

STATE OF MARYLAND  
BOARD OF PUBLIC WORKS  
GOVERNOR'S CONFERENCE ROOM  
STATE HOUSE  
ANNAPOLIS, MARYLAND

January 26, 1994  
11:10 o'clock, a.m.

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P R E S E N T

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HONORABLE LUCILLE MAURER, Treasurer;

SANDRA REYNOLD, Secretary, Board of Public  
Works;

CHARLES L. BENTON, Secretary, Department of  
Budget and Fiscal Planning;

MARTIN W. WALSH, JR., Secretary, Department  
of General Services;

JAMES B. ROWLAND, Assistant to Secretary,  
Department of Budget and Fiscal Planning;

MICHAEL NELSON, Assistant Secretary,  
Department of Natural Resources;

DOROTHY NIEMEYER, Board of Public Works  
Administrator, Department of General  
Services;

MARION J. BOSCHERT, Administrative Assistant,  
Board of Public Works.

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1                   P R O C E E D I N G S

2                   GOVERNOR SCHAEFER: All right. The Board  
3 will come to order. What's first?

4                   MS. REYNOLD: Good morning, Governor, members  
5 of the Board. We'd like to take Item Number 22 on the  
6 General Services Agenda first. That is construction of  
7 the -- well, maybe I'd better let Marty introduce it  
8 and then introduce our guests.

9                   MR. GOLDSTEIN: Bay Sox.

10                  GOVERNOR SCHAEFER: Okay.

11                  MR. WALSH: Governor, we have representatives  
12 here today who are putting together the Bowie Baseball  
13 Stadium and that whole baseball operation in Prince  
14 George's County. I'd like to just very quickly turn it  
15 over to the county, the baseball people, and Maryland  
16 National Park and Planning Commission.

17                  MR. KIRK: Thank you. Good morning. I'm  
18 Peter Kirk from the Bay Sox, and with me today is  
19 Jackie Gilbert from the Maryland National Capital Park  
20 and Planning Commission. She is the project officer  
21 for the project.

1           We're here to give you a quick update and to  
2   have the initial contracts hopefully approved. We are  
3   well underway with construction of the stadium. Our  
4   opening day is 76 days away, April 12; and, God  
5   willing, if the weather will cooperate, we expect to be  
6   playing baseball.

7           We have all of the grading work complete.  
8   The stadium bowl is roughed out. The playing field is  
9   ready for the irrigation system. We purchased the sod.  
10   It's over in Berlin. We kept within the state to buy  
11   the grass. And the plumbing work is complete. On the  
12   1st of January, we had 95 percent of the foundations in  
13   and ready to erect the steel. Then the weather set in,  
14   and today we still have 95 percent of the foundations  
15   complete. So, we've lost a lot of our cushion, but we  
16   have a good group of contractors; and, if the weather  
17   will cooperate, we'll be in opening day. If not, we  
18   will have done everything possible to achieve that.

19           GOVERNOR SCHAEFER: This is your chance to  
20   tell a little bit about you. Do you have any  
21   experience in doing any of this?



1           MR. KIRK: Yes, sir. Maryland baseball is in  
2 love with minor league baseball and especially minor  
3 league baseball in the State of Maryland. We own and  
4 operate right now two minor league baseball teams: the  
5 Frederick Keys and the Bowie Bay Sox. The Frederick  
6 Keys play in Harry Grove Stadium which, as you well  
7 know, was a project put together in a partnership  
8 between the State of Maryland, the Frederick County and  
9 Frederick City, and the private sector.

10           We all contributed to the construction; and I  
11 don't mean any disrespect, but little Frederick,  
12 Maryland led every Class A minor league team in the  
13 nation in attendance and has done so for the last three  
14 years. It is a remarkable success and a credit to that  
15 community.

16           We expect that our new project in Prince  
17 George's County, in Bowie, which again was funded by  
18 cooperative effort of the state and the county through  
19 the Park and Planning Commission and the private sector  
20 -- we all got our checkbooks out and paid our share --  
21 will be similarly successful, and we'd like in time to

1 look at the Eastern Shore of Maryland for a similar  
2 success story. We're very proud of Maryland and proud  
3 of baseball here.

4 GOVERNOR SCHAEFER: Done a remarkable job in  
5 Frederick, I'll tell you that.

6 MR. GOLDSTEIN: Yes, sir.

7 MR. KIRK: Governor, we brought some hats.

8 MR. GOLDSTEIN: Thank you, sir.

9 GOVERNOR SCHAEFER: Thank you.

10 MR. KIRK: And we have a few extra for the  
11 staff. This is our --

12 GOVERNOR SCHAEFER: Better give one to Marty.

13 MR. GOLDSTEIN: Play ball!

14 MR. KIRK: Governor, we'd be happy to answer  
15 any questions, but the "B," of course, is for Bay Sox;  
16 but, to many of us, the "B" will always be Buzz.

17 GOVERNOR SCHAEFER: I think we sent a letter  
18 asking Park and Planning to think about naming the  
19 stadium for Buzz Ryan.

20 MR. KIRK: We certainly support that.

21 MR. GOLDSTEIN: I only have one question



1       about the seating, this bench-type seating. It's not  
2       individual seats then?

3               MR. KIRK: There are 8,000 seats. Three  
4       thousand are individual armchair seats.

5               MR. GOLDSTEIN: Three thousand.

6               MR. KIRK: Five thousand are benches with  
7       backs. We found that minor league games are attended  
8       by a very large number of young families with kids, and  
9       the kids really prefer the benches, and the parents  
10      like that so the kids aren't squirming around.

11              MR. GOLDSTEIN: Move back and forth.

12              MR. KIRK: Yes, sir.

13              MR. GOLDSTEIN: Now, the individual seats,  
14      you know, we have different type of bodies. I know,  
15      before they put the seats in up there to Memorial  
16      Stadium -- not Memorial Stadium, Oriole Park in Camden  
17      Yards, I got one of the prototypes at my office, and I  
18      suppose I'm about the average guy. I weigh about 175,  
19      180, a little broad beamed depending on the season of  
20      the year. You want a seat that's comfortable. You  
21      know, years ago, people were smaller, and they fit into

1 a smaller seat. Now people are getting a little  
2 broader. They need a wider seat.

3 MR. KIRK: Well, we --

4 MR. GOLDSTEIN: I'm just stating the facts of  
5 life.

6 MS. REYNOLD: How true.

7 MR. GOLDSTEIN: I don't have any tape measure  
8 here to do any measurements today.

9 MR. KIRK: What we designed here is seats  
10 that are actually made by the same manufacturer as  
11 supplied the seats at Camden Yards. Here, again  
12 because we get a lot of people who come for a few  
13 innings and have young families and they come and they  
14 go, we've made the seats one inch wider than the seats  
15 at Camden Yards, which are very comfortable, I believe.

16 MR. GOLDSTEIN: Right.

17 MR. KIRK: We're one inch wider.

18 MR. GOLDSTEIN: One inch wider.

19 MR. KIRK: And we have two inches more leg  
20 room than the widest row in Camden Yards. We've added  
21 two inches to that, and that's the smallest row we have

1 in the stadium.

2 MR. GOLDSTEIN: Great!

3 MR. KIRK: And, in addition, we have the  
4 grass areas like we have in Frederick that have been  
5 wonderfully popular for the kids to run around, and Mom  
6 and Dad can sit and have a hot dog and a refreshment  
7 while the kids are running around. They can see them.  
8 There's nothing underneath. The kids are always  
9 visible. It's a very similar design to Grove Stadium  
10 in Frederick.

11 MR. GOLDSTEIN: Thank you, sir.

12 GOVERNOR SCHAEFER: I do hope that the  
13 Salisbury area and the Eastern Shore, prime area -- got  
14 a man over there by the name of Perdue who's very  
15 interested. I wish we could really interest the  
16 political body over there to move. It would be really  
17 something extra special in addition to this one.

18 MR. KIRK: Thank you. We're going to work on  
19 that.

20 GOVERNOR SCHAEFER: I know you've done a  
21 great job with that one in Frederick.



1 MR. KIRK: Thank you.

2 MR. GOLDSTEIN: They used to have the old  
3 Eastern Shore League, had teams in practically every  
4 town from up to Cecil County all the way down to the  
5 two counties in Virginia.

6 MR. KIRK: Great history and tradition.

7 MR. GOLDSTEIN: Yes, sir.

8 GOVERNOR SCHAEFER: Okay. Is there a motion?

9 MR. GOLDSTEIN: And they produced a many a  
10 big league ballplayer there.

11 MR. KIRK: Yes.

12 MR. GOLDSTEIN: Thank you.

13 GOVERNOR SCHAEFER: Motion?

14 MR. GOLDSTEIN: I move we approve it.

15 MR. WALSH: For the record, this is a revised  
16 item that just updated an appeal that they had gone  
17 through with the State Board of Contract Appeals.

18 MR. KIRK: Yes. I might add, aside from the  
19 weather, we're on schedule, we're on budget. We're not  
20 asking for any additional money. These are contracts  
21 where the contractors have been working, and now we're

1 bringing the contracts for approval.

2 MR. GOLDSTEIN: I move we approve the item.

3 MS. MAURER: Second.

4 GOVERNOR SCHAEFER: No objection. So  
5 ordered. Thank you both.

6 All right. Let's start at the beginning.  
7 What's first?

8 MS. REYNOLD: Secretary's Agenda. Today we  
9 have 19 items. Number 19 is hand-carried, and the  
10 members have copies of all of these. Secretary's  
11 Agenda. Shall we start? Who has got the first  
12 question on the --

13 MR. GOLDSTEIN: Governor, Item Number 4 on  
14 page 4 is a request for a release of a performance  
15 bond, James T. Lewis Enterprises. That's the Oxford  
16 Landing at PortAmerica Riverfront, Limited Partnership,  
17 down on the Potomac River, where they put up a bond of  
18 \$100,000. This company has now gone bankrupt, and the  
19 Resolution Trust has the property.

20 MS. REYNOLD: And they've never started  
21 any --



1           MR. GOLDSTEIN: No, they never started any  
2           operations, and this automatically gets rid of the  
3           lease and everything.

4           GOVERNOR SCHAEFER: Okay.

5           MR. GOLDSTEIN: Governor, Item Number 6 is a  
6           project with Johnson Controls, a Fortune 500 company  
7           originally from Wisconsin. They're going to operate a  
8           plant in Cecil County that will build seats for the  
9           Chrysler Corporation that has an operation up in  
10          Newark, Delaware, and they're getting \$175,000 MICRF  
11          loan. I don't know if anybody here wants to give some  
12          details of it.

13          MS. REYNOLD: Mr. Dresler is here.

14          MR. DRESLER: Good morning. Roger Dresler,  
15          director of the Community Financing Group from the  
16          Department of Economic and Employment Development.  
17          We're asking for approval of a Maryland Industrial and  
18          Commercial Development Fund loan to Cecil County for  
19          the assistance of Johnson Controls in the location of a  
20          new facility in Cecil County in North East to supply  
21          automotive seats for the Chrysler plant in Newark,

1 Delaware.

2 This was a competitive situation between the  
3 states Pennsylvania, New Jersey, Delaware and  
4 ourselves, and the state was able to assist with a  
5 small, low-interest loan through the county for Johnson  
6 Controls' benefit for the project. The company is  
7 presently employing 80 people, growing expected to 100  
8 to 120 when it gets up and going fully.

9 MS. MAURER: And, also, there's some training  
10 money.

11 MR. DRESLER: Yeah, there's some Maryland  
12 Industrial Partnership Act training funds also, which  
13 are grant funds, to assist in the training of the new  
14 employees. This is a net new facility for Johnson  
15 Controls.

16 I'd like to point out the significant size of  
17 both the private investment in the company, the company  
18 is making, and the fact that our money is a small  
19 portion that will be back in our fund within four  
20 years. Thank you.

21 MR. GOLDSTEIN: Governor, I don't know if you

1 want any information on Item Number 7 on page 15, a  
2 demolition contract for the new Baltimore Convention  
3 Center.

4 MS. REYNOLD: Give your name and title for  
5 the record, Kim, please.

6 MS. MCCALLA: Good morning. My name is Kim  
7 McCalla, and I'm deputy project manager for the Stadium  
8 Authority. We have five contracts coming to you for  
9 approval for the renovation of one of the rooms in the  
10 existing Convention Center facility. It will actually  
11 be a part of the entire renovation. It is called the  
12 Construction Manager's Suite, and it's used for many  
13 different functions throughout the Convention Center in  
14 operating the different exhibits.

15 The first one is for Contract BCC-029, the  
16 demolition, with Chesapeake Contracting Services in the  
17 amount of \$8,243.43. The next contract is for the  
18 mechanical work, going to Coleman Mechanical, Inc. in  
19 the amount of \$33,500. The third one is for the  
20 electrical work to Mace Electric Company for \$49,900.  
21 General trades to John Hampshire, Inc., and that is for



1     \$54,940. The sprinkler work is to Reliance Protection  
2     in the amount of \$5,745.

3             All work was competitively bid. All work was  
4     awarded to the low bidder, and we verified that all the  
5     taxes for these firms have been paid in the State of  
6     Maryland.

7             MS. MAURER: It says here that it's a  
8     Manager's VIP Suite. For the record, as I understand  
9     it, it is the command center for the conventions, and  
10    the VIPs are for their VIPs.

11            MS. MCCALLA: That's correct. VIPs will come  
12    in and they can stage them there, but it's basically a  
13    command center for the people who are operating the  
14    different shows that are coming in for each event.

15            GOVERNOR SCHAEFER: Could you give us your  
16    qualifications for being able to present this?

17            MS. MCCALLA: My qualifications? I've been  
18    with the Stadium Authority for the past -- since 1988  
19    and have worked on the baseball stadium as the  
20    assistant project manager, and I've been working with  
21    Bruce ever since.

1 GOVERNOR SCHAEFER: Are you an engineer?

2 MS. MCCALLA: Yes, I am.

3 MR. BENTON: Did you say the first one was a  
4 demolition contract?

5 MS. MCCALLA: Yes. We basically gutted the  
6 room.

7 MR. BENTON: Is that for Festival Hall?

8 MS. MCCALLA: No, no. This is for inside the  
9 building. Festival Hall will be coming shortly.

10 GOVERNOR SCHAEFER: Okay. Kim, by the way,  
11 is a very, very good engineer. She worked for the city  
12 and then she went with the Stadium Authority.

13 MS. MCCALLA: Thank you.

14 GOVERNOR SCHAEFER: Excellent! Works very  
15 hard, always on the job.

16 MS. MCCALLA: Thank you.

17 MR. GOLDSTEIN: Governor, Item Number 11 is  
18 an unusual situation with the Southern Maryland Wood  
19 Treatment Plant down there in St. Mary's County in  
20 Hollywood. There's a lot of contaminated soil. Maybe  
21 this gentleman could give us the details as to what's



1 going to be the eventual total cost of removing this  
2 soil or getting this land back in shape and meet the  
3 EPA requirements.

4 MR. DEMARCO: Good morning, Governor and  
5 members of the Board. My name is Bob Demarco. I'm  
6 with the Maryland Department of the Environment. I'm  
7 the administrator of the Environmental Response and  
8 Restoration Program for the department. I'm here to  
9 answer your questions on any of the 10 agenda items  
10 we've requested for the Board this morning.

11 GOVERNOR SCHAEFER: The Comptroller wanted to  
12 know what's the eventual cost of cleaning up this  
13 thing.

14 MR. DEMARCO: That will be determined during  
15 1994. The EPA is expected to propose a record of  
16 decision during this period, during this year, at the  
17 completion of the ongoing focused feasibility study,  
18 which is ongoing at the present. We're expecting it  
19 sometime later this spring. That will then give the  
20 range of alternatives of cleanup as well as the prices  
21 for each of the alternatives of the cleanup.

1                   MR. GOLDSTEIN: That don't answer my  
2 question. Here you're asking for 1,500,000 right now.

3                   MR. DEMARCO: Yes, sir.

4                   MR. GOLDSTEIN: Do you have any ballpark  
5 figure? Is it going to be 10,000,000, 20,000,000,  
6 30,000,000, 40,000,000?

7                   MR. DEMARCO: This is a federal project. It  
8 is a federal mandate that the state match 10 percent of  
9 the cost of this project.

10                  MR. GOLDSTEIN: I see. That's what I'm  
11 trying to get to. In other words, they're going to put  
12 up 90 percent and you'll have to put up 10 percent.

13                  MR. DEMARCO: Right.

14                  MR. GOLDSTEIN: This 1,500,000, are we  
15 putting up 10 percent of this?

16                  MR. DEMARCO: No, sir. That will be -- the  
17 reason we've asked for 1.5 million is for several  
18 reasons. One is ongoing right now there is some  
19 remediation going on at the site. It is an emergency  
20 removal action going on because they've discovered some  
21 additional contamination. They've taken all the

1 liquids that have been stored at the site for a number  
2 of years and they have shipped them off, off site, to  
3 disposal locations.

4 It is EPA's position that Maryland Department  
5 of the Environment is responsible for 10 percent of  
6 those costs. It is the department's position at this  
7 point that Maryland is not, that we are exempt from  
8 this 10 percent because it is an emergency removal  
9 action, and that federal law says Maryland does not  
10 have to pay a 10 percent cost share.

11 Should we not come out a victor in this, then  
12 perhaps we will be responsible for 10 percent, but we  
13 do not intend to change our position at this time.  
14 We'll have this money should we need it in the next  
15 month or so.

16 Also at the site, we know we will have a 10  
17 percent cost share for the ultimate cleanup later this  
18 year. We want to show that we do have funds available;  
19 however, we have requested funds less than we expect  
20 the cleanup cost to be. We do not want to show EPA  
21 that we have a lot of money available should they



1       decide for a remedy that Maryland does not perhaps  
2       concur completely with.

3               MR. GOLDSTEIN: I still have got a question  
4       to my -- didn't answer my question.

5               MR. WALSH: Maybe I can --

6               MR. GOLDSTEIN: In other words, here we're  
7       asked this morning to vote for 1,500,000; is that  
8       right?

9               MR. WALSH: Right.

10              MR. GOLDSTEIN: I'd like to know -- I don't  
11       want to buy a pig in a poke. I think we ought to have  
12       some idea what it's going to cost the taxpayers of the  
13       State of Maryland to clean up this mess. The other  
14       day, you said the guy has gone bankrupt, the guy that  
15       was down in Virginia.

16              GOVERNOR SCHAEFER: Well, the answer is  
17       you're going to pay 10 percent of the total cost,  
18       period. If it's 50,000,000, you're going to pay --  
19       what's 10 percent of 50,000,000?

20              MR. GOLDSTEIN: Five million.

21              MR. DEMARCO: Five million dollars.

1 GOVERNOR SCHAEFER: You're going to pay  
2 5,000,000. You don't have any choice, do you?

3 MR. DEMARCO: No, sir, we have no choice. It  
4 is a federal mandate.

5 MR. GOLDSTEIN: Yeah, but I figure -- have  
6 the EPA people been there?

7 MR. DEMARCO: Yes, sir, they are there  
8 constantly.

9 MR. GOLDSTEIN: There constantly?

10 MR. DEMARCO: Well, often, frequently, yes,  
11 sir.

12 MR. GOLDSTEIN: Well, have they ever given  
13 you some indication what it's going to cost to get this  
14 place cleaned up?

15 MR. DEMARCO: There's estimates ranging  
16 anywhere as high as the last proposed -- I believe was  
17 for \$70,000,000 for a proposed cleanup. That was  
18 incineration. That was rejected by the State of  
19 Maryland and the citizens in the area.

20 MR. WALSH: To give two examples of the kinds  
21 of alternatives that he's talking about: There could



1 be an alternative that would, in effect, pick up every  
2 spoonful of dirt on the site, run it through an  
3 incinerator, and then put it back there sanitized.  
4 This would cost a magnificent fortune. Another  
5 solution, though, is to box it, to contain it, just  
6 like we did at Allied Chrome -- just like Allied Chrome  
7 did it at Allied Chrome, just like a combination of  
8 state and federal did it at that landfill that's  
9 actually right in the middle of the city that doesn't  
10 look like a landfill anymore, didn't look like a  
11 landfill, but was actually a Superfund site.

12 MR. DEMARCO: The Cane and Lombard site, sir.

13 MR. WALSH: Yes. That was, in effect, walled  
14 in to prevent any further outside contamination, and  
15 that's a much cheaper -- and then wait for -- first of  
16 all, no further damage occurs. You're not using the  
17 groundwater. It's a cheaper solution than, certainly,  
18 to pull it out, sanitize it and put it back. And then,  
19 you know, 10 years from now when somebody invents the  
20 magic equivalent of airplane we could put in there and  
21 neutralize all that, we could do that much cheaper or

1 just leave it there because it isn't doing any damage.

2 So that the recommendation to box it in is an  
3 old state recommendation, and that is much cheaper than  
4 the incinerator; and, obviously, EPA who's going to pay  
5 for 90 percent of it is going to vote, and right now  
6 they already -- they wanted to do the incinerate-type  
7 solution --

8 MR. DEMARCO: Yes.

9 MR. WALSH: -- five years ago, and we have  
10 said no, let's do something more reasonable than that.  
11 That's the process that will dictate, though, as that  
12 comes to a head, and we have to be willing. You know,  
13 we have means to disagree with them if we want to, but  
14 it won't go forward either unless the state has made a  
15 clear statement that they're prepared to cost-share,  
16 which this is. This doesn't spend any money. This  
17 just puts the money there as the state match.

18 MR. DEMARCO: In addition, sir, we have  
19 ongoing costs at the site on a frequent basis as the  
20 need arises.

21 GOVERNOR SCHAEFER: Is this that creosote?

1 MR. WALSH: Yes.

2 MR. DEMARCO: Creosote and another chemical,  
3 pentachlorophenol, which was a wood preservative.

4 GOVERNOR SCHAEFER: It's been going on a long  
5 time.

6 MR. DEMARCO: Yes, sir, it has. It's been  
7 going on since 1987, was the initial emergency removal  
8 action.

9 GOVERNOR SCHAEFER: Lot of sinkage and water  
10 contamination.

11 MR. DEMARCO: Sir, we have the water and the  
12 contaminants contained on site at this time. In 1988,  
13 we put in a sheet piling wall, a metal wall that went  
14 down into the clay layer, and is containing the  
15 contaminants on site temporarily.

16 GOVERNOR SCHAEFER: So it's not going into  
17 the water supply anymore.

18 MR. DEMARCO: No, sir, not at all.

19 MS. MAURER: And you closed off the well, the  
20 very deep well?

21 MR. DEMARCO: Yes, ma'am. Very recently,



1 during this past year, the state expended part of its  
2 10 percent cost share. EPA did not think it was  
3 necessary to abandon an on-site production well. It  
4 was some 600 feet deep. Maryland felt very strongly  
5 that the well should be abandoned because of the  
6 potential for the contamination to be let down to the  
7 600-foot depth.

8 We expended our funds with an agreement with  
9 EPA that it would be part of our 10 percent cost share  
10 in the future when it was needed, and we abandoned the  
11 well for a cost of just over \$40,000 to prevent any  
12 further contamination from the site.

13 GOVERNOR SCHAEFER: Okay.

14 MR. GOLDSTEIN: Thank you, sir.

15 GOVERNOR SCHAEFER: Thank you.

16 MR. DEMARCO: Thank you.

17 MR. GOLDSTEIN: Governor, these Items 12  
18 through 17 are very similar items that are explained  
19 here, all dealing with curing the problems caused by  
20 these pollutants. And my question was the other day:  
21 Are you getting judgments against these people to be



1       sure they pay their share? It says they're going to  
2       pursue them. Is that right?

3               MR. DEMARCO: Yes, sir. We will pursue cost  
4       recovery at every site that we spend any state money  
5       at, and, also, we will pursue the implementation of  
6       liens on any sites where we spend state funds.

7               MR. GOLDSTEIN: Thank you, sir.

8               MR. DEMARCO: Yes, sir. Thank you.

9               MR. GOLDSTEIN: I move we approve the agenda.

10              MS. MAURER: Wait. I want to put 19 in the  
11       record.

12              MS. REYNOLD: Item Number 19, the hand-  
13       carried item.

14              MR. GOLDSTEIN: Item 19.

15              MS. MAURER: That's the consolidated master  
16       lease for the year, and it's pretty much as we had done  
17       it in the past. The rates have moved up a little bit,  
18       but not more so than the market. And this is,  
19       Governor, when the operating budget gives an agency  
20       authority to get computer equipment, for example, and,  
21       instead of the agency letting the vendor finance it,

1 we're financing it through a master lease.

2 So, in this case, both the three-year and  
3 five-year have been won by a certified MBE. I move it.  
4 I don't think it needs separate approval.

5 GOVERNOR SCHAEFER: Okay.

6 MR. GOLDSTEIN: I move we approve the agenda.

7 GOVERNOR SCHAEFER: No objection. So  
8 ordered. What's next?

9 MS. REYNOLD: Open Space.

10 MR. NELSON: We'd like to withdraw Item 2A on  
11 our agenda today. That's the SHA/DNR acquisition of  
12 Maryshyhope Ponds.

13 MR. GOLDSTEIN: Item 2A withdrawn. Governor,  
14 the first item on the agenda is Item 1A, page 1A, the  
15 sale of timber up at Savage River Forest in Garrett  
16 County, 49 acres, Compartment Number 69. They had four  
17 bids. The top bid is 69,852. And the appraisal value,  
18 estimated value, was between 74,204 and 82,000.

19 We discussed it on Monday, and we have a  
20 letter here from Mr. Nelson dated January 25 explaining  
21 why the timber didn't bring that much money when it was

1 bid by the four prospective buyers; gives a detailed  
2 explanation about some of the live oak and the dead oak  
3 and all the red oak, chestnut, white oak, and black  
4 cherry, and red maple. Based on the fact that --

5 MR. NELSON: We over-estimated the amount of  
6 live oak on the site, and we under-estimated the cost  
7 associated with putting in the roads and sediment  
8 control. That's the reason that the estimate is off  
9 from the bid.

10 MR. GOLDSTEIN: Once the timber gets infected  
11 by those gypsy moths, each year the value goes down,  
12 because it deteriorates the real body of the timber.  
13 So, based on that explanation -- and, also, Item Number  
14 16 is a very similar problem, Item 16A on page 21A,  
15 sale of 35 acres, Compartment Number 16 at Savage River  
16 State Forest. That only got one bid. The estimate was  
17 between 16,716 and 18,476. That's with reference to a  
18 demonstration area.

19 Lucy, do you have any other questions?

20 MS. MAURER: No.

21 MR. GOLDSTEIN: I move we approve the agenda



1       except the item that was withdrawn.

2               MS. MAURER:   Second.

3               GOVERNOR SCHAEFER:   No objection.   So  
4       ordered.   What's next?

5               MS. REYNOLD:   Budget and Fiscal Planning.

6               MR. ROWLAND:   We have 21 items today.   Items  
7       2-S and 17-S-MOD have been revised, and you have  
8       copies; and we are going to defer Item 21-GM, page 26B,  
9       which is the very last item, to be deferred.

10              MR. GOLDSTEIN:   Deferred, Item 21.   Governor,  
11       I think we ought to have an explanation on Item 2-S on  
12       page 2B.   That's the Department of Transportation study  
13       with reference to the extent of discrimination against  
14       Minority Business Enterprises in the public and private  
15       sector.   It's a big item.

16              Last time I think we had a study was back in  
17       1990.   Coopers & Lybrand had it, and it only cost  
18       300,000; is that correct?

19              MS. WEBBON:   Yes, sir.

20              MR. GOLDSTEIN:   Maybe she can give us the  
21       explanation.

1 MS. WEBBON: Okay. My name is Ruth Webbon.  
2 I'm the director of Minority Business Enterprise for  
3 the Maryland Department of Transportation. This study  
4 was required as a result of action in the 1990 General  
5 Assembly. The Croson Supreme Court case established  
6 the criteria under which local governments may have a  
7 Minority Business Program, and they're fairly strict  
8 court requirements.

9 In 1990, a very short and kind of truncated  
10 study was done to assure that the right documents and  
11 data was in order so that the State of Maryland could  
12 continue to operate a Minority Business Program.

13 In 1994, we're required to deliver a new  
14 study to the General Assembly that will encompass five  
15 years of data that will look at the market area of the  
16 state for obtaining vendors, the kinds of minority  
17 businesses that are out there, what type of minority  
18 they are, the area within which they work in terms of  
19 business, their utilization both in the private and the  
20 public sector. So, it includes what private industry  
21 is doing with respect to minority businesses, and then

1 a very careful, statistical analysis as to whether  
2 businesses are being under-utilized or over-utilized by  
3 type of business and type of minority, and then a  
4 development of recommendations in terms of both race  
5 and gender, neutral recommendations, and Minority  
6 Business Programs for the State of Maryland. The  
7 contractor must also be prepared to take us through any  
8 court challenges to the program, because the courts  
9 require very specific statistical findings and  
10 expertise; and this successful bidder has already  
11 defended their studies in four different court  
12 challenges. So, we have one of the best that's  
13 available in the country.

14 And the scope of this contract is many times  
15 greater than the truncated study that was done back in  
16 1990, which was something very quick in order to  
17 protect the program at that point because of the  
18 Supreme Court decision.

19 GOVERNOR SCHAEFER: I don't think I  
20 understand. You're going to study private businesses?

21 MS. WEBBON: Yes.



1 GOVERNOR SCHAEFER: Why?

2 MS. WEBBON: We have to include whether or  
3 not the private sector is discriminating against  
4 minority businesses because the Supreme --

5 GOVERNOR SCHAEFER: And how does that relate  
6 to you?

7 MS. WEBBON: Because the government has --  
8 according to the Supreme Court, the government has a  
9 clear interest in pursuing and eliminating  
10 discrimination any place within its physical  
11 jurisdiction.

12 GOVERNOR SCHAEFER: Well, why should we pay  
13 for that? Why shouldn't the federal government pay for  
14 that?

15 MS. WEBBON: Well, the federal government --  
16 I don't think it's in their best interest to determine  
17 or to protect an individual state that may have a  
18 discriminatory environment.

19 GOVERNOR SCHAEFER: Why? They're the ones  
20 who are saying that private business is discriminating  
21 against. So, tell me why the state has to pay for

1 investigating private businesses. If the federal  
2 government wants to know, let them do it, let them find  
3 out.

4 MS. WEBBON: I'm going to let our attorney,  
5 Mr. Kahn, discuss that.

6 MR. KAHN: This is not an investigation of  
7 what private businesses do in their own marketplace for  
8 their own purposes. This is a statistical analysis and  
9 the study of practices that affect the state  
10 marketplace to determine whether there is  
11 discrimination disparities in state contracting. This  
12 is a requirement that has been placed on states and  
13 other local governments by the Supreme Court; and, if  
14 we want to protect the MBE program and make sure that  
15 the program is consistent with the Supreme Court's  
16 standards, we must do this, which is why the  
17 Legislature directed that it be done when they revised  
18 the law back in 1990.

19 GOVERNOR SCHAEFER: And what did the Supreme  
20 Court say? That the state has to go into private  
21 business and find out what their practices are? If

1     it's related to our contracts and doing business, I can  
2     understand it; but why are we paying for -- the Supreme  
3     Court says, "You're supposed to go in and go into  
4     private businesses and ask them what their practices  
5     are"?

6             MR. KAHN: Companies who do business with the  
7     state also contract with subcontractors and suppliers,  
8     and there is a flow of state dollars into the private  
9     marketplace. The state cannot sit by and allow  
10    discrimination in the flow of those dollars into --

11            GOVERNOR SCHAEFER: Do we have evidence that  
12    this is happening?

13            MR. KAHN: This is the purpose of the study,  
14    to determine --

15            GOVERNOR SCHAEFER: Do we have evidence that  
16    this is happening?

17            MR. KAHN: There was evidence when Coopers &  
18    Lybrand did the study in 19 --

19            GOVERNOR SCHAEFER: Did we correct it?

20            MR. KAHN: The program was adjusted. That  
21    was the justification for continuing the program. If



1       there is no disparity, if there is no such  
2       justification and we are challenged in court, if we  
3       don't have the statistics and the analysis to back it  
4       up, the --

5               GOVERNOR SCHAEFER: All that is very nice,  
6       and everybody wants studies, and everybody wants to get  
7       into the private business, and everybody wants to tell  
8       them how to run it, everybody wants to be sure we're  
9       protected, and all the rest of this. Is there evidence  
10      that the State of Maryland and the Department of  
11      Transportation is discriminating against minorities?

12             MR. KAHN: There is statistical evidence of  
13      disparity, which indicates that minorities have not  
14      gotten their fair proportion of contracting. That is  
15      evidence --

16             GOVERNOR SCHAEFER: I'd like to have that  
17      evidence before we do this. What evidence is there?

18             MR. KAHN: That's the purpose of the study,  
19      is to show --

20             GOVERNOR SCHAEFER: How do you know --

21             MR. KAHN: Without that kind of evidence, the

1 state cannot have an MBE program.

2 GOVERNOR SCHAEFER: In other words, you're  
3 saying the state is at fault first, and I am tired of  
4 that.

5 MR. KAHN: If the state cannot justify having  
6 an MBE program --

7 GOVERNOR SCHAEFER: We've got an MBE program.

8 MR. KAHN: -- there will be no MBE program.  
9 The city of Richmond was sued in the Croson case.

10 GOVERNOR SCHAEFER: I'm not interested in the  
11 city of Richmond or the city of San Francisco. What  
12 you're saying -- but, you know, you all just fall in  
13 and say, "Well, you know, this is what we're going to  
14 do. They haven't been doing it. They haven't been  
15 doing it properly, and little, small business and big  
16 business say you're discriminating," and we go on the  
17 defensive.

18 Now, as I -- I have gone on the position that  
19 we're not defending ourselves all the time and go on  
20 the presumption that we're doing this. If you show me  
21 where there's this evidence that they're not complying

1 with the program, fine; but what you and everyone else  
2 does, as soon as the Supreme Court or anybody else says  
3 we're doing it, you fold up and start right away, "We  
4 need all this evidence to prove that we're not  
5 discriminating." I'd like to try it the other way now.

6 MR. KAHN: If I might explain, Governor, the  
7 city of Richmond was challenged, just as Maryland was  
8 challenged and could be challenged today.

9 GOVERNOR SCHAEFER: By who?

10 MR. KAHN: By a contractor doing business,  
11 attempting to do business with the city -- a contractor  
12 doing business with the State of Maryland can challenge  
13 us and say that we do not have justification, current  
14 justification, for our MBE program. We are being sued  
15 as we speak --

16 GOVERNOR SCHAEFER: By who?

17 MR. KAHN: -- by the Minority Business  
18 Contractors, who say --

19 GOVERNOR SCHAEFER: They sue everybody all  
20 the time.

21 MR. KAHN: And we must have the evidence so



1       that the state can take the offensive to defend itself.  
2       The best defense is a good offense. That's what this  
3       study is about. That's what the 1989 study was about.  
4       And, without it, if we had --

5               GOVERNOR SCHAEFER: So, we have to prove for  
6       three-quarters of a million dollars that we're not  
7       discriminating.

8               MR. KAHN: The Supreme Court has said that  
9       there must be --

10              GOVERNOR SCHAEFER: You know, you're a lawyer  
11       and I'm judge now. Just answer the question.

12              MR. KAHN: My answer to the question is that  
13       the Supreme Court has said there must be legislative  
14       findings based on statistical evidence that there is  
15       discrimination in this market before a MBE program will  
16       be upheld; and, if that evidence is lacking, our MBE  
17       program will go the same way of the Richmond program,  
18       down the drain. It's as simple as that.

19              GOVERNOR SCHAEFER: You make it sound so  
20       simple, and you make it sound that we're on the  
21       defensive and we've got to prove that we're doing the

1 right thing.

2 MR. KAHN: No, the Legislature must.

3 GOVERNOR SCHAEFER: Why don't you change your  
4 thinking once, and Joe's office, that maybe we're not  
5 discriminating.

6 MR. KAHN: If we're not discriminating,  
7 Governor --

8 GOVERNOR SCHAEFER: The Minority Business has  
9 sued me and sued everybody, and I didn't take it when I  
10 was in the city and I'm not taking it now, just because  
11 they file a suit. They weren't able to prove that we  
12 were discriminating in the city; and, as I find it, I  
13 don't think -- maybe I just hope that we're not.

14 You give me some evidence that the Department  
15 of Transportation is discriminating, and I will be more  
16 than glad to vote for the 790,000.

17 MR. KAHN: You were given that information  
18 back in 1990 when Coopers & Lybrand --

19 GOVERNOR SCHAEFER: Then did we correct the  
20 situation or did the Attorney General's Office just  
21 say, "Well, we'll wait until 1994, so we can spend

1 another 750,000"?

2 MR. KAHN: The purpose of the MBE program is  
3 to do exactly that, to provide an affirmative action to  
4 utilize MBEs that are in the marketplace. That is the  
5 corrective action.

6 I understand, Governor, discrimination is a  
7 very difficult thing to deal with.

8 GOVERNOR SCHAEFER: No, you don't understand.  
9 You have decided that the state should be prepared to  
10 prove that they haven't discriminated. I want to try  
11 it the other way.

12 MR. KAHN: I didn't decide that, Governor.  
13 The Legislature directed that this study be done. They  
14 decided it, and they decided it because the Supreme  
15 Court --

16 GOVERNOR SCHAEFER: Maybe I don't agree with  
17 them. Maybe I don't agree with them. I'm asking you  
18 -- you're our legal person. I'm asking you, show me  
19 the evidence of discrimination.

20 MR. KAHN: And I say to you that evidence  
21 can't be shown without this study; and, if we don't



1 have this study, we will not have an MBE program.

2 GOVERNOR SCHAEFER: How do you know -- in  
3 other words, you're just going on the basis that we're  
4 going to spend \$750,000 to prove there's no  
5 discrimination, but you can't show me a case, other  
6 than the Minority Contractors filing against us, saying  
7 that we're discriminating; and I'm supposed to just --

8 MR. KAHN: We were sued --

9 GOVERNOR SCHAEFER: -- say, "That's fine,  
10 that's fine, that's good." We'll just cave in and say  
11 okay? I'm not going to cave in and say okay.

12 MR. KAHN: We were sued in 1988 by the State  
13 Highway Contractors Association, and I'm sure --

14 GOVERNOR SCHAEFER: You're going back in  
15 history. You are the lawyer for this, and you should  
16 have -- in the Coopers-Lybrand, if there was something  
17 wrong, you should have told me because I was here since  
18 1990, and you should have said to me, "Governor,  
19 there's discrimination in the Department of  
20 Transportation."

21 MR. KAHN: The discrimination is not in the

1 Department of Transportation. It is in the marketplace  
2 in which the Department of Transportation operates.

3 GOVERNOR SCHAEFER: So, we will go into the  
4 marketplace to find out if private business is  
5 discriminating?

6 MR. KAHN: And we take corrective action  
7 through our MBE program, yes, sir, and it needs to be  
8 done. It's been recognized that it needs to be done,  
9 and we've been told by the Legislature to do it, and I  
10 really don't --

11 GOVERNOR SCHAEFER: The Legislature just  
12 listens to you all, and you all convince them, but you  
13 all don't convince me. And show me some of the  
14 businesses -- give me the list of the businesses that  
15 you're going to investigate. Just give me five of  
16 them.

17 MR. KAHN: We don't investigate individual  
18 businesses. This is done on a statistical basis.

19 GOVERNOR SCHAEFER: Just give me the business  
20 climates that you're going -- just give me the business  
21 climates that you're going to investigate.

1           MR. KAHN: There's a focus on the  
2           construction industry.

3           GOVERNOR SCHAEFER: All right. Okay. That's  
4           good.

5           MR. KAHN: We look at all the service  
6           industry.

7           GOVERNOR SCHAEFER: Now, you're saying the  
8           construction industry has been using discriminatory  
9           practices?

10          MR. KAHN: Historically, they have, yes, sir.

11          GOVERNOR SCHAEFER: And you've allowed them  
12          since 1990, and now because somebody tells you we  
13          should spend \$750,000, you're now saying we should do  
14          it; but, for four years, you haven't brought it to my  
15          attention.

16          MR. KAHN: It was brought to your attention  
17          when the study was done in 1990, and legislation --

18          GOVERNOR SCHAEFER: Well, then I should have  
19          been the one that followed up, not you?

20          MR. KAHN: You signed legislation, the bill  
21          that modified the program and called for this study.



1 GOVERNOR SCHAEFER: Fine. Is there something  
2 wrong now? Well, you know, perhaps you're right.  
3 You're absolutely right. I didn't read the bill.  
4 Maybe I should have read the bill, because I just took  
5 it that you were not giving me some job.

6 MR. KAHN: I didn't give you any job. The  
7 Legislature gave you the job.

8 GOVERNOR SCHAEFER: I know that you're trying  
9 to give me a job now, because you haven't answered  
10 anything I've asked.

11 MR. KAHN: I've done the best I can,  
12 Governor, and what I think I've said is accurate.

13 GOVERNOR SCHAEFER: I'm sure what you said is  
14 accurate, and what I've asked you is how you're going  
15 to make the study, give me some examples of  
16 discrimination, show me where there's a practice by the  
17 private sector and all the rest on discrimination, and  
18 I'm fine on this.

19 MR. KAHN: Mr. Jolivet was down here last  
20 April.

21 GOVERNOR SCHAEFER: Jolivet sues me every

1 day.

2 MR. KAHN: He claimed to have evidence -- he  
3 claimed to have evidence that there's --

4 GOVERNOR SCHAEFER: If he claims to have  
5 evidence, why don't you ask him for it?

6 MR. KAHN: Our consultant will do that.

7 GOVERNOR SCHAEFER: Not your consultant.  
8 What the -- what does Joe do? Joe can ask him, "Bring  
9 in the evidence so I can show it to the Governor."  
10 Jolivet sues us every -- Benton was there -- every  
11 month. We used to say, "Come in, Mr. Jolivet. What  
12 are you going to sue us on today?" But, you know, that  
13 didn't petrify me and didn't make me shake in my boots,  
14 because three-quarters of the time he was either right  
15 or wrong, and I won't say which he was; and what he did  
16 was performed a service.

17 And what you're telling me, I signed the  
18 legislation in '90 and now I haven't followed it up and  
19 that was wrong. You're right.

20 MR. KAHN: I didn't say it was wrong to sign  
21 the legislation in 1990. I'm saying it's a fact --

1 GOVERNOR SCHAEFER: Don't pull lawyer crap on  
2 me. Don't lawyer crap me.

3 MR. KAHN: It is a fact --

4 GOVERNOR SCHAEFER: Just get me some  
5 evidence. Just get me some facts.

6 MR. KAHN: The fact is that we've been  
7 directed to do this study.

8 GOVERNOR SCHAEFER: I don't care if you've  
9 been directed. Give me some evidence that there's some  
10 discrimination or something that's wrong. And this is  
11 what the study has to do, and I hear you. Okay. Fine.

12 MR. GOLDSTEIN: May I ask one question,  
13 Governor? Right as of this morning -- today is  
14 January 26, 1994, and the Department of Transportation  
15 has many contracts with reference to highways, bridges,  
16 the transit systems and all that -- is there any  
17 evidence of discrimination right now?

18 MR. KAHN: The last study was done in 1990,  
19 and the evidence of discrimination is as of that date.  
20 The purpose of this study is to find out whether  
21 discrimination persists.



1           MR. GOLDSTEIN: I understand, but, I mean, is  
2       there any court cases now against the Highway  
3       Department, the Department of Transportation, existing  
4       cases with reference to discrimination right now?

5           MR. KAHN: There is a lawsuit by the MBE  
6       Contractors Association, Mr. Jolivet's organization.

7           GOVERNOR SCHAEFER: Are you defending it?

8           MR. KAHN: Yes, we are.

9           GOVERNOR SCHAEFER: Do we have a good  
10      defense?

11          MR. KAHN: We certainly hope so.

12          GOVERNOR SCHAEFER: Well, if you have a good  
13      defense, then there's no discrimination.

14          MR. KAHN: I wouldn't equate the two, no,  
15      sir.

16          MR. GOLDSTEIN: What's the status of that  
17      case now, Mr. Kahn?

18          MR. KAHN: I can't tell you. I'm not  
19      personally involved in it.

20          MR. GOLDSTEIN: I see. Is that in reference  
21      to a highway or a bridge or a transit system?

1 MS. WEBBON: Sir, it's in reference to all of  
2 the transportation activities at the federal government  
3 in Maryland and the state government in Maryland with  
4 an intent to enjoin the flow of federal funds from the  
5 federal government to the state government.

6 MR. GOLDSTEIN: I see. That's a blanket  
7 case.

8 MS. WEBBON: It includes the secretary of  
9 transportation for the United States on down.

10 MR. GOLDSTEIN: I get you. It's one of those  
11 blanket cases.

12 MS. WEBBON: Yeah. If I could just leave --  
13 I'm not a lawyer -- if I could leave that piece behind  
14 a little bit. As director of Minority Business  
15 Program, what I see is that the Minority Business  
16 Program is really an economic development program.  
17 It's to assist groups in our community that have not  
18 been fully empowered over history to gain a fair share  
19 of the marketplace.

20 And what I hope is the focus out of this  
21 study is solid recommendations that can be supported

1 statistically, which is what saves us in a court  
2 challenge, that will see what we need to do to further  
3 enhance the economic situation of the smaller  
4 businesses, is really what it boils down to, so that  
5 they can contribute more and participate more.

6 MR. GOLDSTEIN: Let me ask --

7 GOVERNOR SCHAEFER: We have spent maybe a  
8 billion dollars on doing what you said, at least a  
9 billion dollars if you take the city and the state.

10 MS. WEBBON: Yes, sir.

11 GOVERNOR SCHAEFER: On exactly what you said.  
12 And now you're telling me the results didn't pay off.

13 MS. WEBBON: Oh, no. I believe the results  
14 definitely pay off.

15 GOVERNOR SCHAEFER: Fine. And I don't find  
16 discrimination then. I don't find that they're at a  
17 disadvantage then, because I think we either stop  
18 pouring the money in that we're pouring in to help  
19 small businesses, which I don't approve of, or we do  
20 this investigation and the investigation is going to  
21 find something is wrong and that we've got to change



1       this, because that's what we're supposed to do. Well,  
2       I don't think that's right.

3               If you've got evidence of discrimination,  
4       then we should have been on it in 1990, and the  
5       Attorney General's Office should have been leading me  
6       and telling me there's discrimination. Jolivet's suit  
7       is a suit that he filed against the city. He files  
8       against the state, the United States government, which  
9       is all fine because he makes a good salary on that.

10              But I don't see why this is necessary. So,  
11       we can do what --

12              MR. GOLDSTEIN: Governor, may I ask one more  
13       question? Colonel, the person it comes under, the big  
14       items, don't you have a whole list of different  
15       minority suppliers and business people, and aren't we  
16       required to go to those folks and ask them if they are  
17       ready to bid?

18              MR. WALSH: Yes.

19              MR. GOLDSTEIN: Have you found any  
20       discriminatory practices recently?

21              MR. WALSH: What we find is not -- we don't

1 find necessarily anything that could be provable about  
2 discriminatory action. What we find is, as we  
3 implement the various percentage goals, we find some  
4 contractors or suppliers and various type of functional  
5 area contracts will indicate they can't find a  
6 percentage of Minority Business Enterprises to do that  
7 portion of the job, and at that point we do what you  
8 just described. We offer them a list that we know  
9 exists, and that list is a group of certified  
10 contractors which are orchestrated out of her office.

11 MR. GOLDSTEIN: That's the reason I'm asking  
12 this question. I'm trying to follow it up to see if we  
13 can get the overall picture. So, in other --

14 GOVERNOR SCHAEFER: There are some areas  
15 where every small contractor -- I'm living a little bit  
16 in the past now -- where you tried to get a small  
17 contractor, minority contractor; they weren't in  
18 business or they had so much business they couldn't  
19 handle it.

20 MR. WALSH: Yes, sir.

21 MR. GOLDSTEIN: In other words then, I'm just

1     trying to look at the overall picture, because all the  
2     people he works with are probably eventually in that  
3     stream, because if somebody gets a big contract,  
4     somebody has got to furnish pipe, somebody has got to  
5     furnish cement, somebody has got to furnish gravel,  
6     somebody has got to furnish lumber, somebody has got to  
7     furnish sheetrock, somebody has got to furnish steel  
8     rails, somebody has got to furnish nails; is that  
9     correct?

10           MS. WEBBON:  Yes, sir.

11           MR. GOLDSTEIN:  So, they're all in the  
12     stream, aren't they?

13           MS. WEBBON:  Yes.

14           MR. WALSH:  Could I just -- could I offer a  
15     comment here?

16           MR. GOLDSTEIN:  So, I just want to get the  
17     overall picture to be sure that if somebody asks me why  
18     we're spending this money --

19           MR. WALSH:  We have a disconnect here, I  
20     think.

21           MR. GOLDSTEIN:  Sir?



1           MR. WALSH: There's a disconnect cooking  
2     here.

3           MR. GOLDSTEIN: Well, can you connect it up?

4           MR. WALSH: I'm going to try it.

5           MR. GOLDSTEIN: You're an engineer.

6           MR. WALSH: All right. I'll try it. We have  
7     a functional Minority Business Enterprise program in  
8     the state, centralized, controlled, is at DOT. All of  
9     us in the contracting business implement that, using  
10    their, in effect, referenced certified MBEs, that kind  
11    of thing.

12           What has occurred lately is non-minority  
13    contractors have sued. They have said, "We don't need  
14    to have a leg up, an affirmative action program for  
15    minority companies." They have said that. In the  
16    meantime, of course, other minority companies are  
17    saying, "We're still not getting our cut," and various  
18    suits and other actions are going on.

19           The case that happened in Richmond was a non-  
20    minority contractor saying, "What do you mean, you're  
21    setting these aside and not letting me have that

1 contract," or whatever the details were; but, if it  
2 gave an advantage to a minority contractor which the  
3 non-minority contractor didn't have, they said there's  
4 no basis for this. That was the major drift of the  
5 court case. A non-minority said there's no basis for  
6 this minority "leg up" opportunity, it should be not  
7 there, it should be even-stein, no affirmative action.  
8 And the court upheld that; and, as a result of that,  
9 again working from a long distance away here, for all  
10 practical purposes, the Minority Business Enterprise  
11 program of Richmond had to be dismantled because there  
12 was no basis for it as indicated in that court case.

13 At that point, the feds in other court cases  
14 came about that "We're going to use the same basis for  
15 dismantling all of the MBE programs," and the only --  
16 one of the mechanisms to demonstrate a need to continue  
17 an MBE program is this kind of investigative study. It  
18 doesn't say we're prejudiced or we're giving somebody a  
19 leg up or not giving --

20 GOVERNOR SCHAEFER: Have we been challenged  
21 by anyone on our MBE program, other than Jolivet? Has

1       somebody challenged our MBE program?

2               MR. KAHN:  The State Highway Contractors did  
3       that.

4               GOVERNOR SCHAEFER:  Saying that there should  
5       be --

6               MR. KAHN:  The justification is inadequate.

7               GOVERNOR SCHAEFER:  And, so, what this is  
8       going to prove, that we do have it, and then we're  
9       going to be okay?

10              MR. KAHN:  It's going to tell us whether  
11       there is or there is not justification.  If there is  
12       not justification for the program, then it has to be  
13       either modified or discontinued.  If there is  
14       justification for the program, then it may be modified,  
15       but it would be continued.  That is the purpose of the  
16       study.

17              GOVERNOR SCHAEFER:  What's the status of the  
18       case of the Highway Contractors?

19              MR. KAHN:  The Highway Contractors case was  
20       thrown out on a legal issue.

21              GOVERNOR SCHAEFER:  So, there's no case.



1 MR. KAHN: There is no case pending now.

2 GOVERNOR SCHAEFER: That's all I wanted to  
3 know. So, there's no evidence of -- nobody has sued  
4 us. We aren't asking to dismantle our program. We're  
5 moving along with it; and, so, now you want to run a  
6 \$789,000 study to prove that we're doing okay.

7 MR. KAHN: The program sunsets in 1995. The  
8 Legislature has said it comes to an end.

9 GOVERNOR SCHAEFER: Then let the Legislature  
10 do something in 1995. They can find out if the program  
11 is good or bad.

12 MR. KAHN: And they've directed us to provide  
13 them the information to tell them whether to renew the  
14 program or not. That is one of the purposes of this  
15 study.

16 GOVERNOR SCHAEFER: Did they also tell you to  
17 spend the \$795,000?

18 MR. KAHN: I don't know they told us what  
19 amount of money to spend. I have no idea.

20 MS. WEBBON: There was no amount of money.  
21 They just said do it. They didn't specify --

1 GOVERNOR SCHAEFER: Do what?

2 MS. WEBBON: Carry out the Croson study.

3 GOVERNOR SCHAEFER: Well, you can't do it?  
4 You're in charge. You have all the information there.  
5 What are we paying your agency for?

6 MS. WEBBON: Well, we don't have all the  
7 information. We have information on the Maryland  
8 Department of Transportation statistics. What this  
9 would cover is all of state government and then what  
10 the prime contractors are doing out in the marketplace.  
11 It's far more extensive than anything we have.

12 MR. GOLDSTEIN: That's the reason I asked  
13 Colonel Walsh this question. He lets out big contracts  
14 to build prisons, schools, hospitals, all kinds of  
15 contracts that are different from the Department of  
16 Transportation.

17 Do you have any suits filed against you right  
18 now?

19 MR. WALSH: I don't think I have any MBE  
20 suits.

21 MR. GOLDSTEIN: That's what I'm talking

1 to do with the price of this, because I don't --

2 MR. GOLDSTEIN: I understand, but what you do  
3 is part of this study. You're in the flow.

4 MR. WALSH: If we do nothing, if we do not do  
5 this and they're challenged by non-minority  
6 contractors, they will do the best they can, but they  
7 will not probably have the justification any more than  
8 Richmond did to justify the continuation of this MBE  
9 affirmative action program.

10 MR. GOLDSTEIN: Well, Richmond won their  
11 case.

12 MR. WALSH: They lost it.

13 MS. WEBBON: They lost it.

14 MR. KAHN: They lost it.

15 MR. GOLDSTEIN: Sir? They lost the case?

16 MR. KAHN: Yes. They did not have a program  
17 there for a good number of years because they lacked a  
18 study of this kind.

19 GOVERNOR SCHAEFER: We have been sued by no  
20 one. No one is challenging our program. One of the  
21 things that we've pressed so hard for when we were also



1 in the city and here was that contractors were to be  
2 given minority contractors. Lucy and Louie have  
3 watched minority contractors. We've also tried to  
4 ferret out any fake minority contractors.

5 What this says in so many words, we're going  
6 to justify what you've done, and I don't see it.

7 MR. KAHN: No, I think what it is, is that if  
8 the Legislature tries to continue the program beyond  
9 this year without this basis --

10 GOVERNOR SCHAEFER: You've got a basis.  
11 There it is. There's the lady that's running the  
12 program. We've been paying a potful of dough to keep  
13 her in business, and we have spent a lot of money on  
14 minority contractors and we will continue to spend it;  
15 and, if that isn't justification enough and if you  
16 can't prove that you have done the job, then what the  
17 heck is the use of having the office?

18 MS. WEBBON: Well, our office does  
19 certification statewide, but we only worry about the  
20 MDOT piece of the program. We don't operate the  
21 program statewide, sir.

1           GOVERNOR SCHAEFER: Well, is MDOT okay right  
2           now?

3           MS. WEBBON: MDOT in terms of its operating  
4           policies, I believe, is okay.

5           GOVERNOR SCHAEFER: You believe? You work  
6           for them.

7           MS. WEBBON: Pardon?

8           GOVERNOR SCHAEFER: You work for them.

9           MS. WEBBON: Yes.

10          GOVERNOR SCHAEFER: Is it bad or -- is it  
11          good or bad?

12          MS. WEBBON: Well, what we have --

13          GOVERNOR SCHAEFER: Well, don't say -- is it  
14          good or is it bad? Is it bad? Tell me.

15          MS. WEBBON: What we have, sir, both in MDOT  
16          and other places is an issue of fraud that the Attorney  
17          General's Office has been working very aggressively on  
18          now for the two years I've been involved, and there --

19          GOVERNOR SCHAEFER: And this is going to find  
20          fraud?

21          MS. WEBBON: This also has to deal with the

1 fraud issue with regard to how --

2 GOVERNOR SCHAEFER: What have you been doing  
3 for two years that this report is going to be able to  
4 give you that you and the attorney general shouldn't  
5 have had during that two-year interim?

6 MS. WEBBON: It's what kind of program design  
7 could keep fraud from reoccurring in the future, is one  
8 of the things I would like to see out of this.  
9 Prosecution is ongoing. I mean, that's -- there are  
10 cases pending now. There have been all kinds of  
11 prosecutions, and that's ongoing.

12 GOVERNOR SCHAEFER: You give me general  
13 statements. Who's prosecuting who?

14 MS. WEBBON: The state is prosecuting  
15 minority and non-minority businesses for operating in a  
16 fraudulent manner.

17 GOVERNOR SCHAEFER: Every time we found  
18 something wrong. Right. Every time we found it, we  
19 went after it aggressively?

20 MS. WEBBON: Yes, sir. Yes, sir.

21 GOVERNOR SCHAEFER: Right.



1                   MR. GOLDSTEIN: And this study has to be  
2 completed by November 1, '94?

3                   MS. WEBBON: That's what the piece of  
4 legislation says.

5                   MR. GOLDSTEIN: Right.

6                   MS. WEBBON: So that it could be considered  
7 in the '95 General Assembly before the sunset on  
8 June 30 of '95.

9                   MR. GOLDSTEIN: That's the reason I was  
10 asking my question of Colonel Walsh, because you say  
11 you only do a certain phase of this business. Is that  
12 correct?

13                  MS. WEBBON: I don't understand. I'm sorry.

14                  MR. GOLDSTEIN: Yours is all related to  
15 Department of Transportation.

16                  MS. WEBBON: Oh, no. It is statewide. It is  
17 for all of state government. The study was dictated to  
18 be carried out by the certification agency. Since the  
19 Board designated Maryland Department of Transportation  
20 as the agency to do the certification process, we then  
21 are the ones that would have to do the study.

1 MR. GOLDSTEIN: Well, then, are you familiar  
2 with any discriminatory practices right now, statewide,  
3 in your work?

4 MS. WEBBON: Using the words "discriminatory  
5 practice" would tell me that I have certain proof. No,  
6 I don't have proof that there's discriminatory  
7 practice, because we're all responsible for fixing  
8 anything like that when and if we see it.

9 MR. GOLDSTEIN: Have we had many complaints?

10 MS. WEBBON: Do I think things are working as  
11 openly and as productively to the benefit of the small  
12 minority businesses as they ought to be? No, I don't  
13 think they do work that way all the time.

14 GOVERNOR SCHAEFER: Oh, brother!

15 MR. GOLDSTEIN: Well, we don't have a perfect  
16 world, we know that. The good Lord created all of us a  
17 little different. Some are big, some are small, some  
18 are short, some are fat, some have blue eyes, some have  
19 brown eyes, some have blond hair, some have red hair.

20 MR. WALSH: No hair.

21 MR. GOLDSTEIN: There's a lot of difference

1 in everybody. What I'm trying to find out, are there  
2 any cases or proposed cases now with reference to  
3 discriminatory practices by minorities, whether they're  
4 Asians, whether they're Hispanic, or whether they're  
5 African American?

6 GOVERNOR SCHAEFER: Women.

7 MR. GOLDSTEIN: Are there? I'd like to know  
8 so I can justify voting for this.

9 MS. WEBBON: Well, there are complaints all  
10 the time. Yes, sir.

11 MR. GOLDSTEIN: My wife complains, hell.

12 (Laughter.)

13 MR. GOLDSTEIN: I live around complaints. I  
14 mean, "You came home too late," "You got up too early."  
15 I mean, I'm used to that. The whole world is made up  
16 of complaints. You know that. We don't have a Utopia  
17 yet.

18 I'm talking about do you know of any real  
19 practices that are discriminatory against these people  
20 who are now on that certified list that the colonel  
21 has, or your list?



1 MS. WEBBON: I'd say there are business  
2 practices that work against the smaller and the  
3 minority business persons. One example that we have  
4 fixed in the Maryland Department of Transportation, for  
5 example, is paying your subcontractors in a timely  
6 fashion. There were certain prime contractors that  
7 would hold the subcontractor payments and use them as  
8 their own float money for their own business purposes,  
9 and a small businessman might have to wait four or five  
10 months in order to get his money. Well, we solved that  
11 in our department by adding a clause in the contract  
12 saying that all prime contractors must pay their subs  
13 within 45 days of receiving the money. They can't hold  
14 the subs' money and use it for their own financial  
15 purposes.

16 MR. GOLDSTEIN: Well, that's the way it  
17 should be.

18 MS. WEBBON: But that also takes the pressure  
19 off of the small contractor, many of whom are minority  
20 businesses, so they don't have to go out and borrow at  
21 exorbitant rates because their money is being used by a

1 large contractor. That's one type of thing.

2 Every time we find something like that in our  
3 department, we go after it, because part of our job is  
4 to help the small businessman succeed and grow in the  
5 marketplace. So, I mean, things do happen every time  
6 we find out about it. We deal with what we have to do  
7 in order to make it better.

8 MR. GOLDSTEIN: Sure.

9 MS. MAURER: May I ask a question? From what  
10 I'm hearing, you're saying there are some systemic  
11 practices, that it's very hard to get sometimes an  
12 individual complaint that measures it, and this study  
13 is supposed to be at the general level, the systemic  
14 level, to give us a better idea of how the MBEs are  
15 functioning in the economy.

16 MS. WEBBON: Yes, yes.

17 GOVERNOR SCHAEFER: What was your job?

18 MS. WEBBON: What is my job?

19 GOVERNOR SCHAEFER: Yeah.

20 MS. WEBBON: As director of Minority --

21 MS. MAURER: Isn't Lucy's question your job?

1 MS. WEBBON: No, sir. It has not been.

2 GOVERNOR SCHAEFER: Well, maybe it will be.

3 MS. WEBBON: That would be your decision.

4 GOVERNOR SCHAEFER: Yes, it will be, because  
5 if -- you're going on the presumption that all we could  
6 do hasn't been done, and I'm not very pleased with that  
7 answer.

8 MS. WEBBON: Well, I am -- remember, I'm  
9 still MDOT. There is a lot of the other parts of state  
10 government.

11 GOVERNOR SCHAEFER: I don't care if you're  
12 DDO or --

13 MS. WEBBON: Pardon? I'm sorry.

14 GOVERNOR SCHAEFER: I don't care if you're  
15 DOD.

16 MS. WEBBON: I just wish Mitchell Smith were  
17 here with us at this point.

18 GOVERNOR SCHAEFER: MDOT has had a lot of  
19 flexibility, but you give me that answer -- it's not a  
20 very satisfactory one, to me. I just get tired of  
21 everyone -- as soon as you need a study of some sort,



1     you put the state and the city and all the rest of the  
2     government in the position that we're discriminating;  
3     and I'm tired of it. If it's done, that's something  
4     else; but everything that you've said today, every time  
5     you get an opportunity, you correct it, but you still  
6     see practices that are systemic, as Lucy said. And  
7     this is going to prove that? Well, that's fine. You  
8     can tell the Legislature that, yourself. You can also  
9     tell me and tell Jim, because I will be after Jim on  
10    Thursday to get me what these systemic things are that  
11    we can't touch.

12               MR. BENTON: Bill, do you know whether the  
13    City of Baltimore is initiating a similar study?

14               MR. KAHN: I think they have done so, and  
15    they would have to do it repeatedly if they want their  
16    program to continue in any way, shape or form. These  
17    studies are being done all around the country for that  
18    reason.

19               GOVERNOR SCHAEFER: Just because a study has  
20    been made, that doesn't mean it's the right thing  
21    always to do. You know, you keep lawyers busy; you

1 keep consultants busy. And you can answer all these  
2 suits, and all the lawyers are busy, and we can get  
3 this group to come up with a \$750,000 investigation,  
4 which I think we should have done ourselves anyway,  
5 from what I gather. Okay.

6 MR. GOLDSTEIN: The reason I asked my  
7 question, see, the last line of this presentation says,  
8 quote, "The study will be on behalf of the entire state  
9 government," the entire state government. So, in your  
10 remarks, you said you deal with Transportation. That's  
11 the reason I asked the colonel here, because he deals  
12 with other aspects. Is that correct, sir?

13 MR. WALSH: Yes, sir, yes.

14 MR. GOLDSTEIN: And he said he didn't have  
15 any problems. Now, this is going to be a big study. I  
16 hope they can accomplish it between now and November 1,  
17 because there's a lot of money spent by the State of  
18 Maryland buying everything in the world, from rugs,  
19 drapes, food. Look how many people we feed every day  
20 in our institutions: canned peas, canned corn, Navy  
21 beans, rice, canned peaches, sauerkraut, mashed

1 potatoes and cracked corn. I can name you a thousand  
2 items that are being bought every day. Some are bought  
3 from brokers; some are bought from the canners. Not  
4 many people in that business in Maryland anymore. At  
5 one time, Maryland had 75 canneries canning tomatoes on  
6 the Eastern Shore. Today you can't even find one.

7 So, this is a broad study, isn't it? How  
8 much money do you spend for foodstuffs every year for  
9 your contracts for the institutions in Maryland?

10 MR. WALSH: We spend about, in all  
11 commodities, which would include that, about  
12 400,000,000 of the rest of the state's money.

13 MR. GOLDSTEIN: Four hundred million, see.  
14 So, this is a very broad study in order to really find  
15 out from all these people that are involved all these  
16 different things.

17 GOVERNOR SCHAEFER: The president said last  
18 night he's going to downsize government, get rid of  
19 things that aren't necessary. Just to keep this  
20 program operating for the sake of operating it, I don't  
21 see it, and I don't see a study like this unless



1       there's something wrong or evidence that we're doing  
2       something, or the state or any agency is doing  
3       something that isn't complying with the intent of the  
4       Minority Business Enterprise.

5               MS. MAURER: Isn't it ironic that under  
6       Croson, if the study proves that we're not  
7       discriminating, that we have a level playing field,  
8       then we do not have to have an MBE program?

9               MS. WEBBON: That's right.

10              GOVERNOR SCHAEFER: Right.

11              MS. WEBBON: That's right.

12              GOVERNOR SCHAEFER: And there's no evidence  
13       there is. So, maybe we don't need the MBE program,  
14       because there's no evidence you've been able to give me  
15       at all that says -- other than you say that there's  
16       systemic discrimination, and there will be  
17       discrimination against just people, and there has been  
18       since time immemorial. Well, okay.

19              MR. GOLDSTEIN: We thank you.

20              MS. MAURER: Are we going to defer this?

21              MR. GOLDSTEIN: Pardon?

1 MS. MAURER: Are we going to defer this?

2 MR. GOLDSTEIN: Well, no. I just wanted to  
3 try to get the overall picture. I have great respect  
4 for Bill Kahn. He's one of my best lawyers in life.  
5 If we get in any problems, we always ask him to give us  
6 his advice. But I was just trying to see if there were  
7 prevalent problems of discriminatory practices in the  
8 different branches of our state government.

9 MR. KAHN: To ask us to tell you whether  
10 there are or not puts the cart before the horse.

11 MR. GOLDSTEIN: I understand.

12 MR. KAHN: The purpose of the study is to  
13 find out.

14 MR. GOLDSTEIN: Well, I know. The last study  
15 was '90; but, I mean, in the meantime, see, every day  
16 we're letting contracts. Every single day, some  
17 contracts in state government are being let; is that  
18 correct?

19 MS. WEBBON: Yes.

20 MR. GOLDSTEIN: I know, look, you're never  
21 going to please all the vendors; it's impossible.

1 That's why we have the different access to the Contract  
2 Board of Appeals or the District Court, the United  
3 States Federal Court, State Court. But I was just  
4 trying to get a gut feeling if there are  
5 discrimination.

6 I'm against discrimination. Hell, I know  
7 what it is to be discriminated against. When I went to  
8 go to law school in 1935, I couldn't find a place  
9 downtown to live. I had to sleep in a damn old double  
10 Murphy bed with a guy and be a janitor in Mrs. Dixon's  
11 home at 823 Park Avenue. If I told them my name was  
12 O'Brien, I probably could have rented a damn house.  
13 So, I mean, I know what discrimination is all about,  
14 and I don't approve it.

15 That's what I was trying to find, if there  
16 are any prevalent discriminatory practices going on in  
17 the State of Maryland now against these folks. As of  
18 this morning, I haven't heard of any. Have you? We  
19 don't live in Utopia.

20 MS. WEBBON: I don't want to drag out your  
21 time. I can talk with you in general terms about the



1       systemic complaints we get, which is what we would need  
2       to pin down actually in actual dollars and percentages,  
3       problems with the primes opening up their  
4       subcontracting process competitively, letting MBEs get  
5       the documents so they can make a reasonable bid in time  
6       to make a bid as opposed to getting them the same day  
7       the bids are going out.

8               The whole payment issue, I believe, is  
9       probably still an issue other places in state  
10      government.

11             MR. GOLDSTEIN: Let me tell you why that is.  
12      This Governor right here has done more to make the  
13      state people put their bills through the process than  
14      any governor I've served with. I give him a monthly  
15      report, because the state's credit is its best asset.  
16      And I don't care who the contractor -- he or she ought  
17      to pay their subcontractors on time, and put that in  
18      big, bold type in the contract, put that in big, bold  
19      type, "You will pay your contractors within 45 or 30  
20      days," whatever the case may be.

21             MS. WEBBON: There are reported problems in

1 the financing and bonding markets with regard to  
2 minority contractors getting access to capital.

3 GOVERNOR SCHAEFER: What are you supposed to  
4 be doing, if you're telling me all these things that  
5 they're reporting? What is the office supposed to have  
6 done? What are you doing to correct these things?  
7 There's a report -- well, Louie said he gets  
8 complaints. I get letters, complaints, on everything  
9 in the state. That doesn't mean it's true.

10 I'll tell you what this study is going to do.  
11 You're going to testify. You're going to be called on  
12 this. You're going to say there are some systemic  
13 problems, and then this guy is going to write, "Gee,  
14 yeah, there are some problems we've got to correct."  
15 They won't take any evidence, but you'll just testify  
16 or give information to this National Economic Research  
17 who has to find that there's some problem so we can  
18 continue the program. And that is not the way I think  
19 it should be done.

20 MS. MAURER: As you noted, since you got into  
21 the finance field, an MBE won both awards on our master

1 list today. And we had one of the MBE -- I think won  
2 the one on your IBM, but that was a separate lease.  
3 You have to separate who wins it from whether it's a  
4 general problem.

5 GOVERNOR SCHAEFER: Well, I don't want to  
6 make any motions. I feel very strongly on this. I  
7 think our own people in this instance have presented no  
8 evidence of discrimination. What they're going to do  
9 is have a study made. The study has already been  
10 decided. The study has already been decided there's  
11 systemic, that they haven't paid on time, and haven't  
12 done this, which, whether it's dealing with the state  
13 or dealing with private enterprise, there's no evidence  
14 in my mind that there's great discrimination against  
15 minorities, women, in the state.

16 If you've got the evidence and you want to  
17 bring it and show me, that will be fine; but I just  
18 don't like -- and I think we're absolutely wrong when  
19 we put the state in a position of being at fault  
20 without evidence, and I don't like it, because that's  
21 the easy way of doing it and that's the simple way when



1       about. So, I mean, I've been sitting here now for a  
2       long time, and I remember we bent over backwards to  
3       comply with the requests of minority senators down here  
4       and delegates with reference to the building  
5       contractors in Baltimore, unions, construction of the  
6       ballpark at Camden Yards. Am I right? Didn't have any  
7       complaints.

8               I just want to be sure what the atmosphere  
9       is, what the system is right now. Things are coming  
10      along pretty good right now, aren't they?

11             MR. WALSH: Let me try -- let me give one  
12      more try.

13             MR. GOLDSTEIN: I'm just trying to put this  
14      thing in focus. When I leave here this afternoon and  
15      somebody says, "Louie, you voted for \$752,000 for a  
16      study. Why did you do it? What was the  
17      justification?" I'm just trying to get the  
18      justification so I can explain it, and as of this  
19      minute I don't have that justification, to be perfectly  
20      honest with you.

21             MR. WALSH: My comments don't have anything

1     you go to the Legislature, simple way when you deal  
2     with the attorney general, simple way when you deal  
3     with your agency, "Yes, we'll put the state on the  
4     defensive that we're not doing everything we can."

5             MS. WEBBON: I think we should say here that  
6     the State of Maryland has, in my opinion, the finest  
7     Minority Business Program in the United States; and,  
8     elsewhere in the United States, it is always being held  
9     up as one of the finest programs. So, I think that is  
10    a fact.

11            GOVERNOR SCHAEFER: I happen to think so,  
12    too. I did up until today. I just don't want to -- I  
13    will wait for anything you all want to do. If you want  
14    to defer it a week while we look into it, fine. If you  
15    want to vote on it and approve it, I will vote against  
16    it.

17            MR. GOLDSTEIN: Well, you want to defer it  
18    for a week until you talk with your cabinet members on  
19    Thursday?

20            GOVERNOR SCHAEFER: It's only going to delay  
21    it, Louie, because the attorney general and their own

1 office has made up their mind this study is necessary  
2 to prove that there's some discrimination somewhere in  
3 something that we do, and human nature is that way:  
4 They don't like my tie, so they won't give me the  
5 contract.

6 MS. MAURER: I think a week would at least be  
7 able to give you a chance to put together a document,  
8 not a document, but to present to us more than this one  
9 sheet.

10 I would move that we defer it for a week.  
11 That would give you time to bring us up to date on any  
12 court cases, any suits that are pending, give us a  
13 better feel for where we are.

14 GOVERNOR SCHAEFER: Marty, I'd like to know  
15 from you, are there practices that we aren't doing?  
16 And I particularly would want to know from Lighthizer  
17 some of the things that you said on what we aren't  
18 doing. If we're not doing it, I want it done. If we  
19 are doing it, I'm not going to defend ourselves by  
20 having some study prove that we're not doing it, not  
21 me. Okay.



1           MR. GOLDSTEIN: I second the motion, with the  
2     understanding that we get the information from Colonel  
3     Walsh's department --

4           GOVERNOR SCHAEFER: Prisons.

5           MR. GOLDSTEIN: You said yours is limited  
6     strictly to Department of Transportation; is that  
7     correct?

8           MS. WEBBON: Yes, sir.

9           GOVERNOR SCHAEFER: Department of Natural  
10    Resources.

11          MR. GOLDSTEIN: So, that way, we'll get the  
12    total picture. Department of Natural Resources, all  
13    these different divisions in your cabinet. I think  
14    it's important to know that.

15          GOVERNOR SCHAEFER: Okay.

16          MR. GOLDSTEIN: And, for that reason, I  
17    second the motion.

18          GOVERNOR SCHAEFER: No objections on that.  
19    So ordered. What else have you got on this agenda?

20          MR. GOLDSTEIN: Wait a minute here, let's see  
21    here. My next item was 9-S -- 4-S is the Department of

1       Transportation. They're going to have an inventory of  
2       all their assets. That needs no explanation, I reckon.

3               Let's see, Number 9, 9-S, that's a non-  
4       competitive bid there with reference to Social Services  
5       and Human Resources, the Benedictine School over there  
6       in Caroline County, and that Bello Machre, Incorporated  
7       in Glen Burnie.

8               MS. REYNOLD: They sent you a letter. Did  
9       you get that, an additional letter with some further  
10      explanation? I think you've got that.

11              MR. GOLDSTEIN: Okay. The same way with 10.  
12      Item 14, you're satisfied? That's the one for the  
13      computer that they got from NASA. It's a sole source,  
14      Control Data. Is anybody here from --

15              MS. REYNOLD: Is Mr. Wortherly here, please?

16              MR. GOLDSTEIN: Anybody from Morgan State  
17      University?

18              MR. ROWLAND: He's here. Mr. Wortherly. You  
19      two want to come up and --

20              MR. GOLDSTEIN: Is anybody here from Morgan  
21      State University?

1 MR. ROWLAND: Yes, they're right here, right  
2 here.

3 MR. GOLDSTEIN: Good morning, sir.

4 MR. WORTHERLY: Good morning.

5 MR. GOLDSTEIN: It's afternoon now; it's 25  
6 after 12. This is a sole source contract to Control  
7 Data for \$121,700 for a computer that you received from  
8 NASA.

9 MR. WORTHERLY: Yes, sir.

10 MR. GOLDSTEIN: Did you advertise to see if  
11 anybody else could do this work besides Control Data?

12 MR. WORTHERLY: Well, I've brought with me  
13 Dr. Lupton, who is in charge of the program, and he  
14 will address how this was --

15 MR. GOLDSTEIN: Thank you, Doctor. Nice to  
16 have you here, sir.

17 DR. LUPTON: Thank you.

18 MR. GOLDSTEIN: You want to give your name  
19 and title for the record, please, sir.

20 DR. LUPTON: Yes. I'm Dr. William L. Lupton,  
21 chair, Computer Science, at Morgan State University.



1 MR. GOLDSTEIN: This is a sole source  
2 contract. Can you give a reason why it's sole source?

3 DR. LUPTON: Well, it's a sole source because  
4 the computer that we are trying to maintain is a  
5 Control Data product.

6 MR. GOLDSTEIN: I understand that.

7 DR. LUPTON: The proposal to NASA was for  
8 this particular unit that was presented to Morgan by  
9 NASA-Goddard; and, as a part of positioning the  
10 computer there, the maintenance to go along with it was  
11 also provided. It is Control Data's machine. So, what  
12 we are doing is NASA is providing funds for us to  
13 continue to maintain the machine in operation.

14 MR. GOLDSTEIN: So, in other words, NASA is  
15 giving you the 121,776 to get this --

16 DR. LUPTON: That's correct.

17 MR. GOLDSTEIN: This is not state money?

18 DR. LUPTON: No, it isn't.

19 MR. GOLDSTEIN: This is federal money?

20 DR. LUPTON: Absolutely.

21 MR. GOLDSTEIN: All right. Now, what happens

1 if the federal funds stop?

2 DR. LUPTON: Then the program stops.

3 MR. GOLDSTEIN: I see. So, in other words,  
4 the computer was given to you as a gift, and the  
5 maintenance money is a gift?

6 DR. LUPTON: That's correct.

7 MR. GOLDSTEIN: It's all federal money?

8 DR. LUPTON: Yes.

9 MR. GOLDSTEIN: Okay. I just want to be sure  
10 we got it in the record here, so if something goes  
11 wrong -- because, see, the Legislature is on our head  
12 and our back every time there's a sole source contract.

13 DR. LUPTON: I understand that, sir.

14 MR. GOLDSTEIN: See, so we want to be sure  
15 that the proper parties, like you, put the thing into  
16 the proper perspective. We thank you.

17 DR. LUPTON: You're welcome.

18 MR. GOLDSTEIN: Yes, sir. You've got a great  
19 institution up there. Keep up the good work.

20 DR. LUPTON: Thank you.

21 MR. GOLDSTEIN: Yes, sir. Okay. Item 15, I

1 had Item 15. Are you satisfied with that now, Lucy?

2 MS. MAURER: Just for the record, the  
3 Unemployment Office feels that even going to the letter  
4 box at the corner can be hazardous duty. In fact, I  
5 think they had someone assaulted there; right?

6 MR. CROWLEY: That's correct.

7 MS. MAURER: I'd like to point out that, in  
8 the information you provided, that it's only \$6,000 in  
9 currency, and I presume all the rest is in checks.

10 MR. CROWLEY: Checks, that's correct. It was  
11 about 6,000,000, I think it was, in checks.

12 MS. MAURER: Yeah. And I'd like to encourage  
13 you to use a lock box.

14 MR. CROWLEY: We do for -- I would say, 97 to  
15 98 percent of our deposits are going through lock box.  
16 However, if an employee has to release a lien and they  
17 come into the building to get it done immediately or if  
18 a claimant has cash on hand and they want to satisfy a  
19 debt, we're certainly not in a position to refuse that  
20 money, so we do accept it.

21 MS. MAURER: I was surprised how little of it



1 is in cash and there is so much, and I understand the  
2 need, but I'd like to encourage the use of a lock box.

3 MR. CROWLEY: We agree with you.

4 MR. GOLDSTEIN: Okay.

5 MS. MAURER: Thank you.

6 MR. GOLDSTEIN: Thank you.

7 MR. CROWLEY: You're welcome.

8 MR. GOLDSTEIN: This Item 16, that's another  
9 sole source, Social Services.

10 MR. SIVERT: Good afternoon. I'm Bob Sivert,  
11 chief of support services for Juvenile Services. The  
12 item which we have before you is a request to approve  
13 five per diem contracts with out-of-state vendors for  
14 placement of youth, should it be necessary to use the  
15 services of any one of these five. These will be added  
16 to a list of about 70 that we currently have that may  
17 be available for placement of youth.

18 I'll be happy to answer any questions that  
19 you might have.

20 MR. GOLDSTEIN: There's such a difference in  
21 the price. One is 107,000, one is 67,000, one is

1       53,000, one is 51,000, one is 54,000.

2               MS. MAURER: That would depend on the  
3       services.

4               MR. GOLDSTEIN: I know. It depends on the  
5       services and type of individual, I reckon.

6               MR. SIVERT: Yes, sir. A lot of it depends  
7       upon the psychiatric services that have to be provided.  
8       A lot of it depends upon special education that has to  
9       be provided. These vendors will differ as to what mix  
10      of services they can provide.

11              MR. GOLDSTEIN: Right now, how many clients  
12      do you have that have to go to these places right now?

13              MR. SIVERT: We currently have three youth  
14      placed in three of these particular institutions. Two  
15      of them currently have no youth placed at this time.

16              MR. GOLDSTEIN: How many different  
17      individuals? Three individuals?

18              MR. SIVERT: Three individuals, yes, sir.

19              MS. MAURER: But you have stand-by agreements  
20      for the price, and if a court --

21              MR. SIVERT: That's what you're asked to

1 approve here, is the --

2 MS. MAURER: Stand-by agreement.

3 MR. SIVERT: That's correct. Should a court  
4 decide that that type of treatment is necessary for a  
5 particular youth, we will then have the agreement in  
6 place.

7 MS. MAURER: Do you have any others? I'll  
8 move approval.

9 MR. GOLDSTEIN: Thank you, sir.

10 MS. MAURER: I'll move approval except for  
11 the ones that have been deferred.

12 MR. GOLDSTEIN: Let's see, Item Number --

13 MS. MAURER: Twenty-one has been deferred.

14 MS. REYNOLD: That's right.

15 MR. GOLDSTEIN: Yeah.

16 MR. DAVIS: It was deferred?

17 MR. ROWLAND: Yes, deferred.

18 MR. GOLDSTEIN: Item 21?

19 MS. REYNOLD: Is deferred.

20 MR. ROWLAND: It's deferred.

21 MR. GOLDSTEIN: I just want to be sure we



1 understand that. Do you have any problem with  
2 deferring that, Mr. Davis?

3 MR. DAVIS: Well, we have Mr. -- Dr. Bowling  
4 here, who came all the way from Cumberland --

5 MR. GOLDSTEIN: Who's that?

6 MR. DAVIS: -- with the expectation of  
7 presenting any information that might be useful to the  
8 Board. Dr. Bowling from Frostburg State.

9 GOVERNOR SCHAEFER: The Governor wanted it  
10 deferred. I'd be very glad to listen to the doctor.

11 MR. DAVIS: Well, if there are any questions  
12 that we could answer, we'd be happy to do that.

13 MR. GOLDSTEIN: Well, the discussion -- this  
14 is setting a precedent, you know.

15 MS. MAURER: If he would like to make a brief  
16 statement, because then we will --

17 MR. GOLDSTEIN: Sure, certainly, be glad to  
18 hear from him.

19 MS. MAURER: -- have an opportunity to have a  
20 fuller --

21 MR. GOLDSTEIN: Certainly. Come up, Doctor.

1 We're glad to have you here. I'm sorry you had to make  
2 a trip down here from Frostburg, but I know you folks  
3 like to get down here where it's a warmer climate.  
4 Don't have any ice and snow out here this morning.

5 DR. BOWLING: That's right.

6 MR. GOLDSTEIN: I imagine you've still got  
7 plenty of there, haven't you?

8 DR. BOWLING: Oh, yes.

9 MR. GOLDSTEIN: Yes, sir.

10 MR. DAVIS: I think what we want to emphasize  
11 to the Board is that this is a cost-effective solution  
12 for the state. This is a \$5,000 attorney fee award  
13 settlement. The state litigated aggressively this  
14 lawsuit. We lost. We elected not to appeal, because  
15 we made a legal evaluation on the merits of the case;  
16 we determined we would be far worse off if we were to  
17 appeal. We settled an attorney fee claim of \$7,300 for  
18 \$5,000. If we had not settled the claim, we would be  
19 faced by a court order from the U.S. District Court to  
20 pay more money than \$5,000.

21 So, this \$5,000 proposal before you today is

1 a cost-effective solution for the state.

2 MS. MAURER: As I see, what's precedent  
3 setting in my mind, in my own concern, is that the  
4 university has a disciplinary procedure and the court  
5 has said that, in the instance of this student who  
6 brought the court action, that because he was  
7 simultaneously being considered for a criminal --

8 DR. BOWLING: No criminal charges have been  
9 filed, but the alleged victim has not waived her right  
10 to file those charges. So, there is that possibility.

11 MS. MAURER: And that will have a chilling  
12 effect upon disciplinary actions of universities, not  
13 just yours, and ultimately I am concerned that it will  
14 narrow the opportunities for -- that you will be more  
15 limited in who you let in, because the opportunity for  
16 students to prove themselves if they have anything  
17 against them, you don't want to take a risk because  
18 you've got a court case.

19 DR. BOWLING: Let me just say we share your  
20 concerns, and that's why we fought against the idea of  
21 having attorneys present. We have in our Student



1 Conduct Code, our university standards on personal and  
2 group conduct, a statement saying that students who are  
3 accused may choose to seek assistance from anyone in  
4 terms of preparing for their hearing, but they are  
5 expected to represent themselves at the hearing.

6 We are not finding people guilty of criminal  
7 acts. We're finding them guilty of or not guilty of a  
8 violation of university policies, and so we felt very  
9 strongly that, particularly since no criminal charges  
10 had been filed, that the attorney need not be present  
11 at this hearing. We went to court. The U.S. District  
12 Court judge said that, in view of the fact that there  
13 are criminal charges that are possible, that the court  
14 was concerned about possible self-incrimination at the  
15 on-campus judicial hearing in terms of future criminal  
16 cases.

17 We've been ordered by the court to have the  
18 attorney present.

19 MS. MAURER: I realize that.

20 DR. BOWLING: Now, the role is limited. The  
21 role is limited to advising the accused student as to

1       whether or not he should respond to a question. The  
2       attorney may not function as a trial lawyer, is not  
3       permitted to make opening or closing statements.

4               MS. MAURER: We understand that.

5               DR. BOWLING: Okay.

6               MS. MAURER: But how long would the  
7       complainant have to file criminal charges?

8               DR. BOWLING: It's my understanding that the  
9       alleged victim -- one of the things that she is wanting  
10      to do is wait until after the on-campus hearing has  
11      been conducted to decide whether or not to file  
12      criminal charges.

13              MR. GOLDSTEIN: Has that been completed?

14              DR. BOWLING: Pardon?

15              MR. GOLDSTEIN: Has the on-campus hearing  
16      been completed?

17              DR. BOWLING: No. It is scheduled for  
18      Monday.

19              MR. GOLDSTEIN: Monday.

20              DR. BOWLING: This coming Monday.

21              MS. MAURER: And what would happen if the

1 university said, "We have to wait to find out if there  
2 are going to be criminal charges before we do our" --

3 DR. BOWLING: My concern about that would be  
4 that there's been an allegation made that a university  
5 policy has been violated. There are often policies  
6 that are violated that are not criminal in nature. I  
7 think our ability to respond in a time effectiveness --  
8 it's already been compromised because of the  
9 litigation, but I think our university's ability to  
10 respond in a timely fashion would be compromised by  
11 doing that. That would be my concern.

12 MS. MAURER: It's a reasonable concern, but  
13 I'm not so mindful of if it's a good, cost-effective  
14 settlement as I am about the implications --

15 DR. BOWLING: Precedent.

16 MS. MAURER: -- for universities and for  
17 students who need a chance and that, by reason of this  
18 precedent setting agreement, universities might not be  
19 willing to chance it for other students if there were  
20 anything in their record that would indicate there is a  
21 possible problem.



1           MR. GOLDSTEIN: Let me ask you a question,  
2     Mr. Davis. This item here says, "Description:  
3     Approval requested to pay settlement on behalf of a  
4     state employee from the State Insurance Trust Fund,  
5     pursuant to Title 12, Subtitle 5, State Government  
6     Article, in the case of Cleary versus Giry."

7           Is Cleary a state employee? I thought he's a  
8     student. He's not a state employee, is he?

9           MR. DAVIS: He is not a state employee.  
10    Individual state employees were named as defendants in  
11    the lawsuit, sir.

12           MR. GOLDSTEIN: Yeah, but this payment is  
13    being paid because these lawyers represented Cleary,  
14    didn't they?

15           MS. MAURER: Yes.

16           MR. DAVIS: That's correct.

17           DR. BOWLING: That is correct.

18           MR. GOLDSTEIN: This thing is wrong, the way  
19    it's put.

20           MR. DAVIS: I believe it is wrong, yes.

21           MR. GOLDSTEIN: I said so this morning. I

1       said this has got to be rewritten. In other words,  
2       reading this, Cleary is a student at Frostburg State  
3       University.

4               DR. BOWLING: Correct.

5               MR. GOLDSTEIN: And the two lawyers went up  
6       there. One lawyer could have sat there as well as two,  
7       but they had to bring somebody to hold the hand of the  
8       other one, I reckon, and then we've got to pay \$5,000  
9       to have sat there and just looked around and saw what  
10      the hell was going on up there in those beautiful  
11      mountains.

12              MS. MAURER: Well, they will be sitting on  
13      Monday. How did you --

14              MR. GOLDSTEIN: Will they be there on Monday?

15              DR. BOWLING: We've been ordered by the court  
16      not to have the hearing unless an attorney is present.

17              MS. MAURER: This is just for his going to  
18      the court to fight the university.

19              MR. DAVIS: That's right.

20              MR. GOLDSTEIN: Well, no. They're going to  
21      sit right there and listen to the violation against the

1 university's code of conduct or whatever they call it  
2 up there.

3 MS. MAURER: Right.

4 MR. GOLDSTEIN: So, this is wrong here. This  
5 here, you're paying this on behalf of a plaintiff.

6 MR. DAVIS: The plaintiff's attorneys are  
7 being paid; that's correct.

8 MR. GOLDSTEIN: See what I'm talking about,  
9 Madam Secretary?

10 MS. REYNOLD: Yes, sir, I sure do.

11 MS. MAURER: For going to court and not --

12 MR. GOLDSTEIN: This thing is wrong. I mean,  
13 I read that --

14 MS. REYNOLD: I see that.

15 MS. MAURER: We're going to have to pay them  
16 for sitting in the disciplinary hearing.

17 MR. GOLDSTEIN: That's right.

18 MS. MAURER: That will be coming next.

19 MR. DAVIS: No, no. That is not compensable  
20 under federal civil rights law. The only thing that is  
21 compensable are the legal fees associated with bringing



1 a federal District Court action.

2 MS. MAURER: Okay.

3 MR. GOLDSTEIN: And who brought that federal  
4 District Court action?

5 MS. MAURER: Cleary.

6 DR. BOWLING: The students.

7 MR. GOLDSTEIN: The student brought it?

8 DR. BOWLING: Cleary.

9 MR. GOLDSTEIN: So, here you've got a student  
10 that's violated the code of conduct --

11 DR. BOWLING: Allegedly. The hearing has not  
12 been held.

13 MR. GOLDSTEIN: And then you've got to pay --  
14 well, I just can't get that through my head.

15 DR. BOWLING: I understand.

16 MR. DAVIS: We were not happy with the  
17 result.

18 MR. GOLDSTEIN: Sir?

19 MR. DAVIS: We were not happy with the  
20 result. We aggressively defended the lawsuit. We lost  
21 the lawsuit. We made a judgment that we would be far

1 better off minimizing our losses now rather than  
2 appealing and, perhaps, exposing the state to a far  
3 greater liability.

4 MR. GOLDSTEIN: Well, this has got to be  
5 rewritten, "to pay settlement on behalf of a student,"  
6 Cleary, so-and-so. This is written wrong.

7 MS. MAURER: What are the appeals from the  
8 disciplinary --

9 MR. GOLDSTEIN: You follow me?

10 MS. REYNOLD: Yeah, I have notes on it.

11 MS. MAURER: -- committee that hears on  
12 Monday? There's usually an appeal process.

13 DR. BOWLING: Yes. The request for an appeal  
14 is filed with me. One of my responsibilities is to  
15 serve as the oversee judicial administrator, and that  
16 request for an appeal comes to me, and I judge whether  
17 or not there are grounds for an appeal. If there are  
18 grounds for an appeal, in this particular instance our  
19 vice-president for student educational services would  
20 hear that appeal.

21 MS. MAURER: Individually?

1 DR. BOWLING: Yes.

2 MS. MAURER: And what does your code say  
3 about the students involved having to make their own  
4 case in this, or did they have lawyers?

5 DR. BOWLING: In all hearings, our code says  
6 that students are to represent themselves.

7 MS. MAURER: And, so, does the court order  
8 from the federal District Court cover the appeal steps  
9 too, so the student can have an attorney there?

10 DR. BOWLING: I would presume so.

11 MR. DAVIS: No, the accurate answer is that  
12 it does not cover that subject, but I think a  
13 reasonable reading of the order is that it does not,  
14 because the order is directed at the danger of the  
15 student self-incriminating, giving testimony which  
16 might lead to evidence which could be used against him  
17 in a subsequent criminal proceeding; and the mere  
18 filing of an appeal does not cover that kind of thing.

19 DR. BOWLING: But I think what the Treasurer  
20 is talking about is the appellate hearing.

21 MR. DAVIS: Yes.



1 DR. BOWLING: Would the attorney be present  
2 -- would the attorney be required to be present at the  
3 appellate hearing?

4 MR. DAVIS: Required to be present? I don't  
5 believe so, no.

6 MS. MAURER: If the student wanted to go to  
7 court and, on the basis of the first ruling, say, "I  
8 still have problems; you should do it," we could be  
9 involved in a whole series of court cases.

10 MR. DAVIS: Well, the student has that right  
11 today. The student can go to court with an attorney.  
12 He can file an original action in the Maryland Circuit  
13 Courts and challenge the university's decision. So,  
14 this decision does nothing to change that legal right  
15 that he has today.

16 MR. GOLDSTEIN: What was the nature of the  
17 case in the Federal Court in Baltimore?

18 MR. DAVIS: Sir, it was an action brought  
19 under the federal Civil Rights Act. The student  
20 alleged that he was being deprived of due process under  
21 law because the university denied him a right to have

1 an attorney present during the university disciplinary  
2 hearing.

3 MR. GOLDSTEIN: So, then, based on the very  
4 thing you're saying now, that could happen in every  
5 case in every one of the nine or 11 institutions of the  
6 University of Maryland System, couldn't it?

7 DR. BOWLING: It's conceivable.

8 MS. MAURER: And for the different levels,  
9 the initial hearing, the appellate hearing.

10 MR. GOLDSTEIN: That's it. That's what I'm  
11 talking about, see.

12 MS. MAURER: But it does -- I haven't seen  
13 the District Court's order; but, from what you said on  
14 Monday, I thought it was only if there was the  
15 possibility of a criminal action.

16 MR. DAVIS: That's correct. Moreover, the  
17 only thing the attorney can do is remain silent. He  
18 can only be involved in the hearing to the limited  
19 extent of advising a student when he should speak and  
20 when he should not speak. The attorney himself cannot  
21 speak.

1 MR. GOLDSTEIN: I understand.

2 MS. MAURER: Yeah, but they can charge.

3 MR. GOLDSTEIN: He's sitting right there as  
4 an advisor to the individual. I understand that.

5 Doctor, I didn't get your name, sir.

6 DR. BOWLING: Tom Bowling.

7 MR. GOLDSTEIN: Tom, is that the Southern  
8 Maryland Bowlings?

9 DR. BOWLING: It's spelled the same way.

10 MR. GOLDSTEIN: Yes, sir, down there at  
11 Allen's Fresh. Tom Bowling. That's Dr. Tom Bowling?

12 DR. BOWLING: Right.

13 MR. GOLDSTEIN: Thank you, sir. B-O-W-L-  
14 I-N-G.

15 DR. BOWLING: That's correct, sir.

16 MR. GOLDSTEIN: Well, I think maybe if we  
17 could defer it until next Wednesday. Do you see any  
18 problem with deferring it one week to get the right  
19 information on this item?

20 MR. DAVIS: I'll communicate with whomever  
21 you direct me to, sir, and I'll make sure that --



1 MR. GOLDSTEIN: Our Madam Secretary right  
2 here. You want to make the motion?

3 MS. MAURER: Well, I move that we adopt the  
4 entire agenda except for items which have been  
5 deferred, which includes the Item 21.

6 We appreciate your coming down.

7 DR. BOWLING: Certainly. Thank you.

8 MR. GOLDSTEIN: Thank you all. All right.  
9 The motion was made to approve the agenda with the  
10 exception of the Item Number 21-GM, page 26B, will be  
11 deferred for one week. All in favor, signify by saying  
12 "aye."

13 BOARD MEMBERS: Aye.

14 MR. GOLDSTEIN: Opposed, "no."

15 BOARD MEMBERS: (No response.)

16 MR. GOLDSTEIN: The ayes have it. University  
17 of Maryland System.

18 MR. MAYHEW: Good morning. Joe Mayhew for  
19 the University of Maryland. We have three items today,  
20 sir.

21 MR. GOLDSTEIN: Just for the record, Item

1 Number 3-GM on page C5, can you explain this thing  
2 about the settlement?

3 MR. MAYHEW: I'm sorry, sir, I can't hear you  
4 with the noise.

5 MR. GOLDSTEIN: Item 3-GM, page C5,  
6 University of Maryland System, the settlement with the  
7 Florance, Eichbaum, Escoff & King Architects, successor  
8 to Keys, Condon and Florance Architects, P.C., 1320 -  
9 19th Street, N.W., Washington, D.C. 20036. You got it  
10 now?

11 MR. MAYHEW: Got it now.

12 MR. GOLDSTEIN: Okay, sir. Can you just give  
13 a short explanation about this settlement of \$70,000?

14 MR. MAYHEW: Yes, sir. This settlement is  
15 based on the fact of some design omission and errors by  
16 that same A/E company doing the design for this project  
17 at Shady Grove, in which they did not adequately design  
18 the removal (sic) of a pile of earth at the site and  
19 they did not put in the amount of required sprinklers  
20 and smoke detectors in the building.

21 As a result, during the construction, we had

1 to have change orders to correct this stuff on both of  
2 these items, and what we're -- we went after the A/E,  
3 is to pay for the extra money above which we would have  
4 normally paid for had they designed it there in the  
5 first place.

6 MR. GOLDSTEIN: You want to give your name  
7 for the record.

8 MR. MAYHEW: I did. Joe Mayhew, sir.

9 MR. GOLDSTEIN: Right.

10 MR. MAYHEW: And the \$70,000 is the results  
11 of negotiating with the A/E.

12 MR. GOLDSTEIN: All right. Thank you, sir.  
13 You want to make a motion?

14 MS. MAURER: I move we approve it.

15 MR. GOLDSTEIN: Second the motion. All in  
16 favor, signify by saying "aye."

17 BOARD MEMBERS: Aye.

18 MR. GOLDSTEIN: Opposed, "no."

19 BOARD MEMBERS: (No response.)

20 MR. MAYHEW: Thank you.

21 MR. GOLDSTEIN: All right. Our next agenda



1 item is the Department of Public Service and  
2 Correctional items. You want to come up, sir, please,  
3 sir. You've got two items there, Item 1-S and 2-C,  
4 with reference to the Western Correctional Institution.  
5 Can you give us a little, short explanation for the  
6 manager and, also, the site demolition and the PCBs?

7 MR. BEZANSON: Yes, sir. I'm David Bezanson,  
8 deputy secretary, Department of Public Safety. You  
9 have two items before you this morning.

10 Item 1-S is a contract for program management  
11 services to augment the staff for the construction of  
12 Western Correctional Facility. The amount of the  
13 contract is a low bid, competitive, multi-step, sealed  
14 bidding process. CRSS was the low bidder in the amount  
15 of \$1,538,057. We recommend approval of this item.

16 They will be assisting the department in the  
17 planning and construction of the facility. The first  
18 portion of that construction is the demolition  
19 contract, which is Item 2-C.

20 If I may move on to Item 2-C, the site  
21 demolition contract, I'll give you a brief rundown of

1     that. We modified that in accordance with a question  
2     that came before the pre-Board on Monday. This is a  
3     site demolition that includes the demolition of  
4     buildings and the removal of hazardous material,  
5     abatement, and the construction of a rubble landfill.

6             The contract requires that PCB-contaminated  
7     materials, which are fluorescent light fixture ballasts  
8     in the old buildings, will be transported off site and  
9     disposed of in an approved facility in accordance with  
10    Department of Transportation/EPA regulations.

11            Building rubble will be disposed of on site  
12    and in a rubble landfill adjacent to the site.

13            MR. GOLDSTEIN: Now, these PCBs, that's the  
14    thing that I have concern about.

15            MR. BEZANSON: Yes, sir.

16            MR. GOLDSTEIN: We discussed it on Monday and  
17    discussed it at our pre-Board with the Governor. Now,  
18    I read this language: "The contract requires PCB-  
19    contaminated materials to be transported off site and  
20    disposed of in an approved facility in accordance with  
21    DOT and EPA regulations," end of the sentence.

1 MR. BEZANSON: Correct.

2 MR. GOLDSTEIN: So, I just want to be sure  
3 it's going to be sent to some "X" place --

4 MR. BEZANSON: Licensed facility for that.

5 MR. GOLDSTEIN: Licensed facility that meets  
6 all EPA requirements.

7 MR. BEZANSON: Yes.

8 MR. GOLDSTEIN: And you have all the records  
9 in your file. So, when they come along here five years  
10 or 10 years from now and say, "Wait awhile here, you  
11 all tore down a Celanese building up there in  
12 Cumberland and you moved it out here to 'X' place, and  
13 we now find it's contaminating the water in the state's  
14 streams, and you've got to pay a million dollars to  
15 clean it up."

16 MR. BEZANSON: I understand your concern,  
17 sir.

18 MR. GOLDSTEIN: Yes, sir. That's happened  
19 before here in Maryland, the university.

20 MR. BEZANSON: Right. The contract documents  
21 do require certification of the location of the



1 disposal and do require compliance with all --

2 MR. GOLDSTEIN: Does the company -- you'll  
3 probably have a special company to move this, won't  
4 you?

5 MR. BEZANSON: Yes, there will be a  
6 subcontracting company.

7 MR. GOLDSTEIN: And will they be carrying  
8 adequate insurance?

9 MR. BEZANSON: They will be required to --  
10 the general contractor is required to cover that  
11 insurance; yes, sir.

12 MR. GOLDSTEIN: You see what I'm talking  
13 about, Colonel? To be sure there's the insurance  
14 carrier and the place they're putting it.

15 MR. BEZANSON: This particular item of PCBs  
16 is extremely limited. It's not a large transformer  
17 where it's a liquid.

18 MR. GOLDSTEIN: Sir, look, I've seen it  
19 happen over at Washington College, little, small school  
20 on the Eastern Shore. They came there and said, "Wait  
21 awhile, you've got to pay" -- first, it was way up

1       there, I mean, way up in the thousands, and they hired  
2       a real good, smart lawyer and negotiated and finally  
3       got it down to about 15,000. That was just one,  
4       little, old transformer on the campus, just one. So, a  
5       burnt child fears fire.

6               MR. BEZANSON: Well, we have identified the  
7       location of these materials and cited them in the  
8       contract and made the contractor aware of his  
9       responsibilities.

10              MR. GOLDSTEIN: That's all in writing?

11              MR. BEZANSON: And it's all in writing, yes,  
12       sir.

13              MR. GOLDSTEIN: Okay. I just want to be sure  
14       that no one will come along and say, "Well, so-and-so  
15       forgot to write it up." Thank you, sir.

16              MR. BEZANSON: Thank you.

17              MR. GOLDSTEIN: Make a motion?

18              MS. MAURER: Move approval.

19              MR. GOLDSTEIN: Second the motion. All in  
20       favor, signify by saying "aye."

21              BOARD MEMBERS: Aye.

1 MR. GOLDSTEIN: Opposed, "no."

2 BOARD MEMBERS: (No response.)

3 MR. GOLDSTEIN: Department of Transportation,  
4 I didn't have any problems with anything.

5 MS. MAURER: Move approval.

6 MR. GOLDSTEIN: Second the motion. All in  
7 favor, signify by saying "aye."

8 BOARD MEMBERS: Aye.

9 MR. GOLDSTEIN: Opposed, "no."

10 BOARD MEMBERS: (No response.)

11 MR. GOLDSTEIN: So ordered. You folks can go  
12 get your lunch now.

13 MR. WALSH: Did they have a hand-carried?

14 MR. GOLDSTEIN: All right now. We've got the  
15 colonel's agenda here.

16 MS. MAURER: Did DOT have a hand-carried?

17 MS. REYNOLD: Yes, ma'am.

18 MR. GOLDSTEIN: Excuse me. That hand-carried  
19 item, I think there was no problem with that hand-  
20 carried. It was Item Number 10.

21 MS. REYNOLD: Why don't I just mention for



1 the record -- thank you, Treasurer.

2 MS. MAURER: It was Marty.

3 MS. REYNOLD: That the Department of  
4 Transportation has 10 items. Number 10 was hand-  
5 carried on Monday.

6 MS. MAURER: Right.

7 MR. GOLDSTEIN: Right.

8 MS. REYNOLD: Thank you very much, Treasurer.

9 MS. MAURER: It was Marty.

10 MR. GOLDSTEIN: All right. The first one on  
11 the agenda is Item Number 14, 14-L, page 18. It's my  
12 understanding that item is going to be amended.

13 MR. WALSH: Yes, sir. What I would ask the  
14 Board to do is conditionally approve this item based on  
15 our working with Mr. Hanna, with our real estate people  
16 and Social Services and, specifically, putting into  
17 this contract language that would reflect an option to  
18 buy. I'll get that kind of language and I'll pass that  
19 through the Board of Public Works members and get their  
20 approval before we then execute the contract.

21 We have a pretty good contingent here who

1 have come all the way up from Princess Anne today.

2 MR. GOLDSTEIN: Fine. We're glad to have you  
3 all.

4 MR. WALSH: We have County Commissioner Ring  
5 there and --

6 MR. GOLDSTEIN: Who wants to be one spokesman  
7 and tell us -- just one spokesman? You want to give  
8 your name and title for the record, please.

9 MS. MANNION: Patricia Mannion, director of  
10 the Somerset County Department of Social Services.

11 MR. GOLDSTEIN: M-A-N-N-I-N-G?

12 MS. MANNION: M-A-N-N-I-O-N.

13 MR. GOLDSTEIN: M-A-N-N-I-O-N, Irish  
14 spelling, right?

15 MS. MANNION: Absolutely.

16 MR. GOLDSTEIN: Good. That's a beautiful  
17 name.

18 MS. MANNION: We have my board chairman, we  
19 have a county commissioner who represents the county  
20 commissioners on our board, and our county  
21 administrator here today. And, in addition, in case

1       you had any questions about the need for this building,  
2       I've brought photographs.

3               MR. GOLDSTEIN: We know you're in need of it.

4               MS. MANNION: You're sure of that?

5               MR. GOLDSTEIN: I've been there.

6               MS. MANNION: One picture is worth a thousand  
7       words.

8               MR. GOLDSTEIN: Yes, ma'am. If you want to  
9       leave them, we'll be glad to look at them. You want to  
10      bring them up here. We'll be glad to look at them. I  
11      know exactly where you're located. You've grown like  
12      topsy.

13              MS. MANNION: Yes.

14              MR. GOLDSTEIN: Yes, ma'am, sitting on top of  
15      each other.

16              MS. MANNION: It actually looks better in  
17      those pictures. A week ago, we had a couple of inches  
18      of water all over the floor in addition to the crowding  
19      of the furniture and staff.

20              MR. GOLDSTEIN: Yeah, we all had water.  
21      Unusual freezing and weather conditions.



1 MS. MANNION: That is correct.

2 MR. GOLDSTEIN: Right. But the point is we  
3 now have an understanding that they're going to give us  
4 an option to buy the building, you see. I'm looking at  
5 it as a taxpayer. This is a pretty big rent to be  
6 paying for just a one-story building, big rent; and, if  
7 we had the money, we'd build it ourselves. That's why  
8 we want the option to buy it.

9 Is there anybody who objects to that?

10 MR. WALSH: No.

11 MR. GOLDSTEIN: Okay.

12 MS. MANNION: We feel the citizens of  
13 Somerset County deserve it.

14 MS. MAURER: We do, too.

15 MR. WALSH: We'll get that -- we'll get that  
16 to you, sir, and the Treasurer and the Governor, and  
17 move out of this.

18 MS. MANNION: Good. Okay. Thank you very  
19 much.

20 MR. GOLDSTEIN: Anything else you want to  
21 tell us? Mr. Commissioner, how about you, sir?

1 Anything else you want to tell us, sir?

2 MR. RING: We need some help, whatever you  
3 all can do for us.

4 MR. GOLDSTEIN: Right.

5 MR. RING: We all thank you.

6 MR. GOLDSTEIN: We're going to take care of  
7 you.

8 MR. RING: Okay. Thank you.

9 MR. GOLDSTEIN: We've been doing that for a  
10 long time.

11 MR. RING: Yes, sir.

12 MR. GOLDSTEIN: Been a great county.

13 MR. RING: We appreciate it. Thank you, sir.

14 MR. GOLDSTEIN: Thank you all. Have a safe  
15 trip back.

16 MS. WHITELOCK: I just want to bring to your  
17 attention we do have a cannery on the Eastern Shore.  
18 We do have one cannery in operation.

19 MS. MANNION: In Somerset County.

20 MR. GOLDSTEIN: Is that right?

21 MS. WHITELOCK: Yes. I just wanted to bring

1       you up to date.

2               MR. GOLDSTEIN: Thank you. Canning tomatoes?

3               MS. WHITELOCK: Yes.

4               MR. GOLDSTEIN: Where is it located?

5               MS. WHITELOCK: Six Elms, in Westover.

6               MS. MANNION: Westover, Maryland, between  
7 Princess Anne and Crisfield.

8               MR. GOLDSTEIN: I know where it is. I've  
9 been to Westover many times.

10              MS. MAURER: What label do they have, or is  
11 it just for --

12              MS. WHITELOCK: What label do they can?

13              MR. RING: They don't can anymore. That's a  
14 green tomato.

15              MR. GOLDSTEIN: Sir?

16              MR. RING: A green tomato operation.

17              MR. GOLDSTEIN: See, that's what I know, the  
18 Long family.

19              MS. WHITELOCK: Right, right.

20              MR. GOLDSTEIN: That's not a cannery.

21              MR. RING: No.



1                   MR. GOLDSTEIN: They grow what you call  
2                   "green rats." They send them to Florida and send them  
3                   to New York and Canada. I get a box of those tomatoes  
4                   every summer. Usually around the latter part of June,  
5                   around the 4th of July is when they get the first  
6                   tomatoes, and I always go by there; and, I'm telling  
7                   you, they're real nice, big tomatoes.

8                   MS. WHITELOCK: Yes.

9                   MS. MAURER: Do they pickle them?

10                  MR. GOLDSTEIN: No, ma'am. Lucy, Florida has  
11                  an off season when they don't have tomatoes. They ship  
12                  those tomatoes to Florida and send them up to New York  
13                  and Canada. They get anywhere from about a dollar a  
14                  pound retail, and they sell them for about 40 cents a  
15                  pound. They produce a lot of tomatoes down there. I  
16                  mean, they've got a lot of tomatoes, and I start buying  
17                  there around the latter part of June, first week in  
18                  July, and I buy tomatoes up there almost to around  
19                  October.

20                  You know that nice fruit farm there on that  
21                  back road?

1 MR. RING: Yes.

2 MS. MANNION: Mr. Biggy's daughter works for  
3 the Department of Social Services --

4 MR. GOLDSTEIN: Yeah, very nice.

5 MS. MANNION: -- and she will appreciate your  
6 support.

7 MR. GOLDSTEIN: Yes, ma'am. They have those  
8 peaches that get --

9 MS. MAURER: You mean they sell them as  
10 Florida tomatoes?

11 MR. GOLDSTEIN: Ma'am?

12 MS. MAURER: They then sell them as Florida  
13 tomatoes?

14 MR. GOLDSTEIN: I don't know. They ship them  
15 to Florida, you know, the big trucks right there.

16 MR. WALSH: It's a vegetable --

17 MR. GOLDSTEIN: You ought to see that  
18 operation, Lucy. The tomatoes are green, and they put  
19 them in about a 30- or 32-pound pasteboard carton and  
20 run them through this gas and load them on these trucks  
21 on pallets. They've got trucks going south; they've

1 got trucks going north.

2 MR. MASSEY: We do have one cannery which is  
3 for catsup, which is near Pocomoke City.

4 MR. GOLDSTEIN: Catsup, yes, sir.

5 MR. MASSEY: On 13 just before you cross the  
6 Pocomoke River. That's the only cannery.

7 MR. GOLDSTEIN: Yeah, I know. When Senator  
8 Ralph Mason was in the Senate with me, he had two  
9 canneries down there.

10 MR. MASSEY: You're right. Years ago --

11 MR. GOLDSTEIN: He had one in Stone Hill and  
12 in Pocomoke. I've been to both of them.

13 MR. MASSEY: Years ago, there was a lot of  
14 them.

15 MR. GOLDSTEIN: He has one at Sunset View.  
16 He used to put those little sweet potatoes, little,  
17 small sweet potatoes. I've been right in that plant.  
18 Thank you.

19 MS. MAURER: Not anything in this state that  
20 the Comptroller hasn't been to.

21 MR. MASSEY: Well, thank you.



1 MR. GOLDSTEIN: Thank you all. Have a safe  
2 trip back.

3 MS. MANNION: Thank you.

4 MR. GOLDSTEIN: All right. 14, we took care  
5 of. Item Number 14, we took care of that. Item 16, we  
6 got that explained this morning. And the present lease  
7 at McHenry, we took care of that this morning. We took  
8 care of the baseball park.

9 MS. MAURER: Move approval.

10 MR. GOLDSTEIN: And the construction, the  
11 Bowie baseball. Second. All in favor, signify by  
12 saying "aye."

13 BOARD MEMBERS: Aye.

14 MR. GOLDSTEIN: Opposed, "no."

15 BOARD MEMBERS: (No response.)

16 MR. GOLDSTEIN: So ordered. Thank you all.

17 MS. MAURER: Move we adjourn.

18 (Whereupon, at 1:10 p.m., the above-  
19 entitled meeting was adjourned.)