
Commission Meeting

of

NEW JERSEY COMMISSION ON CAPITAL BUDGETING AND PLANNING

LOCATION: Committee Room 12
State House Annex
Trenton, New Jersey

DATE: December 12, 2003
10:00 a.m.

MEMBERS OF COMMISSION PRESENT:

B. Carol Molnar, Chair
Anthony F. Annese, Vice-Chair
Patrick R. Brannigan
Gary Brune
Kevin P. McCabe
Robert A. Roth

ALSO PRESENT:

David Rousseau
(Representing John E. McCormac)
Beth Schermerhorn
(Representing Peter J. Biondi)

Michael Lihvarcik, Acting Executive Director
New Jersey Commission on Capital Budgeting and Planning



Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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B. CAROL MOLNAR (Chair): I'd like to call the meeting to order. In accordance with the Open Public Meeting Law, the Commission has provided adequate public notice of this meeting by giving written notice of time, date, and location. A notice of the meeting has been filed at least 48 hours in advance by mail and/or fax to the Trenton *Times*, *The Star-Ledger*, and filed with the Office of Secretary of State.

We will now take a roll call.

MR. LIHVARCHIK (Acting Executive Director): Senator Littell. (no response)

Senator Bryant. (no response)

Assemblyman Cryan. (no response)

Assemblyman Biondi. (no response)

Mr. Rousseau. (no response) He's present.

Mr. McCabe.

MR. McCABE: Here.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Here.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Here.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Here.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Here.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Here.

MR. LIHVARCHIK: Madam Chairwoman, we have a quorum.

MS. MOLNAR: Thank you.

Our first item of business is the approval of the minutes of the Commission meeting, October 24, 2003. Do I hear a motion to approve?

MR. ROTH: So moved.

MS. MOLNAR: Second?

MR. ANNESE: Second.

MS. MOLNAR: Any discussion? (no response)

No. If not, we'll take a vote.

MR. LIHVARCHIK: Ms. Schermerhorn, for Assemblyman Biondi.

MS. Schermerhorn: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Chairwoman Molnar.

MS. MOLNAR: Yes.

The minutes are approved.

MS. MOLNAR: Thank you.

The next item is the Executive Director's report.

MR. LIHVARIK: As you know, this is the final meeting, Madam Chair, and the staff has been in the process of making capital recommendations. However, due to the State's current fiscal situation, the Fiscal 2005 capital funding requests and recommendations were developed, as in prior years, adhering to very specific criteria. These are basically dedicated funding sources, such as open space, shore protection, private underground storage, and hazardous waste cleanup, requested funded critical fire and life and health-safety security projects, and funding requests that required a State match to draw down Federal funds.

As a result of using this limited criteria, the 2005 capital funding request totals 1.05 billion, and is composed of 995.2 million in dedicated funding, and 55.6 million in purely discretionary capital. This recommendation is approximately 7 million less than the Fiscal 2004 recommendation made by the Commission.

It should be noted that the request for the Juvenile Justice Commission has been increased by 2.5 million for an exigent project that surfaced after the initial Commission requests were mailed.

A funding summary for 2005 would be that for open space preservation there's 98 million of dedicated sales and use tax. The transportation trust fund recommendation is 805 million, which is composed of motor fuels, petroleum gross receipts, and a portion of the sales tax. Within DEP, funded from the Corporate Business Tax, there are two separate items: publicly funded site remediation, 37.4 million; and private underground storage tanks/hazardous substance discharge cleanup, at 29.8 million. The remaining

dedicated funding is for shore protection at \$25 million, from the realty transfer tax. All of these total \$995.2 million.

In the discretionary area, there is 47.7 million for fire, life, and health safety projects, and 7.9 million to match Federal dollars. And it should be noted that even though we have the 7.9 million in a discretionary line item, these funds are used to draw down more than a one-to-one match of Federal dollars. Basically, the two programs involved there are the HR-6 flood control project and program in DEP for 7.2 million, and \$627,000 for a multi-purpose room for DMAVA.

Basically, that ends my report.

MS. MOLNAR: Thank you very much.

Now we will begin with the fiscal capital recommendations. In the past, we've done it department by department. It seemed to have worked well that way. So, if there is no disagreement, we can do it that way.

MR. LIHVARCHIK: Madam Chair, we can start with the Department of Agriculture.

MS. MOLNAR: Yes. The Department of Agriculture. The Commission is recommending 250,000 -- 328,000 was requested.

Is there any questions or comments? (no response)

MR. ROTH: Move for approval.

MS. MOLNAR: Can I have a second?

MR. ANNESE: Second.

MS. MOLNAR: Okay. We'll take a vote.

MR. LIHVARCHIK: Mr. Rousseau, for Treasurer McCormac.

DEPUTY TREASURER ROUSSEAU: I'm voting yes today. I just want to make a point that I'm voting yes as a member of the Commission. As Deputy Treasurer, I also have to balance the needs of the capital versus the other needs in balancing a State budget. So, I'm voting yes to move these recommendations forward, but it's not a definite that I would then recommend to the Treasurer or Governor that these be placed in the final budget.

Thank you.

MR. LIHVARIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARIK: Chairwoman Molnar.

MS. MOLNAR: Yes.

MR. LIHVARIK: Madam Chairwoman, we have seven votes in the affirmative. The motion passes.

MS. MOLNAR: Thank you.

The next department is the Department of Corrections. The Commission is recommending 5 million. You have the breakout -- perimeter, fire safety, and roof repair.

MR. LIHVARCHIK: And facility renovations.

MS. MOLNAR: Right. Roof repair/facility renovations.

MR. LIHVARCHIK: Yes.

MS. MOLNAR: Any questions or comments? (no response)

If not, do I hear a motion?

MR. ROTH: Moved for approval.

MS. MOLNAR: Do I hear a second?

MR. ANNESE: Second.

MS. MOLNAR: Okay. We'll take a vote.

MR. LIHVARCHIK: Mr. Rousseau, for Treasurer McCormac.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Madam Chair, you have-- The motion passes.

MS. MOLNAR: Thank you.

The next department is the Department of Education. The Commission is recommending 600,000, which would be roof replacement for Jersey City Day School. The other money, 215,000, would come from the interdepartmental account.

Any questions or comments? (no response)

Do I hear a motion to move?

MR. ROTH: So moved.

MR. ANNESE: Second.

MS. MOLNAR: Thank you. Take a vote.

MR. LIHVARIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARIK: Madam Chair, the motion passes.

MS. MOLNAR: Thank you.

The next department is the Department of Environmental Protection. The Commission is recommending 100,158,000.

I had one question. Under shore protection, 25 million, does that include Wreck Pond in that number? No, okay.

Any questions or comments? (no response)

If not, motion to approve?

MR. ANNESE: So moved.

MS. MOLNAR: Do I hear a second?

MR. BRUNE: Second.

MR. LIHVARIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARIK: Motion passes.

MS. MOLNAR: Thank you.

The next department is the Department of Health. At the present time, the Commission is not recommending any moneys. The laboratory equipment -- there's a suggestion to look at existing Federal funds, and the renovation of the lab is on hold, pending the proposal of construction of a new laboratory.

Any questions or comments?

DEPUTY TREASURER ROUSSEAU: I'll move this one.

MS. MOLNAR: Okay.

Do I hear a second?

MR. BRUNE: Second.

MS. MOLNAR: All right. Take a vote.

MR. LIHVARIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Thank you.

The next department is the Department of Human Services, 17,800,000; 10 million of which would be for the Statewide Child Welfare Information System, some improvements at Vineland Development Center, Woodbine Development Center, and fire suppression at Elm Hall.

Any questions or comments? (no response)

Do I hear a motion?

MR. ANNESE: So moved.

MS. MOLNAR: Okay. Second.

MR. BRUNE: Second.

MS. MOLNAR: Okay. Take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Thank you.

The next department is the Department of Law and Public Safety. At this present time, the Commission is not recommending any funding. You have your explanation in front of you, since the majority of the capital is for new structures and building repairs.

Any questions or comments? (no response)

Do I hear a motion to approve?

MR. BRANNIGAN: Motion.

MS. MOLNAR: Okay.

MR. ROTH: Second.

MS. MOLNAR: Okay. We'll take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: No.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Madam Chair, you have six votes in the affirmative and one in the negative.

MS. MOLNAR: Okay. Thank you.

Now, Juvenile Justice Commission -- you have a new packet in front of you. There is an addition of 2 million-five for the New Jersey Training School, which were not in the original amount. There's a letter explaining the change. So these moneys will complete the fire suppression system and smoke detection system and the programs at the Training School campus. Does anyone want an explanation? I believe someone is here from Juvenile Justice. If you're happy with this explanation, we can go with this.

Mr. Brune.

MR. BRUNE: I just have one question. If we can get a clarification of the situation with the original contractor, who was terminated, and the bonding company. I'm not sure that's a JJC question, but if they can answer that, or somebody else.

MS. MOLNAR: Okay.

Thank you. Could you give your names for our reporter.

KEITH POUJOL: Good morning, Madam Chair. I'm Keith Poujol. I'm the Facilities Manager with the Juvenile Justice Commission. To my left is Steve Sutkin, Deputy Director for the Division of Property and Construction, for contract administration; to my far right is Deputy Director Raymond Arcario, and overseeing construction services; and to my immediate right, is DAG Wayne Martorelli, who oversaw the negotiations in this particular matter.

MS. MOLNAR: Would one of you gentlemen like to update us regarding the original contract, clarification.

STEVEN SUTKIN: The original contractor -- we had evidence while they were engaged on the project, one, that they were not paying subcontractors as required by the contract, and is a statutory requirement; and two, was not performing the work in accordance with the contract documents. I commissioned an audit of the firm's books by our in-house auditors, and that audit did reveal that the contractor was not paying its subs in accordance with the requirements. We issued a notice to cure, pursuant to the contract. And at that point, the contractor has an opportunity to cure the default, pay the sum, and show us evidence. That was not forthcoming and, eventually, we terminated the contractor for default.

Just so you know, there is also an open criminal investigation of the contractor by the Division of Criminal Justice, arising from its nonpayment of subs. I understand that anything that the Division of Criminal Justice is looking at they don't tell you, because it's all privileged.

We immediately called on the bonding company and its staff to come in and show us how they were going to guarantee the completion of the contract in accordance with the performance bond that it issued on the project, pursuant to law. That occurred, I believe, in February of '03. We have been negotiating, pleading, threatening, struggling with the bonding company since then to get them to come in, investigate the claim, and reach an agreement with us regarding how they would take over the project. And frankly, we're not at a point where we can reach an agreement with them right now.

We have recently issued a notice to cure to the bonding company, threatening that we would terminate them. We're giving diplomacy every last opportunity. Because, if we do terminate them, we have to move forward with State funds to complete the project and pursue them in litigation. We've been undertaking this effort in coordination with the Attorney General's office, and DAG Wayne Martorelli is here to speak to those questions.

But, as we sit here right now, I'm not optimistic that we'll reach a negotiated deal with the bonding company, and the result of that is partially the request for additional, appropriated dollars.

MS. MOLNAR: Did I read someplace that the bonding company may declare bankruptcy? Did I see that someplace?

WAYNE MARTORELLI, ESQ.: I can speak to that. What's happened is the bonding company -- it's an insurance company, Highlands Insurance, which by law are regulated by states. Generally, what happens when an insurance company gets into dire financial straits, they file the equivalent of a bankruptcy proceeding in the state where they are incorporated. They are in conservatorship proceedings in Texas right now. I am told that the reason for that has to do with some big, multi-million judgment that was returned against them in California, that they are continuing to operate, that they now have the legal clearance from the Texas courts to enter into a takeover agreement with us in the event that we are able to reach an agreement. But that's what I know.

MR. LIHVARIK: If there is an agreement reached between New Jersey and the bonding company, would New Jersey see any money to offset the cost of the additional State appropriation, and would they have to pay the costs of litigation, which obviously would mitigate against any ultimate settlement?

MR. MARTORELLI: You're talking about litigation in the event that we fail to reach an agreement with them?

MR. LIHVARIK: Either way.

MR. MARTORELLI: If we reach an agreement with them, the whole purpose of the performance bond, basically, it's a guarantee. It's best thought of as a guarantee that the work will not cost the owner more than the stated contract price. Under the takeover agreement, they would then come in and they would be paid the remaining contract balance according to the same payment schedule that would apply to the contractor had there been no default termination, and then to the extent that there wasn't overrun. They would then be responsible for picking up the entire overrun cost. All costs coming out of the termination, including architectural costs, anything over the contract balance that we're holding, they are responsible for it. To the extent that there's extra work -- and I understand there has been some extra work here that is not covered by the bond -- that that would be extra to the contract. So, therefore, it would be an extra, whether or not the contractor did the work or the bonding company did the work.

Now, in the event that there is litigation, generally, the courts in this state -- as the courts in this country generally follow what's called the American rules, that each side bears its own litigation costs. I will say that there have been claims made in New Jersey, as elsewhere, against bonding companies based upon a theory of bad faith. What I see in negotiations in this case is, I would say, close to the line on bad faith. And it's possible, I say possible, that in the event that there was litigation against the bonding company based upon bad

faith, we could conceivably recover attorney's fees, but I don't want to guarantee that, because it's not a certainty.

MS. MOLNAR: Okay.

MR. SUTKIN: Just to add one additional thing -- I think, based on my experience and the experience on this matter, I think the evidence that we have in front of us, with the bonding company not coming through between February and today, in December -- I think that it's highly unlikely based on the negotiations underway that the bonding company is going to reach a deal with us. And even if we were to reach a deal, the conditions that they would want to impose in order to reach a deal would require us to expend additional money. Otherwise, they won't come in. So, I don't think there's going to be a deal with the bonding company.

MS. MOLNAR: Mr. Brune.

MR. BRUNE: I just want to ask a question. I think I understand from Keith that part of the reason we're seeing an increase in cost is that there was some unforeseen site conditions that had to do with wiring. So I think I understand you to say then, Wayne, is that if you did reach an agreement, they wouldn't be on the hook for that. They would only be on the hook for whatever the original scope was and the cost associated thereby.

MR. MARTORELLI: Right. The additional scope -- any costs incurred in connection with the default termination of the original contractor. For example, if we have to go out and hire, as I believe we will, or pay the architect engineer more money to prepare a new set of bidding documents to put the remaining work out to bid, the professional fees that we'd have to pay to prepare those documents to administer the bidding, and all of that, would all be

recoverable against the bond, if that's a cost of completion. And anything which really goes towards completion of the original scope of work is recoverable against the bond.

MS. MOLNAR: Do we share this information with other states so other states don't accept guarantees from Highland Insurance Company (*sic*) in the future?

MR. MARTORELLI: Well, the way it works is that every state has its own bond statute. I believe all states do require at least payment bonds for the benefit of subcontractors on public jobs. They also require performance bonds of the type we have here. The Federal Government, as well, also has a list of approved bonding companies. Highlands happens to be on the State's approved list right now.

Generally what happens is that if a bonding company runs afoul with one state government, word gets around and a bonding company, as an insurance company, can be disqualified from doing business in one state based on its disqualification or suspension in another state.

MS. MOLNAR: Okay.

MR. LIHVARIK: Does the contractor bear any responsibility?

MR. MARTORELLI: Oh, absolutely, absolutely. He's primarily responsible for the same cost that the bonding company is. The difference is, we don't know how solid the contractor is, whereas we believe, or at least we did believe, until we found out about what was going on in Texas, that the Highlands was solvent enough to cover the cost.

I still believe that at the end of the day they will remain solvent and they will be able to cover these costs. But there's certainly a deeper pocket, I believe, than the contractors at this point in time.

MR. LIHVARCHIK: Just one last thing, through the Chair. Could you keep the Commission apprised as to the proceedings of this litigation?

MR. MARTORELLI: Absolutely. Absolutely, we will.

MR. LIHVARCHIK: Thank you.

MS. MOLNAR: Do we have any other questions or comments?

(no response)

If not, is there a motion to approve the 5,500,000?

MR. BRANNIGAN: So moved.

MS. MOLNAR: Do we hear a second?

MR. BRUNE: Second.

MS. MOLNAR: Okay. We'll take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Thank you.

Thank you, gentlemen, for coming.

MR. POUJOL: Thank you.

MR. MARTORELLI: Thank you.

MS. MOLNAR: The next department is the Department of Military and Veteran Affairs. The Commission is recommending 1,357,000 -- two projects at the Paramus Veterans Memorial Home, and then the armories -- the fire suppression systems at one, two, three, four, five, six armories.

Any questions or comments? (no response)

If not, do I hear a motion to approve?

MR. ROTH: So moved.

MS. MOLNAR: Okay.

Second?

MR. ANNESE: Second.

MS. MOLNAR: Take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Thank you.

MR. ROTH: Madam Chair, without objection, I suggest we do all of the colleges in one vote.

MS. MOLNAR: Okay. Before the colleges, though, there's a State line item for 150,000 in your packet. That request -- we're recommending zero because it's going to be funded out of the interdepartment Capital Complex project's fund. That will take care of the seating that they had requested. For State, we're recommending zero funding, because there's money available in that account.

So can we vote on that first, before Higher Ed?

Do I hear a motion?

MR. ROTH: So moved.

MS. MOLNAR: Second?

MR. ANNESE: Second.

MS. MOLNAR: Okay.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Okay. Higher Ed -- we'll vote on it all together, unless there's an objection. (no response)

Is there still money available for the colleges in this Higher Ed fund? It looks like that, that's one source of revenue, is the Higher Ed fund. And there's also moneys in the Dormitory Trust Fund.

Any other questions or comments? (no response)

If not, do I hear a motion and a second?

MR. BRUNE: I'll move it.

MR. ROTH: Second.

MS. MOLNAR: Okay.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Thank you.

The next department is the State Library. They requested 2,769,000. At this time, we are recommending no funding. Their requests included seven capital projects.

MR. McCABE: I'll move it.

MS. MOLNAR: I need a second.

MR. BRUNE: Second.

MS. MOLNAR: Okay.

Any questions or comments? (no response)

If not, we'll take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: No.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

Okay. The next one is the Department of Transportation. The biggest piece is the trust fund, 805 million. I recall reading in the paper that by 2005 the total trust fund will be used to pay debt service. Does that make sense? The other question I had is, last year we recommended 930 million, but they were prorated 805. So this year we're also suggesting 805. Is that 805 reality, or do you think that will get cut even lower?

DEPUTY TREASURER ROUSSEAU: I'll take that one. I think for the last three years the Commission has recommended a number higher than the-- The Commission has recommended the constitutional and statutory dedications. For the last three years, the previous administration and this administration has, because of budget problems, appropriated only the constitutional minimum. The Commission recommendation this year is to

acknowledge that and go with just the constitutional minimum of 805 million. The number cannot be any lower than \$805 million.

MS. MOLNAR: And going forward, this will -- the lion's share will be for debt service?

DEPUTY TREASURER ROUSSEAU: It depends on how you define lion's share.

MS. MOLNAR: Yes.

DEPUTY TREASURER ROUSSEAU: I think debt service is probably going to be-- I'm trying to think and remember-- We had it in the debt report, what it was projected to be. Somewhere in the 450 to five range, maybe.

MS. MOLNAR: Okay.

DEPUTY TREASURER ROUSSEAU: Yes. When I say 450 to five, yes. Four-eighty-four is what debt service will be. So that means that it will still be, roughly -- it will still be roughly \$320 million of pay-as-you-go capital, even with an \$805 million appropriation.

MS. MOLNAR: Now, Michael, you mentioned -- someone said that a portion of the sales tax goes for this.

DEPUTY TREASURER ROUSSEAU: That's part of the constitutional dedication. The constitutional dedication is gas tax, part of the sales tax, and the petroleum products gross receipts tax.

MS. MOLNAR: So the 6 percent sales tax, I read--

DEPUTY TREASURER ROUSSEAU: It's roughly \$200 million, I think. It was the equivalent of some sales tax on new cars, or something like that.

MS. MOLNAR: Oh, okay.

DEPUTY TREASURER ROUSSEAU: It's equivalent of about \$200 million.

MR. LIHVARIK: It's not the entire sales tax.

MS. MOLNAR: No. I thought maybe it was 1 percent of the sales tax.

DEPUTY TREASURER ROUSSEAU: No.

MR. LIHVARIK: No. A portion.

DEPUTY TREASURER ROUSSEAU: I think it's roughly-- The 800 is roughly about 400 from the motor fuel tax, about 200 from the petroleum products, and about 200 from the sales tax. And that's 200 of a -- what -- \$6.2 or \$6.3 billion sales tax.

MS. MOLNAR: Okay.

Any questions or comments? (no response)

If not, do we hear a motion to approve the 805 million?

MR. McCABE: I'll move that one.

MS. MOLNAR: Okay.

MR. BRUNE: Second.

MS. MOLNAR: Okay.

MR. LIHVARIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Okay. The next department says Treasury. It's really the Office of Information Technology. We're recommending 7,182,000, basically, for OIT availability and recovery site funding. This will complete it, it looks like.

Any questions or comments? (no response)

If not, do I hear a motion?

MR. ROTH: Move it.

MS. MOLNAR: Okay.

MR. BRUNE: Second.

MS. MOLNAR: Okay. Take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARIK: Motion carries.

MS. MOLNAR: Okay. The Interdepartmental -- we're recommending 107,935-- Ninety-eight million of which is for open space, and the other 9,935,000 is for statewide capital projects, which you have a list of in your packet.

Any questions or comments? (no response)

If not, do I hear a motion?

MR. ANNESE: So moved.

MR. ROTH: Second.

MS. MOLNAR: Okay. We'll take a vote.

MR. LIHVARIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: Motion carries.

MS. MOLNAR: Thank you.

And last, but not least, we have Judiciary. At this time, the Commission is not recommending any funding.

I have one suggestion. As you know, the court system-- It used to be run at the counties. It is now run by the State. So we are saving counties millions of dollars. So, to me, it's a safety issue and productivity -- to increase their productivity. I believe it is important for us to provide some infrastructure changes. So we did eliminate the 1 million-two, which was for improvements to the space for employees. I would like to suggest that we put 1 million and two into our recommendation. Any suggestions?

MR. LIHVARCHIK: So the motion would be to change the request for Judiciary from zero to \$1.2 million. That's what would be voted on.

MS. MOLNAR: Yes. I think it would help their productivity, since they are working under substandard conditions. So it might be a safety issue too. I believe the dedicated funds are used strictly for the technology.

DEPUTY TREASURER ROUSSEAU: I'll support the Chairman on that.

MR. BRUNE: Second.

MS. MOLNAR: Thank you very much.

So we have to have a motion on that.

Do we have to amend this first or just--

MR. LIHVARCHIK: On the amendment, we would take a vote on the amended motion to include an additional \$1.2 million for the Judiciary.

MS. MOLNAR: Okay.

MR. LIHVARCHIK: Make the motion and then--

MS. MOLNAR: Okay, thank you.

Would someone like to make that motion?

MR. ROTH: So moved.

MS. MOLNAR: Second?

DEPUTY TREASURER ROUSSEAU: Second.

MS. MOLNAR: Okay. Let's take a vote.

MR. LIHVARCHIK: Mr. Rousseau.

DEPUTY TREASURER ROUSSEAU: Yes.

MR. LIHVARCHIK: Mr. McCabe.

MR. McCABE: Yes.

MR. LIHVARCHIK: Mr. Brune.

MR. BRUNE: Yes.

MR. LIHVARCHIK: Mr. Brannigan.

MR. BRANNIGAN: Yes.

MR. LIHVARCHIK: Mr. Roth.

MR. ROTH: Yes.

MR. LIHVARCHIK: Mr. Annese.

MR. ANNESE: Yes.

MR. LIHVARCHIK: Ms. Molnar.

MS. MOLNAR: Yes.

MR. LIHVARCHIK: The motion carries to add an additional \$1.2 million to the recommendation for Judiciary.

MS. MOLNAR: Thank you very much.

Okay. I think that's the end of our list.

Do you have any other business that you're aware of?

MR. LIHVARCHIK: I would just like to say one thing. I would like to thank Mr. Thor Woronczuk and Mr. Roger Bushyeager of OMB staff for working very diligently to make changes at the end of this process that got into today's meeting. And I don't want to forget the other OMB analysts that also contributed to this, and people from the department. I just want to thank everybody for that.

MS. MOLNAR: Yes, thank you.

MR. ROTH: Madam Chair?

MS. MOLNAR: Yes.

MR. ROTH: I'd like to thank them as well, particularly for the fact that this year we've been able to get all of our minutes in a timely fashion--

MS. MOLNAR: That's right.

MR. ROTH: --and I wish everyone a happy holiday season.

MS. MOLNAR: That's the other new business -- for you to all have a Merry Christmas and Happy Hanukkah and Kwanzaa.

No other business? (no response)

The meeting is adjourned.

Thank you.

(MEETING CONCLUDED)