

9/10/2008

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P R E S E N T

GOVERNOR MARTIN O'MALLEY, Presiding;

HONORABLE PETER FRANCHOT, Comptroller;

HONORABLE NANCY KOPP, Treasurer;

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

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

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

JOEL LEBERKNIGHT, Chief of Procurement,  
Department of Budget and Management;

JOHN PORCARI, Secretary, Department of  
Transportation;

SHAUN FENLON, Director, Land Acquisition  
Planning, Department of Natural Resources;

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

MARION BOSCHERT, Recording Secretary,  
Board of Public Works.

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P R O C E E D I N G S

GOVERNOR O'MALLEY: All right, good morning everyone and welcome to the Board of Public Works meeting for September 10, 2008. I know that Secretary Perez and Secretary Skinner are here as requested I believe by the Treasurer a couple of meetings ago to bring us up to date on the foreclosure crisis. How it's hitting Maryland and the things that we are doing to try to save every home possible. So we're going to take that first and, but before we do that let's see if Comptroller, do you have any opening statement?

COMPTROLLER FRANCHOT: Yes. Thank you, Governor. I want to just say how pleased I am that I'm getting time to spend time yet again with Secretary Foster and Treasurer Kopp. On Monday we had the Capital Debt Affordability Committee, yesterday the Board of Revenue Estimates, and today the Board of Public Works. Someone suggested we might want to car pool to save the State some money.

TREASURER KOPP: And Friday is the Pension -

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COMPTROLLER FRANCHOT: Friday is the Pension, so --

GOVERNOR O'MALLEY: I walked.

COMPTROLLER FRANCHOT: But in all seriousness, yesterday at the Board of Revenue Estimates we released a rather sobering set of numbers. We were forced to write down fiscal year 2009 revenues by \$432 million, adopted a set of preliminary estimates for fiscal year 2010 that reflects the painful and far reaching toll that the national recession has had on our State's economy.

We also received a firsthand briefing on current economic conditions from a distinguished group of business leaders who represented virtually every leading sector of Maryland's economy. And together they confirmed that the private sector continues to feel the after shocks of the demise of the subprime lending industry, the collapse of the U.S. housing market, and the extraordinary pocketbook pressures facing Maryland's working families. The numbers also confirm that despite the work done last fall and regardless, frankly, what happens this fall in the

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election, we're still going to have a significant budget shortfall.

I'm mindful of, Governor, your reaction to yesterday's news and your commitment to finding savings in the State budget this year. I support you in that effort. I look forward to working with you on the Board to make that happen. And in that spirit this morning, I'm submitting to Budget Secretary Foster a list of actions I am taking within my agency that will save the taxpayers over \$1 million. These measures promise to be of immediate assistance to legislative leaders and to the executive branch in their urgent search for fiscal solutions.

But as we look to the future I would encourage my colleagues both on this Board and in the Legislature to reject the hurried and piecemeal approach of the past and use this opportunity to undertake a comprehensive review of both revenues and State government spending. One that meets the very highest standards of citizen input and public transparency. One that harnesses the considerable wisdom and experience of the State's business community, along with our workforce. And one that

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bridges the partisan divide and draws from the best ideas and instincts of both parties.

States across this country have been finding savings and efficiencies by implementing spend management programs. I believe we can and must do that here in Maryland. In neighboring Virginia, they have streamlined their procurement process, for example, using spend management strategies and they're seeing extraordinary results. Not only have they seen a 70 percent reduction in processing time from contract solicitation to awarding, but they've seen a 12 percent savings on contracts going through the process.

We have the entire fall before the next Legislative session and I hope we can use this time in a productive way to build true consensus. I look forward to working with you and the Treasurer collaboratively here on the Board and anywhere I can be helpful as we strive to resolve Maryland's fiscal challenges in the months to come. Thank you.

GOVERNOR O'MALLEY: Thank you. Madam Treasurer?



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TREASURER KOPP: Governor, I regret I don't have a speech writer. But let me just say personally, we do face very difficult times. The Board of Revenue estimates met yesterday and as you well know has adopted projections that are \$435 million less than the projections adopted last March. Of course, there will be, as the Comptroller said, follow up projections in December, right before the submission of the budget to the Legislature. And as Mr. Roose, who is the Chief of the Staff of the Board pointed out, things are changing rapidly. We don't have all of the numbers from the first quarter of fiscal 2009 yet.

It's unfortunate, but the law did call for us to meet yesterday and make some tentative findings. And I know that you and the Secretary are working on that. And I really do urge you, as does the Comptroller, and as I know the Secretary proposed yesterday, to make some changes as soon as possible. I know it's going to call for some difficult decisions not only on the part of the administration, but this Board of Public Works as well. But if there are to be significant cuts in this year's budget, obviously, the

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sooner they are made the less drastic and abrupt they have to be. And so I know we are looking forward, as the Secretary warned when we made the last series of cuts several meetings ago, that she would be back with new proposals.

At the risk of being too redundant I would like to point out, most of the people here know it, but I think it's important to remember that we are facing two deficits. One is the structural deficit created by the tax cuts of the late 1990's, which was then compounded by the increase in the school funding formula in 2002. That created a structural deficit in which projected revenue simply could not match up to obligated spending.

The other is the effect of the present national recession, I dare call it a recession. Our economic cycle, it's not completely unlike what we saw in the 1980's, the 1990's, somewhat like the early 2000's, although having gone through them all as a member of the Legislature I would say I think this is probably the worst, or at least on a par with the early nineties. And I know at that time the number of

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special sessions we had, the terrible work the Comptroller will recall, time after time, going through, I think if we had realized how serious it was in the early 1990's we would have taken initial steps that were even stronger. And I know that's what you and the Secretary are going through right now.

I am concerned, and the Comptroller knows this, that when we say things like, "It's time to get serious with the budget," or, "We have to start," some people might infer from that that it hasn't been serious all along. That they're worried that there hasn't been serious work going on all along. And I happen to know, and I know the fiscal leaders of the Legislature know, and I think the members of your cabinet certainly know, that there have been cuts, there have been squeezes, there are ongoing examinations. And I was pleased that the members of the public who joined us yesterday at the meeting, the business community, in fact did also acknowledge that they knew that the State had been tightening its belt. They hoped the economy would turn around, when was it? The end of 2009. We hope so, too. We are a little unsure --

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COMPTROLLER FRANCHOT: That was the most optimistic.

TREASURER KOPP: Yeah. I think we were surprised that they were more, a little more optimistic than we were. But these are very difficult times. I wouldn't want anyone to think they have, that the administration and the Legislature, our offices, have not been dealing seriously with them until now. We will continue to do so. Maryland will have a balanced budget. I know the folks in the rating agencies in New York listen to everything we do. They watch everything they do. They have faith that we will have a balanced budget, we will pay all our debts, we will tighten our belts to meet these cyclical crises, and we will continue to address and solve the structural budget deficit which has been left, unfortunately, to us to solve by those who did not do so in the past.

COMPTROLLER FRANCHOT: Governor? Madam Treasurer, I think that was a great speech.

(Laughter)

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GOVERNOR O'MALLEY: Let me say, let me say a couple of words about this. As soon as I clear my throat, excuse me. The, where to begin? Let's talk a little bit, so we get some perspective here. The news on the revenue estimates is certainly not good news. We like to see revenue estimates that are healthy and growing, not revenue estimates that are declining. At the same time, none of us can claim to be, you know, terribly surprised by this. The, there was an article in the Post, I believe, today about the deficit that is being faced by our federal government. Which I believe, Peggy Watson, was it fifty? Or 500?

TREASURER KOPP: 500. \$500 billion.

GOVERNOR O'MALLEY: \$500 billion deficit being faced next year by the federal government. You probably won't hear -- let me not go down that route. \$500 billion deficit that they're facing at the federal level, which is if you do the math, it's like taking the entire budget of the State of Maryland and multiplying it by sixteen or seventeen to come up with the sort of dire straits our federal government is facing. We are going to have some other bad news today about the revenues in the Transportation Trust

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Fund being down. And some projects, therefore, having to be delayed in that six-year capital transportation, you know, investment plan. But it is a far cry from the bankruptcy, John Porcari, that the federal

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transportation trust fund faces, when, in 2010?

Totally out of money?

MR. PORCARI: Governor, up until fairly recently it was projected that the Federal Highway Trust Fund would go bankrupt in September of '09. That's been accelerated. And what was announced last week on the federal side is that they're delaying repayments to the states, all of the states, for our federal highway projects. This is an unanticipated curve ball that has severe and immediate impact on cash flows for our capital projects.

GOVERNOR O'MALLEY: And when did they announce that?

MR. PORCARI: They announced it last Friday.

GOVERNOR O'MALLEY: Oh, great. That's when they announce all of our good news. We choose as Marylanders instead to face our problems at the beginning of the week.

(Laughter)

GOVERNOR O'MALLEY: So anyway, that's one little bit of perspective. And hopefully a national election will change that.

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Let me share some other perspective just as I look at this. You know, had we not done the many tough things, and Madam Treasurer, thank you for acknowledging the difficulty of that process. I think four of the six bills passed by only one vote in one house or the other, and the voters still have to exercise their judgment on a piece of that with the slots referendum coming up this fall. But were it not for those actions, instead of facing, you know, the \$432 million shortfall that we face we'd be looking at a \$2.5 billion shortfall in the current, in the fiscal year 2010 budget.

So this is, while there are still aspects of this that are structural until we resolve that problem, this is primarily cyclical. It's primarily due to the national downturn in the economy. We can't spend \$3 trillion, \$5 trillion that we don't have on the federal level with that, without that eroding the buying power of the dollar. The foreclosure crisis, when federal regulators went AWOL and this bubble was allowed to grow and has now burst, has created problems here as well. So, you know, the things that



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we are addressing are things that every working family throughout the country is struggling with, as the price of food goes up, as the price of energy goes up, as the price of housing goes up, as in other states college becomes more unaffordable, you know, people's spending habits change. They constrict. Their driving habits change and are reduced, and therefore the revenues upon which we all depend collectively to make our State government function, you know go down.

We are in a much better position to be able to address this than we would have been had we not taken the action we did in the special session. There are many states, California, New York, who are facing the challenges of both of those problems together right now and, frankly, that's a third piece that brings me some greater perspective to the task before us.

I appreciate the Comptroller's suggestions, particularly on the procurement which I think all of us would admit has long been underfunctioning, shall we say, in the State of Maryland and where we might be able to realize some improvements in efficiencies. I

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appreciate the \$1 million contribution that the Comptroller's made to addressing this problem and look forward to reviewing those. That gets us 1/432 of the way there. And in the weeks ahead we will be no doubt bringing to this Board, as we have before, hundreds of millions of dollars in cuts.

Keep in mind that part of the fix to that structural deficit challenge was not only the revenue side, but we made \$1.8 billion in cuts and reduced spending, including the elimination of 700 State positions. And yes, all of us in the State were asked to help contribute to eliminating and slaying that structural deficit by the one penny increase in what had been the forty-second lowest sales tax in the nation. We also passed for the first time a progressive income tax.

If you combine the effect of the sales tax and the progressive income tax, 45 percent of the lower earning part of our citizenry actually saw their overall tax burden go down. A little repeated fact. So I'll repeat it again. When one combines the one penny on the sales tax and the effect of the

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progressive income tax with its big increase in the personal exemption, especially for seniors who are on fixed incomes, as well as the increase of the earned income tax credit for families that are working to become part of an upwardly mobile middle class, 45 percent of us actually paid less under those two proposals. Of course, there were also things like the corporate income tax, the tobacco tax, and others.

But now, given the national economy, we're preparing to bring hundreds of millions of dollars of cuts before this Board. We saw how difficult it was. We spent a whole morning looking at smaller numbers and not wanting to cut any of those. Because many of the things that were the so-called simpler, easier things were actually done before, you know, before I even took over the helm. And the next year of difficulty happened, and then the next year of difficulty.

So I don't want to make light of this. The fact that we're going to be able to get through this doesn't mean that it's not going to be painful. It will be painful. It will be painful in the short

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term. It will probably be painful for the next couple of years. It will be infinitely more painful if -- well, I shouldn't say infinitely. It would be greatly more painful if, you know, other things do not come into play here in the fall with the referendum.

None of these cuts will be easy. They are not the only cuts that we will need to make. As I mentioned, the Transportation Trust Fund, because of that, you know, when gas went to \$4 a gallon from \$2 a gallon, everybody started driving less. And so all of our transportation projects are based on the assumption that people will drive at least as much as they have been. And since, you know, the revenues that come from the purchase of a gallon of gas are, is a flat rate and not a percentage rate, just because Exxon is making a lot more money when it goes to \$4 a gallon doesn't mean there's any additional pennies going into the Transportation Trust Fund.

So later today John Porcari will be announcing approximately \$1.1 billion in mostly delay of projects. Most of that's derived from the delay. I believe that there's one elimination of a project.

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But most of that is delays in projects. We hope to be able to get a lot of those projects back on track.

There is talk in Congress of a second stimulus package. And an appreciation that transportation investments, infrastructure investments, not only give a boost to our economy and a boost to the families of the people that are working on those projects, but it also leaves us with something afterwards which underpins our economic future and economic security. And that is better transportation systems, whether it's mass transit or roads, or even water projects. So we're hopeful that the new Congress and Speaker Pelosi will be successful in maybe helping us address some of those projects.

The good news is many of those projects that will be delayed are actually ready to go. The planning and the design, in fact, in some cases is already done. So the construction dollars, contrary to what had been the common wisdom on the Hill when the first stimulus was passed, a lot of those projects are good to go and could go out immediately and start hitting the, you know, the economy in a beneficial

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way. Following this meeting Secretary Porcari will be holding a briefing for members of the media on these reductions.

None of this has been easy. I really want to thank at this time the members of the General Assembly, who demonstrated a tremendous amount of selflessness and a tremendous amount of political courage in voting for things that they knew would be politically unpopular but in the long term were required in the mix of actions in order to restore fiscal responsibility. Without fiscal responsibility we are not capable as a people, whether that's at the county level, the state level, city level, or national level. We're not capable of making better progress for the sake of our children and theirs if we're not fiscally responsible at our center.

So we will continue to strive to hold onto and improve, even, the degree to which we can be fiscally responsible. Not in order to win a pat on the back from Moody's, though that's nice and I appreciate the Treasurer's hard work in maintaining that AAA bond rating. But also to, more importantly,

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to improve public education, improve public health, improve public safety, expand opportunity for our middle class. That upwardly mobile middle class, which is the, not only the core but the cutting edge of what makes us a great people for the future and the sake of our kids.

So in the weeks ahead we'll do this. If, you know, any and all suggestions are welcome. I maintain a constant line of communication with a number of business leaders, as I'm sure each of you does as well. We heard from a number of them yesterday that advise us, retailers, bankers, people in real estate, and the like. No one has a crystal ball to tell us when this cycle ends and we start on the upswing. But when we do, we're going to come through this more quickly and actually stronger than other states in the Union because of the really politically difficult things that we have had to do which are in the best interests of our people.

The investments we fought so hard to preserve are all investments we make to strengthen and grow the ranks of an upwardly mobile middle class to

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create a more sustainable future for our kids. That's our goal. That's been our goal from the start.

That's still our goal. We're going to get through this, but it will be painful. And I don't make light of the challenge. We have our work cut out for us.

And let's hear from two other gentlemen who have their work cut out for them. Secretary Perez and Secretary Skinner, this foreclosure crisis. The Washington Post, one of my favorite daily periodicals, said that we passed some of the most sweeping foreclosure prevention legislation in the country. I understand we're seeing some of the results of that in a slight downtick in the rate of foreclosure filings in our State. But in the meantime we're trying to take advantage of this window so that when that, when that forestalling of those foreclosures comes to its end in another 120 days hopefully we've been able to connect up homeowners that are in distress with a more willing group of mortgage lenders that can work out something so that they can stay in their home. Why don't you bring us up to date?



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MR. SKINNER: I'm going to start off and then I'll turn it over to Secretary Perez. Let me first of all start off by saying good morning, Governor, Treasurer Kopp, Comptroller Franchot. Thank you for giving me the opportunity to bring you up to date on what we've been doing in trying to save Marylanders' homes, keep them in their homes and prevent foreclosures.

As shown by the federal intervention with Fannie Mae and Freddie Mac over the weekend, there continues to be major instability in the financial markets, both nationally and internationally, really. And in part due to this instability the foreclosure problem has proven to be really much more extensive and more intractable than we ever imagined when we first started trying to work with this issue, oh a year and a half, almost two years ago. But as the Governor noted, Maryland has been a leader. We've gotten national recognition in terms of what we've done, both in legislation as well as programs, and our outreach in the community in trying to work with the community to actually prevent foreclosures.

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But in spite of all the efforts at the State level and what's being done nationally through what's called the HOPE NOW Alliance we continue to see increases in delinquencies, although as the Governor noted for the second quarter of 2008 we actually saw a decrease in foreclosure. And if you look at the handout that was just given out on the, what's really the second page but it's labeled page one, is a chart showing the foreclosures over the last several quarters, beginning in 2006 through the second quarter of 2008. And the top line is really the total of what we call foreclosure events, which consists of notices of default, notices of sale, that is the docket in the court for sale, and lender purchases.

And again, as you would note, the last quarter there was in fact a decrease in the notices of sale, that is dockets in the court. And we really attribute that to the, attribute that to the new law, again as the Governor noted, which requires more notice to borrowers and essentially a waiting period before a lender can file that notice in the court. So we've seen that sharp decrease. But at the same time,

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if you noticed on the line, I know the colors aren't very sharp, but the blue line, which is the diamonds, shows the default notices. There was a continued increase in actual default notices so, or delinquencies, so eventually we think that we'll see, again, an uptick in the actual number of foreclosures. And then on the next page --

TREASURER KOPP: Excuse me, Ray, do you have projections, and this is sort of dampening down the notice stage, but when the time span, the waiting period is over, do you then expect, or have you projected what you would anticipate in terms of an increase?

MR. SKINNER: Yes, that is our concern. We haven't done specific projections but we do think that there will in fact be an increase once that, that --

TREASURER KOPP: You're just pending it, it's going to be a pent up --

MR. SKINNER: Right. Because the, the lenders and servicers --

TREASURER KOPP: But if something besides --

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MR. SKINNER: Yeah, the lenders and servicers are getting used to the new law and in implementing this new law. But what we certainly hope will happen is, in many respects we're buying time.

TREASURER KOPP: For some of these --

MR. SKINNER: And time is good. Yeah, time is good because that allows us to continue to work with the borrowers who are in trouble and work with the lenders and servicers to get them to do more modifications and refinancing, and so forth. So hopefully if we can take that time during this delay and work with them, work with the borrowers and get more people refinanced, get more loan restructurings, then hopefully that number will not go up as fast, certainly, as it has been over the past year and a half.

GOVERNOR O'MALLEY: And even in the debate over this bill in the session there were some who said, "Well, all you're doing is delaying the inevitable."

MR. SKINNER: Is delaying, correct.

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GOVERNOR O'MALLEY: "If you push off 150 days who's going to say, you know, that anything better is going, that anything is going to change in those 150 days." Well --

MR. SKINNER: But I think the good news is that we're really helping people --

GOVERNOR O'MALLEY: Right.

MR. SKINNER: -- as we go through I'll talk a little bit about --

GOVERNOR O'MALLEY: Right. And there's a number of things, I mean, since the passage of it you have also the, I mean, a number of events that took place since the passage of the bill and even before its implementation. You finally had Congress do whatever it was they were going to do.

MR. SKINNER: Right --

GOVERNOR O'MALLEY: Which had a lot of the mortgage lenders reluctant to engage in mitigation discussions until they knew the degree to which Congress would get involved. And then recently you have the Fannie Mae, Freddie Mac thing. And then in

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the meantime I know you all are going to update us on some of the mortgage servicer agreements --

MR. SKINNER: Right.

GOVERNOR O'MALLEY: -- we've been able to strike.

TREASURER KOPP: These created a window of opportunity.

MR. SKINNER: Yeah, that's a good way to put it. Absolutely. If you look at page two, this just shows the second quarter foreclosure data by jurisdiction. And has been the case since we started tracking this data Prince George's County continues to lead in terms of the number of foreclosures. In fact, there are twice as many in Prince George's County as any other jurisdiction. Montgomery County is in second, and Baltimore City third.

And, you know, when we saw this increase in foreclosures Governor O'Malley asked us to take some action. And he appointed a task force consisting of a number of stakeholders in the industry that was chaired by myself and Secretary Perez. And I'm really pleased to report that the task force had nine

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recommendations and all nine recommendations have either been fully implemented or are well on their way to being fully implemented. And they were basically in three areas. Financial resources, coming up with some finance programs to help people refinance or get help. Secondly, education and outreach, getting out into the community, letting people know that they had to take some action if they were behind in their mortgage. Then thirdly, legal and regulatory reform. And this law extending the time for foreclosure was part of that. And Secretary Perez is going to delve more into that since DLLR really took the lead in that area.

But I just want to briefly talk about our efforts in finance and the education and outreach. If you look at page three, part of our effort to help people -- I'm sorry, let me first talk about financial resources. In an effort to help people to get out of these subprime and other types of exotic mortgages we created two refinance products which we call Lifeline and Homesaver. And basically the difference in the two is that the Lifeline program was intended for

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people who are in adjustable rate mortgages that had not reset, and it gave them an opportunity to refinance and get out before it reset and before their mortgage payment went up. And then the second one, the Homesaver, was intended for people who were more challenged, who were in a more challenged situation who had low credit scores, and they could be up to sixty days delinquent in their mortgage to get one of these refinance products.

And then while we were working with some of our homeowners and trying to keep them in their houses we found that once you get behind, one months, two months, your credit score really takes a big hit and it's much more difficult to refinance. So we came up with a new and innovative idea and I think there are only one or two other states in the country that have done this. We came up with a program called The Bridge to Hope. And that program will provide up to \$15,000 in a zero percent interest, deferred loan to homeowners to help them catch up on their mortgage. And when they do that they can improve their credit score and hopefully get to the point where they can



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refinance. So to get this Bridge to Hope loan they have to work with one of our counseling agencies. Go through and do an extensive budget analysis, see what their income is, what their expenses are, and also look at what, what they can actually afford in terms of a monthly mortgage payment.

So we've got these products now. The data you see on page three shows the active reservations for the various products and the loans closed. Although the numbers aren't large I think the key that we found out in going through this is that we really can't refinance our way out of this problem. We really, as the Governor alluded to earlier, have to work with the current lenders and servicers and get them to do modifications and loan restructurings in order to help people. But in the meantime there are other resources available.

And you see in the middle of page three the FHA refinances. There have been a number of FHA refinances going on in the State. These are just the numbers for the State of Maryland, about 8,000. And these are what we refer to as term and rate

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refinancings with FHA, where people that are in a high rate mortgage refinance to get to a lower rate. And this is really prospective, before they get into trouble. And again, we think this is absolutely a good thing in terms of helping Marylanders to stay in their homes.

If you go to the next page, on page four, in terms of education and outreach, we've used both State and federal resources. We've funded thirty-two nonprofit housing counseling agencies throughout the State to help us work with these borrowers who are in trouble. To counsel them, to help them to look at their budget, to identify what their issues are, and to help them to come up with solutions and get to a positive outcome.

But more importantly, we undertook an extensive marketing and outreach campaign to get people to call. We came up with the slogan, "Mortgage Late, Don't Wait," which we actually borrowed from a group in Baltimore City, and started this extensive campaign. We started with sending out postcards, what looked like this. Over 600,000 postcards went out to

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the zip codes that had the highest incidence of foreclosure. We set up a hotline, 1-877-462-7555, number for people in trouble to call. We set up a website, which we call our HOPE website, [www.mdhope.org](http://www.mdhope.org). And we began to hold foreclosure seminars all over the State. Secretary Perez and I have been going around literally to almost every county in the State talking about this issue and trying to drive people who are in trouble, get them to call our 800 number, our hotline number, so that they can get help.

And so the data that you see on page four is just some of the outcomes for fiscal 2008. We received over 8,000 calls, 8,700 calls in our HOPE hotline. We've attended over 125 outreach and foreclosure prevention events, reaching some 14,800 people at those various events. Our HOPE website received about, over 50,000 hits. Our counselors have actually interacted with and talked to almost 10,000 borrowers here in the State during this one year. And of those borrowers that we talked to about 3,400 have received what we call a positive outcome. A positive

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outcome is that they were able to restructure, get a repayment plan through their lender or servicer, they were able to modify or restructure the loan, or in some cases they were able to do a short sale and get out with their credit still intact and, you know, basically in one piece. So we think that's really good. That's about a third of the people that we saw. The national data shows that only about 25 percent get to positive outcomes once they go through the counseling process.

In addition, the HOPE NOW Alliance, which is the national organization, reports that during just the second quarter of 2008 that over 9,000 Maryland borrowers established repayment plans or received loan modifications through servicers that are part of that initiative, that HOPE NOW National Initiative.

So all of, I conclude from all of this that people in fact are getting help. But as I indicated at the beginning, it continues to still be a problem. And the availability of credit, particularly to allow people to refinance, is an issue. And the whole issue with Fannie and Freddie will impact that. And

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certainly we hope, I think it's a positive thing that was done in terms of the federal intervention, and it will help in the short term by reducing rates. And long term I think it will help overall.

And then on the next page, page five, it just shows the distribution and the names of the counselors that are part of our counseling network. And again, we cover every county in the State. And let me just quickly in closing mention one other thing. And that is on the next page, page six, we started looking at where there are concentrations of foreclosures. And we came up with an index which combines the number of actual foreclosures with the per capita foreclosure. That is the number of foreclosures per household in a given jurisdiction. And we did it by zip codes. And came up with what we call the foreclosure index. And if you see in the chart on page six, in the right hand column, the foreclosure index, the average is 100. So anything over 100 is more of a concentration of foreclosure. And you will see, as you go down this chart, that of the twenty-five top foreclosure zip codes in the

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State, nineteen of them are in Prince George's County.

Only a couple in Baltimore City and a couple in Montgomery County.

So what we are trying to do now is come up with what we call a Neighborhood Conservation Program, where we can begin to work in these neighborhoods with the local governments and the community to try to do things. For example, you know, Governor, under the Housing Stimulus Bill that was passed about a month ago, there was, there is \$4 billion allocated nationally for what's called neighborhood intervention, that would allow us to purchase foreclosed properties in these neighborhoods, rehab them, and put them back on the market. We don't know how much yet Maryland will receive. We've seen some estimates around \$30 million but I'm not going to, you know, hang my hat on that. HUD has been charged with coming up with the formula for how the money is going to be distributed. They have until the end of September to do that. And then once that's done they have thirty days to actually get the money out the door. So while HUD is doing that we're working on

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coming up with our strategy in terms of which areas we want to target and how we're going to work, again, with local governments and nonprofits to try to intervene in these neighborhoods and keep them from deteriorating.

And then on the next page is a, is a map that just shows these concentrations of these foreclosure hotspots.

I'm going to stop there and allow Secretary Perez to talk about some of the legal and regulatory things that we're doing.

GOVERNOR O'MALLEY: The Comptroller has a question for you, Mr. Secretary.

COMPTROLLER FRANCHOT: Secretary Skinner, how many homes in Maryland are in foreclosure? And --

MR. SKINNER: The data that we have, again going back to the chart on the first page, there are about 9,000 what we call total foreclosure events. And again, that includes people who have received a notice of foreclosure, people who have actually been docketed in the courts, and actual sales where their home has actually been sold out from under them. So,

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you know, we refer to those combinations as total foreclosure events.

COMPTROLLER FRANCHOT: So is that the universe for, I mean, does that include homes that have been foreclosed and sold in the, is that for a year? Or for --

MR. SKINNER: This is for --

COMPTROLLER FRANCHOT: Is this a snapshot, or --

MR. SKINNER: We get this data, actually we get it monthly. But we really put out a report quarterly. So that is for the second quarter of 2008, just during that time period.

TREASURER KOPP: To build on the Comptroller's question for a moment, when we look at page four, there must be overlap, I mean, there are stages that you go through in foreclosure. Right?

MR. SKINNER: Yes, absolutely. Again, this is first --

TREASURER KOPP: So each of these snapshots may be, there, the question I guess is how many families or how many homes in fact are, if you have



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first a notice, then you've got a notice of sale, then you've --

MR. SKINNER: Right, exactly. What we're doing is actually, and I think Secretary Perez will talk about this, we're working with the lenders and servicers to get the exact number of homes that they've actually sold and that they own, that become REO, real estate owned, for the lenders and servicers.

TREASURER KOPP: Well, or even that, there are obviously a lot more default notices than there are lender purchases.

MR. SKINNER: Right. It's --

TREASURER KOPP: I mean, so these are just the events, foreclosure related events?

MR. SKINNER: Yes. But for example, the notice of default, which is a delinquency, essentially, eventually could turn into a docket in the court, or a foreclosure sale.

TREASURER KOPP: Yeah, or could not, as the case may be. And we --

MR. SKINNER: Right.

TREASURER KOPP: -- don't know.

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MR. SKINNER: Yeah, we don't know. And we really don't have a mechanism to track exactly on an address by address basis to do that.

COMPTROLLER FRANCHOT: I'm interested in the Treasurer's line of questioning. But I'm, I was more interested also in, do completed foreclosures drop off the list after the, in other words --

MR. SKINNER: Yes. Yes, they do.

COMPTROLLER FRANCHOT: -- are we getting a -

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MR. SKINNER: Yes.

COMPTROLLER FRANCHOT: Can we get a, rather than a quarterly snapshot can you give us something that would over a year's period tell us how many homes in Maryland are in foreclosure? And I'm also particularly interested if you have any capacity to measure at risk homeowners that have not entered, perhaps this system, where they have actually defaulted.

MR. SKINNER: The, I mean, the at risk homeowners are, I mean, we don't know they're at risk until they miss a payment. You know? Then they're

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delinquent. And we do have, we do get delinquency data. That's one of the things, one of the new regulations.

COMPTROLLER FRANCHOT: Okay. That would just be interesting. So, but the 9,000 figure is for the quarter, it's not for the year?

MR. SKINNER: That's for the quarter, yes.

COMPTROLLER FRANCHOT: Okay. And do you have any income data that shows whether, what the groups are that are affected? Is this foreclosure issue affecting middle class, and --

MR. SKINNER: Well, what we've done is --

COMPTROLLER FRANCHOT: -- families as well as lower income families?

MR. SKINNER: What we're trying, what we're doing, our research unit is actually correlating the foreclosure data with the income data that we have through the Census by a zip code. So we can get that information.

COMPTROLLER FRANCHOT: I'd be interested in that. And then the \$30 million you get sometime in the year, or whatever it might be, from whatever you

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estimate, can that be used to take care of some of these neighborhoods where there are homes that are foreclosed, and apparently they negatively impact the entire neighborhood.

MR. SKINNER: Yes, they do. And that's --

COMPTROLLER FRANCHOT: Their home values drop 15 to 20 percent.

MR. SKINNER: Under the law, this Housing Stimulus bill, that \$4 billion can be used to purchase foreclosed properties to rehab them and to do other kind of neighborhood improvements. Some, you know, limited infrastructure and things like that, to in fact improve the neighborhood and make sure the neighborhood doesn't deteriorate any further.

COMPTROLLER FRANCHOT: And are you picking up that first time homeowners in fact are not benefitting necessarily because they've got, obviously they've got a buyers' market, prices are lower.

MR. SKINNER: Right.

COMPTROLLER FRANCHOT: But apparently the credit's been tightened up, or normalized, however you

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want to phrase it, so much that the first time homeowners are running into problems. Do you --

MR. SKINNER: Yeah, again, that goes back to the issue of Fannie and Freddie. And that is credit is difficult. I mean, you know, the idea behind Fannie and Freddie is to bring liquidity to the market so there's money available to lend. But that is an issue right now. But I would mention, by the same token, our program, our first time home buyers program, the Maryland Mortgage Program, is really doing very well. I mean, last fiscal year we assisted about 3,000 Maryland families to become homeowners for the first time. But, more importantly, our delinquency and foreclosure rate has not increased at all. And we attribute that to a couple of things. One is that we require prepurchase counseling for all our loans. But secondly, we do a lot of loss mitigation. We intervene the minute we see someone miss a payment. Our staff at DHCD as well as our contract servicer contacts the family, tries to find out what's wrong, and what happened, why they're behind, and helps to work with them. So as a result

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we've not really seen an increase in foreclosures in terms of our portfolio.

COMPTROLLER FRANCHOT: And then just a final question, yesterday we received testimony from some utilities and others that for the first time they're seeing a big increase in Marylanders paying basic living expenses through high interest credit card payments. Are you hearing or seeing that Marylanders are beginning to use their Visa card for their mortgage payment, as hard as that might be to believe?

MR. SKINNER: We've, I've not heard that specifically. But I think, you know, working, our counselors are hearing, honestly our counselors are hearing all kinds of horror stories in terms of the situation that people find themselves in. And they're doing whatever they can to, one, stay in their home, and also, you know, pay their other bills and expenses.

COMPTROLLER FRANCHOT: And what kind of response are you getting from the holders of these mortgages?

MR. SKINNER: Secretary Perez --

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COMPTROLLER FRANCHOT: Cooperation, I guess, and --

MR. SKINNER: Secretary Perez is going to talk about that. But the Governor initiated a process where he initially called in servicers and we're continuing to meet with them. And, again, Secretary Perez can bring you up to date on that.

COMPTROLLER FRANCHOT: Okay.

TREASURER KOPP: Ray, one last question, just about the numbers. Is there any relationship between the numbers on page one and the numbers in the hot spot, page six? I mean, is there --

MR. SKINNER: The hot spot, what you see on page six were just the top twenty-five hot spots. So it doesn't include all of the total foreclosures for the State.

TREASURER KOPP: And these foreclosures are at what state? Are these, again, just foreclosure events, the same sort of --

MR. SKINNER: Yeah. They're, this is the total foreclosure events, which includes, again, the notices and so forth.

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GOVERNOR O'MALLEY: And hopefully Ray, I guess, you know, the, some of the numbers we're used to seeing are things that, like in crime numbers where they do month to date, year to date, so we can see kind of a sense of the running cumulative versus the -

MR. SKINNER: The point in time. Yeah, we can, we can put that together.

GOVERNOR O'MALLEY: Okay.

MR. SKINNER: We can put something like that together.

GOVERNOR O'MALLEY: Great.

MR. SKINNER: Okay.

GOVERNOR O'MALLEY: Your sidekick?

MR. PEREZ: Good morning.

GOVERNOR O'MALLEY: Secretary Perez?

MR. PEREZ: Yes. Yes. I work for Secretary Skinner and the Governor. My name is Tom Perez. I want to, before I get to my remarks I want to just take a stab at some of the questions that have been raised already. Again, for contextual purposes, roughly 3,500 foreclosure events in the State of



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Maryland in 2006. Roughly 22,500 foreclosure events in 2007. We project somewhere between 45,000 and 50,000 foreclosure events in 2008. A foreclosure event does not mean that the home will be lost. It means, that's a measure of people in distress that understates the number of people in distress because there are other people who will soon fall in that pattern. We, as a result of the second in the nation servicer regulation, now have the capacity, and in fact are collecting data from servicers about the number of Maryland mortgages that are thirty days delinquent, sixty days delinquent, ninety days delinquent. And we are happy to share that data with you. So the data does exist.

Not all of those 8,929 people -- well, actually, you can look at that as that's 8,929 distinct properties that had a foreclosure event. One property can have multiple foreclosure events, because you may have a second mortgage or there may be a utility lien. And so this data is crunched in a way to eliminate that double counting.

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TREASURER KOPP: That was my -- thank you.

So you're --

MR. PEREZ: That's what I thought your question was.

TREASURER KOPP: -- adding discrete buildings?

MR. PEREZ: These are discrete residential units, okay? And so that's the very important point to make, is that we early on, when we saw this crisis coming, Secretary Skinner and I and the Governor, you know, we saw the need to make sure the data is not overstating the problem. And so that's a very critical set of data points.

Another set of data points to understand is that while this problem touches every corner, it disproportionately touches communities of color. And that's simply because African Americans and Latinos are disproportionately in the subprime market. 53 percent of African Americans have a subprime loan in Maryland; 46 percent of Latinos, versus something like 16 or 17 percent of non-minorities. We disaggregate this data by legislative district and it has been a

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race between Senator Middleton's district and Senator Currie's district. Those are the top districts in the State. And what they have in common is high percentages of African American homeowners. It affects the middle class. It affects the lower middle class. We did an event with Chris Van Hollen in which we met people who were tenured professors at Howard, workers at the CDC, the NIH, other federal agencies. And that is the regrettable reality of the crisis in which we find ourselves.

If you go to page four of the data that we submitted, under the new law lenders are required to file with our office a notice of intent to default. We have received 30,000 such notices. And so we have been very quick to point out that while the bill that passed resulted in a de facto temporary moratorium, which is a good thing, the three most important things people need when they're in foreclosure are time, money, and a lawyer. The 30,000 notices of intent to foreclose portend an increase that we expect will be happening very, very soon.

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So that's some background on some of the data.

COMPTROLLER FRANCHOT: Secretary Perez?

MR. PEREZ: Sure.

COMPTROLLER FRANCHOT: If I could just, I get confused sometimes with these numbers. But there's, the figure of 9,000 foreclosure events is in Secretary Skinner's --

MR. PEREZ: Yeah, 8,929 in the second quarter of 2008, correct.

COMPTROLLER FRANCHOT: Okay. So, and then you're saying that you estimate there will be 45,000 to 50,000 --

MR. PEREZ: Correct.

COMPTROLLER FRANCHOT: -- foreclosure events in the calendar year 2008?

MR. PEREZ: 2008, correct. Because, again, the second quarter saw a decrease because of the de factor moratorium. When you have 30,000 notices of intent to foreclose what that suggests to us very strongly is that we will see a spike in those notices in the third quarter. Because if you look at page

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three of the materials that we submitted, what one of the very important lynchpins of the series of measures that the Governor led through the Assembly was we eliminated the fast track to foreclosure. We moved from fifteen days to roughly 150 days before you can actually take action. The effective date of the bill was April 3, so now you, you move out 150 days. And so that's why we predict that the foreclosures will spike again this fall. And again, the notices of intent to foreclose, those 30,000 that we have received in our office, are a harbinger of that.

And by the way, I do want to note parenthetically that one of the reasons we, that that provision is in the bill is we're taking those notices and within a very short period of time we are turning around a letter to people who are in distress saying, "Beware of scam artists. There are many government resources available. Call the HOPE hotline. Do not suffer in silence." And what, the combination of that outreach, the bus outreach, the outreach with faith communities that we're doing, a big metric that we need to move in this context is that too many people

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are suffering in silence. And this, it's a simple reason, is that they're embarrassed. This has never happened to them before in their lives. They've lived, they've played by the rules. This crisis is about bad things happening to good people.

GOVERNOR O'MALLEY: But in the past we didn't even have, we had fifteen days to get a notice. Well, they weren't even required to give us a copy of the notice.

MR. PEREZ: We weren't required to receive the notice, Governor. And so now --

GOVERNOR O'MALLEY: And even if we had we couldn't have turned around the done anything, and connected people --

MR. PEREZ: Heck, no. No.

GOVERNOR O'MALLEY: -- with counselors in fifteen days.

MR. PEREZ: No. I mean, we have built a new assembly line at DLLR that is taking these and turning them around. Because the biggest frustration that our financial regulation investigators were experiencing was that the scam artists beat them to the punch. And

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by the time we got out there the train wreck had occurred and we were picking up the pieces. And that was very frustrating. And so, the package of reforms is giving us additional tools to get to people earlier on. And the outreach efforts that Secretary Skinner -

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COMPTROLLER FRANCHOT: Secretary Perez?

MR. PEREZ: -- described were very important.

COMPTROLLER FRANCHOT: If I could just interrupt for one second?

MR. PEREZ: Yes?

COMPTROLLER FRANCHOT: And I applaud that, and I read in the paper that the Governor and you have, I think Secretary Skinner made a grant to Prince George's County recently to --

MR. PEREZ: \$200,000 for more prosecutors.

COMPTROLLER FRANCHOT: -- face the fraud issue. That's terrific, but on the numbers. If two years ago it was 3,500, a year ago it was 22,000, you're estimating 45,000 to 50,000 this year. What

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are you predicting for in the future, next year? Do you have a, an out year estimate on what --

MR. PEREZ: I could probably make a lot more money if I could give accurate predictions of those things. This problem, I think, our projection is that it will be sometime in 2009 when we see this problem begin to abate. We don't see the problem necessarily abating in 2008. We've done a lot to assist people, and I'm about to describe just a few of those things -  
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COMPTROLLER FRANCHOT: You know, I want to hear that.

MR. PEREZ: But --

COMPTROLLER FRANCHOT: But I'm also just trying to get an idea of where we are. For example, these are separate events. These are not the overlapping --

MR. PEREZ: Correct.

COMPTROLLER FRANCHOT: -- mortgages. And how does that compare with Virginia, or D.C., or Delaware, or some of our regional states?



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MR. PEREZ: Well, we were, we've stabilized in terms of foreclosure rates. About a year, when we first began this conversation in the spring of 2007 we were something like 41st in the country in our foreclosure rates. We moved up to 14th or 15th. We've now stabilized back at something like 18th or 19th. And that's been relatively stable. But one foreclosure, as I think we would all agree, is one foreclosure too many. And I think we have put in place a series of provisions, and there is no grand slam --

COMPTROLLER FRANCHOT: Well if you have any comparison or Secretary Skinner with Virginia, for example.

MR. PEREZ: Sure.

COMPTROLLER FRANCHOT: Just so we have a context of where we are compared to our neighbors.

MR. PEREZ: We have that. And I don't know that off the top of my head in terms of whether Virginia is above us, below us. And we're happy to provide you with that data.

COMPTROLLER FRANCHOT: Thank you.

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MR. PEREZ: I did want to talk briefly about some of the things we're doing and I will try to be as brief as possible. Again, on the enforcement front, the largest foreclosure rescue scam fraud case in the United States is being prosecuted in the U.S. District Court in Greenbelt. And that was a case initiated by our office involving the Metropolitan Money Store. Nine defendants in that case, there's already been a guilty plea in that case. And, again, the victims were disproportionately in Prince George's, Charles, and the District of Columbia. We've had a robust practice in the mortgage fraud case. We're working very closely with our attorney general. We're working very closely with states attorneys offices. And enforcement in the mortgage fraud context continues to be regrettably through the roof right now.

A number of regulations have been put in place. A lot of your data questions, if you were in forty-two other states the answer would be, "We don't collect that data. We don't collect that data." The servicer regulations that we enacted a few months back, we were the second such state in the Union to

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require that data be collected. And we've just tweaked those data. Because what we're finding is that servicers now are contending, "We're helping more people than ever before." But the question is, are they helping people in a meaningful way?

I met with Wells Fargo recently and they gave me this really color power point that was just so nice, talking about their best practices. And they have an example in their power point of a guy who had \$1,000 a month mortgage payment, couldn't afford it, and they were able to refinance his mortgage payment. And now the guy's paying \$1,200 a month. And I asked the simple question, "I went to law school because I hated math. But how is it that somebody who couldn't afford \$1,000 before is better off with \$1,200?" And his answer was, "I'll have to get back to you on that one."

(Laughter)

MR. PEREZ: I haven't heard back from him yet. But that's a vivid illustration of the problem. And we need to collect better data on that. And so now, we've tweaked our servicer regulation to require

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servicers to provide us with data. How many modifications have you done? Well, that's fine, but that's only the first question. How many have resulted in a reduction in payment of more than \$100? More than \$200? How many have resulted in an increase in payment? Because we've got to get, the metric here is are we helping people stay in their home? Not whether we're modifying loans. Are we meaningfully modifying loans?

And so, we're doing a lot of work in that area. And I think it's been very, very productive because we've been able to move the needle. I've spent a lot of time personally meeting with servicers in an effort, led by the Governor, to get servicers to alter their business practices. Too many people couldn't get a phone call returned. That was the basic problem. They designed a system that was premised on having X amount of calls and now they're getting 100X amount of calls. And they did not adjust fast enough. And if there's one and only one thing I've learned from that outreach, and I'm confident that we will have exciting things to announce in that

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area within the next couple weeks at most, it's that, what I learned from the servicers was that they have substantial discretion to modify the terms and conditions of loans. In other words, they can save people's homes. What they lacked before was the will to do it. And what we have done in this oversight is make sure that they have the will to do it and in fact they are doing it. And so we're seeing a lot of progress in that area and we're working toward written agreements that will help us to ensure wide scale, large scale reform in these business practices. And so that's a big area where I'm spending a lot of time. And the Governor has personally invested a significant amount of time.

Yes, Mr. Comptroller?

COMPTROLLER FRANCHOT: So of the 40,000 to 50,000, whatever the estimate is for this year, how many of those have that kind of either positive or negative, some kind of response from the banks?

MR. PEREZ: Well the --

COMPTROLLER FRANCHOT: Or, will you be able, I know that this is an information type program.

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MR. PEREZ: Right.

COMPTROLLER FRANCHOT: But can you get us --

MR. PEREZ: The --

COMPTROLLER FRANCHOT: -- what the impact is on the universe?

MR. PEREZ: Sure. The Department of Housing and Community Development gives, our, our, the front lines in this are the housing counselors.

COMPTROLLER FRANCHOT: Mm-hmm.

MR. PEREZ: And the data that you just referenced is precisely the kind of data that we're collecting.

COMPTROLLER FRANCHOT: So you --

MR. PEREZ: And so we're able to tell --

COMPTROLLER FRANCHOT: When you get it you can --

MR. PEREZ: -- how many people we're helping. But let me say this. There is still an unacceptably high percentage of people, and depending on what study you read it's up to, upwards of 50 percent of people, who have no meaningful contact with their servicer or with a counselor, or with anyone, at

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the time of foreclosure. They're still suffering in silence. And part of what we're trying to do is lower that number through a wide array of outreach efforts. Our efforts with servicers, our efforts to fund and build capacity among housing counselors. At one point there were three housing counselors serving Southern Maryland. That's not enough. There's, I mean, there should be thirty housing counselors.

COMPTROLLER FRANCHOT: And you've mentioned your interaction with the banks. That interests me because it seems that if we have 45,000 or 50,000 and it could be, I happen to disagree. I think this has got some eighteen to twenty-four month time frame ahead of it, where we're going to have a lot of rough weather. So conceivably those numbers could go up next year. I'm wondering what the response is you're getting from the banks. Because why is it in their interests to foreclose 50,000 homes in Maryland? And from a financial standpoint I would think that would be incredibly unappealing and counterproductive --

MR. PEREZ: Right.

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COMPTROLLER FRANCHOT: -- to a normal bank.

What are they, what are you hearing from them --

MR. PEREZ: Sure.

COMPTROLLER FRANCHOT: -- about how they can, you know, in their own self interest mitigate this?

MR. PEREZ: Well one, I guess the first thing I would do is make a friendly amendment to your question, in the sense that what we have observed in Maryland, and really across the nation, is that the foreclosure crisis is -- let me just speak for Maryland. It's primarily a non-bank phenomenon. The, it's not the Chevy Chase Bank that has been the source of the foreclosure crisis, or the state chartered banks. There are some state chartered banks who had a subprime portfolio and they're encountering challenges. But it's primarily nonbank originators, like Countrywide --

COMPTROLLER FRANCHOT: Mm-hmm.

MR. PEREZ: -- and, and entities like that. And so that's really where we've been focusing our efforts because they have been the source of the



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origination of so many of the problematic loans. And what I'm observing happening now is that there is an all too slow, from my perspective, an inevitable march toward the self interest of the banks and the investors who own the securitized loans, and the self interest of the State of Maryland, and the self interest of the homeowner trying to stay in their home. Because we've been hammering on people, on the lenders, and the servicers, that if you don't lower the principle sooner or later you're going to be in foreclosure. And you've told me five minutes ago that everybody loses in foreclosure.

And so a year ago they were saying, "No, we can't lower principle amounts. That's something we just can't do." Now the conversation is shifting. Because the sand is shifting. And so what, the short answer to your question is what was being said a year ago is evolving. And I'm seeing more opportunities to create win-win-win solutions. And the federal dollars that have come in, the federal bill that passed, will also facilitate that. But the servicers have to understand that you've got to take a haircut in this

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in order to survive. So that's been the conversations we've been having.

COMPTROLLER FRANCHOT: Thank you.

TREASURER KOPP: Tom, just --

MR. PEREZ: Sure.

TREASURER KOPP: One of the problems I hear you saying that may be being solved is when you talk about the servicers having to, that they are large, often large bureaucracies. They're not the home community --

MR. PEREZ: No, this is, right.

TREASURER KOPP: -- bank or mortgage company.

MR. PEREZ: This is not your neighborhood bank. This is the new paradigm of lending.

TREASURER KOPP: So with whom are you in fact dealing? I mean, who can make the decision?

MR. PEREZ: We're, we're, actually we asked for and received, we had in one case the CEO. Like Litton is a large subprime servicer. Litton came in and met with us. So we were --

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TREASURER KOPP: So can they then get the word down to their operatives on the street that this is the way? Because I've been talking to some people, and it just seems to me that they are, well, it's not the market working.

MR. PEREZ: Correct.

TREASURER KOPP: I mean, they are essentially bureaucrats who are marching to what they perceive to be the rules --

MR. PEREZ: Right. And that's --

TREASURER KOPP: -- laid down for them.

MR. PEREZ: And that's why we asked in these meetings, we need decision makers and we need people who understand the servicing process. You know, we love government affairs people.

TREASURER KOPP: Right.

MR. PEREZ: But please, you know, bring them too. But, you know, bring the people who know the substance. No disrespect, I know there's a lot of people shooting daggers at me behind here. But we love all of our government affairs people, they're very important, but we needed people who are running

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the programs. And that's why we've been able to make progress because we brought, again, we've spoken with CEOs, we've spoken with, you know, very high up VPs.

TREASURER KOPP: And then they then speak to their, I mean, you talk about in everyone's self interest.

MR. PEREZ: Yes.

TREASURER KOPP: And I think it is. But somehow --

MR. PEREZ: It's not --

TREASURER KOPP: And that's the way the market's supposed to work, right?

MR. PEREZ: Correct. Well --

TREASURER KOPP: But it gets tied up in perception, in bureaucracy, in red tape, which is just as bad on the private side as the public.

MR. PEREZ: Absolutely. I mean, this whole --

TREASURER KOPP: And you're saying this is what you are getting to the point of cutting through?

GOVERNOR O'MALLEY: Well, the other thing was --

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MR. PEREZ: There's a gradual confluence.

GOVERNOR O'MALLEY: And if I, having sat through a number of these, although they would deny up and down that they were waiting to see how much the federal government would do, they were all waiting to see how much the federal government do.

TREASURER KOPP: Sure.

GOVERNOR O'MALLEY: Would do.

TREASURER KOPP: They probably want somebody else to pay the bill.

GOVERNOR O'MALLEY: Yeah, they wanted somebody else to cover their losses rather than them renegotiating to, you know, mitigate their losses. And if somebody was going to write a check they were going to sit and let the crisis build in the hopes that that would move Congress. I mean, I think that, I mean that's what was going on here.

MR. PEREZ: Well I mean, I mean, you look at what happened with Bear Stearns. Over the course of seventy-two hours there was a government bail out. So in fairness to a servicer, if I'm a servicer I'm going to be waiting, too. Because if they're going to bail

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out Wall Street why won't they bail out someone else?

And that made our job that much more difficult. But I think there is this gradual, and I regrettably underscore the word gradual, alignment of their economic self interest with our interest in enforcing the law and protecting homeowners and preserving home.

TREASURER KOPP: And let me just pick up what Peter was saying for a second. Since you've gotten to this point, or it sounds like you've gotten to this point, as I understood it one of the driving factors in terms of the timing of everything was the times of adjustment of the ARMs, et cetera. I mean, there were specific points in time when things were going to come up and people would either be able to pay or not pay, et cetera. Is that still so?

MR. PEREZ: The --

TREASURER KOPP: Or is it more mushy now?

MR. PEREZ: That was only part of the problem. What we discovered in our research was that people were falling behind early on in their loan. In other words, they were set up for failure. The initial rate was unsustainable. And that's because,

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again, yesterday's paradigm of lending, you go to your neighborhood S and L. Chances are, that person goes to the same church, synagogue, or other place of worship as you. You run into problems, they've held onto the note so they work with you. Today's paradigm is the broker comes in and he or she has a very perverse incentive to steer you into products that maximize their commission and maximize your chance of foreclosure. And that is a collision course. And so it would be inaccurate, actually, as we looked at the data, that was my initial hypothesis. And that was part of the problem, was that when they were adjusting upward people were being adjusted into foreclosure. But there was a considerable subset of people who were doomed to failure from the outset.

And that is why one of the pillars of the new legislation is the duty of good faith and fair dealing. That did not exist. And now a broker or an originator has that duty of good faith and fair dealing. And we have the authority to enforce that. Because too many people were just set up for that failure.

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A couple of final observations. These are the things that are being done that I think are very critical. We're working very closely with the courts. Because in the courts over time the culture, as well as the rules that have evolved, have been when someone comes to court you sell the property first, and if there's any defenses you deal with those after the sale. Well, the legislation that the Governor signed and led is really intended to change that culture. There are new rights that homeowners in danger of foreclosure have. And so we've worked very closely with the courts. And they've initiated and implemented some emergency rules. And they're in the rule making process now and we're neck deep involved in that to change that culture that exists. Because we can pass all the laws in the world. But if it doesn't trickle down to the day to day practice in this area it's going to be of limited utility.

And then finally I said at the outset, the three most important things that people need are time, money, and a lawyer. Ray described some of the money that we're trying to bring to bear. The foreclosure



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process relates to extending the time. And we undertook an initiative to capture the best spirit of Maryland's legal community. Our goal was to identify 500 lawyers who would volunteer their services and we're now over 600. And I want to thank the Chief Judge, Judge Bell, who has been very, very active in this effort. And we've worked very, very closely with him and with a number the bar associations in the State of Maryland. So we're making progress.

GOVERNOR O'MALLEY: And on that note, I make a motion that the Board of Public Works send a letter thanking Judge Bell for his leadership and commending him on spearheading this wonderful drive. Is there a second? Seconded by the Treasurer. All in favor signal by saying, "Aye."

MR. PEREZ: Okay.

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed? The ayes have it. So it is written, so it shall be.

MR. PEREZ: Great. So this is, I guess I've described the silver buckshot. There is no silver bullet, but there's a lot of buckshot going around and

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we're hoping that this confluence of interventions is going to make a difference. And we're seeing that evidence of that.

GOVERNOR O'MALLEY: So, but the key for us to watch, the key number that you all watch, which is the leading number, is that number of notices. When we see the number of notices start to wane then that will be our first indication, if we see it wane for two months in a row, that will be our first indication that we've hit the bottom of this very tragic cycle.

MR. PEREZ: That's a key indicator. The realty track data is a key indicator. And we've, again, scrubbed it so that we're not overcounting. And those are the things that we're going to continue to monitor very closely.

GOVERNOR O'MALLEY: Okay.

MR. PEREZ: Thank you.

GOVERNOR O'MALLEY: Shall we move on?

Shall, we --

TREASURER KOPP: Thank you. Thank you.

GOVERNOR O'MALLEY: We haven't even begun the --

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TREASURER KOPP: No.

GOVERNOR O'MALLEY: I see, I see we have some of these in Frederick as well. Nobody's immune. Frederick and Washington County as well. That is Commissioner Gardner, right? I have a hard time seeing beyond ten paces. Which one are you here for, Commissioner? And we'll take your item first.

MS. GARDNER: 2A.

GOVERNOR O'MALLEY: 2A in which part of the

--

MS. GARDNER: POS. The Hughes property.

GOVERNOR O'MALLEY: Okay, let's start with Program Open Space. Come on up, Commissioner, and tell us about the Hughes property.

MS. GARDNER: Good morning.

TREASURER KOPP: Good morning.

MS. GARDNER: And thank you for taking us out of order. For those of you who don't know me, I am Jan Gardner. Where did Paul go? Come on up, Paul. I am the President of the Frederick County Commissioners. And with me today is Paul Dial. He's our Director of Parks and Recs. And I came today

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because I wanted to speak in support of the acquisition of the Hughes property, not only because it's important to Frederick County but because it's the first time Frederick County has had a partnership with DNR to acquire property utilizing funding from the Land and Water Conservation Fund Program.

The County's been looking for property in this part of the County for a district park for several years. The parcel has high potential for natural resource protection, which makes it of interest to DNR. And plans do include specific conservation and habitat restoration projects, as well as the portion of the property that will be developed for active recreation will utilize the development of green infrastructure.

So I was here to speak to our pleasure with this partnership with the State. I think it's a win-win for all of us and we're very excited about it.

GOVERNOR O'MALLEY: Great. Thank you.  
Anybody have other questions on Program Open Space?  
No? The Comptroller moves approval seconded by the Treasurer. All in favor signal by saying, "Aye."

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THE BOARD: Aye.

TREASURER KOPP: Thank you, Jan.

GOVERNOR O'MALLEY: All opposed, "Nay." The ayes have it. Well done. That was the least amount of debate we've ever had about a Program Open Space.

MS. GARDNER: Thank you. I'll come back again --

GOVERNOR O'MALLEY: Good. Thank you for your good work and your leadership of MACO. I saw your colleague Jim Smith yesterday. He's lost ten pounds and he looks twenty years younger. And we're all looking forward to the Phelpstival come October 4th. Let's go to Secretary's Agenda.

SECRETARY MCDONALD: Good morning Governor, members of the Board. There are fourteen items on the Secretary's Agenda. We are withdrawing Item 9. So thirteen items remain, and there are seven reports of emergency procurements.

GOVERNOR O'MALLEY: Any questions on the Secretary's Agenda items? Okay. Congratulations to Department of Correctional Services. I see MBE participation on Item 13 is 100 percent. That's a

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pretty big percent. So the Treasurer moves approval of the Secretary's Agenda items, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

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

MS. FOSTER: Yes.

GOVERNOR O'MALLEY: DBM.

MS. FOSTER: Governor, Madam Treasurer, Mr. Comptroller, good morning. There are twelve items today on the Department of Budget and Management's agenda. And I'll be happy to answer your questions.

GOVERNOR O'MALLEY: Anybody have any questions on this? Treasurer?

TREASURER KOPP: Governor, I don't have a question. But Madam Secretary, on number ten, DHR, I wish, since I don't know if anyone's here, you would extend my congratulations to them on having such a productive contract. They seem to have done extremely well in a very important service.

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GOVERNOR O'MALLEY: Well, why don't you tell us what that is.

TREASURER KOPP: It's the refugee, legal refugees/asylees, reach out, training, job placement, et cetera. And the contractor, Lutheran Services, in the national capital area I think has done an extraordinary, looking at national numbers, which I just happen to have done for another function, seems to have done really very well in a very important task. And I congratulate them.

GOVERNOR O'MALLEY: Got you.

MS. FOSTER: I will pass it on.

TREASURER KOPP: Because it means that the refugees who come in become very quickly integrated into the community, taxpayers, have one-ups fulfilling jobs, and become independent instead of dependent on the community.

GOVERNOR O'MALLEY: What a wonderful American idea.

TREASURER KOPP: It is. It is.

GOVERNOR O'MALLEY: All right, Comptroller?

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COMPTROLLER FRANCHOT: Yeah, Governor, I did have a question on Item 1. And I see that Secretary Jenkins is here. Apparently this contract is for \$1.7 million to increase participation of disadvantaged business enterprises. I guess those are DBEs. And I wonder whether you have looked at this as a possible vehicle for some collection of MBE and perhaps give your office some additional data and benefit?

MS. JENKINS: Good morning, Mr. Comptroller. Thank you for noticing. The item that you're speaking of is an innovative project between the State Highway Department here in Maryland with the Department of Transportation in Delaware. And it is to bring on board a consultant who will essentially provide a great deal of technical assistance in identifying twenty-five minority firms who can grow capacity in working on State Highway projects. And we got briefed on this project last week by the members of the team at State Highway Administration. And we think this is a real innovative opportunity to not only grow more minority firms to do more work on State Highway projects. But it is also a win for the State because



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it's being funded by a federal grant. So it's above and beyond the State's budget.

And we also see this as an opportunity to provide assistance in getting minority firms on some of those other unique areas of State Highways where we find it difficult to bring MBEs on board, like line striping, and some of those other areas where Secretary Porcari's folks have been struggling to get real meaningful MBE participation. So it is a good news story, and we do see it as a way to grow capacity and get more minority firms on State Highway contracts.

COMPTROLLER FRANCHOT: Excellent, thank you.

TREASURER KOPP: Governor, if I could take a, just a moment off of the agenda since the Comptroller and the Secretary raised the issue of MBE participation. You'll receive notice from the State Pension system, you either have or will tomorrow, and I know the Secretary and the Comptroller have already, of our expansion, Madam Secretary, of the Emerging Managers Program --

GOVERNOR O'MALLEY: Good.

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TREASURER KOPP: -- which has been an extremely successful program. We are now expanding it very extensively. We'll bring in much greater diversity of managers and be able to take advantage of the agility of small managers to make money for our pension system. And it's something that we have been working on for some time. We appreciate your insight and your help. And I know when I pushed the creation of this program two years ago I had high hopes, but we had no real numbers. And I know the Comptroller is a very strong supporter, and we now recognize that all of the numbers, that is both the profit to the pension system and the expansion of opportunity to small and minority managers has been moving quickly in the right direction. And I just want to take this opportunity to thank you all. Thank Secretary Foster and thank the Comptroller for supporting us in this.

GOVERNOR O'MALLEY: Great. Mr. Gaskins? The Comptroller identified me for you. You want to come and testify on this item?

MR. GASKINS: Thank you Governor, Comptroller, and Treasurer. This is a good program no

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doubt about it. But the problem that I have with this program, and I speak on behalf of you as the founder of the Prince George's County Contractors Association, is the entity in which you have chosen in order to implement the program. I don't think that there has been enough research and background into the ability of this individual to perform.

This individual has a contract in Prince George's County with the National Harbor. He's been in the newspaper for the last year, year and a half, in terms of not meeting the goals of local disadvantaged firms in the, on that particular project. And to date, we've tried, with assist, in terms of being able to reach out to that individual. As recently as two months ago I set up a meeting with my office and our bid center, which we operate and provide technical assistance, access to loans, low income, low rate incubator space to small businesses. And to date he's not reached out to any of the businesses that we represent in terms of providing them an opportunity to participate.

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GOVERNOR O'MALLEY: How many businesses do you represent?

MR. GASKINS: We have 500 businesses --

GOVERNOR O'MALLEY: Hm.

MR. GASKINS: -- that come into our technical incubator in order to get services. We do loans to, last year we did sixty loans to small businesses with assistance with SBA.

GOVERNOR O'MALLEY: Where is your technical incubator located?

MR. GASKINS: Across from Andrews Air Force Base in Camp Springs, Maryland.

GOVERNOR O'MALLEY: Mm-hmm.

MR. GASKINS: It's one of the only private run incubators. We have over thirty --

GOVERNOR O'MALLEY: Ms. Jenkins, are you familiar with the Suburban Maryland Contractors Association and their --

MS. JENKINS: I'm familiar with Mr. Gaskins and his incubator.

GOVERNOR O'MALLEY: Mm-hmm.

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MS. JENKINS: I can't speak to the specifics of what he's commenting on now. But, yes, I'm familiar with them.

GOVERNOR O'MALLEY: Got you. Okay.

MR. GASKINS: Well, my concern is, I think we're talking about fiscal responsibility in spending the State's money. I think that was the attitude of the individuals. And we have the same thing, because we see businesses fail every day and we see them progress. We have thirty hands on business, we are partners with SBA, we are partners with HHS, in providing jobs to low income individuals. We are partners with the union as well in order to make sure that we are providing jobs that are, will allow individuals to be able to pay mortgages and not lose their homes.

This specific instance, in my opinion, should be re-reviewed again. We have complaints, letters came out from the Maryland Minority Contractors Association who are against this particular award. Maryland, Frazier, it came out also as well from Arnold Jolivet's office as well. One of

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the requirements of this award was for them to be able to reach out to the Minority Contractors Association and they refused. So why would you put technical assistance money in the hands of individuals who haven't been responsive from the beginning?

So before you do your allocation I would suggest, or before you vote, I would ask that you would re-review the entity that's going to be implementing this particular program.

GOVERNOR O'MALLEY: Actually, you don't want to, you're asking, I'm just trying to understand. You want us to delay this until you have the meeting? Or you want us not to give it to this particular entity?

MR. GASKINS: I would be, I, in my opinion, I'm not the person who makes the award on any contract. I ask that you do what you can. Because I don't think that we're going to get the desired results, and we're certainly not going to get the response of the local contractors, the Maryland Minority Contractors, as a whole because they haven't been involved with this company. This company has refused to sit with them to deal with their clientele

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for the entire extent of that National Harbor project. So unless there's a serious attitude change I don't think it's going to be any difference from the results that we got down at the National Harbor.

GOVERNOR O'MALLEY: Okay. The, is there anybody here from TAC? Yes? No? Okay. John Porcari, Secretary Porcari?

MR. PORCARI: Governor, if I may, the, the National Harbor example, which is a private project obviously, I can't really comment on because I'm not familiar with all of that. But I do understand that the local employment, business component was, is the issue in question here. I would like to ask Bob Gay and Jennifer Jenkins from the State Highway Administration, who have been involved in this procurement, to comment on this.

GOVERNOR O'MALLEY: Okay.

MR. GAY: Good morning, Governor, board members, Bob Gay, State Highway. With me I have Wanda Dade from the Office of Equal Opportunity and Jennifer Jenkins who is the Director of Equal Opportunity.

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The firm that we are proposing here today, TAC Company, they submitted the highest rated technical proposal and their price was the most beneficial to the State. This is a triventure between Federal Highway, DELDOT, and MDOT. DELDOT and MDOT, State Highway specifically, were on the evaluation team and we evaluated this company as the highest, had the best plan for the State. Currently, TAC is working with the ICC as part of our outreach team. And on those contracts we have met the goal on every project.

I don't know anything about National Harbor so I cannot comment on that. But we did the evaluation and we feel they're the best value for the State.

GOVERNOR O'MALLEY: Got you. Anybody else?

MS. DADE: We received six proposals in this particular procurement.

TREASURER KOPP: Could you speak up a bit?  
Thank you.

MS. DADE: We received six proposals in this particular procurement. All of them were Maryland



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companies with the exception of one, out of New Jersey. Of the proposals two were ranked high, and most acceptable for award. And of those two TAC was technically superior in regards to the rest. And they also happen to have had between the two the lowest price. And so we found them the most, the best value for the State.

GOVERNOR O'MALLEY: Okay. How about we do this, do you want to, Mr. Porcari, can you make sure that they sit down with Mr. Gaskins?

MR. PORCARI: We'd be happy to do that, Governor.

GOVERNOR O'MALLEY: Okay. The, anything else on this? All right. Conditioned on, conditioned on --

MR. PORCARI: The State Highway Administration meeting with Mr. Gaskins?

GOVERNOR O'MALLEY: Facilitating a meeting between Mr. Gaskins --

MR. PORCARI: Yes.

GOVERNOR O'MALLEY: -- and also this TAC group.

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MR. PORCARI: And this would be consistent with what we would like to do is make sure wherever possible --

GOVERNOR O'MALLEY: Right.

MR. PORCARI: -- that Maryland companies are involved.

GOVERNOR O'MALLEY: Right. Okay. All right. So the Treasurer makes that motion, seconded by the Comptroller. All in favor signal by saying, "Aye." All opposed, "Nay." The ayes have it. So now on the balance of the agenda items, the Treasurer moves --

TREASURER KOPP: Oh, could I --

GOVERNOR O'MALLEY: Sure.

TREASURER KOPP: Could I just ask about that one, too? It seems like a very innovative program. And I understand Mr. Gaskins' concern. I have great respect for Mr. Gaskins. I've worked with him. But that issue aside, even, it would be very interesting to get updates on this program and how it is working, and whether it can in fact be a model way to extend opportunity in other areas. And I wonder, Governor,

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if we could ask the two secretaries, or ask Secretary Porcari and get input from --

MR. PORCARI: We'd be happy to do that.

TREASURER KOPP: -- actually, all three secretaries sitting there, on how the project is going?

MR. PORCARI: We'd be happy to do that.

TREASURER KOPP: Thank you.

GOVERNOR O'MALLEY: Okay. Now the balance of the agenda -- Comptroller?

COMPTROLLER FRANCHOT: No, no, that's fine. I'm through with that. But I have a question on another item, Governor.

GOVERNOR O'MALLEY: Okay.

COMPTROLLER FRANCHOT: Item 4-S. There's someone here --

MS. FOSTER: Item 4-S is a contract to provide technical assistance and internal audit services for the Maryland Transportation Authority. We do have Terry Niswonger from the Authority here.

COMPTROLLER FRANCHOT: Great, thank you.

MS. FOSTER: Do you have a specific --

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MS. NISWONGER: Good morning. Terry Niswonger, Chief Procurement Officer at Maryland Transportation Authority. This is our audit and consulting contract for \$2.5 million. It's a five-year contract with a 25 MBE goal.

COMPTROLLER FRANCHOT: And how often do you put contracts like this out to bid for --

MS. NISWONGER: This is our very first contract.

COMPTROLLER FRANCHOT: And I take it it's a \$2.5 million contract for --

MS. NISWONGER: Five years. \$500,000 per year. \$250,000 is going to be dedicated to the audit division, the other \$250,000 to the finance.

COMPTROLLER FRANCHOT: Okay. And I understand the two selected firms were rated as the top two in technical ranking, but that they were more expensive than almost all the other competition. And I'm wondering if, I'm also concerned about one of the, could you give me the history of this contract? I understand that the winning, one of the companies that bid on it, won the contract, received a letter from

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you awarding the contract, and then received a letter saying, "We're not awarding the contract to you."

MS. NISWONGER: Yes. Due to an error on my procurement office we originally sent out the letter saying that they were awarded. However, after a review by DBM we picked up there was an error on their MBE form and they were then told that they were being rejected.

COMPTROLLER FRANCHOT: But, and, but I take it this company, which is a, is it a minority owned company? Or an MBE company?

MS. NISWONGER: It is a -

COMPTROLLER FRANCHOT: Or is it both?

MS. NISWONGER: The one that was rejected?

COMPTROLLER FRANCHOT: Yes.

MS. NISWONGER: They are an MBE firm.

COMPTROLLER FRANCHOT: They are an MBE firm. And they initially won the contract both on technical and on cost?

MS. NISWONGER: I believe so.

COMPTROLLER FRANCHOT: I take it that's why you awarded it to them.

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MS. NISWONGER: Yes.

COMPTROLLER FRANCHOT: Well, who from DBM is here that could help me understand why the contract was, or the offer, or the award was rejected, I guess?

MR. PORCARI: Perhaps I can help with that, Mr. Comptroller.

MS. FOSTER: Yeah, you don't want --

MR. PORCARI: Unless Secretary Foster would like to --

MS. FOSTER: Well, I'll start and you can follow up. It's my understanding that what occurred was this vendor, there was a vendor that was eliminated. The company, there was an MBE procurement, MBE requirement of 25 percent. The vendor did agree to meet that. But part of the procurement rules really require that when the vendor submits who the subcontractors are to be that the vendor at that time is to identify the level of business, even in terms of the dollar volume of the percentage. And the vendor was eliminated because the forms did not contain that information.

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My office did notify the Department of Transportation, advised them of this, and told them to check with their attorney general.

MR. PORCARI: Secretary Foster covered it, I think. And based on the advice of the attorney general's office we could not accept that bid.

COMPTROLLER FRANCHOT: Okay. Well --

MR. PORCARI: Because the MBE submission was incomplete.

COMPTROLLER FRANCHOT: -- I appreciate all the advice, et cetera, et cetera. But this does not seem to be right, here. The best deal for the State, the best on the technical grounds and best on the price apparently, and apparently received a letter awarding them the contract, they get rejected and we get two of the most expensive firms in return that are selected. So I'm wondering, I mean I, obviously we abide by procurement law and we're aware of the technicalities. But this seems to be an awfully minor impediment that, to reject a whole contract.

In other words, you've got a minority owned company here. It is an MBE company. It's a very

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professional company. They win the contract based on the, the price and the performance. And apparently the 25 percent was not filled in by them. I guess they had an explanation. But it certainly seems that we're, this is a, it doesn't seem logical to me that this situation would end up with them having the contract rejected.

MR. PORCARI: Mr. Comptroller, this is exactly the issue that you've seen played out time and again over the last year or so in front of the Board of Public Works, where the responsiveness test for minority business participation was not met. It's a yes or no. And in this case the firm, which is a minority firm, but as part of the process is also required to submit a minority participation plan including percentages, did not do so. And it is a yes or no question. The, as this, as with other cases you have seen, we are following both the letter and the spirit of the law. And in this case it is a basic responsiveness test which, unfortunately, the low bidder did not meet.



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COMPTROLLER FRANCHOT: Well, it's, I mean I appreciate your description. But it still seems like the State is getting the worst end of the bargain and it seems, I guess here's a question. How many other bids have been thrown out on a technicality, well your, this is your only one. But how many other bids at MDOT have been thrown out because of what has to be an extremely conservative reading of COMAR? Because, look, the company said, "We're minority owned. We're an MBE. We've won the contract." The 25 percent, they claim, apparently, was impossible to correctly fill out because it was task driven. But they're happy to fill in the blank. And for us to simply throw it out the window because, you know, of a technicality strikes me as awfully harsh. And, I guess, I mean, just from a common, from a fairness standpoint, doesn't this strike you as, as unfortunate?

MR. PORCARI: I know that Secretary Jenkins will want to comment on this as well. To answer your specific question, I can think of at least a half dozen construction contracts where there has been a

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similar failure to meet the responsiveness test. And I would remind you why this is in place, why this requirement is here in the first place. Senate Bill 903, which was passed I think four years ago, three or four years ago, required the prime contractors to list the minority business subcontractors as well as the percentages at the time of bid submission. Prior to that, they could wait until it was awarded. And that was, that put the minority business community at a severe disadvantage because the contract would be awarded, the prime contractor would then go back to the minority subcontractors and say, "If you want the business, here's the price." That was, as I understand it, the intent of Senate Bill 903. The difference is, we are following the law on Senate Bill 903 and it is to protect the minority business subcontractors. Secretary Jenkins?

MS. JENKINS: And that was to my point, I was going to comment that while this technicality unfortunately in this case is putting a minority firm at a disadvantage on this bid, it typically works to the advantage of minority firms who are protected by

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this provision. And to your question, you asked how often does this happen? Usually the disqualifying firms are large prime contractors who have not thoroughly met the specifications on delineating what their plans will be for minority participation. And it's that lack of specificity which puts minority firms at a disadvantage once bids are awarded.

COMPTROLLER FRANCHOT: Well I understand that and I'm sympathetic to that. Obviously we have to, everybody has to have the same rules applied. But it strikes me as a really bad outcome. And, and, you know --

MS. JENKINS: Also --

COMPTROLLER FRANCHOT: I just, I mean, I mean, how could you, how could this company have filled that form out properly, really? Given the fact that they claim that they couldn't do it without the, before they get the task orders done. How could you, how can they fairly and accurately fill it out? And, and, you know, you mentioned the spirit of the law. The spirit of the law is, this is a minority owned business. And I understand, I don't want to get

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tripped up by somebody saying, "Well, you don't want to follow the procedure, and the law, and all that." Of course we do. But, you know, to have the spirit of the law kind of turned on its head by a, what I think is a, here is a very minor technicality. I'm, you know, I appreciate what other primes who are not minority owned do. But this seems to be a special circumstance.

MR. PORCARI: And the flip side of that coin is, we are in litigation on construction contracts, one in particular I can think of, that's in the \$100 million range. Where a minority prime contractor did not properly fill out the MBE form, which did not, the --

COMPTROLLER FRANCHOT: I understand that, Mr. Secretary.

MR. PORCARI: -- meet the basic --

COMPTROLLER FRANCHOT: I understand the need and the law. I just say in this instance --

GOVERNOR O'MALLEY: Could you, I'm sorry to interrupt, but you were interrupting. Could you please complete your response?

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MR. PORCARI: Sure. The, the legal challenge in question, which is a very large construction contract, in that case the majority prime contractor did something very similar to this, did not properly fill out the minority business form and properly identify the subcontractors. And that is being uniformly enforced. It is one that is regrettable in this and other cases. But it is one where in legal terms there is a basic responsiveness test, which this bidder unfortunately did not meet. It's not subject to interpretation.

MS. JENKINS: And on one final note. There are two specific things that we have asked to have happen in response to this particular matter. Ron Freeland, the MTA Administrator, has agreed to debrief in person Thompson, Cobbs, and Bazilio, which is the firm that we're speaking of because he is personally aware of the firm, values their work, and also regrets that this technicality has set them out. We have also insisted across the board throughout all State agencies that procurement directors when they are in prebid meetings where they are giving bidders

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instructions on how to properly complete forms and fill out the procedures for bids, that they give implicit directions around MBE documentation so that we can avoid having disqualifications on minor, seemingly minor technicalities in the future.

COMPTROLLER FRANCHOT: That's excellent. I appreciate that. I think that's terrific. I'm still going to vote against this contract because I think it's, I think it's a, as I said, a bad outcome. Particularly because the State sent a letter awarding the contract to the company. And, but I appreciate that there are going to be efforts to meet and in the future try to avoid these kinds of illogical situations. Thank you.

GOVERNOR O'MALLEY: Did they have an MBE and not put it down? Or did they not have an MBE?

MS. NISWONGER: They had two MBES listed.

GOVERNOR O'MALLEY: They had two MBES listed.

MS. NISWONGER: Yes. And on the form they committed to the 25 percent, they just didn't identify the percentage that they would give --

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GOVERNOR O'MALLEY: Mm-hmm.

MS. NISWONGER: -- between the two MBEs.

GOVERNOR O'MALLEY: John?

MR. PORCARI: That's correct.

GOVERNOR O'MALLEY: All right. And the one that did, properly said, "It's this one and that one," rather than creating a situation where you have them both fight over each other to, and undercut each other? I mean, that's the purpose, right? Of allocating the percentages up front so they don't go back and say, "Hey, MBE number one?"

MR. PORCARI: That's right, Governor.

GOVERNOR O'MALLEY: "What will you do this for? Because I've got another MBE, he will undercut you?"

MR. PORCARI: That's exactly right. And --

GOVERNOR O'MALLEY: That's pretty substantive, isn't it?

MR. PORCARI: It's, it is very substantive.

GOVERNOR O'MALLEY: Okay. Let's call the question. The Chairman moves Item 1 --

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TREASURER KOPP: Mr. Chairman, I would like to say that I think that this is an area that has got to be looked into. I, we have seen time after time this sort of thing happen both in Transportation and in General Services contracts. And I know you all have reached out to try to educate people and sensitize them to the forms. The law, as far as I am concerned, is the law. And I will vote to support this project. But it, it does not always seem to work sensibly or in the pocketbook interest of the taxpayers.

GOVERNOR O'MALLEY: Seconded with that well placed caveat by the Treasurer. This is, I'm sorry, Item 4 is what this is? I'm sorry. All right. We're calling Item 1. The Chairman, I'm sorry, we're calling number four. We're not calling Item 1, we're calling number four. The Chairman moves approval and with that well placed caveat by the Treasurer, the Treasurer seconds it. All in favor signal by saying, "Aye." Aye.

TREASURER KOPP: Aye.



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GOVERNOR O'MALLEY: All opposed?

Comptroller?

COMPTROLLER FRANCHOT: No.

GOVERNOR O'MALLEY: Votes no. The motion passes. We are now on the balance of the Department of Budget and Management agenda items. Item 1 and Item 4 already having been voted upon. The Treasurer moves for the approval of the balance of the agenda items, seconded by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, the ayes have it. We now move on to? I'm sorry? University System of Maryland. And as all of you depart, know that you now know everything about what we're doing on the foreclosure crisis. Don't let your neighbors suffer in pain. Tell them there's actually some help. Okay. Anybody have any questions on University System of Maryland agenda items, as we approach the noon hour? Tummies grumble. No?

SECRETARY MCDONALD: We did have one request to speak.

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GOVERNOR O'MALLEY: Oh, okay. What item is that?

SECRETARY MCDONALD: Items two and three, are the new arena at Towson University. Mr. Kilcullen is here. He will be, he's been the, anyway, Towson University, the front row.

MR. SHEEHAN: Good morning. My name is James Sheehan. I'm Vice President for Finance and Administration at Towson University. The project before you is an amendment to an approved project for the architect because of expansion of the project. And also a project, the approval of a general contract project for predevelopment of our Towson Center. The Towson Center is an arena, basketball arena, on the Towson campus. And the original project that you approved was for a renovation of the project. And through various iterations of design it was determined that the best approach would be to build an addition to the arena to encompass the basketball arena.

TREASURER KOPP: How is, how is this project funded?

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MR. SHEEHAN: This project is funded with system funded bonds.

TREASURER KOPP: System, University System of Maryland?

MR. SHEEHAN: University System of Maryland.

TREASURER KOPP: And I'm sure you are aware, although I don't know if you're the representative, the appropriate representative, but you are aware that there are some folk in the community who are concerned about what I would classify as town/gown relationships. That is, students in the community, housed in the community, rather than on campus. And at some points creating potential or real problems in the community. One of the legislative representatives of Towson, who is strongly supportive of Towson University, and of these projects, did request that we urge upon you a clear schedule of meetings for community input. I know you have something scheduled, I believe November, as part of an ongoing discussion. But my question regarding that is, is that a meeting to inform the community? Or is it actually to get usable input which will be used from the community?

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MR. SHEEHAN: The, if I may, the community associations requested to view the documents, the drawings of the project, the proposed project. And of course we don't have any yet because the architect contract has not been approved --

TREASURER KOPP: Right.

MR. SHEEHAN: -- for the expanded project. We did meet with them in July and we went over some of the details. We made a pledge to ensure that we would involve the community association in most of, in all of the things that we do. And that when we did have some design, some plans designed, before we finalized the design, long before we finalize the design, we would meet with the community associations and share the plans with them.

TREASURER KOPP: And not just --

MR. SHEEHAN: And solicit their input.

TREASURER KOPP: And not just, solicit their input and then work to integrate their input to the extent possible?

MR. SHEEHAN: To allay their concerns over the impact that the arena might have on the community.

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TREASURER KOPP: The --

MR. SHEEHAN: We've also agreed to put, to put, prior to the beginning of the project, to put some barriers up between our property and the closest neighbors to mitigate the --

TREASURER KOPP: Landscaping barrier?

MR. SHEEHAN: Landscaping, correct, fencing, trees, and so forth.

TREASURER KOPP: And one of the other proposals was to use some of the marketing public relations funds involved in this to reach out to parents of off-campus housed students, just to let them know what is going on and that they retain responsibility for their minor, minor children despite the theory of in loco parentis.

MR. SHEEHAN: Yes.

TREASURER KOPP: Will that be done?

MR. SHEEHAN: Well, not with the contract as it's going to be presented today. But we have made a significant effort to reach out to the students. We will be looking at ways to improve the situation to make them aware, an educational program to make them

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aware of their, their commitment and their responsibility to the community that they're living in. We have also begun to try to control them and to inflict judicial proceedings against students who are, you know, violators of common decency, frankly.

TREASURER KOPP: And to let everyone, both on campus and off campus, know that this process is in place and will be --

MR. SHEEHAN: Yes.

TREASURER KOPP: -- implemented?

MR. SHEEHAN: Yes. We have made it a point to inform --

TREASURER KOPP: People are accountable for their actions.

MR. SHEEHAN: Yes, exactly.

TREASURER KOPP: One of the last questions was about increasing on student housing. My recollection is on the other campuses, I don't know Towson, this is done through public/private partnerships, not the University System bonds and construction.

MR. SHEEHAN: That's correct.

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TREASURER KOPP: Is that right?

MR. SHEEHAN: Yes.

TREASURER KOPP: Is that true at Towson,  
also?

MR. SHEEHAN: Yes, at Towson as well.

TREASURER KOPP: And do you have any plans  
for --

MR. SHEEHAN: Absolutely. We, in our master plan we had a five phased program to increase housing stock by 3,000 beds. And it would be about 600 beds each. The first phase was just completed and opened in August, this month, last month. And it was 660 beds. We're in the process now of finalizing a selection of a development firm to do phase two, which would be another 600 beds, which are scheduled to open in August of 2010. And then after that period we will begin phase three, which will be an apartment complex.

TREASURER KOPP: I know you are on the receiving end of some of the increased, potential increase in University System-wide enrollment.

MR. SHEEHAN: Yes.

TREASURER KOPP: And --

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MR. SHEEHAN: Yes, we are the, I would say the fastest growing public institution in the State of Maryland.

TREASURER KOPP: Including University College?

MR. SHEEHAN: No. Maybe.

TREASURER KOPP: I am going to ask Mr. Freedlander to follow up with you and keep on track about the community participation --

MR. SHEEHAN: Mm-hmm.

TREASURER KOPP: -- concerns. Every university campus that I know of has this problem, and I know that you are attempting to deal with it. But any way in which we or the legislative representatives from the Towson area can be of assistance, I'm sure we would like to.

MR. SHEEHAN: We will keep you informed.

GOVERNOR O'MALLEY: The letter we also received from Delegate Lafferty asked that you set a public and specific schedule for community members to meet with the architect, see the evolving plans and



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drawings, and solicit their input. Is that acceptable?

MR. SHEEHAN: We have, it would be difficult to set anything specific at this point in time because of the nature --

GOVERNOR O'MALLEY: Well then it's difficult for us to vote for this, then.

MR. SHEEHAN: I'm sorry?

GOVERNOR O'MALLEY: Then it's difficult for us to vote for it.

MR. SHEEHAN: We are willing to meet.

GOVERNOR O'MALLEY: Do you want to reconsider?

MR. SHEEHAN: Yes.

GOVERNOR O'MALLEY: Okay. Number two, the advertising and marketing contract, he asks that a portion of the campaign involve outreach to parents of off campus students, as the Treasurer just mentioned, and also that a portion be directed to supporting the Towson Business Core, which is part of the community the University serves. And I know it's undergoing a lot of renovation and redevelopment up there as well.

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I think the Delegate's intent is that you reach out more, as the Treasurer underscored, to those off campus parents and also to encourage, you know, the support of the Towson Business Core. And the fact that you do it through these funds or that you do it as just being good neighbors I think is probably less consequential. But the point is that, to paraphrase George Bernard Shaw, that you do it. Do you think you can do more of that?

MR. SHEEHAN: Yes, we definitely will do more of that, Governor.

GOVERNOR O'MALLEY: Okay.

MR. SHEEHAN: We want everyone to be aware that we want to be good neighbors to everyone around us. We are growing and with growth comes complications, but we will work through them.

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

THE BOARD: Aye.

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GOVERNOR O'MALLEY: All opposed, "Nay." The ayes have it. Thanks, and you'll get back to us on those things. Including the specific schedule. What are we going to now? Department of Information Technology, my favorite acronym for any department. DoIT.

MR. SCHLANGER: Good afternoon, Governor, Madam Treasurer --

GOVERNOR O'MALLEY: Governor Schaefer would like that.

MR. SCHLANGER: -- Mr. Comptroller. For the record, Elliot Schlanger, Department of Information Technology. We have three items on the agenda this afternoon and I would be happy to take questions at this time.

COMPTROLLER FRANCHOT: Governor --

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: -- if I could just interrupt? I think we had person who wanted to speak --

TREASURER KOPP: Yes.

COMPTROLLER FRANCHOT: -- on Towson if he --

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GOVERNOR O'MALLEY: Oh, I apologize. I didn't know we had another person who wanted to speak on Towson.

COMPTROLLER FRANCHOT: If he's --

GOVERNOR O'MALLEY: I'm sorry, sir. Come on up. I apologize. I did not know that we, that you were signed up to speak.

MR. KILCULLEN: I guess my point is moot but I'll speak anyway. My name is Ed Kilcullen. I'm the President of the Greater Towson Council of Community Associations. We're an umbrella organization that represents more than thirty community associations in the greater Towson area. We oppose the contracts associated with the proposed sports arena for a number of reasons.

Towson University's enrollment is increasing by several hundred students each year, and is slated to continue increasing by several thousand students. Four years after committing to collecting local addresses for students the point was made when the previous speaker was up here about reaching out to the parents of the students. Towson University claims

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they don't know where these students live when they're off campus. Four years after committing to collecting local addresses, requiring students to provide their local addresses, they're still not requiring, they're still not enforcing it. So they don't know where students, they sent out 1,200 letters, they have thousands of students living out in the community. They said they sent out 1,200 letters and they're the only addresses that they had. Other schools are doing it. We're, the community is pointing out schools that are doing this successfully. And Towson University just shrugs their shoulders and says, "Oh, we can't do it, we can't do it, we're trying, we can't do it."

Their mantra has been, and we have made numerous efforts to engage the University in some dialogue. They have not reached out to us. We are constantly reaching out to them. Their mantra has been, "We don't have money." We asked them for additional police officers when they have their annual Tiger Fest which brings thousands and thousands of students and their friends into Towson for an all day concert, and spills out into the neighborhoods with

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drunken and disorderly conduct taxing our local county police resources, and driving us all crazy, those of us who live in Towson. They say, "Oh, we don't have," you know, "we can't bring on additional police officers to patrol the neighborhoods." You know, "They're too busy on campus."

So it, it was, this was dropped on us like a bomb, this sports arena. We've been through the master plan. There have been several efforts with the County, with redevelopment and so on, discussing what's going on. No new arena was ever mentioned. So this is dropped on us with no notice. And they've come up with \$45 million to build a sports arena, to supplement an existing arena that's grossly underutilized. This comes on the heels of a stadium that was built several years ago that they claim they needed to have a much bigger and nicer stadium. It's been sold out once, I understand. It's, I think it's highest attendance is the Special Olympics, which isn't even a Towson University event.

So I think the old saying that, you know, build it and they will come is not really applying

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here. And in these tough economic times it seems really inconceivable to spend \$45 million on a sports arena when there's a dire need for on campus housing. So we ask that you, you really take a look at the funding that is provided to the University and where their priorities are. Because obviously they're more concerned about having a nice sports arena than providing on campus housing. And all the research demonstrates that students do better when they live on campus. At Towson University they've had kids die living off campus from drug overdoses and the University said, "Oh, they lived off campus, we can't do anything about them." You know.

So they're setting up this situation where they're pitting the communities against the students. The students are forced out into the community after two years. Despite what they say, "Oh, the students choose to live off campus." They're forced off campus. So something has to be looked at as far as their priorities and where their funding is going. And I really, seriously urge you to look at that. Thank you very much.

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GOVERNOR O'MALLEY: Thank you. And Mr.

Kilcullen, we had a similar issue with St. Mary's just two weeks ago. We almost need a State Office of, you know, College and Community Mediation or something. But Ms. McDonald, can you do a letter for us to the President of Towson State underscoring the caveats that we put in there? You know, their specific commitment to that openness. And it seems like a very reasonable request from Mr. Kilcullen and the people he spent the time to come down here to represent, that they should know where their students who live off campus live. I'm certain they know for billing purposes, you know? So. And tell him that we would like a report back from him on those things as well as an update on the on campus housing, on when that's anticipated.

TREASURER KOPP: Governor, I wonder if it would be worthwhile, let me just throw this out, to try to go to the University System office? Because this is coming up with several different campuses. And see if they can assist each of the campuses in



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setting up a system to trace students. And some common code of behavior enforced --

SECRETARY MCDONALD: Oh, actually, Treasurer, I think there might be a model. I saw just a newspaper article this weekend about that the Frostburg University President had been given a national award actually for decreasing the alcohol use on campus --

TREASURER KOPP: Well, we shouldn't have to reinvent the wheel for each campus.

SECRETARY MCDONALD: Well, the two things that they are doing are they are notifying parents when a student has had an alcohol violation, which they've never done before. And they are also notifying parents when there's something happens off campus, not just on campus. And the Frostburg University President received national recognition for just these two things because their numbers have just fallen once there was notice given. And I guess you have to sign a release when you go in saying, "I know that my parents will be notified." But then maybe they don't let you in the school unless you say that.

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MR. KILCULLEN: There are a number of best practices out there. We've done the research. We can, and the University will say, "Oh, we're a public institution. We can't do it." There are lots of other public universities across the county who do it. And they think they're a model because they, they're required, or they have this off campus disorderly conduct policy? Other schools have been doing it for fifteen years. They're not pioneers here. They're behind the curve. So I, like you said, there are lots of other schools out there. They don't have to reinvent the wheel. We've provided them with the information. We can do it again. But there are lots of things that can be done that aren't being done.

TREASURER KOPP: Thank you.

MR. KILCULLEN: Thank you very much.

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

Let's go on to the --

SECRETARY MCDONALD: Governor, may I just say --

GOVERNOR O'MALLEY: We're back on DoIT.

Yes, sir?

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SECRETARY MCDONALD: The court report, oh, I'm sorry, the court reporter has gone back through their recording and on the POS agenda they find that we approved the one item that was called up but not the entire --

GOVERNOR O'MALLEY: Okay, the Comptroller moves the approval of the whole POS agenda items, followed by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay." The ayes have it. And we're on DoIT again. Anybody have any questions on DoIT? The Comptroller moves approval seconded by the Treasurer. All in favor signal by saying, "Aye."

THE BOARD: Aye.

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

MR. SCHLANGER: Thank you.

TREASURER KOPP: This won't continue.

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GOVERNOR O'MALLEY: How about General Services? Anybody have any questions on General Services?

MR. COLLINS: Governor, may I make just one comment?

GOVERNOR O'MALLEY: Sure, you get timed, though.

MR. COLLINS: Thirty seconds, no, I had to do this. Item 2-EP on your agenda is our, a significant energy and performance contract for the Department of Agriculture. Great news for the State. Thank you, Board, for giving us permission to move these contractors some time ago. And Item, I just want to point out, Item 3-EP, page six, also, is the first time we are doing an indefinite quantity set of contracts for wind, solar, and biomass, which gives us, I think moves Maryland into the leadership position in terms of renewable energy in the future. So those are both great news from the Department. And I want to thank you for your support.

GOVERNOR O'MALLEY: Thank you.

TREASURER KOPP: That's real good.

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GOVERNOR O'MALLEY: That's good stuff. Mr. Comptroller?

COMPTROLLER FRANCHOT: Mr. Secretary, on Item 2, if you could arrange for either our staff, or send us an update on what other phase two energy conservation projects you have in the pipeline I'd be --

MR. COLLINS: Yes, sir. We'd love to, Mr. Comptroller. Thank you.

COMPTROLLER FRANCHOT: And just update us on that. And, and the renewable, Item 3, does that include energy conservation as well as solar, wind, and biomass?

MR. COLLINS: Energy conservation is a part of this of course, yes, sir.

COMPTROLLER FRANCHOT: I'd like to, if you could include the update there?

MR. COLLINS: Sure.

COMPTROLLER FRANCHOT: Because --

MR. COLLINS: Okay.

COMPTROLLER FRANCHOT: -- there is some confusion out there I think sometimes about what

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exactly we get as opposed to what we are promised we are going to get in savings.

MR. COLLINS: I understand. Yes, we would be --

COMPTROLLER FRANCHOT: And if you could focus on that --

MR. COLLINS: We'd love to follow up with you on that.

COMPTROLLER FRANCHOT: Thank you.

GOVERNOR O'MALLEY: Okay, anything else? The Treasurer moves approval of the DGS items followed by the Comptroller. All in favor signal by saying, "Aye."

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, and the ayes have it. We now go to, last but not least, Secretary Porcari --

MR. PORCARI: Good afternoon, Governor.

GOVERNOR O'MALLEY: -- the Department of Transportation.

MR. PORCARI: Madam Treasurer, Comptroller, we have twenty-nine items including supplemental Item

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29-GM-MOD. And I'll be happy to answer any questions you may have.

GOVERNOR O'MALLEY: Comptroller?

COMPTROLLER FRANCHOT: If I, not to, Item 25, Mr. Secretary?

MR. PORCARI: Yes. Item 25 is the memorandum of understanding with the, with British Airways regarding the continuation of the subsidy, the guarantee for British Airways daily flight to London.

COMPTROLLER FRANCHOT: And the item is, it authorizes \$5.5 million and you predict how much would be spent of that authorization?

MR. PORCARI: Yes. This is --

COMPTROLLER FRANCHOT: And how much of that would be spent, do you think, in fiscal year 2009?

MR. PORCARI: We've, let me ask at this point Tim Campbell and Jim Walsh, the Executive Director and Deputy Executive Director at BWI Thurgood Marshall to come up. This is --

COMPTROLLER FRANCHOT: Oh, for fiscal year 2010 I guess is what we're talking about here, aren't we?

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MR. PORCARI: There's an overall rate.

Previously, the previous memorandum of understanding had guaranteed a 10 percent return on sales to British Airways. That has been renegotiated to 8 percent.

COMPTROLLER FRANCHOT: Okay.

MR. CAMPBELL: That's correct. Tim Campbell, Executive Director of Maryland Aviation Administration. We don't know what the '09 will be. It's prospective. They just started their fiscal year.

COMPTROLLER FRANCHOT: Mm-hmm.

MR. CAMPBELL: We know what the past three years have been.

COMPTROLLER FRANCHOT: Less than five and a half?

MR. CAMPBELL: Yes.

COMPTROLLER FRANCHOT: Okay. How many other airlines do we have this arrangement with --

MR. CAMPBELL: This is the only --

COMPTROLLER FRANCHOT: -- to subsidize --

MR. CAMPBELL: This is the only one.



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COMPTROLLER FRANCHOT: And what's the average daily ridership, BWI to Heathrow? What would it have to be so that we're not paying, let's just pick a figure, \$3 million subsidy? What would the ridership have to be to get out from underneath this arrangement?

MR. CAMPBELL: It would be a combination of load factor and fare, and cost of the flight. One of the problems we've had in the past several years is the high cost of fuel has made it difficult for British Airways to get the return on sales that they're looking for on this flight. The fares, the loads have been very good. They're running over 80 percent load factors on the flight. And if we can just get fuel prices down we think that we could get to the break even point.

COMPTROLLER FRANCHOT: Well, I'm not going to hold my breath on that. But do we have this arrangement with other international lines, like Ghana and Aer Lingus?

MR. CAMPBELL: No.

COMPTROLLER FRANCHOT: Did --

MR. CAMPBELL: No.

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COMPTROLLER FRANCHOT: We only have it with British Air?

MR. CAMPBELL: British Airways, yes.

COMPTROLLER FRANCHOT: And --

MR. PORCARI: Neither Ghana nor Aer Lingus are at BWI Marshall.

MR. CAMPBELL: That's correct.

GOVERNOR O'MALLEY: How many international flights are there anymore at BWI?

MR. CAMPBELL: In terms of air carrier service we have British Airways, which of course provides premier service to Europe through London Heathrow. We have Air Canada with service to Canada, Air Jamaica to Jamaica, and then USA3000 provides service down into the Caribbean.

GOVERNOR O'MALLEY: But Ghana's gone?

MR. CAMPBELL: Ghana's gone.

GOVERNOR O'MALLEY: Aer Lingus is gone?

MR. CAMPBELL: Aer Lingus is, yes.

GOVERNOR O'MALLEY: Iceland is gone.

MR. CAMPBELL: Yes.

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GOVERNOR O'MALLEY: So we're in danger of losing the I in BWI?

MR. CAMPBELL: Correct.

GOVERNOR O'MALLEY: Thurgood Marshall, excuse me.

COMPTROLLER FRANCHOT: If I could ask, Governor?

GOVERNOR O'MALLEY: Sure.

COMPTROLLER FRANCHOT: What's the strategy on that? Because are we going to have to subsidize everybody who comes in the William Donald Schaefer, is it the William Donald Schaefer Terminal?

MR. CAMPBELL: That's the name of the international terminal, yes, sir. Well, we're very aggressive in terms of our air service marketing and development program. These are challenging times in the airline business, both domestically and internationally. We continue to work very hard. We're somewhat optimistic that Southwest Airlines, our largest carrier at BWI Thurgood Marshall International is, has indicated a willingness to enter into interline agreements and co-share agreements. It's a

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little bit of a longer term prospect. It'll take a couple of years for that to come about. But they would provide some very important domestic feed to help support the additional international service.

COMPTROLLER FRANCHOT: And what has British Air done as far as local marketing campaigns, et cetera, contacts with the companies?

MR. CAMPBELL: They've been very aggressive. We work jointly with them with our marketing and sales folks. We follow up on leads. When we see new businesses and companies coming into the area we get in contact with those folks right away. They're very aggressive in terms of following up, working with the larger companies to provide some corporate incentives and discounts. And they've been very aggressive. And we work with them almost on a daily basis.

MR. PORCARI: And if I may, it's important to remember that the daily British Airways service is unlike any other service in the sense that this is our gateway to the world. The Heathrow connection --

GOVERNOR O'MALLEY: Right.

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MR. PORCARI: -- literally opens up connections with the rest of the world for our passengers.

COMPTROLLER FRANCHOT: And, thank you for that. Is, I see there's some study that talks about economic benefit. But is there an independent, I take it that's an airline, who, who paid for that study?

MR. CAMPBELL: That was an, we paid for it. It's an independent consulting firm that specializes in these kinds of studies.

COMPTROLLER FRANCHOT: And when was that study done?

MR. CAMPBELL: Just a few weeks ago, I believe. About a month ago. We had it updated. We had one for the first MOU and we thought it would be appropriate to update it.

COMPTROLLER FRANCHOT: Well, I appreciate what you're trying to do. But it also strikes me that this is a subsidy without end, particularly if it's based on fuel prices. And I really question the economic rationale here, other than that everybody does it, I guess. And I'm not quite sure if there's,

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that's what other airports do. But I'm going to vote against this because I think \$5.5 million or \$3 million in this kind of economic distress going to a private company is the wrong signal.

GOVERNOR O'MALLEY: The, so what item is this? We'll handle that separately. Are you okay with this?

MR. PORCARI: This is 25-GM.

GOVERNOR O'MALLEY: 25-GM? Let's handle 25-GM. And let me, go ahead, Madam Treasurer?

TREASURER KOPP: You have notified the legislative fiscal committees as the law requires?

MR. CAMPBELL: Yes. Yes, we have.

TREASURER KOPP: Yes, you have. And you do have an independent study you referred to?

MR. CAMPBELL: Yes.

TREASURER KOPP: Just one question. I am supporting this. I think we do need the potential of a major international airline. But our track record hasn't been great. Do you, if this doesn't work, what happens then?

MR. CAMPBELL: I'm sorry, if the?

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TREASURER KOPP: If British Airways pulls out the way the others have --

MR. CAMPBELL: Mm-hmm.

TREASURER KOPP: -- what is the cost to the State?

MR. CAMPBELL: Well, again, you have the economic impact analysis. The direct benefit of the route is over \$62 million per year. And then with multiplier it's double that. So that basically will go away. We will continue to work to find additional international air service, particularly to Europe. It's very challenging getting access into Heathrow Airport, which is the premier European gateway airport. It's slot controlled. There are many restrictions on gaining access. And it will be very difficult if we were to lose the BA service, frankly, going forward. This is a premier service. There are many airports around the country that would pay a lot more than up to \$5.5 million --

TREASURER KOPP: No, I'm aware of that.

MR. CAMPBELL: -- to have this route, so. We're very fortunate.

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TREASURER KOPP: So we're just going to keep plugging away.

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

MR. PORCARI: And I think it's also important to point out that given the stress the industry's under right now preserving that service is job one. And then as times get better building additional international service.

MR. CAMPBELL: That's correct.

GOVERNOR O'MALLEY: And we do have other American flights that travel internationally, though, correct?

MR. CAMPBELL: Connecting service but not direct, nonstop service.

GOVERNOR O'MALLEY: Delta doesn't fly internationally out of BWI?

MR. CAMPBELL: No.

GOVERNOR O'MALLEY: No? And I guess they fly out of Dulles internationally, huh?

MR. CAMPBELL: I don't think, not Delta out of Dulles.



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GOVERNOR O'MALLEY: What, to Africa? Well, I know they do because I know a pilot who lives in town who flies the plane. So either they fly out of one place or the other.

MR. CAMPBELL: Yeah, Delta's, Kennedy is Delta and Atlanta is their primary area.

GOVERNOR O'MALLEY: Okay. Well, it may well be. Yeah, that's possible. Okay, well look, I have, Comptroller do you have something you wanted to add?

COMPTROLLER FRANCHOT: Yeah, if I could just ask one final question. Does Dulles do all of these kinds of subsidies and payments to international companies?

MR. CAMPBELL: No, they do not. They're, they have a much larger international marketplace. A good portion of the international travel originates in the Dulles area and vicinity and so they have an advantage there. And they have a long running international presence that BWI just doesn't have. We're working on trying to grow that, but they do not.

COMPTROLLER FRANCHOT: Thank you.

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GOVERNOR O'MALLEY: In these times of consolidation in the airlines, this, this flight to Heathrow is a real lifeline for what is a growing number of Maryland businesses, and especially in Central Maryland, that are very engaged in the global economy, long before any of us in public office became comfortable with urging global competitiveness. I mean, you need only to go to one of the events of the World Trade Center Institute and see the number of Maryland companies whose, whose employees and businesses and customers use that connection to come in and out of Baltimore. It's not only important for Baltimore, it's important for the State, it's important for the Port. Deb Kielty at the World Trade Center Institute would be able to provide you a ton of information, evidence as to just how important this connection is for Baltimore to stay connected, and thereby Central Maryland to stay connected to this global economy. It's a critically important economic development investment and especially in these tough times. And I move this agenda item, seconded by the

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Treasurer. All in favor signal by saying, "Aye."

Aye.

TREASURER KOPP: Aye.

GOVERNOR O'MALLEY: The Comptroller votes no.

COMPTROLLER FRANCHOT: No. No, thank you.

GOVERNOR O'MALLEY: He votes twice and with a thank you attached as well. We now move to the balance of the Department of Transportation agenda items. Anybody have anything on those?

COMPTROLLER FRANCHOT: I just have an information question about the Port contract. How could we be off by 102 percent from the original \$35 million estimate? I think we're up above \$65 million. I don't have it in front of me.

MR. PORCARI: That's a fair question. And I'll ask Doug Matzke from the Port to come up as well. This is the Masonville Beneficial Reuse Project where among other things we are taking an old ship breaking site, the grayest of gray fields, brownest of brown fields, and turning it into an environmental resource. There were a number of technical and cost unknowns,

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including abandoned vessels, timbers, some dating back to the Great Baltimore fire.

TREASURER KOPP: Really?

MR. PORCARI: And other --

TREASURER KOPP: Did you have archaeological work done? I mean, seriously, salvage?

MR. PORCARI: It, there were literally piles of some of the timbers from the Great Baltimore fire that have been there ever since. But I forget the number of derelict vessels but we have removed a number of them. And while this is a very significant cost increase and not something I would minimize it is, technically this has been a very, very challenging project. And the reality is we're assuming a great cost and technical unknown in this environmental clean up which is going to greatly benefit the middle branch of the Patapsco and the Chesapeake Bay.

MR. MATZKE: Good morning. Or, I apologize, good afternoon. My name is Doug Matzke. I'm Director of Engineering at the Maryland Port Administration.

COMPTROLLER FRANCHOT: I understand the importance of the dredging and I support it, and I

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assume that everything the Secretary said is correct.

But --

MR. MATZKE: Well, if --

COMPTROLLER FRANCHOT: What's the, why are we so out of --

MR. MATZKE: The --

COMPTROLLER FRANCHOT: You know, are these things just guesses?

MR. MATZKE: No, sir. We came down initially, preliminarily with a concept level estimate about 10 to 15 percent. And with, based on the best information that we had at that time, based on field investigations, and reviewing of historical records. And during the design process with additional subsurface and historical data collection had to do additional design work and add to the project in order to be able to complete the project. Some of it is the copper dam job which had a significant increase in escalation of steel prices in the marine installation work that was associated with it, as well as the onsite borrowed material that made our preliminary investigations of the subservice soils indicated that

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it was, probably would be able to use for the material. We were not able to use it after we did subsequent testing and investigations.

COMPTROLLER FRANCHOT: And did you send a letter to us that explains the differences?

MR. MATZKE: Yes, sir. But I probably, what should have happened is that a letter should have been sent prior, earlier in the process, and I apologize for that because we did not do that.

MR. PORCARI: I, and again, this is a fair question. It is a significant escalation from the original cost estimate. It is, it is one where I think the lesson we've learned here is that much more geotechnical work could have been done early on to try to minimize the cost unknowns and any other up front work that would have helped define that risk.

MR. MATZKE: We should have waited in my, and I apologize. We should have waited until a little bit further down the path to come and request the approval to proceed.

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COMPTROLLER FRANCHOT: Okay. And just a last question on the, thank you for saying that, the publication of awards in the eMaryland Marketplace?

MR. MATZKE: Yes?

COMPTROLLER FRANCHOT: Was that done within the thirty-day window when it should have been done?

MR. MATZKE: I'm sorry. I --

COMPTROLLER FRANCHOT: You've got the State Finance and Procurement Law requires that publication of the awards occur within thirty days in eMaryland Marketplace. And --

MR. MATZKE: I don't believe that happened.

COMPTROLLER FRANCHOT: Well can we get a look at that and get a review back as to where --

MR. MATZKE: Yes. Well, we're at, as a result --

COMPTROLLER FRANCHOT: It's just a technicality of course but earlier --

MR. MATZKE: We're looking --

COMPTROLLER FRANCHOT: Earlier this morning we, you know, we gave a contract to two expensive people in lieu of giving it to someone else because of

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a technicality. And this is a technicality. I think we should look at it.

MR. MATZKE: We are looking at our procurement process in total as far as expediteds go to make sure that we in the future will follow everything and see that it's done properly.

MR. PORCARI: Well, Mr. Secretary you could get back to me as to whether this met the letter and the spirit of the procurement law.

MR. PORCARI: I will do that. I don't know the answer.

COMPTROLLER FRANCHOT: Thank you.

MR. PORCARI: But we'll do that for you.

GOVERNOR O'MALLEY: Anything else in the Department of Transportation agenda items?

TREAS

MR. MATZKE: I'm sorry?

TREASURER KOPP: That's my assumption.

MR. MATZKE: Correct.

SECRETARY MCDONALD: Items 26, 27, and 28 are basically a report of an expedited procurement to you. I would think you could perhaps, I mean if you wanted to hear back on them, defer these three items



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and do the rest of the agenda. Because basically they've been doing all this work. And so if you want it clear on the record --

TREASURER KOPP: Yeah.

SECRETARY MCDONALD: -- you could certainly probably defer the Board's approval and acceptance of these items until we got a further explanation.

TREASURER KOPP: Or condition it. I mean, I just, we shouldn't be approving things that are not legal. I have no reason to think it's not.

GOVERNOR O'MALLEY: Who wants to talk to me about, somebody want to talk to us about the eMaryland Marketplace thirty-day publication requirement?

SECRETARY MCDONALD: It's really, it's more than just the eMaryland Marketplace. You know, everything was supposed to be I think reported to the Board within thirty days of contract award and published in eMaryland Marketplace and other things within thirty days of contract award. My understanding is that the people at the Port at the time were looking at it as thirty days after the project is done, not thirty days after the contract is

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awarded. There were payment questions, that contractors needed to get paid, and, but we said that we would not approve any further payments until the reports finally came to the Board. So that's why they're here now.

TREASURER KOPP: So the reports are now at the Board?

TREASURER KOPP: But if you want a, from, you know, a more detailed explanation I think it could probably be provided.

MR. PORCARI: We'd be happy to do that.

TREASURER KOPP: Okay.

GOVERNOR O'MALLEY: So what do you want to do? Defer these three?

SECRETARY MCDONALD: Would you like to defer these three items? Or go ahead, and then, with the, and have them come back with the report? Or do you want to go ahead and approve these three items and let the report come in later?

COMPTROLLER FRANCHOT: Let me suggest that, I think the contract should go forward. I think it's important work. But if you could get back to us just

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itemizing all of this that would be satisfactory for me, and --

TREASURER KOPP: And say how it meets the law.

COMPTROLLER FRANCHOT: Correct.

MR. PORCARI: Certainly, we'll do that.

TREASURER KOPP: Yeah.

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

THE BOARD: Aye.

GOVERNOR O'MALLEY: All opposed, "Nay." The ayes have it. Thank you all very much. That concludes our agenda.

(Whereupon, at 12:40 p.m., the meeting was concluded.)

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