

MR. LOLEAS: I think they --

TREASURER KOPP: I mean, there's got to be a reason that --

MR. LOLEAS: Well I think there was over the years a lot of attempts at the congressional level to bring the federal government into regulation. But the Obama administration very unexpectedly did this all rapidly and by regulation.

GOVERNOR O'MALLEY: That's great. I hope they --

COMPTROLLER FRANCHOT: Obviously there's a reason, the reason for this is, just to put it on the record, is that there is tremendous loss to local and State revenues because of aggressive fraud by people that are trying to make a profit by duping these taxpayers into signing these returns that are obviously

fraudulent. We, as I said, vigorously try to go after it. But I estimate there are tens of millions of dollars that are denied the State every year. And I guess my frustration, much as I appreciate your, the fact that today coincidentally is the day you are kicking the system off, it's been four years.

MR. LOLEAS: Understood. We --

COMPTROLLER FRANCHOT: And there could have been, I mean, literally tens of millions of dollars that would have, and here's the other thing. When we find the fraud under law we go after the individual taxpayer who said, "Gee, the guy told me to sign the thing. And I didn't realize that it had all sorts of fraudulent deductions and things on it. He gave me \$1000 and you know he gets the refund. Go after him".

Well, we don't. We go after the taxpayer, because that's the way the law is constructed. And, you know, among other things they cannot have legal deductions for three years along with the enormous fines and penalties that we put in. And it's a real problem.

And I guess my frustration, thank you for going online or whatever it is you are doing now, is that it has been four years. And it is not as if my office hasn't been on this. I've been over to your board.

I've asked Secretary Perez, I don't know whether anyone remembers him. And, you know, it was just a lot of foot dragging, and bureaucratic inertia, and as a result the State has lost a tremendous amount. And I'm, you know, I don't know what the federal, I guess the federal government is moving into this area but I think it's a very weak excuse.

MR. LOLEAS: Well Mr. Comptroller frankly, as with all new licensing programs, you cannot start up the new program until there is initial funding. And it took two years to get to the point where we could get money in the budget to do that, as decisions were being made every day on what was going to be and not be funded. But we did get funding into the budget. We did have to confront the arrival of the federal government. We could not move forward with our program until we understood exactly what they were going to do and how we were going to do it. So, I mean, none of us wanted this program to be delayed as long as it was. But I think there were some legitimate reasons for that.

COMPTROLLER FRANCHOT: That's a lot of nonsense. I offered a staff person from my agency. I offered to defray the costs, whatever they might be.

And it wasn't because of that. You know it. And, you know, I thank you for being here, and I'm going to stop the subject because it's really annoying to me that we had this situation. And it is not as you described it.

Governor, I really applaud your interest in this. And you know, it's, I don't know who I'm aiming at now.

But it is really, it is a travesty. And you know, we all talk about tough economic times. We just got finished with this school construction. And to be told that for the first two years you didn't move forward because the Legislature didn't allocate a resource for an executive director is just, it's just a fiction. And I'm sorry to be frustrated. But it's my agency that's in charge of this. And, you know, this would not have been a curative, panacea type thing, but it would have been a helpful tool. And now it's just a big mess. And I'm pulling out of this, thank you, Governor, for listening, and thank you, Madam Treasurer.

GOVERNOR O'MALLEY: Well the Comptroller approached me on this, what, about three months ago. Shortly after the election. I think it's been longer than that now. I mean what, how many staff do you need in order to regulate this?

MR. LOLEAS: Well we need, we're hiring two people to bring this program online. Obviously we have some infrastructure costs related to getting this program online to get the licensing in place. But you know, we needed a couple hundred thousand dollars which we have budgeted now to allow that to happen.

GOVERNOR O'MALLEY: How many people in your division?

MR. LOLEAS: In the overall division? About eighty.

GOVERNOR O'MALLEY: And how many were there four years ago?

MR. LOLEAS: We're probably down about 10 percent.

GOVERNOR O'MALLEY: Mm-hmm. I'm not sure why it's been so long either. Not one of our finer moments.

COMPTROLLER FRANCHOT: Yeah, I want to thank you obviously for being here. I'm not, this is not personal. Okay.

MR. LOLEAS: Oh, I understand that, Mr. Comptroller.

COMPTROLLER FRANCHOT: But believe me, I'm, my blood pressure goes up whenever I think about this.

Because of the tens of millions of dollars that we could have delivered to the Governor for his excellent programs. Thank you.

GOVERNOR O'MALLEY: The other one that keeps coming up is this whole, the amount of money we lose as, on the online purchases and the sales tax. And I don't know what the hitch in our get-along is on that one. I don't know if it requires more staff. But we've probably lost even more money, you know, over the years with not collecting sales that happen online. And --

COMPTROLLER FRANCHOT: Yeah, the problem there, Governor, is obviously there is federal legislation that needs to be put in place for agencies like myself to collect, you're right, you are absolutely right, collect what is owed the State as far as the sales tax in internet purchases. And that legislation is either moving or it's held up because of litigation. And that is a, you know, I noticed a couple of months ago Texas sent a \$245 million bill to Amazon asking for just a little bit of sales tax. And I've asked my staff whether we should be doing the same thing. And they've said that the problem is that all of this is held up in litigation, and Texas had some

more bricks and mortar Amazon locations than we did. But it's a, it is absolutely a disadvantage for our local companies.

GOVERNOR O'MALLEY: Right.

COMPTROLLER FRANCHOT: Who are paying the sales tax to compete with these out of State internet behemoths. Hopefully that will change and I look forward to that.

GOVERNOR O'MALLEY: The other big one was Travelocity, which somehow avoids paying the local hotel room tax --

MR. LOLEAS: Yes.

GOVERNOR O'MALLEY: -- as well. And I don't know, I know other states have gone after them or, and I know a number of our counties have. Do we have something going on with that, Liz? I know I've asked all around. I've asked the Comptroller's Office. I've asked the Attorney General's Office.

TREASURER KOPP: That's something you can get around the prohibition on the, sales tax because it's not sales tax?

MS. HARRIS: Two different issues there --

GOVERNOR O'MALLEY: Liz, you might have to come up and introduce yourself.

TREASURER KOPP: That would be good. Any way you can get around that court case.

MS. HARRIS: Liz Harris from the Governor's Office. My understanding is the Comptroller and the Attorney General's Office are aware of and have been working on the online travel company issue and looking at some of the other lawsuits and actions that have been taken consistent with the internal processes that have to be followed in Maryland. With respect to the -  
-

GOVERNOR O'MALLEY: Is it moving? I mean, I've been asking about this for a year or more.

MS. HARRIS: Or more, we have.

GOVERNOR O'MALLEY: More like a year and a half. I think I've sent three or four letters saying, please, counties are going after Travelocity, states are going after Travelocity. Is there something in our statutes that make this extremely complicated between the two jurisdictions between the Comptroller and the Attorney General to recover dollars that are owed given the pressures we are under with the budget?

MS. HARRIS: My understanding is that there are some internal processes that have to be followed within the State. You know, there are some

restrictions that prevent us from just doing it affirmatively, as has been done, as you know, by Baltimore City and other counties.

GOVERNOR O'MALLEY: Wicomico, I think. No, Worcester.

MS. HARRIS: And so I think that's probably a question probably directed to the Comptroller's Office and the Attorney General's Office.

COMPTROLLER FRANCHOT: Right. Well let me just -- since you're here, no stay there. We are finishing an audit --

MS. HARRIS: And Liz is not, Ms. Harris is not from the Governor's Office, she's the Governor's Counsel.

COMPTROLLER FRANCHOT: Excellent, Madam Counsel, and it's nice to have you.

MS. HARRIS: Nice to be here.

(Laughter)

COMPTROLLER FRANCHOT: It was delivered so nicely. We are in response to your request and the press request, we are finishing an audit to, which is the first step in getting the amount of money that would be subject to a finding and a request for payment by us. And the Attorney General, we are working

closely on that. I think it's a fair subject, Governor. And you know, we are treating this very aggressively as we are treating some other enforcement issues.

In this area, I'll just say in my agency's defense, that the Attorney General is the one that is the person that we link up with to enforce it. And sometimes there are legal requirements that are difficult to get through. But on this issue, yeah, we are on it like white on snow and we are vigorously pursuing any revenues that we can ascertain. And my understanding is the audit will be finished shortly.

GOVERNOR O'MALLEY: All right. Okay. Thanks a lot. Is there anything else on -- what part of the Agenda are we on here?

MS. FOSTER: Budget and Management.

GOVERNOR O'MALLEY: -- Budget and Management? Any other items from the Department of Budget and Management? The Comptroller moves approval, seconded by the Treasurer. All in favor signal by saying, "Aye"

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay"

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We now move on to the, Eloise what are we moving on to? The University System of Maryland.

MS. FOSTER: Yes.

MR. STIRLING: Good morning, Governor, Mr. Comptroller, Madam Treasurer. I'm Jim Stirling for the University System. We have twelve items on today's Agenda. I'd be happy to answer any questions you might have.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay"

(No response.)

GOVERNOR O'MALLEY: The ayes have it. We move on now to the Department of Information Technology.

MR. SCHLANGER: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Elliot Schlanger, Department of Information Technology. This morning we have only two items on the Agenda. And I'll be happy to answer any questions at this time.

GOVERNOR O'MALLEY: Questions, Department of Information Technology? Comptroller moves approval, Treasurer seconds. All in favor signal by saying, "Aye"

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay" The ayes have it.

MR. SCHLANGER: Thank you.

GOVERNOR O'MALLEY: Thank you. Department of Transportation, MDOT.

MR. MOBLEY: Good morning, Governor, Madam Treasurer, Mr. Comptroller. For the record, Darrell Mobley representing the Maryland Department of Transportation. MDOT is presenting eleven items today. For the record, Item 10-RP has previously been revised.

GOVERNOR O'MALLEY: Questions? No?

TREASURER KOPP: No, just a comment. I think that the increased focus on the bus, the express buses going downtown, going down to Washington, D.C. is a great thing. And I commend you. Thirty-four years ago Delegate and Mr. Kopp lived in Annapolis during the session and he commuted directly to the Justice Department when we had a new baby up here and it worked

extremely well. It was more of a reverse commute than than it is now when I see the backup coming back here, but I'm very glad to see that we're encouraging that and trying to get cars off the road.

GOVERNOR O'MALLEY: One of our fifteen strategic goals even in the challenges that we face in terms of the budget is to double transit riders in our State. The Treasurer moves approval of the Department of Transportation budget items, seconded by the Comptroller. All in favor signal by saying, "Aye"

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay"

(No response.)

GOVERNOR O'MALLEY: The ayes have it.  
Department of General Services.

MR. COLLINS: Good morning, Governor, Madam Treasurer, Mr. Comptroller. Al Collins from the Department of General Services. We have twenty-four items on our Agenda today. We have revised Item 8. And I would be glad to answer any questions you have on these items.

GOVERNOR O'MALLEY: Any questions?

TREASURER KOPP: So the courthouse came in under budget?

MR. COLLINS: We're working out those items and we are reversing, revising and reversing that, yes.

GOVERNOR O'MALLEY: And a \$61,000 credit because of an SHA hookup that they didn't need?

MR. COLLINS: Yes, sir.

GOVERNOR O'MALLEY: What is that? Like another curb cut or something that they didn't need?

MR. COLLINS: Yes, sir. Yeah.

GOVERNOR O'MALLEY: So we charge courts for curb cuts to State roads?

MR. COLLINS: We do. It's part of this contract, yes.

TREASURER KOPP: Good idea.

MR. COLLINS: Yeah.

TREASURER KOPP: Hey.

GOVERNOR O'MALLEY: I guess because the site was so very, very small they didn't need another curb cut.

MR. COLLINS: And it's in the City of Rockville, sir.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed?

(No response.)

GOVERNOR O'MALLEY: And the ayes have it.

I'm sorry, the Treasurer moved approval, the Comptroller seconded it. Didn't you say? All in favor signal by saying, "Aye" All opposed, "Nay".

(No response.)

GOVERNOR O'MALLEY: The ayes have it. And that concludes our meeting of the Board of Public Works. Thank you.

(Whereupon, at 11:44 a.m., the meeting was concluded.)

.