



Colorado State Board of Education

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
COLORADO DEPARTMENT OF EDUCATION COMMISSION
DENVER, COLORADO
November 12, 2014, Part 4

BE IT REMEMBERED THAT on November 12, 2014,
the above-entitled meeting was conducted at the Colorado
Department of Education, before the following Board Members:

Paul Lundeen (R), Chairman
Marcia Neal (R), Vice Chairman
Elaine Gantz Berman (D)
Jane Goff (D)
Debora Scheffel (R)
Angelika Schroeder (D)



1 CHAIRMAN LUNDEEN: Next item, 12.03. The
2 Colorado State Board of Education conduct a public
3 rulemaking hearing for the rules of the administration of
4 English language proficiency--the English Language
5 Proficiency Act. State Board approved a notice of
6 rulemaking in its September 10 meeting. A hearing to
7 promulgate these rules was made known through the
8 publication -- thank you -- of a notice on September 25th
9 through the Colorado register and by State Board notice on
10 November 5th of 2014.

11 State Board is authorized to promulgate
12 these rules pursuant to House Bill 8-B-14-12-92, Statutes
13 22-2-106-1(a) and (c) and 22-2-107-1(c) Colorado revised
14 statutes.

15 Mr. Commissioner.

16 UNIDENTIFIED VOICE: Thank you. We've
17 talked about this as you noted in September. Purpose of
18 these changes (indiscernible) staff I believe I think you
19 have some people maybe signed up to speak, Mr. Chair.

20 Gorge, did you sign up--

21 MS. NEAL: Yes.

22 UNIDENTIFIED VOICE: --or were you--

23 UNIDENTIFIED VOICE: (indiscernible)

24 MS. NEAL: Yes. Yes.

25 CHAIRMAN LUNDEEN: Madam Vice Chair.



1 UNIDENTIFIED VOICE: All right. Thank you.

2 UNIDENTIFIED VOICE: So we're here today to
3 talk about the rules for the administration of the English
4 Language Proficiency Act as a result of legislative
5 changes that took place last session. You had adopted
6 emergency rules earlier in September. One of the things
7 we wanted to talk through today is we did receive some
8 feedback from two organizations from the Office of Legal
9 Services and an individual in Roaring Forks School
10 District.

11 You have a summary document of the
12 suggested changes or input that were provided by each of
13 these organizations and the individuals and we're happy to
14 answer questions and walk through that if there's specific
15 things people have interest in.

16 Office of Legal Services had some
17 clarifications that they requested. We were able to
18 incorporate those suggested changes into the alpha rules
19 that you have in front of you today and so there was some
20 pieces around some of the technical language, some
21 clarifications that they had requested, and we agreed to
22 those.

23 There were also some -- some pretty
24 detailed responses and suggestions from the Bueno Policy
25 Center form HELDI which is the Higher Education and



1 Linguistically Diverse Education and an individual in
2 Roaring Forks School District. And there's some
3 similarities in the feedback that we received from each of
4 the two organizations and the individual in Roaring Fork.

5 And brief summary of that, the request,
6 while I think well intentioned and ultimately would be
7 good -- some good things that we could do around requests
8 from school districts, they really do exceed the statutory
9 authority of what is required and they would be going
10 further than what the statute is asking of. And so for
11 that reason, we declined to include that -- those
12 suggestions into the rulemaking -- the rules that are in
13 front of you today. And we're happy, like I said, to talk
14 through those specifics if you'd like, but we wanted to
15 open it up for any questions. And I think there might be
16 some people here to testify, but there's -- that's a
17 possibility. I'm not sure if anyone did show up. Yep.

18 CHAIRMAN LUNDEEN: Yeah. So do we want to
19 direct staff questions or let's get the public comment
20 first and then come back to staff? So no one is signed
21 up, but if there's anyone in the room that would like to
22 make comment, they're certainly welcome to comment on this
23 issues. Okay. I don't see anyone. Going once, twice,
24 three times. So back to staff. Questions of staff.
25 Comments.



1 MS. BERMAN: Could you review with us the
2 Roaring Fork request and rationale for not accepting it?

3 UNIDENTIFIED VOICE: Mr. Chair.

4 CHAIRMAN LUNDEEN: Please, go ahead.

5 UNIDENTIFIED VOICE: I'd like to have
6 Liliana Graham, our director of the English language unit
7 to be able to go through that specific information.

8 And Ms. Berman, you said Roaring Fork, the
9 individual in Roaring Fork, is that --

10 MS. BERMAN: Yeah.

11 UNIDENTIFIED VOICE: Okay. Sure.

12 MS. GRAHAM: So this individual talked
13 about some federal law that could guide the work we do
14 around evaluation, the law (indiscernible) kind of it was
15 included. She was very positive around the alpha law in
16 general. There were some suggestions she made. One of
17 'em was that we would add to the rules that teachers be
18 required to have preparation endorsement and license
19 around ELD programming. And that is not included in the
20 law and outside of the scope of the law. It's certainly
21 something that could be sought and decided at a district
22 level, and many districts do require this, but it's not
23 something that is in this law.

24 The other thing she talked about was that
25 we think about a different way of approaching the



1 excellence award program and a gap analysis. That also is
2 outside of the scope of the law. Although a great idea,
3 something that perhaps could be brought to the legislature
4 for reconsideration of this law, but not in the law. That
5 we develop rules around the evaluation of districts; the
6 law also does not provide for us to go in and evaluate
7 districts. We do upon request go in and evaluate
8 districts, but it's not part of this law.

9 And then the last one was just that she
10 appreciated the inclusion of the field in providing
11 feedback around this law and the rules is how she stated
12 it and that she would like that in rules to ensure that it
13 happened is how interpreted it. And so we do have a
14 process for public comments in this process and we did
15 follow that process.

16 MS. BERMAN: So it sounds like what she's
17 requesting is -- is sounds like best practice, but it goes
18 beyond the scope of the statute?

19 UNIDENTIFIED VOICE: That's correct.

20 MS. BERMAN: Okay. Thank you.

21 CHAIRMAN LUNDEEN: Angelika.

22 MS. SCHROEDER: So building on Elaine's
23 question, I know that there are times when the Department
24 feels that there should be some changes in legislation or
25 some fixes. And I guess I would want -- based on the



1 recommendations we -- we received from two different
2 sources, are these things that you feel districts should
3 decide, and certainly the one about certification makes me
4 nervous about requiring that in districts where they
5 simply don't have the capacity, the resources.

6 But we might think about whether there is a
7 recommendation that we make to the legislator and/or a
8 recommendation that we make to districts that if they can,
9 these -- these are the items that -- these are suggestions
10 that would improve delivery for kids.

11 UNIDENTIFIED VOICE: Mr. Chair.

12 There -- as -- as we were involved in the
13 process last year of this legislation being changed, they
14 -- the -- the legislators that worked on this did pull
15 several pretty large groups of stakeholders together to
16 talk through some things. And one of the -- one of the
17 issues that surfaced -- and while we -- we think there's
18 some real value looking at programs and helping to support
19 districts around their programs, the districts and I think
20 CASE and CASBE were very concerned about putting
21 additional requirements and burdens on school districts.
22 And part of that was because they felt like we still
23 aren't funding the ELL population at a level that's --

24 MS. BERMAN: (indiscernible)

25 UNIDENTIFIED VOICE: -- even close to what



1 they're spending at a district level. And even though
2 there's an infusion of money here and I think there's some
3 opportunity for improvement and services out in the school
4 districts, many school districts still spend far beyond
5 what they're getting from the state specific to EL.

6 And so there was a pretty good discussion
7 about that and the legislators, you know, ended up I think
8 listening to the school district specifically on that
9 burden piece and deferred to that. That's why it wasn't
10 included in the statute.

11 MS. BERMAN: So that would mean that the
12 message to the legislator would be these would be
13 improvements, but only if they're also funded in a truly
14 adequate way which isn't going to happen.

15 UNIDENTIFIED VOICE: Mr. Chair.

16 I -- I think that's pretty accurate to what
17 the school districts were saying at the time. And we had
18 I think even gave some comments on being able to evaluate
19 programs and -- and look at programs and felt like, you
20 know, that requires a burden, too, on the Department, some
21 additional staffing so we had a fiscal piece impact of
22 that. And again, I think the intent was they wanted to
23 try to streamline, get as much resource out to the school
24 districts and -- and as few burdens as possible. And
25 that's -- that's where this legislation landed. Would



1 there be an opportunity in the future if there's
2 additional funding to have some better supports, I think
3 that's absolutely a part of what this -- this could move.
4 But seeing how this one hadn't been updated since 1980 --
5 '83, it was -- this was a huge step forward from our
6 perspective from where we are at with the language that we
7 had from 1983.

8 MS. BERMAN: Okay. Then my last question;
9 are there some efficiencies scale that can be generated by
10 districts working together or doing some of its work
11 through BOCES? Will there be BOCES grants as opposed to
12 individual districts?

13 UNIDENTIFIED VOICE: (indiscernible)

14 UNIDENTIFIED VOICE: Mr. Chair.

15 CHAIRMAN LUNDEEN: Please, go ahead.

16 UNIDENTIFIED VOICE: So there -- the way
17 that some of the districts are funded and the way that
18 this some of this funding flows and then you look at Title
19 III and the way the funding flows through BOCES in some
20 cases where they take it and work in regions, I think
21 there's an opportunity for this -- this funding to flow
22 into that work to support the Title III work. So
23 absolutely that will happen --

24 MS. BERMAN: Okay.

25 UNIDENTIFIED VOICE: (indiscernible) BOCES,



1 but not everybody does it that way --

2 MS. BERMAN: Right.

3 UNIDENTIFIED VOICE: -- so there -- there's
4 still opportunities for individual districts to develop
5 their own plans and to support their own plans, but there
6 are several good examples I think around the state of
7 BOCES that are working on EL support through their --
8 through their regional area.

9 MS. BERMAN: Great. Thanks.

10 CHAIRMAN LUNDEEN: Questions down this way?
11 Deb -- Dr. Scheffel, go ahead.

12 MS. SHEFFEL: So just remind me the
13 context. We -- this -- we saw this in September. Didn't
14 we see it in October?

15 CHAIRMAN LUNDEEN: As an emergency. Was it
16 an emergency?

17 MS. SHEFFEL: This is pretty complex here
18 to -- are we supposed to be voting on this today? Are we
19 just reading this? A lot of detail.

20 CHAIRMAN LUNDEEN: Go ahead. History.

21 UNIDENTIFIED VOICE: (indiscernible) before
22 you (indiscernible) emergency rules (indiscernible)
23 authorized (indiscernible)

24 MS. SHEFFEL: Right.

25 UNIDENTIFIED VOICE: Which is today.



1 MS. SHEFFEL: Right.

2 UNIDENTIFIED VOICE: If the Board is of the
3 unanimous view regarding these rules and want to adopt it
4 today, it can. Otherwise the vote would be by the
5 majority (indiscernible)

6 MS. SHEFFEL: Okay. Yeah, so I just
7 remember the discussion around the READ Act and how
8 (indiscernible) articulates with that as far as the
9 assessments and I guess I'd like a lot more information on
10 how they work together and the services provided. I read
11 the funding (indiscernible) how the money follows the
12 kids. Am I right about that? It's per pupil. So if a
13 district has X-number of students that are English
14 language learners (indiscernible) per pupil reimbursement,
15 is that right?

16 UNIDENTIFIED VOICE: Mr. Chair.

17 CHAIRMAN LUNDEEN: Please.

18 UNIDENTIFIED VOICE: Do you want to go
19 through the funding piece?

20 UNIDENTIFIED VOICE: Sure.

21 UNIDENTIFIED VOICE: Okay.

22 UNIDENTIFIED VOICE: The funding is done on
23 a per-pupil basis so you have one English language learner
24 in your district, you're eligible for funding. So it
25 doesn't -- it's not subject to the same limitations of



1 (indiscernible) for example. You have to have a grant of
2 at least \$10,000.00. So the money, then, is given to
3 general fund at the district for the purposes of
4 supporting -- there are several programs within this law
5 now. One is supporting English language proficiency
6 programming. The other is called the support program or
7 the professional development and student support program.
8 And that is targeted at professional development for any
9 teacher that might serve English language learners as well
10 as any student who might've at some point in their life
11 been a English language learner. So there -- and then
12 there's the excellence award. And the excellence award is
13 an award that is given to districts that meet the criteria
14 stated within the law; high growth in language academics
15 for kids in the program and then achievement for kids who
16 have exited the program.

17 UNIDENTIFIED VOICE: Mr. Chair, that one is
18 also explicit (indiscernible) set amount of charter
19 schools and then a set amount of districts. So that ALPA
20 excellence award is about growth of EL students in both of
21 those settings. And so the first pieces of this are
22 really updates to the -- that were called out in
23 legislation -- required in legislation. And then the
24 funding specifically goes to the districts and then they
25 have the discretion to put it towards their programming.



1 There's some suggestions about our reviewing those
2 programs and our ability to require those programs. And
3 that's really outside the statutory authority that was
4 called out in the update of the legislation. So the money
5 goes to the districts and then they're accountable for
6 delivering the programs to students.

7 MS. SHEFFEL: So is the -- so there's no
8 RFP, the money just -- it's just based on formula, like
9 Title I.

10 UNIDENTIFIED VOICE: Mr. Chair.

11 That's -- that's correct except for the
12 excellence award which would be an award that we look at
13 based on criteria. We would select individual districts
14 and schools -- charter schools, and then if they accept,
15 there's some requirements that they would have to go
16 through to take the funding. And that's all spelled out
17 in the statute.

18 MS. BERMAN: I just think it's an
19 interesting discussion because we're really failing ELL
20 kids to a large extent, and if this a Title I program
21 that's formula based, what are states doing with this type
22 of legislation to ensure that the money works, right? I
23 mean, we're not doing too well when we look at our data
24 with ELL kids so this is our one shot to tie a substantial
25 amount of money to programming for these kids and it -- I



1 just guess I'm wondering what's the plan for
2 accountability for the funds. And I understand that the
3 statute is limiting with respect to --

4 UNIDENTIFIED VOICE: Uh-huh.

5 MS. SHEFFEL: -- being too prescriptive,
6 but I mean, the same could be said of Title I. Not
7 prescriptive, it's based on a formula. It's been not very
8 effective nationwide so we have a similar programs. There
9 any unique way we could be thinking about this that would
10 give us guidance on what kind of language to put here such
11 that the money would have -- would be more effective I
12 guess?

13 UNIDENTIFIED VOICE: Mr. Chair.

14 I think it's a great point and is -- it was
15 a point that was debated and discussed with the
16 legislators in their -- in their -- in their convening
17 that they held in the spring. And ultimately, you know,
18 while this is an infusion of funds to school districts
19 that is better and much more money than they've received
20 in the past, many of the districts I think if they were
21 here would tell you that this still is not comparable to
22 what they spend trying to serve students that are English
23 learners. And so their feeling was they did not want
24 additional requirements and restrictions put on that would
25 require, for example, like program development, program



1 review, that they'd have to submit plans to the Department
2 in order to receive the funds. They had healthy good
3 discussions about that, but ultimately that did not make
4 it into the legislation.

5 So the -- the idea to add that in rule
6 would far exceed what the statutory authority and I -- and
7 I think you'd have substantial pushback from the school
8 districts and from, you know, CASE and CASBE that we've
9 exceeded our statutory authority.

10 MS. SHEFFEL: Is that a report or anything
11 -- and maybe I missed it -- that said how this -- these
12 funds have been used in the past? I mean, are they
13 allocated toward personnel are they (indiscernible) Title
14 I, hire more teachers. Is it -- I mean, what makes it
15 value add to get this chunk of money?

16 UNIDENTIFIED VOICE: Mr. Chair.

17 My -- my understanding -- again, I -- I
18 don't like to say that I'm speaking for school districts,
19 but based on what I've heard is that because the amount of
20 dollars that was actually going into the school districts
21 through this funding formula was so small in comparison to
22 what they were spending, there were no reports tied to it
23 or accountability in a sense because, for example, like a
24 school district maybe would get \$40,000.00 from ALPA and
25 they're spending \$400,000.00 on EL teachers and they're



1 like you're going to put requirements on me and you're not
2 even fully funding what I'm spending on EL. So they would
3 say it just goes into the general fund and they have the
4 discretion to -- to apply it how necessary. Until you get
5 it up to a level where they feel like they're fully
6 funding it, I think you're going to get substantial
7 pushback on additional requirements, especially in this
8 context right now where we're constantly looking to try to
9 give waivers of -- and more flexibility that this -- that
10 seems to run contrary and seems to be a concern from a lot
11 of the school districts.

12 Best practice from a Department
13 perspective, Dr. Scheffel, we absolutely thought about
14 being able to review plans, helping to support districts,
15 and we do do that. I think Lilyanna is correct when
16 there's situations where school districts say we're
17 struggling, we need help, her team and part of the
18 supports that they got from the ALPA Act, the additional
19 FTE, are exactly for that. They're to provide support
20 around ELD development, regionally based support around
21 the BOCES and the school district structures, but -- but
22 it's not a mandatory component of receiving the funds.

23 MS. SHEFFEL: How much is it? Is it so
24 much per student?

25 UNIDENTIFIED VOICE: Yeah. Do you want to



1 go through the amounts?

2 MS. GRAHAM: Yes. The -- there's three
3 programs. The first program is just under 17 million
4 dollars. That's the ALPA program that's comparable to
5 what we had before which (indiscernible) some significant
6 changes. One, the number of years eligible, five years.

7 MS. SHEFFEL: Seventeen million a year?

8 MS. GRAHAM: Yes. The other program, the
9 professional development, and student support program is
10 27 million this year. It's subject to availability of
11 funds and the legislature funding the program on an annual
12 basis. And then the third program, the excellence award
13 is a half a million dollars. That also is subject to the
14 amount awarded through the legislature.

15 MS. SHEFFEL: Can you break it down per
16 student if you look at 17 and 27, the number of students,
17 I mean, does it -- it's per student, right?

18 MS. GRAHAM: Yes. Unfortunately, I don't
19 have those numbers with me, but --

20 MS. SHEFFEL: I mean, roughly, is it
21 different in different districts?

22 MS. GRAHAM: No, it's -- you take all of
23 the students in the state and then you divide that
24 depending on what category they fit in, the 75 percent or
25 the 25 percent, and then that's calculated.



1 We were here in October which you're
2 remembering is around that allocation and those allocation
3 funds have gone out to districts.

4 MS. SHEFFEL: Okay. Thank you.

5 UNIDENTIFIED VOICE: It's a very really
6 important program --

7 UNIDENTIFIED VOICE: (indiscernible)

8 CHAIRMAN LUNDEEN: Angelika.

9 MS. SCHROEDER: So how much more money --
10 not the -- not the award, but the other two, how much more
11 is it than districts were getting before?

12 MS. GRAHAM: For most districts, if you
13 look at adding the ALPA and the support program, they're
14 tripling, quadrupling the amount that you --

15 MS. SCHROEDER: Okay.

16 UNIDENTIFIED VOICE: What's the raw million
17 dollar differential? It was 17 before?

18 MS. GRAHAM: Oh, yeah. If you add the two
19 programs that everyone gets, it's 43 million dollars.

20 MS. SCHROEDER: Okay. So that's a lot more
21 than before.

22 MS. GRAHAM: Last year, it was around 15
23 million.

24 MS. SCHROEDER: So if I'm understanding Dr.
25 Scheffel's concern about, you know, measures, what do we



1 expect to see in five years? Maybe we're -- maybe we're
2 not asking for reports or whatever, but what do we expect
3 to see? Where are we today and what do we expect to see
4 different?

5 UNIDENTIFIED VOICE: Mr. Chair.

6 UNIDENTIFIED VOICE: (whispering) cut and
7 pasted, but I think (whispering)

8 CHAIRMAN LUNDEEN: Please go ahead.

9 UNIDENTIFIED VOICE: And I --

10 MS. SCHROEDER: Do we have a sense for
11 that?

12 UNIDENTIFIED VOICE: I think we do. I -- I
13 think one of the things that we testified on last year and
14 worked with legislators on from a Department perspective
15 was the amount of requests that we were getting from
16 school districts around the state, how to help support a
17 changing demographic in their community. And we didn't
18 have much in the way of support throughout, but I think
19 the Department on the prior act got \$40,000.00 a year
20 since 1980 to support the -- the implementation of the
21 Act. And so our ability to get some additional staff,
22 which Lilyanna's been working and hiring regionally based
23 around the state to support schools and districts, is
24 going a long ways to accomplishing the goals of the ALPA
25 Act and the infusion of additional resources in the school



1 districts and how they help -- how to help them budget and
2 spend that funding.

3 Now, again, it's not mandatory. They don't
4 have to ask for the help, but I would tell you there's a -
5 - there's a hunger for good ideas and good programming and
6 supports for that, especially in our small rural school
7 districts around the state that have had substantial
8 demographic changes in the last five to 10 years and are
9 really struggling with how to adequately and properly
10 support students that are learning English.

11 And so my hope -- and I think the intent of
12 the additional resources that we've got at the Department
13 is that we will be able to broadly reach our schools and
14 districts, help them stand up to this new legislation and
15 then have them utilize this funding in a way that supports
16 the academic achievement of kids so we'll see increases in
17 our achievement for English learners. And I think -- I
18 think the coalition, kind of the willing, the districts
19 that want the help, that want the support, and the
20 situations that some of our schools and districts have
21 gone into the state with OCR and the Department of
22 Justice, absolutely the help that they're providing to
23 these districts around quality programs, supports for
24 kids, they're all asking the right questions and now we
25 have a team that can stand up and -- and provide that



1 support around the state. So that -- that's -- that's
2 where we're moving as a Department.

3 MS. SCHROEDER: Thank you.

4 CHAIRMAN LUNDEEN: Dr. Scheffel.

5 MS. SHEFFEL: Yeah, I just have a follow-up
6 comment. I'm remembering the budget last year, we had --
7 didn't we have seven FTE hired -- be hired regionally to
8 assist schools with serving these kids, right?

9 UNIDENTIFIED VOICE: Mr. Chair.

10 We had hoped and -- and worked to try to
11 get some additional FTE in that range. It ended up being
12 about three and a half that we were allocated through the
13 JVC and then through the legislator. And there's some --
14 some costs that are associated with that that have really
15 kept us closer to three FTE for right now, but even that
16 is a big increase in adjustment over the support that we
17 had in the past. So it's been well received, well
18 utilized, and we're going to put it to work.

19 MS. SHEFFEL: Okay. Well, I guess I don't
20 know if we have time to do it today, but it would be great
21 to -- what I hear in the field, and of course it was
22 anecdotal, is just that some of these programs aren't
23 particularly effective with kids and it's just one of our
24 top priorities in our state because it's a huge group that
25 needs support in language and achievement. So I guess I'd



1 love more detail as to really how the district spend the
2 money, what the Department can do to ensure that the money
3 following the kids really matters because I -- some of the
4 feedback I get is that it's maybe -- I mean, what you're
5 saying is it's not enough so of course it doesn't matter.
6 I guess I would say it -- it's quite substantial whether
7 it's enough. It probably never would be enough, but I
8 think it'd be interesting to look deeply at how folks are
9 spending that money.

10 UNIDENTIFIED VOICE: Sure.

11 CHAIRMAN LUNDEEN: Jane, did you
12 (indiscernible)

13 MS. GOFF: Yes. And sorry, having a
14 problem today. Dr. Owen would maybe remember this. I
15 mean, it is -- it is true. I'm going back and
16 acknowledging Dr. Sheffel's statement about our continued
17 challenge on the achievement level for our ELL kids. But
18 not that we're going to be talking a lot more anymore
19 about TCAP, CSAP, but haven't -- over the past several
20 years, hasn't that been the most growing group overall or
21 is by level? I assume -- trying to remember, I'm -- it's
22 got to be elementary level. That's where the vast
23 majority of our measured kids are, but what do we know --
24 what do we know about that? How do we line that up with
25 the continuing need, which is easy to do, but how do we



1 know again what's working and where -- what -- what is
2 being used in those schools, how are they allocating their
3 money on the program picture side of things? How does
4 that work?

5 UNIDENTIFIED VOICE: No, I -- Mr. Chair.

6 It's a great point and I think specifically
7 to the work that's been going on around the state for our
8 English learners, there is -- there's absolutely a
9 connection to the broader work at the Department around
10 supporting all of our students. And the EL population as
11 a whole, if you look at -- if you look at some of the gap
12 groups that we have in the state, some of the
13 presentations we've done, it's actually the one that's
14 made the most progress in closing gaps. And so there's
15 some promising practices happening around the state, some
16 supports that have helped I think some of our students
17 make that kind of progress, but not -- it's not uniformly
18 applied everywhere. We still do have areas at school
19 districts across the state that are struggling with the
20 implementation of supporting EL students. But they're --
21 that is one of our more promising areas when you look at
22 the gaps and you look at the gap groups across the state.

23 And I think one of the things we've been
24 trying to help support districts is more of a asset model
25 of looking at students from what do they bring when



1 they're a English learner versus a deficit model of what -
2 - what do we -- why are we approaching students in a way
3 that is -- that there's so many issues that we can't help
4 support 'em. And we've seen districts that have kind of
5 moved more of an asset model of they're bringing -- these
6 students are bringing so much more to the table and so
7 much more that we can learn from as a district that has
8 absolutely helped change the conversations in some of our
9 schools and some of our districts around the state.

10 And our team is out trying to help support
11 districts in the implementation of ALPA, but that just
12 started. These -- we've just been hiring up staff,
13 getting people -- they're getting ready to go on a
14 regional tour of the state to help address the ALPA
15 changes, the supports that are available at the
16 Department, and I think they're getting ready to start
17 next week. And so that's the first tour that they've got.

18 And so, again, I think we'll be a in much
19 better position next year to -- to address some of the
20 things we've learned this year and the supports we
21 provided to school districts.

22 MS. SHEFFEL: Okay. Thank you.

23 CHAIRMAN LUNDEEN: Any questions down this
24 way?

25 Okay. So I've just got a couple questions.



1 Kind of the history. You referred to this is a first
2 touch in a meaningful way since 1983. What's the
3 progression of both dollars, program and result look like
4 over that time period? And just kind of help me
5 understand the history of what this has been about.

6 UNIDENTIFIED VOICE: Mr. Chair. I'd
7 probably have to have Leanne talk to you about the -- from
8 1983 to now.

9 CHAIRMAN LUNDEEN: You don't carry that
10 kind of information in --

11 UNIDENTIFIED VOICE: I don't have that in
12 my head, but I would say it's -- it's probably seeing a
13 steady, you know, it was part of the way that we fund in
14 the state. What's the determination for that category?
15 Categorical I think is what it's called. And, you know,
16 from 1983 to last year, that was 15 million, you probably
17 saw a steady increase over that period of time in good
18 years and you probably saw some pieces froze during the
19 other, you know, tough years or not as much added.

20 This is the first big infusion of dollars
21 going into this school year --

22 CHAIRMAN LUNDEEN: This is the hockey
23 stick.

24 UNIDENTIFIED VOICE: This is when it jumped
25 up to the total of the 40-some million dollars, so she



1 could give you a more accurate kind of detail over the
2 time period, how that's increased, but this -- that --
3 there's never been a big increase like this in the time
4 that it's been funded since 1983 that I know of.

5 CHAIRMAN LUNDEEN: Okay.

6 UNIDENTIFIED VOICE: I don't know if you
7 have anything else --

8 UNIDENTIFIED VOICE: (indiscernible)
9 correct.

10 CHAIRMAN LUNDEEN: Other questions or
11 information at this point? Okay. So I'm looking for a
12 little bit more information. I sense that we may be
13 looking for more information down here so we'll have a
14 vote on this in December.

15 UNIDENTIFIED VOICE: Sure.

16 CHAIRMAN LUNDEEN: Thank you very much.

17 MS. NEAL: Thank you.

18 CHAIRMAN LUNDEEN: Beginning to feel like
19 Groundhog Day, isn't it? How we doin'? Press on? Okay.
20 Let's --

21 MS. NEAL: Onward and upward.

22 CHAIRMAN LUNDEEN: One, two more goodies
23 here. We will now conduct a public rulemaking hearing on
24 the rules governing -- we okay? We're okay on timing
25 here. Rules governing the renewable energy in our schools



1 loan program. State Board approved the notice of
2 rulemaking at its September 10 Board meeting. Hearing to
3 promulgate these rules was made known through publication
4 on September 25th in the Colorado register and by State
5 Board notice on November 5th of this year.

6 State Board is authorized to promulgate
7 these rules pursuant to 22-2-107-1(c) and 22-92-105-1, the
8 Colorado revised statutes, and SB-14-202.

9 Mr. Commissioner, I see staff is here. I
10 assume they are prepared.

11 UNIDENTIFIED VOICE: Well, this is a
12 different one --

13 CHAIRMAN LUNDEEN: Oh, that's right. We've
14 got a mixed bag.

15 UNIDENTIFIED VOICE: Right. So I will turn
16 it over to -- is it Michael? Okay. Turner.

17 CHAIRMAN LUNDEEN: Thank you, ma'am.

18 UNIDENTIFIED VOICE: Go ahead
19 (indiscernible) take it from there (indiscernible)

20 MR. TURNER: Great. Thank you, Mr. Chair
21 and Board Members. My name is Michael Turner. I'm the
22 energy efficiency programs manager at the Colorado Energy
23 Office. The renewable energy and energy efficiency loan
24 program or REEES is part of a suite of K through 12 energy
25 efficiency services and resources that CO offers.



1 CHAIRMAN LUNDEEN: Thank you.

2 MR. TURNER: CO's comprehensive K through
3 12 program, the energy savings for schools program, is
4 designed to cover the variety of energy efficiency and
5 energy management needs of schools. The energy savings
6 for schools program is available to all schools with a
7 focus on small rural school districts. The REEES loan
8 program provides school districts with loans for renewable
9 energy products and energy efficiency projects out of the
10 State's public school fund, also referred to as the
11 permanent fund, if they're unable to secure private-sector
12 financing.

13 To apply for a REEES loan, the school
14 district must receive approval from its Board of Education
15 and have a team dedicated to the project. Applications
16 are submitted to the Colorado Energy Office and must meet
17 specific standards for the project facility. The CO then
18 recommends awards and loan amounts to the State treasurer.
19 The State treasurer approve loans -- approves loans,
20 provides funds from the public school fund and specifies
21 loan terms. Prior to accepting the loans, school
22 districts must determine available financing terms from at
23 least two banks.

24 If a district is unable to repay a loan,
25 the State treasurer may without funds from the State share



1 of the district school finance funding. If a loan is not
2 repaid, the general assembly must reimburse the public
3 school fund with the general fund appropriation.

4 The REEES program was enacted in 2009
5 through House Bill 13.12, at which time the School Board
6 created rules in consultation with the Colorado Energy
7 Office. In the last legislative session, this program was
8 amended by Senate Bill 14.202 which opened this current
9 rulemaking. In October, we convened the stakeholder group
10 of interested and various parties to take their feedback
11 on the posted draft rule. CO does not have rulemaking
12 authority and so we informed stakeholders that official
13 public comment would need to go directly to the State
14 Board. However, this stakeholder meeting along with the
15 Board's comments at the notice of rulemaking were very
16 helpful for making additional changes in the redline
17 provided in your Board packet.

18 At this time, I'd like to ask the Chair to
19 recognize my colleague, Andrew Sand who will be walking
20 through the recommended changes to the rule.

21 CHAIRMAN LUNDEEN: Welcome.

22 UNIDENTIFIED VOICE: Thank you, Mr. Chair,
23 Board Members. My name is Andrew Sand. I'm a policy
24 advisor at the Colorado Energy Office. You have a number
25 of documents before you and I'll do my best to let you



1 know which one we should -- we should look at 'cause I --
2 I know even myself it can be a bit confusing.

3 But as -- as Michael said, we did have a
4 stakeholder meeting that represented a variety of
5 interests from across the state and even the comments that
6 you made in the notice of rulemaking helped us inform some
7 changes. And so there's three different types of changes
8 I'm going to go through when we walk through the redline
9 if that pleases the Board.

10 The first is statutory changes resulting
11 from Senate Bill 202. Those -- examples of those would be
12 broadening the definition of energy efficiency allowing
13 school districts to obtain renewable energy through third-
14 partyship -- third-party ownership of generating
15 facilities and aligning statute with the high-performing
16 schools statute. The second type is -- that's reflected
17 in the redline before you are grammatical or technical
18 changes recommended by our AG to better align with current
19 statute. And then the third are -- reflect the
20 stakeholder feedback that we received. A number of the
21 things that we -- we heard were reflected that the process
22 needed to be simpler, more streamlined to make sure we
23 weren't burdening smaller school districts. In particular
24 an example of one of -- what we did was to shorten the
25 time frame through which our administration process would



1 work down to 45 days and it was much -- it was
2 particularly longer before that, but that was -- that was
3 the goal.

4 At this time, I'd like to -- probably the
5 best thing is to walk through the rule with you all if
6 that pleases you. And to do so, if you wouldn't mind
7 looking at the Colorado Energy Office's redline which is
8 the document. I believe it should have a gray bar on the
9 side. Yes, that one. And I will walk through those.

10 So essentially there's a few changes that
11 happened numerous times throughout the rule. And one
12 would be to change -- our office's previous name was the
13 governor's energy office. And so in between the current
14 rulemaking and the last rulemaking that changed so you'll
15 see throughout the document, it's changed to the Colorado
16 Energy Office. There's also numerous additions of -- and
17 energy efficiency before the word project which is just to
18 align with statute that this a renewable energy and energy
19 efficiency projects. So those happen a number of times
20 just so I can stay from going through each one, so.

21 In the first paragraph under the
22 background, we made a change that just indicated that this
23 rule was being revised by Senate Bill 202, and that's
24 essentially for that one. Then the next paragraph, we
25 have a number of additions throughout the document where



1 we switch to the section symbol as opposed to writing the
2 word section or adding the section symbol and so you'll
3 see that. I won't go through those each time.

4 In the middle under authority, the third
5 paragraph, our attorney general staff decided that that
6 wasn't necessary, it was duplicative. That was additional
7 language that our office had added in the initial draft
8 rule that -- that you had seen at the notice of
9 rulemaking. The -- if you look under -- under scope and
10 purpose, there's additions in both one and two. Those are
11 to align with statute. That was changed under Senate Bill
12 202. So -- and you'll see the reference or meets the
13 requirements set forth in Section 22.32.124.3. That's
14 aligning with the school -- the high performance schools
15 statute which is included in Senate Bill 202.

16 If you go to the next page on -- under
17 definitions, this why we start to get a few more changes.
18 Under -- under 1.4, we add in the legislative language
19 that defines what energy efficiency is. And any of these
20 I'm happy to answer questions -- questions on -- in -- in
21 more detail, but that's -- that's an example of that's
22 legislative language that was added.

23 In 1.5, this was a technical fix from our
24 office to include the energy stars portfolio manager which
25 is what the -- the rule was referring to, but it wasn't



1 explicit and also calling it a tool 'cause it's a tool and
2 not a method so just to be correct. I've already
3 referenced the remainder of the changes in that page.

4 On the next page under eligibility and
5 general terms, there's two -- under 2.3, this was an
6 addition that our attorney general's office made to align
7 better with statute. Substantively it doesn't make a --
8 make a large change.

9 If you turn to the next page, this is where
10 we start to get some of the stakeholder feedback under
11 2.3. We decided to recommend striking 2.3. There's a
12 couple references to third parties in this rule requiring
13 -- or requiring that they consider using third parties to
14 -- school districts using third parties to make sure that
15 they capture any available incentives and have technical
16 expertise. We heard from stakeholders that that
17 requirement was perhaps too onerous on smaller school
18 districts, and since our office is always there to provide
19 technical assistance, two school districts looking to do
20 these types of projects, we agree that this wasn't --
21 wasn't necessary language.

22 Under 2.6, this is -- this was an addition.
23 This was -- this was already in statute, but it wasn't in
24 rule, and in the interest of being -- having clarity and
25 transparency in the process, this is the requirement



1 that's in statute that a district cannot accept the loan
2 from the treasurer without first determining financing
3 terms from two banks. So we just wanted to put that in
4 rule 'cause that was a point that was confusing that it
5 wasn't in rule as well.

6 3.1, we made the addition with a similar
7 rationale as we did in 2.3. We just wanted to make it
8 clear that whether a school district is looking to do an
9 energy project through -- through the REEES program or
10 through one of our other suite of offerings that Michael
11 spoke about, we wanted to make sure that they knew that we
12 were available and we can direct them towards the type of
13 program that would best fit their needs 'cause this
14 program will fit needs of some school districts and may
15 not fit the needs of others.

16 One other thing, you'll see the --
17 throughout there's -- there used to be the energy
18 efficiency bus project. You'll see there's numerous
19 changes striking the word bus and changing it to energy
20 efficiency project just to make -- to make that clear.
21 You'll see that in 3.2.

22 In 3.3, we heard from stakeholders that
23 this is -- this -- we run application cycles twice a year
24 and the timing of those were not the best for school
25 districts. And so from the feedback we got, they



1 recommended we change it to August and February as opposed
2 to October and April so we will still have two funding
3 cycles a year available, but they will be changed.

4 The remainder of this that I'll go through
5 in 3.3 are we tried -- throughout the rule, there were
6 different areas where there were different deadlines, you
7 know, three days for this, five days for this. We tried
8 to consolidate that to make it more clear so to -- that
9 people would understand our process. And one of the
10 things we really heard from stakeholders was the time
11 frames in -- in this rule were too long, your
12 administrative process was too long, and we were sensitive
13 to that and we wanted to -- to shorten it so we both moved
14 from other parts of the rule all the timelines into this
15 section and shortened everything that our office did down
16 to 45 days. So I'll -- I'll go through what those are.

17 We -- we have three days to let the
18 applicant know that we've received the -- after they
19 received their application after the deadline, we have up
20 to five days to let them know if additional -- if they
21 have an incomplete application and additional information
22 is required. And then the largest portion of this 45-day
23 period is we allow districts to have 30 days if they have
24 an incomplete application to fix it and resubmit. So
25 that's -- and we wanted that to happen within our decision



1 deadline of 45 days so that they could be used -- they
2 could be ranked with the rest of the projects in a timely
3 manner.

4 In 3.2.3, it's where we kind of explicitly
5 lay out what we're doing within that 45-day period. So
6 reviewing the application, writing a report for each
7 application, prioritizing the list and making the
8 recommendation to the treasurer and notifying the
9 applicants whether we have recommended to the treasurer
10 that they -- that he offer -- he or she offer financial
11 assistance within that 45-day period.

12 3.2.4 is -- is moved from Section 7. This
13 was already in rule that the office has discretion. The
14 addition of (indiscernible) was from our -- from an
15 attorney general's office. And then we added 3.2.5 to
16 clarify that requirement and -- and in the interest of
17 having transparency to the applicants that we would if we
18 extended the deadlines, post the deadline extension in the
19 same area -- area on our website where they would have
20 found the application.

21 On the next page, there are some technical
22 fixes that we've gone through. 3.7, we just wanted to
23 make it clear. This was, again, in the interest of
24 clarity and transparency that if any project was unfunded
25 they can resubmit so whether they weren't selected through



1 our process or they weren't selected by the treasurer or
2 say there wasn't enough money in the pool or there was --
3 you've -- they had already hit their cap for the school
4 district -- any -- any of those scenarios. This would
5 give them just the clarity that they could apply again.

6 4.2 is a statutory update. This is from
7 Senate Bill 202 and this is the addition of -- of
8 community garden and solar gardens and third-party
9 ownership of -- of energy. So this is a eligible use that
10 was changed in statute. And then this 4.3 here is from
11 statute and it just made sense to put that under
12 permissible uses so that that was added, but that -- that
13 wasn't something that had changed from statute; that was
14 current statute.

15 Down in 5.1.3, this is -- this is, again,
16 letting -- this is within that 45-day period so within the
17 45 days we would let them know whether they would be --
18 they were recommended or not and putting requirements on
19 our office to -- to do that in writing.

20 In 5.1.4, this is a clarification that
21 stakeholders were looking to -- that -- that ourselves and
22 the treasurer's office didn't have a problem with that was
23 we are clarifying what the treasurer has review over. Our
24 office would -- would be more suited to deal with it --
25 the technical energy portions of the -- of the application



1 while the treasurer would be -- his -- his or her -- her
2 view is focused on the financial aspects of -- of the
3 application.

4 This addition in 5.1.4 is just an addition
5 in rule. For clarification, it is in statute and it's the
6 -- one of the changes from the Senate Bill 202 was that
7 the -- there was a change between the -- the book yield --
8 the -- the loan can be at the -- at least equal to the --
9 there was a change between exceeding and equal to and so
10 this just reflects current statute.

11 Down in 5.2.6.1, we -- point one -- we
12 added and you likely saw this in our initial draft, and I
13 remember there was a question about it in the notice. The
14 addition of if there's an existing climate action plan or
15 sustainability plan, the idea is we want to know if a
16 community has any kind of planning element how this
17 project fits into it. It will help us in -- in our
18 criteria matching knowing how this can better serve the
19 community and their larger goals.

20 You'll see in the paragraph right below
21 that there is if the (indiscernible) project does not
22 reduce energy costs, explain the rationale. This is a
23 clarification that we just want to make sure any
24 installations that happen we -- we want to make sure that
25 energy costs don't go up on the community 'cause that's



1 the -- so this is just clarifying language to ensure that.

2 You'll see in 5.2.6.2.1 and following on --
3 on the next page, these are statutory changes. This is
4 how the statute interprets energy efficiency. So part of
5 this language is statutory and then we add some clarifying
6 language, for instance, with 5.2.6.2.2 in terms of what
7 does it mean to reduce water consumption, what does it
8 mean to have vehicle efficiency, laying that out to -- to
9 give applicants an idea of -- of what that looks like.

10 In 5.2.8, you'll see third-party
11 contractors. I addressed this a few pages ago, but
12 stakeholders let us know that this was unnecessary and we
13 agreed and we struck this reference.

14 We are almost through. In 5.3.1, this is
15 the reference to the high-performing school statutory
16 reference. This is something out of Senate Bill 202, and
17 so that's reflected there.

18 Another thing we heard from stakeholders
19 was in 6.1.1, the criteria, so this is our ranking
20 criteria of the applications. We had -- we had an equally
21 distributed ranking between -- between energy cost,
22 technical merit and educational benefit. And while
23 everyone in the room and certainly our programs really do
24 prioritize the educational element, since this was a
25 funding program, we wanted to have the technical merit in



1 the energy cost reductions to be more -- be weighted
2 stronger than the educational component. So while we're
3 not removing it, we are changing the ranking criteria
4 percentages.

5 And then 6.2 was moved to 3.7 so that's
6 still in place. It's just moved. 6.3 is another example
7 where we shorten our time frame down to 45 days. And the
8 entirety of Section 7 was moved to Section 3 as I
9 referenced before just so that it's all in one place.

10 And then in -- in eight, stakeholders gave
11 us feedback that quarterly reporting was -- was too
12 difficult for a lot of applicants and so what we did was
13 change that to an annual report.

14 So that is CO's draft that we put together
15 and then we -- we know that stakeholders have put --
16 submitted a draft that has additional comments on top of
17 that. And I've -- we provided just now a decision matrix
18 for you that -- that shows us those changes so it's a
19 little bit easier to look at and we -- if any of the
20 stakeholders are in the room at a later point to discuss
21 this, they can clarify whether we caught all those changes
22 in this decision matrix.

23 But certainly the State treasurer's office
24 is naturally focused on protecting the permanent school
25 fund and stakeholders, especially those looking to promote



1 charter schools are naturally focused on equity of funding
2 and so we understand that. It -- some of these issues
3 fell outside of our direct subject matter expertise as the
4 Colorado Energy Office and so we wanted to defer to the
5 Board's judgment on a -- on a few of these, but we wanted
6 to provide the matrix in our -- in a comment at least to
7 our initial -- our initial view of it.

8 So if you would -- if you wouldn't mind the
9 decision matrix has a change in 1.1, and once again, the
10 stakeholders are welcome to -- to -- to discuss these with
11 you if you so -- if you would like them to. There --
12 there's a statutory definition of a qualified school
13 district which is seen in the first column and
14 stakeholders were looking to add the State Charter School
15 Institute into that definition. Co sees that as a defined
16 statutory term that -- that's in statute and it would be
17 deferred to the Board's judgment on whether that was
18 something that could be expanded and rule within -- within
19 the rule authority.

20 Similar with the one point -- 1.5, the
21 renewable energy project team is a defined statutory term.
22 Fortunately in the statute it allows for the caveat at a
23 minimum. And so in the case where a charter school is --
24 district is applying on behalf of the charter school,
25 certainly members of the charter school could be -- are



1 allowed to be on that project team, but since it was a
2 defined statutory term, we didn't add that to our -- to
3 our redline.

4 In 2.1.2, this is where it -- where in rule
5 -- and this is statutory reference that a qualified school
6 district may apply for the loan on the program on behalf
7 of the charter school authorized by the school district
8 and the stakeholders were interesting in -- interested in
9 clarifying and perhaps changing the relationship between
10 whether the school district needed to provide consent to
11 the charter school in that district or whether the
12 financial assistance would be granted directly to the
13 charter school versus to the qualified school district.

14 Again, our position is that the first
15 column reflects current statute and that it would expand
16 and possibly clarify that financial relationship, but we
17 would defer to the Board.

18 Also in 2.1.2, the stakeholders were
19 looking to strike the State treasurer can now make loans
20 directly to the charter school. This -- that particular
21 sentence is in rule and not statute, but we'll -- the CO
22 will take the same position we did on the last.

23 In 3.2, stakeholders were looking to add if
24 the application is submitted by the charter school,
25 essentially our office, Colorado Energy Office, is going



1 to work with both the qualified school district and the
2 charter school that's applying on behalf of the district
3 and we would naturally do that and we think that's good.

4 And then the last one would be stakeholders
5 were looking to add, if applicable, to the carbon
6 reduction benefits reporting requirement in the technical
7 application. And we had no -- no problem with that.

8 CHAIRMAN LUNDEEN: Excellent.

9 MR. TURNER: And lastly --

10 UNIDENTIFIED VOICE (indiscernible)

11 MR. TURNER: -- lastly, we do have the --
12 you did not receive another redline -- as if you needed
13 more documents in front of you -- that reflects the
14 changes that we accepted in the matrix just so that you
15 would have a clean version.

16 CHAIRMAN LUNDEEN: Excellent. Leanne.

17 MS. EMM: Thank you. Thank you, Mr. Chair.
18 Just to summarize very quickly --

19 CHAIRMAN LUNDEEN: Okay.

20 MS. EMM: -- very quickly. This redline
21 version that says at the top CEO 11 slash/11 2014, that is
22 the version that incorporates the additional stakeholder
23 comments other than the three at the top of this matrix.
24 And the matrix outlines that by accepting some of the
25 stakeholders comments, it actually expands the statutory



1 definitions and it did not appear that there was authority
2 in order to do that. So in regards to the qualified
3 school district, that is left as statutory language and
4 then the next one was left as the statutory language. So
5 those are the differences. The three at the bottom, they
6 did incorporate the State -- they struck the State
7 treasurer cannot make loans and then added the language
8 around the charter schools working with the districts and
9 then the last one. So that's kind of a summary of this
10 matrix here that's incorporated into the rules that were
11 just handed out.

12 CHAIRMAN LUNDEEN: Excellent.

13 UNIDENTIFIED VOICE: Mr. Chair, the
14 recommendation would be based on this document --

15 MS. EMM: Correct.

16 UNIDENTIFIED VOICE: -- an exclusive --

17 CHAIRMAN LUNDEEN: CO 11/11 2014.

18 UNIDENTIFIED VOICE: Right. And we
19 compliment the Department for including all the
20 stakeholder comments --

21 MS. EMM: Yes.

22 UNIDENTIFIED VOICE: -- this is what we
23 would request your approval on if you want to do that.

24 MS. EMM: That is correct.

25 UNIDENTIFIED VOICE: Thank you.



1 CHAIRMAN LUNDEEN: Okay. Questions.

2 UNIDENTIFIED VOICE: (indiscernible)

3 CHAIRMAN LUNDEEN: Oh, we have a sign-up
4 sheet with no one it. I guess let's ask if there's anyone
5 in the room that cares to provide additional information,
6 public comment. Going once, twice, thrice.

7 So with that we will turn to questions.
8 We'll let Angelika go first. One bite at the apple, young
9 lady.

10 MS. SCHROEDER: I liked the young, but I
11 didn't like the rest of it. I have two questions. I'll
12 admit, I got a little lost in all the technical stuff, but
13 there is the sentence in here that says that you will help
14 applicants. What does that look like? Does that mean
15 you'll actually help them do the application so that it's
16 very likely that when it's submitted that it is a complete
17 application? What's the limit to the capacity that you
18 believe that you'll bring to districts? Not every
19 district's going to be really very well prepared without
20 some outside help to submit some of this stuff. At least
21 I didn't understand some of it.

22 UNIDENTIFIED VOICE: Mr. Chair.

23 CHAIRMAN LUNDEEN: Please.

24 UNIDENTIFIED VOICE: Yes, in response to
25 that question, the energy office will be providing



1 technical assistance for the schools similar to what we
2 provide in our energy savings for schools program which is
3 going through, you know, what could be an onsite energy
4 audit, a walk-through energy audit, identifying some of
5 the measures that would be included in the -- the
6 application and walking them through the complete
7 application process and submitting that -- helping them
8 submit that on their behalf.

9 MS. SCHROEDER: So they're likely to be
10 able to submit -- if they request your help, they're
11 likely to be able to submit a complete application?

12 UNIDENTIFIED VOICE: That's correct.

13 MS. SCHROEDER: And then my second question
14 and -- and I just didn't catch it if it was in here, does
15 it matter whether this application for a loan applies to a
16 new school being built or existing buildings that we're
17 retrofitting?

18 UNIDENTIFIED VOICE: There's no
19 requirements in both statute or rule for new or existing.

20 Mr. Chair, is that your understanding?

21 MS. SCHROEDER: Is that right? So either
22 one would be okay. So the -- particularly districts that
23 are building new buildings, some of the rural best
24 schools, for example, this would be another option to get
25 a loan to implement renewable energy pieces that will make



1 it a more efficient building.

2 UNIDENTIFIED VOICE: Mr. Chair.

3 Yes, I would say that the -- the loan
4 amount is capped at one million dollars and in terms of
5 building new facilities that may limit it to more
6 retrofits instead of the new building facilities.

7 CHAIRMAN LUNDEEN: Okay.

8 MS. SCHROEDER: Or up to a million dollars
9 and then the bond covers the rest, is that also a
10 reasonable expectation? I'm just wondering what -- what
11 kind of information we should be sending out to schools
12 about this opportunity.

13 UNIDENTIFIED VOICE: Mr. Chair --

14 CHAIRMAN LUNDEEN: Go ahead, sure.

15 UNIDENTIFIED VOICE: It's possible without
16 -- we wouldn't have the breath of understanding of the
17 best program application to really answer that, but our
18 understanding would be that this could -- as long as there
19 wasn't a requirement in a another funding application that
20 it -- there can't be any duplicative funding --

21 MS. SCHROEDER: Right, right.

22 UNIDENTIFIED VOICE: -- I don't see why.

23 MS. SCHROEDER: Thank you.

24 CHAIRMAN LUNDEEN: Okay. Down this way?

25 Dr. Scheffel.



1 MS. SHEFFEL: Yeah, I wonder if you could
2 just -- I was just looking at 1.14 where it says -- it
3 defines renewable energy project. And I would think wind
4 and solar probably would be maybe ones that schools would
5 choose. How does a school work with a community that
6 doesn't want wind turbines installed? I mean, does the
7 school gets -- or solar panels let's say 'cause of land
8 use. Let's say a school or district applies for the
9 grant, gets it, and they choose wind energy and they need
10 to install X-number of wind turbines. How do they work
11 with the community that doesn't want that? What input
12 does a community have?

13 UNIDENTIFIED VOICE: Mr. Chair.

14 CHAIRMAN LUNDEEN: Please.

15 UNIDENTIFIED VOICE: Because we haven't had
16 any applications for this, we haven't gone through that
17 process before, there was a previous program that we had
18 called the wind for schools program which required that
19 schools actually get community participation when making
20 an application for that program. So I would say it will
21 depend on a case-by-case basis and what sort of issues we
22 see with sort of any wind development projects that would
23 proceed in any of these districts.

24 CHAIRMAN LUNDEEN: Other questions down
25 here? Over here? Okay. I've got a couple questions.



1 Help make this practical for me. This is a follow onto
2 the bus project, right? An option on the bus project was
3 -- just describe that for me a little bit.

4 UNIDENTIFIED VOICE: Sure, I'll begin and
5 Michael can take over. It allowed for renewable energy
6 and it allowed for energy efficient busses, and so yeah,
7 this -- this Senate Bill 202 just expanded that more
8 broadly to energy efficiency.

9 CHAIRMAN LUNDEEN: Okay. And the adoption
10 on the busses was how effective? How many -- how many
11 participants? How many loans, how many busses?

12 UNIDENTIFIED VOICE: Certainly. The REEES
13 program did not have an -- ever have an application.

14 CHAIRMAN LUNDEEN: No applications --

15 UNIDENTIFIED VOICE: Correct.

16 CHAIRMAN LUNDEEN: Okay. So what's the
17 total funding pool envisioned for this?

18 UNIDENTIFIED VOICE: The -- Mr. Chair, the
19 State treasurer can -- can define under statute what
20 portion of the permanent fund can be associated with this
21 loan program and it's currently set in -- at one of the
22 requirements is that no school district can have more than
23 a million dollars out.

24 CHAIRMAN LUNDEEN: Okay. So that's the
25 limitation? It's a cap rate per school or school district



1 --

2 UNIDENTIFIED VOICE: For school district.

3 CHAIRMAN LUNDEEN: Yeah. What -- what are
4 the projections? Are there -- is there any sense of the
5 marketplace on this? Best case, worst case, how many
6 adopters? What kind of adoptions and so forth? Any idea
7 what's going on out there in term of appetite for this?

8 UNIDENTIFIED VOICE: Mr. Chair, I wouldn't
9 want to speculate on the numbers. I would say that this
10 is -- we view this as one of the offerings of our program
11 and it certainly wouldn't fit the needs of all school
12 districts who would have a greater ability to finance in
13 the private sector.

14 CHAIRMAN LUNDEEN: Okay. And for -- for
15 somebody who finances in this way, what -- what would the
16 expected return on capital be, payback period, things of
17 that nature? Any -- is there any sense of, you know, kind
18 of realistically for a school board, local school board
19 that's trying to make decisions, what -- what would it
20 look like to them in terms of money out, money in, so
21 forth?

22 UNIDENTIFIED VOICE: Sure. Mr. Chair, I
23 believe in rule the -- the -- the current rule sets the
24 payback period at 15 years.

25 CHAIRMAN LUNDEEN: Tells 'em to get it done



1 within 15 years.

2 UNIDENTIFIED VOICE: Within 15 years --

3 CHAIRMAN LUNDEEN: Yeah.

4 UNIDENTIFIED VOICE: -- correct. To my
5 knowledge, that's the only requirement that's in rule. We
6 would --

7 CHAIRMAN LUNDEEN: So they'd have to do
8 their own research and say, look, we think we can get this
9 kind of return if we make this kind of capital
10 improvement. Let's go get the money to do it sooner, so
11 that's not really spoken to in this other than you can't
12 go past 15 years on your anticipated payback. Okay.
13 What's a climate action plan? That's in 5.2.6.1.1.

14 UNIDENTIFIED VOICE: Sure, there's --
15 there's the addition of the climate action plan or
16 sustainability plan. They essentially get it at the same
17 concept so if -- if a community has a plan of any type for
18 goals for infrastructure, it would just -- for our
19 application process it would be good to know if this fits
20 in with the community schools.

21 CHAIRMAN LUNDEEN: Okay. So I'm not -- is
22 a climate action plan a specific thing? I mean, is that
23 something -- if I Google climate action plan, it would --
24 I'm just unfamiliar with the phrase --

25 UNIDENTIFIED VOICE: Sure --



1 CHAIRMAN LUNDEEN: -- I'm curious to what
2 it is.

3 UNIDENTIFIED VOICE: Yeah, Mr. Chair. I
4 would say that it depend -- it depends on the priorities
5 of the community and the scale of it, you know, climate
6 action plans can be focused more on mitigation of
7 greenhouse gas emissions. It can be focused on adaptation
8 and preparation for projected climate change impacts so it
9 depends on really the priority and needs of the community.
10 It can be on a municipal level, it can be on a statewide
11 level, but you would be looking at, you know, the
12 projected impacts of climate change and how the community
13 can adjust for that.

14 CHAIRMAN LUNDEEN: Okay. So it's -- it's
15 the concept of -- of what this does to improve the threat
16 of climate change?

17 UNIDENTIFIED VOICE: Exactly.

18 CHAIRMAN LUNDEEN: Okay. On -- in -- and
19 this more kind of for my fellow Board members, this is
20 kind of a little study in how powerful rules can be. Kind
21 of this ranking of the applications. There's these
22 criterias -- criteria whether you're going to get it or
23 not as I understand it. This is Section 6.1. And clearly
24 if -- if you change the -- the ranking criteria from one
25 of these three criteria and weighed -- over weighed it to



1 another, it would dramatically change who might qualify
2 and who might not qualify for the -- the application.

3 UNIDENTIFIED VOICE: Mr. Chair, yes. So
4 the -- the way our office -- we would receive all the
5 applications within the 45 days. We would review them, we
6 would rank them, then it goes to the treasurer. The
7 treasurer's office would determine based on their
8 requirements who they could give loans to. It's -- yes,
9 ranking criteria certainly has an impact on where you
10 ranked, but we are -- we are making a recommendation for
11 assistance that's --

12 CHAIRMAN LUNDEEN: Sure, sure.

13 UNIDENTIFIED VOICE: (indiscernible)
14 ranking them.

15 CHAIRMAN LUNDEEN: Yeah, so the -- there's
16 the treasurer kind of has an actuarial or a business
17 soundness review piece of it as well.

18 UNIDENTIFIED VOICE: Correct.

19 CHAIRMAN LUNDEEN: That's it for my
20 questions.

21 MS. SHEFFEL: I just had a follow up.

22 CHAIRMAN LUNDEEN: Sure.

23 MS. SHEFFEL: Is it -- are the rules the
24 appropriate place to require community involvement if the
25 school chooses to write this grant, get this grant, and



1 want to install wind turbines or solar panels such that
2 land use is effected where people that live there might
3 not like that? And whose kids go to the neighborhood
4 school and say, you know, visually as far as the effect on
5 the environment, I mean.

6 UNIDENTIFIED VOICE: Sure. Mr. Chair --

7 CHAIRMAN LUNDEEN: Sure.

8 UNIDENTIFIED VOICE: The statute doesn't
9 speak to community involvement, and so whether rule is the
10 appropriate place, it certainly would be an expansion of -
11 - of what statute says. However, you know, there is local
12 land use planning and permitting associated with
13 installations that -- that this doesn't trump. They would
14 still have to go through local processes.

15 CHAIRMAN LUNDEEN: So -- so just so I'm
16 clear on it as well, in addition to whatever's happening
17 here, whatever happens at the treasurer's office, there's
18 still all the local ordinances must be complied with and
19 so forth. You're going to build a building or -- or make
20 some, you know, architectural change, you've got to comply
21 with whatever the requirements are there as well.

22 Dr. Scheffel.

23 MS. SHEFFEL: Yeah, and I just want -- one
24 more follow up.

25 When you Google climate action plan, it



1 really links to Agenda 21. Is it -- does it link to that?
2 In other words, does a community have a plan based on
3 sustainability linked to Agenda 21 and then this climate
4 action plan fits in -- fits into that?

5 UNIDENTIFIED VOICE: Mr. Chair --

6 CHAIRMAN LUNDEEN: Please, go ahead.

7 MS. SHEFFEL: (indiscernible)

8 UNIDENTIFIED VOICE: -- our -- our --
9 certainly. Our addition of the climate action plan was --
10 was merely an example of the type of plan a community
11 could have. We realized that communities across the state
12 of Colorado will have a different types of plans. That's
13 why we also included sustainability plan. To my
14 knowledge, it doesn't have a direct connection to Agenda
15 21.

16 MS. SHEFFEL: Thank you.

17 CHAIRMAN LUNDEEN: Okay. Jane, go ahead.

18 MS. GOFF: Yes. And I apologize if I
19 missed this detail. The treasurer's office will -- does
20 and will have the office's criteria for loans in general.
21 As -- per these loans, is it consistent for all? Is it in
22 here? I'm sorry. Are the details in here? When the
23 treasurer applies criteria for loan approval of any -- of
24 any sort, whether it's this program or another one, is
25 that consistent for all of the loans that are applied for?



1 Would it -- should it be?

2 UNIDENTIFIED VOICE: Mr. Chair.

3 CHAIRMAN LUNDEEN: Please, go ahead.

4 UNIDENTIFIED VOICE: Yeah. Without
5 speaking for the treasurer's office and their duties --

6 MS. GOFF: Understood.

7 UNIDENTIFIED VOICE: -- they would still
8 have additional criteria that they are --

9 MS. NEAL: (indiscernible)

10 UNIDENTIFIED VOICE: -- bound by law to
11 consider for any of -- any loans that they --

12 MS. NEAL: (indiscernible)

13 UNIDENTIFIED VOICE: (indiscernible) does
14 that answer your question? I'm sorry.

15 MS. GOFF: It's a start, yeah.

16 UNIDENTIFIED VOICE: Okay.

17 MS. GOFF: I'm just saying is there any --
18 is there any standard by which the treasurer has to be
19 consistent or maybe Leanne has some experience with this.
20 Is there a -- is there a consistent set of criteria for
21 approving loans that fall into this relatively new way of
22 going about things? But -- in our past operations, even -
23 - I mean, best doesn't operate that way, but there's still
24 a money agreement, there's still transfer agreements that
25 are made. Are the criteria for that consistent among a



1 group of loans of a similar type --

2 MS. NEAL: (indiscernible)

3 UNIDENTIFIED VOICE: Mr. Chair.

4 CHAIRMAN LUNDEEN: Yeah.

5 UNIDENTIFIED VOICE: Mr. Chair, since --
6 since Mr. Johnson is here from the treasurer's office --

7 CHAIRMAN LUNDEEN: We -- I didn't want to
8 put him on the spot, but if he's interested in answering,
9 certainly --

10 UNIDENTIFIED VOICE: If -- if he could
11 field that that'd be great.

12 CHAIRMAN LUNDEEN: You are now officially
13 on the spot.

14 MS. GOFF: Sorry about that.

15 MR. JOHNSON: Good afternoon. My name is
16 Bret Johnson. I'm the deputy treasurer across the street.
17 Be happy to answer any questions.

18 In terms of the question about loan
19 criteria and also, Mr. Chair, to your questions about
20 projections how many schools might participate in this, I
21 will tell you, and -- and I may be a little bit
22 pessimistic, but my expectation is there will likely be
23 close to zero loans based on this program. Not because
24 it's -- not because I don't think school districts aren't
25 doing some of these energy performance contracting, but I



1 think in general what you'll find is that they'll get a
2 better deal from a bank. They'll get a more attractive
3 interest rate is my expectation. Part of the statute
4 requires that they engage with at least two banks prior to
5 applying for this loan. What -- what I expect is that
6 they're going to find that the terms they would receive
7 from -- from a bank for these types of -- of transactions
8 will be more favorable than what we can offer them.

9 In terms of criteria, yes, we would have a
10 consistent look at that. And -- and it would really be
11 based on the fact that the source of these loans if
12 they're made is from the permanent fund which has some
13 pretty stringent criteria in general in terms of how we
14 can invest.

15 Ninety-five percent of the permanent fund
16 is invested in securities of double A or higher. Ninety-
17 nine point six percent of a permanent fund is invested in
18 securities that are A or higher. So these are very safe
19 loans with a short duration generally, closer to five
20 years in duration. So we would -- we would have to be
21 very serious about what the credit strength of any
22 applicant is and what the interest rate we would apply
23 would have to be in relation to the management of the
24 entire permanent fund as a whole. My expectation is that
25 most school districts if not all school districts would



1 find a much favorable interest rate from a private bank.

2 CHAIRMAN LUNDEEN: Other questions? Madam
3 Vice Chair?

4 MS. NEAL: So this could be a good example
5 of legislation that somebody spent a lot of time on, a lot
6 of effort, that, you know, I hadn't realized that. Thank
7 you, Bret, for, you know, that this was, like, desperation
8 if they can't get a loan from a bank, then they'll come to
9 you. Except then they're probably not a real good credit
10 risk, so. Am I -- have I got that right?

11 MR. JOHNSON: Sure. And Mr. Chair, if I
12 may.

13 I wouldn't editorialize it that --

14 MS. NEAL: No, I know you wouldn't.

15 MS. JOHNSON: -- worthwhile or not, but I
16 will say that it probably should be viewed as kind of the
17 -- the last ditch effort --

18 MS. NEAL: Yeah.

19 MS. JOHNSON: (indiscernible) truly if
20 they've gone everywhere and they literally can't get
21 anybody to fund their project because there are likely
22 more efficient ways to go about it.

23 MS. NEAL: Well, I can editorialize a
24 little bit from this side in that we -- we legislate -- we
25 talk to the legislators about is this necessary, you know.



1 I -- I think lots of times nobody answers that question,
2 was this necessary, did you need this bill? And I hadn't
3 realized that. Thank you. Thank you for your
4 enlightenment, whatever.

5 CHAIRMAN LUNDEEN: Thank you.

6 Other questions, other comments?

7 Sir.

8 UNIDENTIFIED VOICE: Mr. Chair, just two
9 things. One just that, yeah, we -- we see this program as
10 one of the options that are in our -- our toolbox. We
11 seek to serve the needs of K through 12 through a variety
12 of other programs so that's one. And then just to -- a
13 correction to the discussion that Leanne made about the
14 matrix in 2.--1.2, the striking of the State treasurer can
15 now make loans to a charter school, the draft that we are
16 recommending to you doesn't actually strike that. So just
17 a clarification on that.

18 CHAIRMAN LUNDEEN: So we would --

19 UNIDENTIFIED VOICE: Correct. So the -- as
20 written in the draft dated 11/11/2014, we suggest that you
21 adopt that. I was just clarifying --

22 CHAIRMAN LUNDEEN: Okay.

23 UNIDENTIFIED VOICE: -- something that
24 Leanne said that was not correct.

25 CHAIRMAN LUNDEEN: All right. So we can



1 account for that in the administrative portion of this.

2 Now back to the State treasurer's office.

3 MR. JOHNSON: Sure, and since you put me on
4 the hot seat --

5 CHAIRMAN LUNDEEN: You put yourself on the
6 hot seat. I want to make that clear for the record.

7 MR. JOHNSON: We are -- we are struggling
8 with the additions to some of these drafts of -- of
9 charter schools just because we're in an awkward position
10 of trying to figure out how to do to this. And from a --
11 from a credit-strength standpoint, it may be that or it is
12 likely that it'll be hard from both an implementation
13 point of view as a well as a credit criteria. I'm just
14 really struggling with what we have to do with a permanent
15 fund versus -- versus how these are going to be
16 structured.

17 And so we -- we've stated some concern to
18 the Colorado Energy Office on that -- on that point
19 because while I think there have been some good ideas, in
20 fact, we -- we helped manage the moral obligation program
21 for charter schools that is issued currently outstanding
22 in about 400 million dollars of principal. There have
23 been ideas in prior legislative sessions to possibly do a
24 revolving loan fund for charter schools. I would -- I
25 would suggest that this is probably not the right place,



1 and I understand from the -- the perspective of equitable
2 funding where they're coming from, but from the management
3 of the permanent fund, I would -- I would suggest that
4 it's -- it's slightly awkward and -- and certainly
5 complicated when we dabble in that as far as this REEES
6 loan program goes.

7 CHAIRMAN LUNDEEN: Okay. Other questions?
8 Okay. Well, let me make a couple comments --

9 MS. NEAL: Okay.

10 CHAIRMAN LUNDEEN: -- I'm kind a double
11 minded on this. To me it's (indiscernible) in a teapot.
12 It's not going anywhere and let's move the rule through
13 and be done with it is one line of thinking. Another line
14 of thinking is sounds to me like it's not completely baked
15 and I don't think we want to serve up a cake that's not
16 properly baked. So I'll let my colleagues guide me as to
17 whether we want to move this through now or whether we
18 want to take 30 days to kind of chase out some of these
19 things. We're hearing maybe challenges or not.

20 UNIDENTIFIED VOICE: Identify what we're
21 chasing.

22 CHAIRMAN LUNDEEN: Well, I don't know. I
23 guess the treasurer's office has signed off on it, but it
24 sounds like there may be some concerns that it puts them
25 in an awkward place. We might be able to resolve those if



1 we take 30 days to do that. I don't know.

2 UNIDENTIFIED VOICE: Well, and it sounds
3 like some of these are -- are -- are currently listed and
4 if that's the case perhaps we -- you guys could move
5 forward either way on that.

6 UNIDENTIFIED VOICE: The only --

7 CHAIRMAN LUNDEEN: Okay. So can you give
8 us clarification on that, Leanne?

9 MS. EMM: Yes. Mr. Chair, in the -- I
10 believe that what Bret is referencing is some of the
11 suggested changes regard -- in the matrix around the
12 charter schools and those were not incorporated in this
13 draft other than we would recommend striking the language
14 if the State treasurer cannot make loans to the charter
15 schools. Just in the case that it's possible that you
16 can, but -- but these other things were not incorporated
17 into the draft that you have which were the concerns that
18 Bret had.

19 UNIDENTIFIED VOICE: (indiscernible) can go
20 ahead.

21 CHAIRMAN LUNDEEN: So the treasurer's
22 office position on the draft that we would take action on
23 now is thumbs up, thumbs down? You're comfortable with
24 it, you're not comfortable with it.

25 MR. JOHNSON: We're -- we're agnostic on



1 it.

2 CHAIRMAN LUNDEEN: You're agnostic. Okay.
3 Well, that's better than uncomfortable.

4 MS. NEAL: And I would -- I mean, do you
5 want to go through this again a month from now?

6 UNIDENTIFIED VOICE: Well, here's the rub.
7 I think there's some question in our minds as to whether
8 this is a viable program, but that is not our decision --

9 MS. NEAL: It's not ours, that's --

10 UNIDENTIFIED VOICE: (indiscernible) by the
11 legislature --

12 UNIDENTIFIED VOICE: That's right.

13 MS. NEAL: Yeah. No, I -- I totally agree.

14 UNIDENTIFIED VOICE: So (indiscernible)

15 UNIDENTIFIED VOICE: (indiscernible) rules
16 that align (indiscernible) legislation.

17 CHAIRMAN LUNDEEN: I understand.

18 UNIDENTIFIED VOICE: It sounds like we did.

19 CHAIRMAN LUNDEEN: So -- so then I'm --

20 UNIDENTIFIED VOICE: (indiscernible) get
21 this off our plates.

22 MS. NEAL: Yeah.

23 CHAIRMAN LUNDEEN: If there is -- if it
24 pleases the Board, I would receive a motion.

25 UNIDENTIFIED VOICE: (indiscernible)



1 UNIDENTIFIED VOICE: Don't we need to make
2 that one change in here with the exception --

3 UNIDENTIFIED VOICE: Yes.

4 UNIDENTIFIED VOICE: -- Mr. Chair.

5 UNIDENTIFIED VOICE: Yes.

6 CHAIRMAN LUNDEEN: But that -- we're in
7 clear in what that -- that change needs to be?

8 UNIDENTIFIED VOICE: Yes.

9 CHAIRMAN LUNDEEN: Okay. Dr. Scheffel.

10 MS. SHEFFEL: Does this vote have to be
11 unanimous --

12 CHAIRMAN LUNDEEN: It does or it stops. So
13 (indiscernible) now if we've got heartburn.

14 MS. SHEFFEL: I won't --

15 CHAIRMAN LUNDEEN: You're not ready?

16 MS. SHEFFEL: (indiscernible)

17 CHAIRMAN LUNDEEN: Okay. So this -- we'll
18 hold this over 'til December.

19 Thank you very much all for your
20 presentation.

21 MS. NEAL: Thank you. We -- we don't look
22 forward to seeing you again next month.

23 CHAIRMAN LUNDEEN: Don't take that
24 personally.

25 MS. NEAL: Don't take that personally --



1 CHAIRMAN LUNDEEN: End it in the best
2 possible way.

3 UNIDENTIFIED VOICE: Thank you for your
4 time.

5 UNIDENTIFIED VOICE: Yeah, I think we need
6 a break, Paul.

7 CHAIRMAN LUNDEEN: We're going to take a
8 break.

9 (Meeting Adjourned)

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1 C E R T I F I C A T E

2 I, Kimberly C. McCright, Certified Vendor and
3 Notary, do hereby certify that the above-mentioned matter
4 occurred as hereinbefore set out.

5 I FURTHER CERTIFY THAT the proceedings of such
6 were reported by me or under my supervision, later reduced
7 to typewritten form under my supervision and control and
8 that the foregoing pages are a full, true and correct
9 transcription of the original notes.

10 IN WITNESS WHEREOF, I have hereunto set my hand
11 and seal this 5th day of April, 2019.

12

13 /s/ Kimberly C. McCright

14 Kimberly C. McCright

15 Certified Vendor and Notary Public

16

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