

1 HOUSE OF REPRESENTATIVES
2 COMMONWEALTH OF PENNSYLVANIA

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4 DEPARTMENT OF GENERAL SERVICES
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6 House Appropriations Committee

7 Main Capitol Building
8 Majority Caucus, Room 140
9 Harrisburg, Pennsylvania

10 Wednesday, February 28, 2018

11 --oOo--

12 MAJORITY COMMITTEE MEMBERS PRESENT:

13 Honorable Stanley Saylor, Majority Chairman
14 Honorable Karen Boback
15 Honorable Sheryl Delozier
16 Honorable George Dunbar
17 Honorable Garth Everett
18 Honorable Keith Greiner
19 Honorable Marcia Hahn
20 Honorable Doyle Heffley
21 Honorable Susan Helm
22 Honorable Lee James
23 Honorable Warren Kampf
24 Honorable Fred Keller
25 Honorable Duane Milne
Honorable Jason Ortitay
Honorable Michael Peifer
Honorable Marguerite Quinn
Honorable Brad Roae
Honorable James Santora
Honorable Curtis Sonney

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MINORITY COMMITTEE MEMBERS PRESENT:

Honorable Joseph Markosek, Minority Chairman
Honorable Kevin Boyle
Honorable Tim Briggs
Honorable Donna Bullock
Honorable Maria Donatucci
Honorable Marty Flynn
Honorable Patty Kim
Honorable Stephen Kinsey
Honorable Leanne Krueger-Braneky
Honorable Michael O'Brien
Honorable Mark Rozzi
Honorable Peter Schweyer

NON-COMMITTEE MEMBERS:

Honorable Steve Barrar
Honorable Cris Dush
Honorable Harold English
Honorable Eli Evankovich
Honorable Adam Harris
Honorable Francis Ryan
Honorable Tommy Sankey
Honorable Judy Ward

Honorable Matthew Bradford
Honorable Bryan Barbin
Honorable Frank Burns
Honorable Dom Costa
Honorable Paul Costa
Honorable William Kortz
Honorable Brian Sims

1 STAFF MEMBERS PRESENT:

2 David Donley
3 Majority Executive Director

4 Ritchie LaFaver
5 Majority Deputy Executive Director

6 Miriam Fox
7 Minority Executive Director

8 Tara Trees, Esquire
9 Minority Chief Counsel

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DEPARTMENT OF GENERAL SERVICES

Curt Topper
Secretary

Beverly Hudson
Deputy Secretary for Administration

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1 MAJORITY CHAIRMAN SAYLOR: Anyway, I
2 wanted to say this morning, we have Secretary
3 Topper with us today, and Deputy Secretary of
4 Administration, Bev Hudson. If you would both rise
5 and raise your right hand and be sworn in.

6 (Testifiers were sworn en masse by
7 Chairman Saylor).

8 MAJORITY CHAIRMAN SAYLOR: Very good.

9 I wanted to recognize, we've been joined
10 by other members who -- in and out today. I know
11 other members will be joining us that are not on
12 the committee. We have Representative Sims here.
13 We have Representative Ryan, Representative O'Neil,
14 Representative Sankey and Representative Dush who
15 are in presence today. I will announce others as
16 they walk in as well.

17 So, with that, Chairman Markosek, any
18 comment?

19 MINORITY CHAIRMAN MARKOSEK: Thank you.
20 Thank you, Chairman.

21 Just a welcome, Secretary, Deputy
22 Secretary. We're anxious to hear what you have to
23 say today. I'll have a question later, but for
24 now, just welcome and glad you're here.

25 SECRETARY TOPPER: Thank you.

1 MAJORITY CHAIRMAN SAYLOR: Very good.
2 We'll start off with our first questioner of today
3 is Representative Marguerite Quinn.

4 REPRESENTATIVE QUINN: Here we go.

5 SECRETARY TOPPER: Good morning.

6 REPRESENTATIVE QUINN: We both have our
7 tissue supplier, our Kleenex supply, uh?

8 SECRETARY TOPPER: Thank you so much.

9 REPRESENTATIVE QUINN: It is the season.
10 I really wish DGS would do something about
11 eradicating the germs around here. Until you
12 figure that out, we'll just go on to some other
13 easier topics, okay?

14 SECRETARY TOPPER: I thought I had a big
15 job already.

16 REPRESENTATIVE QUINN: We're gonna start
17 with one of the biggest topics we've all been
18 reading about, and some of us with surprise. I've
19 been in the General Assembly now in my 6th term.
20 To be honest with you, I was not aware of and nor
21 do I yet have a real clarification on the employee
22 liability self-insurance program. It came to light
23 this year, and I hope it's not going to be coming
24 to light with anything else we have yet to read
25 about, but let me start with a basic question.

1 What agencies does this cover? How wide
2 of an umbrella does it have over state government?

3 SECRETARY TOPPER: Sure. So, the
4 employee liability self-insurance program is part
5 of our bureau of risk and insurance management at
6 the Department of General Services.

7 The Commonwealth is self-insured and --
8 So ELSIP is one program within the larger program
9 that the Department manages to handle all potential
10 types of insured loss.

11 REPRESENTATIVE QUINN: Slip and fall,
12 rock falling from a building, and anything else
13 we've read about; those type -- anything like that?

14 SECRETARY TOPPER: That's correct. Any
15 loss due to lightening strikes, property losses.
16 The majority of claims that come through the bureau
17 actually have to do with things like the PennDOT
18 traffic line paint on citizens' vehicles, that sort
19 of thing.

20 REPRESENTATIVE QUINN: Which are much
21 more interesting to deal with.

22 Our PASSHE system was here last week in
23 front of us. Because they are universities owned
24 by the Commonwealth, are they part of this system?

25 SECRETARY TOPPER: Yes, they are.

1 REPRESENTATIVE QUINN: When the reports
2 came out about some payouts, did they include
3 payouts from those university systems?

4 SECRETARY TOPPER: I believe they did,
5 yes.

6 REPRESENTATIVE QUINN: How does the
7 employee liability self-insurance program work and
8 who pays into it? I looked at some of my pay stubs
9 and I don't see a line where I'm paying into it,
10 where I see my Social Security and other normal
11 things on a paycheck.

12 SECRETARY TOPPER: I don't believe you
13 would -- any state employee would see an individual
14 charge at the paycheck level. However, the
15 agencies under the Governor's jurisdiction, the
16 House and Senate, PASSHE, all of the organizations
17 that are covered under ELSIP are billed by the
18 Department of General Services.

19 REPRESENTATIVE QUINN: Like my
20 automobile insurance, if I had a claim or my
21 homeowners; if there's claims against an agency
22 paying into this, does their assessment go up the
23 following year?

24 SECRETARY TOPPER: Yes, it does.

25 REPRESENTATIVE QUINN: I don't recall

1 ever seeing notice of that on any of these
2 different agency budget lines, but that's for those
3 agencies and not for you.

4 How much of the annual revenues and
5 expenses of that program?

6 SECRETARY TOPPER: ELSIP specifically or
7 BRIM overall?

8 REPRESENTATIVE QUINN: ELSIP, or what
9 overall?

10 SECRETARY TOPPER: BRIM, the Bureau of
11 Risk and Insurance Management, so --

12 REPRESENTATIVE QUINN: ELSIP
13 specifically. That's a mouthful.

14 (Paper handed to Secretary Topper).

15 REPRESENTATIVE QUINN: She's good.

16 SECRETARY TOPPER: Yeah. So the total
17 billing for the ELSIP program was \$5.75 million
18 last year.

19 REPRESENTATIVE QUINN: And the payouts
20 last year?

21 SECRETARY TOPPER: There were a total of
22 -- total claims of 7 million -- Oh, I'm sorry. For
23 ELSIP, 3 million. Roughly \$3 million.

24 REPRESENTATIVE QUINN: Does the money
25 from a previous year that's not paid out roll over

1 to, you know, increase the pot going forward? And
2 if so, what is your total number of -- what are you
3 sitting on in terms of dollars for potential risk?

4 (Secretary Topper and Ms. Hudson confer
5 privately).

6 REPRESENTATIVE QUINN: You can get back
7 to me with that. I have this little green clock
8 sitting in front of me that I need to ask --

9 You mentioned any sorts of liability.
10 What point of responsibility does the bureau have
11 to say, um, this is -- we're paying this out, but
12 there's a red flag here that needs to be reported
13 somewhere that maybe a state employee, be it
14 through a driver's record or egregious behavior on
15 the job towards another employee or someone else,
16 when does that come up? We're not paying for this
17 guy or gal. They're getting reported and they're
18 getting their boot -- butt kicked to where it
19 should be.

20 SECRETARY TOPPER: So, all payments that
21 are made out of ELSIP have been preceded by a
22 process involving a formal claim that is made, and
23 involves agency legal counsel, involves agency HR,
24 and involves frequently either the Attorney General
25 or EEOC. We are at the back end of a long process

1 that results in a settlement.

2 REPRESENTATIVE QUINN: While I still
3 have green, let me go to the front end of that
4 process. Very often when I go to a public restroom
5 or something, I will see signs, if you feel abused
6 at home or anything, call this hotline. I don't
7 ever remember seeing that in a ladies' room or in a
8 cafeteria or anything in the Capitol or in another
9 state.

10 What access to this information does a
11 staff person, who may be fearful for their job,
12 know that there's an avenue of recourse without
13 them having to, you know, go through levels of
14 embarrassment; maybe not being believed and
15 potential feeling abused within the system as
16 they're trying to report it?

17 SECRETARY TOPPER: Right.

18 Representative, I think since the onset
19 of the "Me Too" movement and well before, Governor
20 Wolf has been absolutely dedicated to improving the
21 way we handle claims like sexual harassment claims.

22 REPRESENTATIVE QUINN: I'm trying to get
23 to before the claims happen in terms of people
24 knowing that out in the workplace that that is just
25 unacceptable behavior.

1 SECRETARY TOPPER: Absolutely,
2 Representative. The entire cabinet has gone
3 through mandatory training. Every Commonwealth
4 employee has been required to go through mandatory
5 training so that it is clear to every Commonwealth
6 employee what their avenues of recourse are --

7 REPRESENTATIVE QUINN: Thank you.
8 That's what I wanted to hear.

9 SECRETARY TOPPER: -- and they should be
10 going to. And we've been very aggressive about
11 that.

12 REPRESENTATIVE QUINN: Thank you very
13 much.

14 MAJORITY CHAIRMAN SAYLOR:
15 Representative Markosek.

16 MINORITY CHAIRMAN MARKOSEK: Thank you,
17 Chairman.

18 You know, safety is a big concern; not
19 only here in Pennsylvania, but everywhere, of
20 course. Can you just give me a little status
21 report on how the Capitol Police, which I believe
22 come under DGS, and our police forces that we have
23 here at the Capitol, the House police, security and
24 also the Senate, can you tell me about how all
25 those entities work together or work with you, and

1 what is the collaboration and maybe just a status
2 report? Is there some things that we can do a
3 little better or things that you need some help
4 with to make all three entities perform to the best
5 of their ability?

6 SECRETARY TOPPER: Thank you, Mr.
7 Chairman. I appreciate the opportunity to always
8 talk about the Capitol Police force.

9 I'm immensely proud of the work that
10 they do. In fact, I would be remiss if I didn't
11 acknowledge that just last week, they were first on
12 the scene and they saved a life in the lobby of the
13 North Office Building.

14 We had a contractor go down with a
15 severe heart attack virtually at our security check
16 point in the North Office Building. The two
17 Capitol police officers who were on the scene
18 immediately administered CPR. We had an AED device
19 right there, and we were able to bring this
20 gentleman back to life.

21 It's a real credit, and it really
22 underscores the value of having qualified,
23 well-trained first responders, and fully-fledged
24 police officers operating as our security force
25 here in the Capitol. We have so much to be proud

1 of.

2 Broadly speaking, you asked about our
3 level of coordination with the House and Senate.
4 My sense of it is, is that, it has never been
5 better. I think we've established a solid rapport
6 between Capitol Police facilities and all four
7 caucuses. We have better coordination.

8 We've been able to work together on the
9 new badge access system as part of the Capitol
10 project that's improving our Capitol security
11 systems here. We are in regular communications,
12 and I think it's a good story. I think we have
13 better coordination than we've had.

14 The Capitol -- I mean, this amazing
15 facility that we all get to work in every day, you
16 know, like any public facility, it could always be
17 more safe. It could always be made more secure.
18 But, making it more secure involves more than just
19 coordination and collaboration. It also involves
20 potential greater investment.

21 And so, we're certainly open to having a
22 conversation going forward about whether those
23 additional investments are worthwhile to harden the
24 facility to a greater degree.

25 But, as of right now, I believe that the

1 level of security is adequate to the threat. We
2 routinely re-evaluate what the safety situation
3 looks like. Honestly, I couldn't be prouder of the
4 work that they're doing.

5 MINORITY CHAIRMAN MARKOSEK: And I agree
6 with you that things are so much better today than
7 they had been years and years ago. When I started
8 here, anybody off the street could walk in. You
9 know, there's 600 rooms here in the Capitol. They
10 could walk in almost any of those 600 rooms and
11 steal a purse, do whatever they wanted to do.

12 In fact, I was amazed--And this was many,
13 many years ago--how the access to this place was so
14 open, which is good for transparency and all that
15 stuff, but even then I wondered -- Then 9/11 came
16 along, and that's 15 years ago or so, and things
17 really changed around here. You know, we see the
18 sniffing dogs, and the garage is now gated and all
19 the many doors are gated, and you have the security
20 and the main entrances to the Capitol Building.

21 But having said that, it's still a huge,
22 huge building, and you have other buildings besides
23 this one that come under your purview. You know,
24 we've had a couple incidents. Not too long ago
25 somebody broke in. Your folks did a good job of

1 corralling that person pretty quickly.

2 But, nevertheless -- And I know all
3 this costs money. I can only imagine what we've
4 spent since 9/11 just upgrading the security here
5 at this building.

6 But, can you talk a little bit about
7 anything specifically that you might be doing to
8 upgrade security even more?

9 SECRETARY TOPPER: Sure, Mr. Chairman.
10 I mentioned the Capitol project. It's a multiphase
11 project that has upgraded the access system, which
12 is now 99 percent complete. We're in the process
13 of upgrading the parking equipment and the barriers
14 which you mentioned. That's 75 percent complete.

15 We are installing new bollards and
16 granite work at Third and State. We are 50 percent
17 complete with the IMCS, which is the Incident
18 Management Center, which I believe a number of you
19 may have toured, and I would invite you all to come
20 and see the security center firsthand. It really
21 gives you a sense of just how comprehensive our
22 coverage of the facility is from a video-monitoring
23 standpoint.

24 The one instance you mentioned where the
25 vandal was able to break in last year, we were all

1 on him in about 11 minutes at 2 o'clock in the
2 morning. In a facility this large, to have been
3 able to detect him that quickly and to have
4 apprehended him that fast, I think is a credit to
5 just how good our systems are.

6 We have also taken steps with card
7 access here for the Capitol Complex. You'll know
8 that there are double doors which, historically,
9 you could badge into one door, and then the second
10 door on the inside would have been opened. Now you
11 need a badge to get through both doors. That helps
12 us reduce on the piggy-backing issue with folks who
13 are unauthorized or unbadged being able to enter
14 the building. We have locked down a few doors and
15 made them exit only.

16 I think we're doing -- we're doing what
17 we can within the budget constraints that we have
18 to ensure that the facility is safe.

19 MINORITY CHAIRMAN MARKOSEK: Okay. And
20 I appreciate that. I mean, it's a -- it's a huge,
21 huge, huge and expensive job, too. You know,
22 perhaps, we're never going to be 100 percent. We'd
23 like to think we're 100 percent safe. But, I mean,
24 we can walk down the street and have something
25 happen to us, too.

1 But I think you've done a great job of
2 really enhancing security. In the time I've been
3 here, not just you, but previous folks, there's a
4 huge difference in security today than the way it
5 was, but I think we can always do better. So I
6 would just leave you with that, and we'll try to
7 help you to the best that we can.

8 SECRETARY TOPPER: Thank you.

9 MAJORITY CHAIRMAN SAYLOR: Mr. Topper, I
10 have a quick question. I shouldn't say question,
11 but a comment.

12 I think -- Yes, I think both the House
13 and Senate security as well as the Capitol Police
14 have done an amazing job. One of the things I
15 think that we have to in the House and Senate, as
16 well as the Governor's office and yourself, need to
17 remind employees as they come in not to let people
18 piggy-back.

19 I was just at South Eastern Middle
20 School to speak to 7th graders, you have to go
21 through two double locked doors. I know parents
22 are very much in recognition of not somebody behind
23 them to walk in.

24 I think we need to remind our employees,
25 because I have seen it. All are guilty parties

1 here. Not everybody does it. I know when I walk
2 in, I look to see if somebody behind me has a badge
3 or not.

4 I think that's something, we have to
5 have a constant reminder. I think we take a lot
6 for granted around here sometimes. Everybody
7 coming into the Capitol has a badge or an employee.
8 We don't know each other. But I do think that's
9 something we have to keep reminding employees is
10 that, their security depends on them.

11 Also being alert is the President and
12 Homeland Security and FBI, and everybody else warns
13 people to put a call in if you have anything. We
14 also have to be observant here at the Capitol to
15 protect the employees here. We have a lot of
16 school students, and people who come in to see
17 their beautiful Capitol.

18 So, I just think that's one of the
19 things we probably need to do as a -- on a constant
20 reminder to our employees, the Governor's office,
21 the House, and the Senate as well employees.

22 SECRETARY TOPPER: Mr. Chairman, I
23 believe we have a pending meeting in the next
24 couple of weeks involving House and Senate
25 leadership, Capitol Police, myself and my executive

1 team. I'm looking forward to that meeting and to
2 that dialogue, and then determining what else we
3 can do.

4 MAJORITY CHAIRMAN SAYLOR: Appreciate
5 that, Mr. Secretary.

6 With that, we'll move to Representative
7 Peifer.

8 REPRESENTATIVE PEIFER: Thank you,
9 Chairman. Thank you, Secretary, for being here.

10 I'd like to talk a little bit about the
11 Farm Show finance project. I know last fall you
12 issued an RFP for this project. We had heard that
13 the Governor was interested in doing a lease/
14 lease-back of the Farm Show Complex. This wasn't
15 new to anyone. It had been in his budget
16 proposals.

17 Could you tell me how many bids you
18 actually received for this project?

19 SECRETARY TOPPER: Yes, sir. We've
20 received four bids.

21 REPRESENTATIVE PEIFER: Okay. So you
22 received four bids based upon the lease and
23 lease-back of the Farm Show; is that correct?

24 SECRETARY TOPPER: That's correct. We
25 issued a request for a proposal consistent with the

1 Commonwealth's procurement code and regulations,
2 and we received four competitive proposals.

3 REPRESENTATIVE PEIFER: Okay. So, when
4 I look at the RFP itself, very clearly in the title
5 it talks about this lease slash lease-back of the
6 Farm Show Complex, specifically named. Under the
7 project description, again it talks about the
8 lease/lease-back of the Farm Show Complex.

9 But somewhere -- You know, we just
10 received payment, correct? Can you explain, we
11 just received \$200 million in January for this
12 overall proposal, correct?

13 SECRETARY TOPPER: That's correct.

14 REPRESENTATIVE PEIFER: Okay.
15 Somewhere, I guess my question is, how did the RFP
16 morph itself into what we have as a financing
17 agreement?

18 I'm trying to look through this
19 financing agreement and read some of the terms of
20 the financing agreement. I don't see the
21 lease/lease-back of the Farm Show Complex. It's
22 not called a lease/lease-back agreement. It's
23 called a financing agreement.

24 So, could you explain how we morphed --
25 this whole process morphed itself from one set of

1 terms to a separate set of terms?

2 SECRETARY TOPPER: Representative, the
3 contract -- the final contract emerged as a result
4 of the contract negotiations that typically follow
5 any request for proposal process. So, between OGC,
6 my Office of Chief Counsel, and the prospective
7 winning bidder, we arrived at a contract that was
8 agreeable to all parties.

9 REPRESENTATIVE PEIFER: Do you think,
10 maybe, if you had an RFP out for the financing
11 agreement, there might have been other entities
12 willing to propose or put a bid in for the
13 financing agreement, because I see two separate and
14 distinct documents. I was just wondering if you've
15 ever considered putting out the financing agreement
16 to bid?

17 SECRETARY TOPPER: Perhaps. I don't
18 think that there was any confusion in the
19 marketplace over whether the Commonwealth was --
20 was looking to establish what is in effect a
21 financing agreement. It was referred to as a
22 lease/lease-back model from day one, but I really
23 don't think there was any confusion based on the
24 numerous communications that I know my team had
25 with participants in the market.

1 REPRESENTATIVE PEIFER: So you still
2 feel confident -- Even though it doesn't say that
3 in this financing agreement, you still feel
4 confident that it is a lease/lease-back
5 transaction?

6 SECRETARY TOPPER: I feel confident that
7 the final agreement was entered into in a manner
8 that's consistent with the requirements of the
9 procurement code in the original RFP?

10 REPRESENTATIVE PEIFER: Some of the --
11 Let's go on to the actual financing agreement as
12 it's called. Page 4, paragraph C, talks about DGS
13 and the Secretary of Budget reasonably believe that
14 sufficient funds can be appropriated to DGS by the
15 General Assembly to make all payments owed during
16 the term.

17 You know, is that consistent with other
18 debt that we issue at the state level?

19 SECRETARY TOPPER: That's consistent
20 with -- with all -- with all contract obligations;
21 virtually all contract obligations that the
22 Commonwealth enters into within the context of
23 Commonwealth procurement and contracts.

24 It is a standard term in Commonwealth
25 contracts that our obligations are subject to

1 appropriations --

2 REPRESENTATIVE PEIFER: So even though
3 we received \$200 million, we received an
4 amortization schedule that details a 29-year-
5 payment term totaling, I think, cash payments of
6 \$375 million--I have that somewhere--it just seems
7 odd that we would just say we reasonably believe we
8 can make payments.

9 But you're saying that's pretty common?

10 SECRETARY TOPPER: I'm saying that all
11 of our obligations -- all of our payment
12 obligations within the context of contracts, or
13 virtually all of them, are contingent upon
14 appropriations from the General Assembly.

15 REPRESENTATIVE PEIFER: Okay. Next
16 page, on page 5 -- item 5 in the middle, talks
17 about security of this transaction. In the middle
18 it says: Semi-annual payments are not secured by a
19 pledge of the Commonwealth.

20 So, I would think in a lease/lease-back
21 of the Farm Show Complex, that we are using the
22 actual complex as some type of security on the
23 \$200 million that we received. But it clearly says
24 on this paragraph that they are not pledged by --
25 they're not secured by a pledge. Is that true?

1 SECRETARY TOPPER: That is true.

2 REPRESENTATIVE PEIFER: Okay. So what
3 happens if the General Assembly is not reasonable
4 and they're not able to make payments on the
5 \$200 million, what happens then? I mean --

6 SECRETARY TOPPER: I suppose, then, we
7 would be in default.

8 REPRESENTATIVE PEIFER: But we would
9 still own the Farm Show Complex?

10 SECRETARY TOPPER: That is correct.

11 REPRESENTATIVE PEIFER: Okay.

12 MAJORITY CHAIRMAN SAYLOR: Are you done?

13 REPRESENTATIVE PEIFER: One more
14 question, Mr. Chairman.

15 MAJORITY CHAIRMAN SAYLOR: Okay.

16 REPRESENTATIVE PEIFER: The credit
17 rating agencies, how do they see this transaction?
18 Do they see this, as far as we know, again, general
19 obligation bonds rank? Where does this fit in
20 their ranking or -- of our Commonwealth as far as
21 our ratings go?

22 SECRETARY TOPPER: Representative, that
23 might be a better question directed towards the
24 Budget Secretary. I not do not have any direct
25 dealings with the credit agencies.

1 REPRESENTATIVE PEIFER: Okay. Thank
2 you, Chairman.

3 MAJORITY CHAIRMAN SAYLOR:
4 Representative Kinsey.

5 My apologies, Representative Kinsey.
6 Just one quick -- I wanted to note that
7 Representative Ward has joined us as well. She's
8 not a member of the committee, but is here to
9 observe as well.

10 Representative Kinsey. Thank you.

11 REPRESENTATIVE KINSEY: Good morning.
12 Thank you, Mr. Chairman. Good morning, Deputy
13 Secretary.

14 My question is going to center around
15 the diversity and contract issuance. Governor Wolf
16 had issued an Executive Order 2015-11 to expand and
17 improve contract opportunities. My understanding
18 is that part of this executive order had tasked DGS
19 to expand its diversity bureau and to focus on
20 training, outreach and implement meaningful
21 performance-based metrics, as well as establish a
22 mentor protege program to help grow, sustain
23 participating businesses.

24 Can you briefly elaborate on this work
25 and identify the specific outlay of this program;

1 how the Commonwealth has improved in terms of
2 diversity contracting?

3 SECRETARY TOPPER: Sure. Thank you for
4 your question, Representative.

5 I'm really proud of the record we've
6 established here over the course of the last three
7 years when it comes to diversity and inclusion.
8 When the Administration arrived, measured as a
9 matter of payments, the Commonwealth -- the level
10 of participation by small businesses overall, and
11 particularly my minority and women-owned businesses
12 was in sharp decline. It had declined every year
13 in the prior Administration.

14 I'm proud to be able to say that we've
15 at least turned the corner, and we've leveled that
16 decline off and started it back in the right
17 direction. However, we have tremendous work to do.

18 You know, currently, our overall level
19 of small business participation in Commonwealth
20 contracts, measured as a matter of payments, sits
21 at about 8 and a half percent. That's all in small
22 businesses and small diverse businesses. Small
23 diverse businesses, which are a subset of that
24 number, currently sits at just over 5 percent.

25 We can do better. The Commonwealth --

1 If we look to our neighbors to the south and to the
2 north, Maryland and New York, they routinely see
3 levels of participation three to four times the
4 level of participation that Pennsylvania has
5 historically achieved when it comes to
6 participation by small and minority-owned
7 businesses.

8 We have taken pretty significant steps
9 here for the last three years in order to help stem
10 the tide, or trim the corner, and get very serious
11 about how we do this. The first thing we did was,
12 we got -- we moved to an imperially met valid
13 measure based on payments. This was a number that
14 was, unfortunately, had been politicized over the
15 course of successful administrations. The numbers
16 were a little bit cooked.

17 We've now established an empirical basis
18 that I hope will be sustained through success of
19 administrations.

20 The second thing we did was, we put in
21 place compliance measures, firm subcontract
22 requirements, so that, when prime contractors make
23 commitments to subcontractors in the course of our
24 procurement process, they -- we have teeth in the
25 contract and in the subcontract that enable us to

1 hold them accountable for those commitments.

2 A third thing we've done, working with
3 the Governor's advisory council for diversity and
4 inclusion, is establish an agency liaison program
5 and begin to set agency-level goals and start a
6 senior-level dialogue between DGS, the Governor's
7 office, members of the advisory council and agency
8 leadership around identifying the places where we
9 can do better; what contract should we target; how
10 can we do a better job of driving more small
11 business participation. That just got underway
12 within the last year, and I think we're starting to
13 make some headway with it.

14 And finally, last year we contracted for
15 the state's first comprehensive disparity study,
16 which includes all of the goods and services that
17 are purchased under the purview of DGS and the
18 other agencies, and PennDOT and PennDOT
19 construction. So, it's the first comprehensive
20 disparity study that the Commonwealth has ever
21 done.

22 The purpose of the disparity study is to
23 establish an empirical basis. It's a measure of
24 the availability of small and minority and
25 women-owned businesses, diverse businesses to do

1 Commonwealth work; and, historically, the level of
2 -- the percentage of the contracts they've actually
3 been able to win, their level of participation.
4 When we have those things empirically established,
5 it creates a baseline and an opportunity for us to
6 put in place legally defensible policies and
7 programs to help drive the numbers up.

8 REPRESENTATIVE KINSEY: Mr. Secretary, I
9 know that my time is almost up.

10 Just so we're clear, when we talk about
11 small business participation and diversity, are we
12 looking at -- you have it broken down. We have
13 folks of color, as well as women, folks with
14 disability and also individuals with the LGBT. Do
15 we have those broken down in those categories as
16 well, and others?

17 SECRETARY TOPPER: We do. I can provide
18 you with -- I don't have the participation, but
19 I'll be happy to provide it for you.

20 REPRESENTATIVE KINSEY: If you could
21 send it in, I would just like to see that, and also
22 see the growth from previous years up to where we
23 are now.

24 SECRETARY TOPPER: I'll be pleased to
25 share that information.

1 REPRESENTATIVE KINSEY: Thank you very
2 much, Mr. Secretary.

3 Mr. Chairman, thank you very much.

4 (Chairman Saylor spoke to Representative
5 Kinsey).

6 REPRESENTATIVE KINSEY: He's given me
7 additional time, and I appreciate that.

8 SECRETARY TOPPER: Sorry for the
9 filibuster. It wasn't intentional.

10 REPRESENTATIVE KINSEY: No, that's fine.

11 I think just the important part that I'm
12 going to ask for again is -- Again, I listed four
13 categories of diversity: Folks of color, women,
14 people with disability as well as LGBT. If there's
15 any other category that your department captures,
16 I'd like to receive that as well.

17 SECRETARY TOPPER: Veterans.

18 REPRESENTATIVE KINSEY: Thank you very
19 much. Thank you very much.

20 Thank you again, Mr. Chairman.

21 MAJORITY CHAIRMAN SAYLOR:
22 Representative Sonney.

23 REPRESENTATIVE SONNEY: Thank you, Mr.
24 Chairman. Mr. Secretary, thank you for being here.

25 SECRETARY TOPPER: Good morning.

1 REPRESENTATIVE SONNEY: Good morning.
2 I'd like to follow up a little bit more on the Farm
3 Show and the lease/lease-back agreement that turned
4 into a financial agreement.

5 So you were, obviously, the lead agency
6 on this, correct?

7 SECRETARY TOPPER: We did execute the
8 agreement, yes.

9 REPRESENTATIVE SONNEY: And you also
10 executed the RFP?

11 SECRETARY TOPPER: That's correct.

12 REPRESENTATIVE SONNEY: You just
13 testified that four people or four entities
14 responded to that RFP?

15 SECRETARY TOPPER: Yes, sir.

16 REPRESENTATIVE SONNEY: Did any of those
17 entities respond believing that it was a true
18 lease/lease-back?

19 SECRETARY TOPPER: I believe all four
20 entities responded based on the language that was
21 in the RFP. I'm not sure --

22 REPRESENTATIVE SONNEY: It says in the
23 RFP that it is a lease/lease-back.

24 SECRETARY TOPPER: Correct. I guess
25 what I'm struggling with is your characterization

1 of true lease/lease-back versus false lease/
2 lease-back. I'm not sure what that means.

3 REPRESENTATIVE SONNEY: Mr. Secretary, I
4 guess at some point in time this changed from what,
5 in all appearances, was a lease/lease-back proposal
6 to a financing proposal. And so, I'm curious as to
7 why your agency remained a lead agency in
8 finalizing this agreement.

9 In other words, did your agency have
10 anything to do with securitizing money using the
11 tobacco settlement money?

12 SECRETARY TOPPER: No, sir.

13 REPRESENTATIVE SONNEY: So it's not
14 common practice for your agency to do financing,
15 other than specifically for, you know, your
16 projects or anything under your purview?

17 SECRETARY TOPPER: That's correct.

18 REPRESENTATIVE SONNEY: So why did you
19 not turn this over to a different agency when it
20 became clear that it was morphing into a financing
21 and not a lease/lease-back?

22 SECRETARY TOPPER: The Department was
23 working extensively with the Office of Budget and
24 the Department of Agriculture. Because DGS issued
25 the RFP, it made sense for DGS to be the

1 contracting agency. It's that simple.

2 REPRESENTATIVE SONNEY: When I read
3 through the agreement, then the amortization
4 schedule, which is paid over 29 years, correct?

5 SECRETARY TOPPER: Correct.

6 REPRESENTATIVE SONNEY: And we have
7 semi-annual payments for the debt, correct?

8 SECRETARY TOPPER: That's correct.

9 REPRESENTATIVE SONNEY: If we were to
10 pay this debt off early, do we then end on the
11 interest payments, or are the interest payments
12 guaranteed?

13 SECRETARY TOPPER: I don't know the
14 answer to that, Representative, off the top of my
15 head, but I'll be happy to provide it for you.

16 REPRESENTATIVE SONNEY: It would seem
17 odd to me that you don't know that answer when you
18 are the one that initiated that contract. I know
19 if I go to borrow money from somebody, I'd like to
20 know all the terms of that agreement, and what my
21 ability is to end that agreement. And you don't --
22 you don't know that?

23 SECRETARY TOPPER: I'll be pleased to
24 provide the answer to you.

25 REPRESENTATIVE SONNEY: Thank you.

1 Would you be able to provide the copies of those
2 four proposals that came back for the lease/
3 lease-back?

4 SECRETARY TOPPER: Representative, I
5 don't know to what extent those proposals are
6 required to be maintained as confidential, but I'll
7 be pleased to provide whatever information we're
8 able to provide.

9 REPRESENTATIVE SONNEY: Thank you.
10 Thank you, Mr. Chairman.

11 MAJORITY CHAIRMAN SAYLOR: Mr.
12 Secretary, I would appreciate you sending those to
13 Chairman Markosek and myself. The proposals that
14 were submitted, as well as any other documents at
15 that point, since they've been requested?

16 SECRETARY TOPPER: Absolutely.

17 MAJORITY CHAIRMAN SAYLOR: With that,
18 Representative Bullock.

19 REPRESENTATIVE BULLOCK: Thank you, Mr.
20 Chairman.

21 Good morning, Secretary, how are you?

22 SECRETARY TOPPER: Good morning.

23 REPRESENTATIVE BULLOCK: I was reading
24 through the materials and noted that we have been
25 working on an energy -- savings energy reduction

1 plan for the Commonwealth buildings.

2 Similarly, the City of Philadelphia
3 actually has a Philadelphia municipal energy master
4 plan that has committed itself to reducing carbon
5 pollution -- or reducing its own energy use and
6 cleaning their energy supply. In that plan they
7 set benchmarks, by which they plan to reduce
8 greenhouse gas emissions for their built
9 environment by 2030 by 50 percent. They plan to
10 reduce their overall built environment energy use
11 and generate more than -- well, generate a hundred
12 percent of their electricity from renewable
13 sources.

14 Have we set similar benchmarks for the
15 Commonwealth and for our buildings and our energy
16 use here as well?

17 SECRETARY TOPPER: Thank you for the
18 question, Representative.

19 We're in the process of actually rolling
20 out building by building sort of a public awareness
21 campaign to make certain that visitors and
22 employees, folks coming and going from our
23 buildings are aware of what the actual energy
24 consumption looks like in the buildings they are
25 visiting, and also what that energy consumption

1 looks like in comparison with key benchmarks.

2 I'm really pleased to be able to share
3 with you that, overall, the building fleet is
4 16 percent more efficient than the CBECS average,
5 which is the Commercial Building Energy Consumption
6 Survey for the northeast region, which is the
7 benchmark that we typically use.

8 You asked about green energy. At the
9 start of the Administration, the Commonwealth's
10 green energy purchase had been reduced by the prior
11 Administration to zero. I'm pleased to say that
12 three years in, we are now back up to 30 percent of
13 the Commonwealth's energy purchase is coming from
14 renewable sources.

15 We would absolutely like to see that
16 number continue to grow. We are working within the
17 constraints that we have in terms of current
18 contracts and budgets to try to continue to make it
19 grow. But I'm quite proud that in three years, we
20 have been able to grow it back from zero to 30.

21 That 30 percent equates to 160,000
22 metric tons of carbon dioxide, or, you know,
23 sufficient actually to -- sufficient power for
24 22,000 average American homes. It's quite a
25 significant amount of electricity.

1 I could go on and on. It's quite a
2 comprehensive process. We've made significant
3 investments under the GESA program within the last
4 three years. You know, the building we're in now
5 has LED lighting virtually everywhere you look. As
6 you know, LED is about 9 to 10 times more efficient
7 than the prior electric lighting; also involves
8 considerable less maintenance, so we're excited
9 about that.

10 REPRESENTATIVE BULLOCK: Are you able at
11 this point to report any specific savings; whether
12 it's this building or --

13 For example, I know the Philadelphia
14 Museum of Art had a 3-million-dollar-a-year
15 electric bill that we were able to cut with the
16 savings that we're working on, right?

17 SECRETARY TOPPER: I think our savings
18 have come from two sources. The first is, we got
19 much more aggressive and much smarter about how we
20 were engaging the market in order to buy
21 electricity. So we've been aggregating the buy
22 across all Commonwealth facilities; working with
23 Penn State -- a team at Penn State to get the
24 strategy right and going long. You know, the net
25 of it is -- I'll have to get the exact numbers, but

1 it was several million dollars a year in savings.

2 Our average cost per kilowatt hour
3 across the Commonwealth is now right around \$0.05,
4 which is competitive with every commercial
5 benchmark I can find. We expanded that this year
6 to the COSTARS program and began buying energy on
7 behalf of 28 municipalities in the Commonwealth.
8 And they, in turn, with our help, have -- over the
9 next four years will save about \$1.8 million over
10 their current rates simply by participating;
11 working together with us on the buy.

12 That's where our focus has been; there,
13 and also reinvesting in systems like LED lighting,
14 HVAC systems; when we do upgrades to our buildings;
15 finding ways to manage them in a more efficient
16 way.

17 There's a lot of more detail here than
18 we have time for, but I'd be pleased to provide it
19 to you.

20 REPRESENTATIVE BULLOCK: I appreciate
21 that, Mr. Secretary.

22 Thank you, Mr. Chairman. And I have no
23 further questions.

24 MAJORITY CHAIRMAN SAYLOR:

25 Representative Delozier.

1 REPRESENTATIVE DELOZIER: Thank you, Mr.
2 Chairman.

3 Mr. Secretary, over here. We're moving
4 around on you. Sorry about that. I actually -- I
5 know a couple questions have been asked about the
6 lease-back. I have some issues on authority, so I
7 just want to get a couple questions out to you.

8 This agreement was the DGS, the
9 Commonwealth, and the municipal real estate --
10 municipal real estate, which, from all intents and
11 purposes, from what I can tell, that was kind of
12 developed simply for this deal. They hadn't been
13 in existence prior to that for the January 30,
14 200 million.

15 The Governor has made a number of
16 proposals. It seems that when he doesn't get it
17 passed through the legislature, he just does it on
18 his own, even though the legislative process is
19 supposed to be a part of it. Yesterday we heard
20 from Department of Corrections. They didn't get
21 probation and parole in the corrections merger, so
22 he just did it on his own.

23 This seems to be kind of the same
24 scenario, in the sense that he proposed it; it
25 didn't get passed by 253, majority in the

1 legislature, so he's doing it on his own. I guess
2 health and human services will be next since he
3 proposed that this year if it doesn't go through --

4 SECRETARY TOPPER: Representative,
5 that's not correct.

6 REPRESENTATIVE DELOZIER: What's not
7 correct?

8 SECRETARY TOPPER: It was not proposed
9 as part of the last budget.

10 REPRESENTATIVE DELOZIER: What was not
11 proposed?

12 SECRETARY TOPPER: The lease/lease-back.
13 There was ample discussion on it. There was --
14 There were hearings on it.

15 REPRESENTATIVE DELOZIER: Right. So we
16 had conversation about the fact of doing it. He
17 did not get the votes in order to have it happen
18 here in the legislature, correct?

19 SECRETARY TOPPER: It was never the
20 position of the Administration that the General
21 Assembly was required to be a party to the deal.

22 REPRESENTATIVE DELOZIER: Oh. So the
23 General Assembly has no oversight of budget? Is
24 that the thought of what the Governor thought?

25 SECRETARY TOPPER: No. It's quite clear

1 that the Commonwealth -- that DGS, the Office of
2 the Budget, the Governor has ample authority to
3 enter into contracts.

4 REPRESENTATIVE DELOZIER: Yes. But the
5 -- You're dealing with the Farm Show, so my
6 question with authority comes into play with this
7 particular entity. I mean, I've been around
8 government a long time with the Governor's office,
9 Lieutenant Governor's Banking, Office of
10 Administration. I've never seen a contract like
11 this. Has there ever been one done like this
12 before?

13 SECRETARY TOPPER: This is the first of
14 its kind. Okay.

15 REPRESENTATIVE DELOZIER: That's what I
16 thought.

17 So the ability for -- Since this is the
18 Farm Show that we're talking about, even though it
19 seems that the Farm Show is not really involved, my
20 question comes to the fact that my understanding --
21 and Secretary Redding was here and said that
22 agriculture hasn't been involved in this contract
23 whatsoever. They're not a signatory looking at the
24 signatures that are on it.

25 My understanding with the Farm Show, and

1 I asked one of the board members, Farm Show
2 Commission exists in statute, and their
3 jurisdiction is the oversight of the Farm Show.
4 Why are they not involved with this contract?

5 SECRETARY TOPPER: Historically, my
6 understanding is, the Commission has never been
7 involved in Capitol projects associated with the
8 Farm Show or other decisions that have been made
9 historically related to the facility itself. The
10 Commission, as I understand it, has been
11 predominately focused on the Farm Show -- on the
12 Farm Show event.

13 REPRESENTATIVE DELOZIER: Well, I would
14 think if you're going to put the Farm Show in hock,
15 that they would have something to do with the fact
16 that you're using them as the -- you're using them
17 as the reason for the loan, correct?

18 SECRETARY TOPPER: I don't believe we've
19 put the Farm Show in hock.

20 REPRESENTATIVE DELOZIER: You're getting
21 a mortgage out on 200 million -- you're getting
22 \$200 million for the Farm Show, correct?

23 SECRETARY TOPPER: There is no security
24 interest in the Farm Show conveyed as --

25 REPRESENTATIVE DELOZIER: Right, which

1 might be more of an issue.

2 Okay. The other one I saw was not on
3 this contract was the Commission of Public Grounds
4 and Buildings. My understanding, in statute, that
5 they are responsible for all assets for executive
6 agencies, but yet, they are not a part of this.
7 Where would they normally -- Wouldn't they normally
8 be part of the contract like this; with DGS I mean?

9 SECRETARY TOPPER: Our determination
10 with council was that this transaction did not
11 constitute a lease that would have been required to
12 go through the Board of Commissioners of Public
13 Grounds and Buildings.

14 REPRESENTATIVE DELOZIER: Okay. What is
15 the definition of ones that do not go through that
16 entity, then?

17 SECRETARY TOPPER: I'd be happy to get
18 for you the --

19 REPRESENTATIVE DELOZIER: I didn't know
20 there was a differentiation.

21 SECRETARY TOPPER: I --

22 REPRESENTATIVE DELOZIER: So there's
23 some that do and some that don't?

24 SECRETARY TOPPER: That's correct.

25 REPRESENTATIVE DELOZIER: And you're not

1 clear on which ones don't? That's the information
2 you can get us?

3 SECRETARY TOPPER: I'd be pleased to.

4 REPRESENTATIVE DELOZIER: Okay. I
5 appreciate that.

6 One of the questions we also had deals
7 with -- a lot of the whereases that are in the
8 contract talk about a lot of the stipulations where
9 you have the authority to go in and make contracts
10 and everything else.

11 When this particular contract went into
12 place and everything else, one of the questions
13 that I -- In reading it, I was a little just kind
14 of confused to the fact that, \$200 million in cash
15 is going into the General Fund, correct?

16 SECRETARY TOPPER: Yes, ma'am.

17 REPRESENTATIVE DELOZIER: So all
18 200-million is going in. And the ability for us to
19 turn that around, that money would be used for DGS,
20 or was it going to other entities?

21 SECRETARY TOPPER: The 200 million is
22 deposited in the General Fund. It's to be used to
23 provide sufficient funding to pay DGS's operational
24 expenses, agricultural extension service payments,
25 a food purchase program costs, and other

1 agricultural operation costs in fiscal year '17-18.

2 REPRESENTATIVE DELOZIER: Okay. That's
3 something I will just have to follow up on mainly
4 because the ag secretary didn't believe that any of
5 the dollars were coming back to agriculture. So,
6 we just have a conflict there. I just need to
7 figure out exactly where those dollars are going
8 and what they're actually paying for so we know
9 which line items there are going to help in the
10 budget in and of itself for '17-18.

11 Thank you, Mr. Secretary. I appreciate
12 it. I just have a lot of, I guess, concerns as to
13 the fact that, A, this is the first of its kind,
14 kind of contract. I'm just a little nervous that
15 the Governor seems to be kind of going out on his
16 own when he doesn't seem to get what he wants from
17 the legislature, and checks and balances are there
18 for a reason. I think that many of them have been
19 skipped recently. So, thank you very much.

20 MAJORITY CHAIRMAN SAYLOR: With that,
21 Representative Kampf.

22 REPRESENTATIVE KAMPF: Okay. Thank you.

23 Mr. Secretary, following on what
24 Representative Delozier says, I've looked at this
25 finance agreement. And my sense is that, we put

1 into the budget documents, and the Governor signed
2 it, that 300 million was supposed to come out of
3 special funds; money that was already in the
4 special funds. The Administration didn't want to
5 do that, so they used you to issue debt, and that's
6 what this finance agreement is. Plain and simple,
7 it's debt.

8 They gave it this entity that was
9 created for this. I'm sure it's folks who have
10 lots of money. They agreed to give us 200 million;
11 and, in turn, by signing this contract, you
12 attempted to bind us to pay back, I think it's
13 about 394 million.

14 So my questions are really, first, about
15 debt. Is this the first time you have ever signed
16 a contract to issue debt?

17 SECRETARY TOPPER: Representative, this
18 is the first time I've signed a contract of this
19 nature. It's the first time the Commonwealth has
20 executed a contract of this nature.

21 REPRESENTATIVE KAMPF: And my under-
22 standing is, generally speaking, the Commonwealth,
23 a legal entity has to have legal authority in order
24 to do these things.

25 So, with respect to debt, the

1 Constitution of Pennsylvania says that debt is
2 defined as anything that -- where we issue and have
3 outstanding obligations, and it includes
4 obligations of its agencies or authorities to the
5 extent they are to be repaid from revenues of the
6 Commonwealth.

7 Would you agree that this financing
8 agreement falls into that definition?

9 SECRETARY TOPPER: Sure.

10 REPRESENTATIVE KAMPF: Okay. Since we
11 are now in agreement that it is debt under the
12 Constitution's definition, I don't know if you're
13 aware, but there are several limitations on debt in
14 that same Constitution. You're allowed -- We are
15 allowed to issue debt for tax anticipation notes.

16 Is this a tax anticipation note?

17 SECRETARY TOPPER: Representative, we're
18 --

19 REPRESENTATIVE KAMPF: Is it a tax
20 anticipation tax note? Yes or no, or I don't know.

21 SECRETARY TOPPER: I don't know.

22 REPRESENTATIVE KAMPF: All right. Is it
23 debt to -- and you can do this to unlimited
24 amounts, to suppress insurrection, rehabilitate
25 areas affected by man-made diasters, or was it

1 approved by the electorate, this financing
2 agreement?

3 (Pause).

4 REPRESENTATIVE KAMPF: Yes, no, or I
5 don't know?

6 SECRETARY TOPPER: No, that seems to be.

7 REPRESENTATIVE KAMPF: No, okay.

8 MINORITY CHAIRMAN MARKOSEK: These are
9 questions --

10 REPRESENTATIVE KAMPF: So the other
11 reason --

12 MINORITY CHAIRMAN MARKOSEK: Excuse me,
13 Representative.

14 REPRESENTATIVE KAMPF: I'm sorry. I'm
15 asking the questions.

16 MINORITY CHAIRMAN MARKOSEK: I know.

17 REPRESENTATIVE KAMPF: Can we stop the
18 clock for a moment, please?

19 MINORITY CHAIRMAN MARKOSEK: Chairman's
20 license here that we --

21 REPRESENTATIVE KAMPF: Please stop your
22 clock.

23 MINORITY CHAIRMAN MARKOSEK: There are
24 questions that would be more apropos for the
25 Secretary of the Budget. The Secretary has said

1 he's not an expert in this, so --

2 REPRESENTATIVE KAMPF: He signed this
3 agreement by attempting to bind the Commonwealth of
4 Pennsylvania, and I believe I'm entitled to ask
5 these questions.

6 So there's another possible debt under
7 the Constitution, and that is for Capitol projects.
8 Is this debt related to a Capitol project?

9 SECRETARY TOPPER: No, sir.

10 REPRESENTATIVE KAMPF: Do we pledge in
11 this agreement the full faith and credit of the
12 Commonwealth of Pennsylvania?

13 SECRETARY TOPPER: No, sir.

14 Sir, I'm advised that, according to the
15 Attorney General, this is not constitutional debt.

16 REPRESENTATIVE KAMPF: Right. So, let's
17 go to another question on authority as opposed to
18 debt.

19 So you -- This agreement that you signed
20 has a bunch of whereas clauses. We've already
21 established that it doesn't really have anything to
22 do with the Farm Show, despite the RFP that you
23 issued. So the Farm Show Commission didn't approve
24 it, even though the statute says they approve
25 leases. This Board of Leasing, whatever it's

1 called, that you sometimes use for your work didn't
2 approve this.

3 But, you say there are multiple acts, I
4 guess the administrative code, that allow for this.
5 So I've got some questions about that. The whereas
6 clause indicates that you're allowed to, under the
7 administrative code, sign contracts for the
8 carrying-on of your operations. Is signing a
9 financing agreement part of carrying-on your
10 operations?

11 SECRETARY TOPPER: Representative, it
12 seems to me your questions are -- are --

13 REPRESENTATIVE KAMPF: I just want to
14 know. I just want to know, if signing a financing
15 agreement is part of your operations?

16 SECRETARY TOPPER: I'd like to be able
17 to ask (sic) your question.

18 REPRESENTATIVE KAMPF: And I asked it,
19 and I still haven't heard under the administrative
20 code or some other law or rule related to DGS,
21 whether signing a financing agreement is
22 essentially a promise to pay back money with
23 interest is part of your operations; your
24 department's operations. Yes or no?

25 SECRETARY TOPPER: Representative, my

1 Department signs contracts every day.

2 REPRESENTATIVE KAMPF: I asked about a
3 financing agreement; this financing agreement.

4 SECRETARY TOPPER: The answer is yes.

5 REPRESENTATIVE KAMPF: Okay. So is
6 generating revenue and issuing debt part of DGS's
7 mission?

8 (Pause).

9 REPRESENTATIVE KAMPF: Yes, no, or I
10 don't know?

11 SECRETARY TOPPER: The Department
12 generates revenue from a number of sources, so yes.

13 REPRESENTATIVE KAMPF: All right. So
14 you indicated that you are following the
15 administrative code. This financing agreement has
16 some other whereas clauses. It says under this
17 Section 2401, you're allowed to accept grants and
18 aid, gifts. This is in the agreement you signed:
19 Grants and aid, gifts, donations, legacies or
20 usages of money extended by individuals.

21 Is this document one of those items?

22 SECRETARY TOPPER: Yes.

23 REPRESENTATIVE KAMPF: Is it a gift?

24 SECRETARY TOPPER: No.

25 REPRESENTATIVE KAMPF: Is it a donation?

1 SECRETARY TOPPER: It's a usage of
2 money.

3 REPRESENTATIVE KAMPF: It's a usage of
4 money. So usage of money is, if somebody gives me
5 \$200 million, and I agree to pay them 394 back --
6 394 million back, that's a usage of money, sir? Do
7 you have any citation for the usage of money being
8 that kind of an instrument?

9 SECRETARY TOPPER: Representative, if
10 it's your intent to question the legality of the
11 contract, you're certainly free to do that.

12 REPRESENTATIVE KAMPF: That's actually
13 what I'm actually doing, and you signed it, sir.

14 SECRETARY TOPPER: I did.

15 REPRESENTATIVE KAMPF: And there is an
16 obligation under the budgeting and the law of the
17 Commonwealth of Pennsylvania that when things are
18 passed and signed by the Governor, like the code
19 bills were, that he's supposed to follow the law.

20 This does not appear to me to be
21 transferring money out of special funds as was
22 instructed in that code.

23 REPRESENTATIVE BRIGGS: Mr. Chairman,
24 the red light's been going on and off, on and off.
25 This is -- This is getting a little bit excessive.

1 REPRESENTATIVE KAMPF: My last question
2 then, let's say you wanted to sign --

3 REPRESENTATIVE BRIGGS: Mr. Chairman.

4 REPRESENTATIVE KAMPF: -- a financing
5 agreement for \$1.5 billion. Would you be allowed
6 to do that?

7 SECRETARY TOPPER: I'm not interested in
8 hypotheticals.

9 (Pause).

10 MAJORITY CHAIRMAN SAYLOR:
11 Representative --

12 REPRESENTATIVE KAMPF: Never in my
13 wildest dreams did I think we would get to the
14 point where you were signing a finance agreement,
15 so I think --

16 SECRETARY TOPPER: The contract that I
17 signed was thoroughly reviewed by the Office of
18 Attorney General; thoroughly reviewed by the Office
19 of Chief Counsel; thoroughly reviewed by the -- by
20 the Department's counsel. It was approved in terms
21 of form and legality, and I felt 100 percent
22 comfortable signing it. Otherwise, I would not
23 have signed it, sir.

24 MAJORITY CHAIRMAN SAYLOR: With that, we
25 need to move on to the next member.

1 REPRESENTATIVE KAMPF: Yes,
2 Mr. Chairman.

3 MAJORITY CHAIRMAN SAYLOR:
4 Representative Dunbar.

5 REPRESENTATIVE DUNBAR: I always love
6 following you, Warren.

7 Thank you, Mr. Chairman.

8 I guess we'll stick with the Farm Show.
9 I guess it's not the Farm Show anymore, but the
10 financing agreement. And on page 8 of the finance
11 agreement, there is a number 12, fees, commission
12 expenses. It lists that there's language that
13 allows DGS -- that says DGS shall pay all expenses
14 and the issuance of this debt not to exceed
15 \$2.3 million in costs.

16 Were those costs incurred?

17 SECRETARY TOPPER: I'm sorry. Which
18 costs?

19 REPRESENTATIVE DUNBAR: \$2.3 million of
20 fees, commissions and expenses related to the
21 interim financing or permit financing agreement.

22 SECRETARY TOPPER: Yes, sir, those were
23 included.

24 REPRESENTATIVE DUNBAR: And how were
25 they paid? Or were they borrowed?

1 SECRETARY TOPPER: It's rolled into the
2 cost of the transaction.

3 REPRESENTATIVE DUNBAR: So the borrowing
4 then was 200 plus; is that correct?

5 SECRETARY TOPPER: I believe that's
6 correct.

7 REPRESENTATIVE DUNBAR: So, as far as
8 our budgets are concerned, the repayment of this,
9 the interest expense is part of your budget going
10 forward now?

11 SECRETARY TOPPER: It will be, yes.

12 REPRESENTATIVE DUNBAR: So that would be
13 part of the budget -- As far as what we're looking
14 at for '18-19, will I be able to see that somewhere
15 in our actual budget or --

16 SECRETARY TOPPER: I believe the first
17 required payments will be in '19-20.

18 REPRESENTATIVE DUNBAR: Okay. So, in
19 '19-20, we should start seeing an increase in your
20 budget based upon incurred interest?

21 SECRETARY TOPPER: That's correct.

22 REPRESENTATIVE DUNBAR: Okay. Thank.
23 You.

24 MAJORITY CHAIRMAN SAYLOR:

25 Representative Boback.

1 REPRESENTATIVE BOBACK: Thank you, Mr.
2 Chairman.

3 Good morning, Mr. Secretary.

4 SECRETARY TOPPER: Good morning.

5 REPRESENTATIVE BOBACK: A few weeks ago,
6 Governor Wolf created a new executive level office
7 called the Office of Performance Through
8 Excellence. Are you able to explain what the
9 duties of this new office will be?

10 Did DOS -- excuse me -- DGS previously
11 handled the tasks that this office is going to
12 handle, and how many people would the office
13 (pause) whether it be employed and at what cost?

14 SECRETARY TOPPER: Sure. Thank you for
15 the question.

16 The Office of Performance Through
17 Excellence was created recently to take the efforts
18 that were previously being administered and
19 organized through the GO-TIME office within the
20 Office of Administration, and to elevate them to
21 make them a direct report to the Governor, and to
22 accelerate our efforts here on performance
23 management across the enterprise and on our
24 implementation of lean principles, which is
25 basically an approach to management that was

1 developed first by the Toyota Corporation -- by
2 Toyota called the Toyota Production System. It's
3 best practices on how to administer business
4 processes and drive out waste and make it more
5 efficient.

6 The Governor felt it was important to
7 elevate both of those tasks, performance management
8 which is to say the application of metrics to our
9 business operations, and the application of lean
10 which is intended to help drive efficiencies in the
11 attainment of those metrics.

12 REPRESENTATIVE BOBACK: Thank you. And
13 about how many people will the office employ at
14 what approximate annual cost?

15 SECRETARY TOPPER: I don't have the cost
16 in front of me. But, my understanding is that, the
17 new office effectively subsumes the personnel and
18 the budget that were already within the GO-TIME
19 office within the Office of Administration. And I
20 don't anticipate it's a net increase.

21 REPRESENTATIVE BOBACK: Thank you, Mr.
22 Secretary. Thank you, Mr. Chairman.

23 MAJORITY CHAIRMAN SAYLOR:
24 Representative Roae.

25 REPRESENTATIVE ROAE: Thank you, Mr.

1 Chairman.

2 And thank you, Mr. Secretary, for your
3 testimony today.

4 My question is about the \$5 million
5 Capitol fire protection line item in the budget.
6 The Harrisburg Fire Department budget, according to
7 the city budget, is \$8.3 million. And then, in our
8 state budget we have a \$5 million line item for
9 Capitol fire protection. That's seemingly paid to
10 the city of Harrisburg. That would cover about
11 60 percent of the budget for the Harrisburg Fire
12 Department.

13 Do you know, are approximately
14 60 percent of the calls that the Harrisburg Fire
15 Department responds to, are they to the Capitol
16 Building in the Capitol Complex?

17 SECRETARY TOPPER: Representative, that
18 seems unlikely to me. I --

19 REPRESENTATIVE ROAE: It does to me,
20 too. That's why I'm asking.

21 I mean, they respond to -- the
22 Harrisburg Fire Department responds to about 3,400
23 calls a year. So, 60 percent of that would be over
24 2,000 calls a year. So every nine calls the
25 Harrisburg Fire Department has, five or six of them

1 would be to this building and the other buildings
2 in the Capitol Complex.

3 Do you think that's close to what's
4 happening, or is that probably not the situation?

5 SECRETARY TOPPER: I understand the line
6 of questioning, Representative. I believe that
7 it's best to consider that \$5 million line item as
8 a payment in lieu of taxes.

9 REPRESENTATIVE ROAE: Well, okay. Let's
10 talk about it from that perspective. This
11 Harrisburg city budget says they're going to
12 collect \$17.4 million of property taxes for all the
13 properties in Harrisburg. So, we're giving them
14 5 million.

15 Is this building -- about over a fourth.
16 Is this building about 28 percent of the total
17 assessed property value in the entire City of
18 Harrisburg when you look at all the houses and
19 colleges and hospitals, and county government
20 buildings, and businesses, and retail shopping
21 centers, its factories? Is this building we're in
22 right now about a fourth of the total assessed
23 value of the entire city?

24 SECRETARY TOPPER: I honestly don't
25 know, Representative.

1 REPRESENTATIVE ROAE: It doesn't -- it
2 doesn't seem very likely. So if it's payment in
3 lieu of taxes, it seems like it should be something
4 proportional.

5 Maybe by square miles, the City of
6 Harrisburg is 12 square miles. 60 percent of that
7 is seven square miles. Do you know, does the state
8 government own seven square miles out of the 12
9 square miles in the city of Harrisburg?

10 SECRETARY TOPPER: Representative, I'm
11 told I can provide to you an answer to your prior
12 question relative to assessed values. I'll be
13 happy to provide that.

14 REPRESENTATIVE ROAE: Okay. Thank you.
15 And then, a couple of questions for the
16 Department. Would the Department support using
17 that \$5 million throughout the state? In my
18 legislative district, we have a Department of
19 Agriculture office. We have a PASSHE college. We
20 have a Department of Corrections prison.

21 Would the Department support spreading
22 that \$5 million for fire protection to the fire
23 departments in all communities throughout the
24 Commonwealth where the state owns property, or does
25 your Department support keeping all 5 million of it

1 in the City of Harrisburg?

2 SECRETARY TOPPER: The Department
3 supports the budget as proposed.

4 REPRESENTATIVE ROAE: Okay. I will be
5 asking for some follow-up questions that we don't
6 have time to do today.

7 My second question regards the vehicles
8 that are provided to legislators through DGS. When
9 a legislator -- When a state House member has a
10 vehicle that's leased or bought, or whatever the
11 arrangement is through the state, does the
12 Department of General Services order annual driving
13 records of those legislators?

14 SECRETARY TOPPER: I'm told we do not.

15 REPRESENTATIVE ROAE: Oh. Does DGS
16 require legislators to report accidents when it's
17 in a state-leased or state-owned vehicle?

18 SECRETARY TOPPER: Yes, we do.

19 REPRESENTATIVE ROAE: If a legislator
20 does not report the vehicle, is the vehicle revoked
21 from that legislator?

22 SECRETARY TOPPER: Yes, it is.

23 REPRESENTATIVE ROAE: Okay. And then,
24 do you know approximately how many vehicle state
25 House members have that are through leased

1 agreements with DGS?

2 SECRETARY TOPPER: There are currently
3 35.

4 REPRESENTATIVE ROAE: Okay. Then one
5 final question: If a legislator has too many
6 tickets or accidents, or anything like that, does
7 DGS revoke the car if they were not involved in an
8 accident?

9 SECRETARY TOPPER: We have the ability
10 to do that, yes.

11 REPRESENTATIVE ROAE: How often does
12 that happen? Like, when's the last time you
13 revoked the driving privileges from somebody
14 because of too many tickets or things like that?

15 SECRETARY TOPPER: Three weeks ago.

16 REPRESENTATIVE ROAE: Okay. Thank you,
17 sir.

18 MAJORITY CHAIRMAN SAYLOR: I want to
19 announce that we've been joined by Representative
20 Hal English as well. He's not a member of the
21 committee, but he's observing as well.

22 With that, we'll move to Representative
23 Helm.

24 REPRESENTATIVE HELM: Thank you, Mr.
25 Chairman.

1 Secretary Topper, up here. Several
2 years ago I had a bill to give DGS the authority to
3 sell the Harrisburg State Hospital grounds. And
4 then later we did an amendment to bring in the
5 Dauphin County Redevelopment Authority.

6 I haven't heard lately -- What's the
7 update on that? Can you inform me what's going on?

8 SECRETARY TOPPER: Sure, Representative.
9 We have been actively engaged in negotiations with
10 the Redevelopment Authority over the course of the
11 last six months or so. I anticipate we'll have a
12 deal closed within the next month or two. I think
13 we're getting closer.

14 REPRESENTATIVE HELM: When you say
15 closed, tell me more about what you mean by closed?

16 SECRETARY TOPPER: So, the -- the intent
17 is to convey the property in its entirety to the
18 Redevelopment Authority, so that they, in turn, can
19 determine the best disposition for it.

20 What we're working through now are the
21 terms. So, for example, the portion of the
22 proceeds that would come back to the Commonwealth,
23 you know, upon the ultimate disposition of the
24 property is an important consideration.

25 We also still have, as I sit here, I

1 think how many? (Question directed to Ms. Hudson).

2 SECRETARY TOPPER: We also still have
3 roughly 800 Commonwealth employees on the property.
4 And so, what we're doing is negotiating the timing
5 of the conveyance and taking into account the
6 transition of those -- of those remaining employees
7 off of the property and into downtown locations.

8 REPRESENTATIVE HELM: That's what I was
9 wondering, how long they would be there, because
10 that was part of the Harrisburg Strong Plan to move
11 on with those employees leaving and going into
12 Harrisburg.

13 SECRETARY TOPPER: That's right. So
14 far, we have already successfully transitioned, how
15 many? (Question directed to Ms. Hudson).

16 SECRETARY TOPPER: It's significant. I
17 believe it's a couple thousand employees into
18 downtown locations; primarily, into Strawberry
19 Square.

20 Okay. Thank you. I'm sorry, 751. So
21 751 so far; 800 remaining.

22 REPRESENTATIVE HELM: All right. And
23 how much do you anticipate the Commonwealth will
24 save in annual carrying costs once this is all
25 sold?

1 SECRETARY TOPPER: The annual carrying
2 cost of the property is approximately \$5 million.
3 So I'm anxious to --

4 REPRESENTATIVE HELM: So the sooner the
5 better, right?

6 SECRETARY TOPPER: That's correct.

7 REPRESENTATIVE HELM: Recently, the
8 Susquehanna Township members of the school board
9 came to see me. They would love to have a part of
10 this parcel to build a new school. And I know we
11 have some good parcels. We also have some parcels
12 that have asbestos all through the buildings, which
13 those parcels have a negative value.

14 What is the possibility of Susquehanna
15 Township obtaining some of this ground to build a
16 school?

17 SECRETARY TOPPER: Representative, as
18 I'm sure you can imagine, I am anxious to get the
19 current deal that we are negotiating completed so
20 that we can get the property on a schedule to,
21 ultimately, have it off the Commonwealth's books.

22 I would certainly be happy to engage
23 with the township, but I would think it would need
24 to be, at this point, a three-party kind of
25 conversation involving the state, the Redevelopment

1 Authority and the school district.

2 And, ultimately, I would be hesitant to
3 add new complications that would potentially slow
4 down our progress here. So, I think it may be
5 worth an offline conversation. I would certainly
6 encourage a conversation between the RDA and the
7 school district. But I'm not in a position to be
8 able to judge the likelihood of success there
9 sitting here.

10 REPRESENTATIVE HELM: All right. We
11 will work on that. I know some of the problems
12 with some of the parcels.

13 How many other state-owned properties
14 are unused and surplus? While you're looking for
15 that, like, what's the annual carrying costs for
16 these properties?

17 SECRETARY TOPPER: I actually had it
18 here.

19 So, we currently have 18 properties;
20 five, of which, are under agreement of sale; 13, of
21 which, we're currently prepping for sale. The ones
22 we are prepping for sale have all in about a -- a
23 carrying cost of about \$4 million a year.

24 REPRESENTATIVE HELM: Since it seems to
25 take us so long to do this, do you have any

1 suggestions for legislative changes you can
2 recommend to speed up the process for future
3 properties?

4 SECRETARY TOPPER: I do. We have
5 provided language to both State Government
6 Committee Chairmen and staffs with a package that
7 we're calling real estate modernization. In there,
8 there are a number of steps that I think would make
9 it easier for us to dispose of properties faster.

10 Frankly, it's the involvement of the
11 General Assembly that tends to slow this process
12 down.

13 REPRESENTATIVE HELM: All right. We'll
14 listen to your comments, but I do want to talk to
15 you about the Susquehanna school because I
16 graduated from that school. That's a long time
17 ago. They need a new property, and they're
18 actually increasing their student population where
19 a lot of schools are decreasing.

20 So, thank you very much.

21 MAJORITY CHAIRMAN SAYLOR:
22 Representative Everett.

23 REPRESENTATIVE EVERETT: Thank you,
24 Mr. Chairman.

25 Secretary Topper, I want to just briefly

1 talk about the Separations Act. Could you just,
2 for the committee and for those who may not be
3 familiar, can you explain what the Separations Act
4 is?

5 SECRETARY TOPPER: Sure.

6 The Separations Act of 1913 requires
7 that the Commonwealth and other public entities,
8 when we contract for construction, that we engage
9 four prime contractors separately, effectively
10 acting as our own GC. So, that would be a general
11 construction contract as a prime, and then one each
12 for mechanical, electrical, and plumbing and HVAC.

13 REPRESENTATIVE EVERETT: It's my
14 understanding that in testimony last year in the
15 Senate, you opined that you thought the
16 Commonwealth could save a hundred million dollars
17 or so if -- if the Commonwealth had the ability to
18 maybe bid both ways or -- and compare the costs.
19 Is that still your opinion?

20 SECRETARY TOPPER: In the year since, we
21 have been taking a pretty hard look at both the
22 potential administrative cost savings and the
23 potential impact on total costs associated with
24 construction, if we had -- if we had other
25 alternatives. We're continuing to do that

1 analysis.

2 I think from an administrative cost
3 standpoint, there's little question that it would
4 be less costly. But, in terms of total costs, I
5 think we're still evaluating data that we have been
6 able to receive from constituencies on both sides
7 of the issue.

8 Presently, the Administration's position
9 on the Separations Act hasn't changed. We're
10 continuing to look at it. I don't believe at this
11 point that a -- that a straight repeal of the
12 Separations Act, without an ample description of
13 what we would replace it with administratively is a
14 tenable position.

15 REPRESENTATIVE EVERETT: I have been
16 working on legislation with all the stakeholders in
17 your office. At this point, I think that the
18 proposition that I would put forward would be that
19 the Commonwealth and all the different municipal
20 entities would have the option of bidding it the
21 way we do it now, or bidding it to just do one
22 prime, and just give them the flexibility to do it
23 the way they feel, in their situation, would be the
24 best cost savings for them.

25 Prior to coming to the legislature, I

1 was the solicitor for a number of school districts,
2 municipalities and authorities, and they are
3 unanimous in the desire to have that flexibility.
4 Is that -- I don't see how that compromises
5 anybody. If you still want to do it the way we do
6 it now, you can still do it that way. If you want
7 to put your bid out in another way, it would give
8 you the flexibility to do that.

9 Is that something you think that you
10 could support?

11 SECRETARY TOPPER: I would prefer to
12 conduct a further study that we need to do in order
13 to understand exactly what the impact is on total
14 costs. But, broadly speaking, I do tend to favor
15 greater -- a greater amount of flexibility in terms
16 of how we do our contracting. I can't -- I think
17 we need to see the details of what's being proposed
18 before we can take an official position.

19 REPRESENTATIVE EVERETT: Okay. I'll get
20 that -- We're reworking the legislation right now
21 and putting the fine details on it. We'll get it
22 to your office to review again.

23 And I'd just like to point out to the
24 committee that's not -- that aren't familiar with
25 the Separations Act. Forty-seven other states have

1 moved away from the Separations Act. We're one of
2 three left in the country that still do it. What
3 year was it, 1911, 1913?

4 SECRETARY TOPPER: 1913.

5 REPRESENTATIVE EVERETT: Yeah, that
6 still do it the 1913 way. I'm convinced and all
7 the state associations that represent
8 municipalities and authorities are convinced that
9 they can save money with this flexibility. And
10 we're going to advance that cause with the help of
11 the Chairmen and the state government, and we'll
12 move that forward.

13 Thank you for your time. Appreciate it.

14 MAJORITY CHAIRMAN SAYLOR:
15 Representative James.

16 REPRESENTATIVE JAMES: Thank you, Mr.
17 Chairman. Good morning.

18 SECRETARY TOPPER: Good morning.

19 REPRESENTATIVE JAMES: I would like to
20 devote a couple moments of time to discuss an act
21 which was passed in 2012. For the benefit of the
22 audience, it's called the Indigenous Mineral
23 Resources Development Act.

24 The essence of the act is, that it
25 enabled your Department to consider leasing

1 properties owned by the Commonwealth or the state
2 system of higher education, and really enable us
3 to, perhaps, benefit from the natural resources
4 beneath our feet.

5 I wonder if any action has been taken in
6 that area? And if so, are the revenues for the
7 benefit of the Commonwealth?

8 SECRETARY TOPPER: Representative, I do
9 not believe there's been any recent activity
10 pursuant to the act through the Department. But
11 I'll be happy to follow up with any detail. At
12 least I'm not familiar with any over the course of
13 the last couple of years.

14 REPRESENTATIVE JAMES: Would you
15 speculate that that's because the public is unaware
16 of the passage of the act, or they don't perceive
17 it to be of value or --

18 SECRETARY TOPPER: Quite honestly, I'd
19 rather get better informed before I speculate.
20 I'll be pleased to dig into it and find out. I
21 don't know if things have been proposed and have
22 been rejected for some reason, or if we just had an
23 absence of proposals.

24 REPRESENTATIVE JAMES: Okay. Final
25 comment. I live in Venango County; represent

1 Venango County. We have at least two major
2 institutions there, Polk Center and Clarion
3 University campus of Clarion University, both of
4 which have considerable lands, and very possibly
5 could benefit by gas well drilling, oil drilling,
6 things of that nature.

7 So, I would ask you to do exactly what
8 you just said you would. And thank you --

9 SECRETARY TOPPER: Sure.

10 REPRESENTATIVE JAMES: -- for your time.

11 Thank you, Mr. Chairman.

12 MAJORITY CHAIRMAN SAYLOR: I wanted to
13 announce that we've been joined by Representative
14 Evankovich as well, who's not on the committee, but
15 here observing the hearing.

16 Representative Greiner.

17 REPRESENTATIVE GREINER: Thank you, Mr.
18 Chairman.

19 Good morning, Mr. Secretary. I'm going
20 to talk briefly about the COSTARS program. In
21 background, I was a township supervisor and I know
22 a lot of municipalities used this, and local
23 governments and not-for-profits to their benefit.

24 I know the cooperative purchasing
25 program offers -- offers these benefits to the

1 government and nonprofits to allow them to
2 piggy-back on our state contracts. But there have
3 been some concerns that have been raised.

4 There's been some feedback that some
5 local governments are actually spending more on
6 goods and services under COSTARS contracts than
7 they would if they would have actually bid the
8 contracts out themselves. I think they're
9 assuming, you know, we have the best deal, and
10 that's not always the case.

11 What I wanted to know is, are there any
12 mechanisms in place to ensure the COSTARS contracts
13 are not costing the local governments more money
14 than they could bid locally? That's the first
15 question.

16 The second question would be: Is the
17 COSTARS program working equally well for supply
18 service and construction contracts, you know,
19 across the board?

20 And number 3: If not, would it be best
21 to alter the COSTARS program so that it only
22 applies to maybe those procurements where it's
23 working the best?

24 SECRETARY TOPPER: Sure. Thanks for the
25 questions. Let me see if I can remember them all.

1 First, with respect to goods, services
2 and construction, the COSTARS program does not
3 apply to construction. They're only goods and
4 services contracts currently in the COSTARS
5 program.

6 With respect to savings and potential
7 savings, the vast majority of the contracts that
8 are available to municipalities and nonprofits
9 through the COSTARS program are multiple-award
10 contracts, which is to say, for any good or service
11 that you might want to go to the contract for, you
12 have multiple entities from whom you could purchase
13 that service.

14 A best practice that we recommend that
15 everyone follow is that, although they're not
16 required to do a formal public bid, they should
17 absolutely seek competitive quotes from the various
18 options that they have on each contract in order to
19 ensure that they're getting the best price they
20 can, because these contracts are in definite
21 delivery and definite quantity.

22 So, the pricing that the suppliers
23 provide to us at the time they win the contracts is
24 provided in the absence of any information about
25 what the volume of the purchase might ultimately

1 look like. So once a municipality has a specific
2 purchase, it's much easiest for a supplier to
3 potentially provide a further discount, knowing
4 what the likely revenue is that they're going to
5 generate.

6 So, it's really a best practice. We
7 can't vouch every day all day for every price
8 that's on every one of those contracts. It
9 wouldn't be possible.

10 REPRESENTATIVE GREINER: Yeah,
11 understood. And it's been a while since I've been
12 a township supervisor. But I will say, I remember
13 there was a case where I think we wanted to go
14 through the program, and we found out that one of
15 the local dealerships was gonna be able to provide
16 a truck for less money, which came as a surprise to
17 me at the time.

18 That's all I have right now. I do just
19 wanna ask one last comment. I know a lot of my
20 colleagues hit on this. With my background as a
21 CPA, I will tell you that I do have -- And this
22 will be more discussion. I do have grave concerns
23 about what ended up being a finance agreement and
24 not a -- not a lease-back. And having done tax
25 work, you know, often we've said, if it doesn't

1 pass the smell test, it doesn't.

2 I think what's even more troublesome to
3 me is, I feel that the legislature here is -- we're
4 getting our power usurped; meaning, I think if
5 we're gonna do a financing decision or we need to
6 provide that funding as one of my colleagues
7 suggested, the Governor was to use these
8 supplemental -- the funds that were in the
9 restricted accounts or the off -- off General Fund
10 accounts.

11 I think that -- I think we're going to
12 have to look at this, because I'm very worried. I
13 don't know what's next; whether it's gonna be the
14 East Wing of the Capitol or the Capitol Building
15 itself. I'm just saying, with my professional
16 background, I struggle very much with that
17 transaction. I wanted to go on the record publicly
18 to let you know.

19 I know you've been asked a lot of
20 questions. So, I thank you for coming today. I
21 thank you, Mr. Chairman.

22 MAJORITY CHAIRMAN SAYLOR: Thank you.
23 Representative Hahn.

24 REPRESENTATIVE HAHN: Thank you, Mr.
25 Chairman.

1 Good morning, Mr. Secretary. I'm on
2 this side. Over here.

3 SECRETARY TOPPER: I'm sorry.

4 REPRESENTATIVE HAHN: That's all right.
5 Thank you.

6 I just wanted to follow up on some
7 things you had said earlier about these small
8 business opportunities. If I missed any of this
9 earlier, I apologize.

10 Have veterans always been in that group,
11 or were they just added recently?

12 SECRETARY TOPPER: Veterans were added
13 in 2012.

14 REPRESENTATIVE HAHN: And how are they
15 made aware that they're part of this and that and
16 it exists? Is there advertisement how to -- other
17 than we put it on our website or whatever? I mean,
18 does DGS do anything?

19 SECRETARY TOPPER: Sure. Part of our
20 diversity and inclusion and small business
21 opportunities team is devoted to doing some
22 outreach.

23 Honestly, we don't have sufficient staff
24 to be able to engage in a full on-marketing kind of
25 approach, but we do try to get out in the

1 community. We've done a number of events sponsored
2 by members of the House and Senate in local
3 communities, and we'd be pleased to do it in your
4 district. We're doing everything we can to expand
5 the number of veterans and other qualified
6 businesses so we can grow that database.

7 REPRESENTATIVE HAHN: What are some of
8 the opportunities that they might have? Not just
9 veterans, but any of them. So what is the
10 opportunity for them when they get into the
11 program?

12 SECRETARY TOPPER: In any given year,
13 the Commonwealth spends in the neighborhood of
14 \$4 billion on various goods and services through
15 contracts. There are -- Really, it runs the gamut.

16 So, what I would encourage any business
17 that you're talking to to do would be, to go to our
18 website to register as a small business. If they
19 qualify as a small diverse business, to start the
20 process of getting certified so that we can engage
21 with them directly and help them find
22 opportunities.

23 REPRESENTATIVE HAHN: Is there any
24 criteria as to what qualifies as the owner?

25 So, I had some complaints in my office a

1 couple years ago where people were trying to start
2 a small business were having problems. And they
3 said, well, there's this husband and wife, and it's
4 the husband's business, but the wife is on paper as
5 the president, but doesn't go into the business;
6 doesn't really do anything with the business. She
7 has another full-time job, but they qualified.

8 Does any of that get looked at to see
9 if --

10 SECRETARY TOPPER: Thank you. It does
11 get looked at quite extensively. We rely on, I
12 think, five or six independent certification
13 entities, such as the Women's Business Enterprise
14 Council, the Minority Business Enterprise Council,
15 the federal government FedBiz program, all of whom
16 do certifications; all of whom take into account
17 what the ownership structure of these businesses
18 look like, and all of whom have operations that
19 we'll investigate when there are allegations made
20 about a firm not being who they say they are.

21 REPRESENTATIVE HAHN: Have any
22 applications been rejected or businesses taken out
23 of the program because they're found that the
24 owners --

25 SECRETARY TOPPER: Not recently.

1 REPRESENTATIVE HAHN: All right. Thank
2 you.

3 SECRETARY TOPPER: You're very welcome.

4 MAJORITY CHAIRMAN SAYLOR:

5 Representative Bradford.

6 Before I do that, Representative
7 Bradford and Representative Metcalfe are here as
8 oversight committees as Chairman Metcalfe and
9 Chairman Bradford.

10 CHAIRMAN BRADFORD: Thank you,
11 Mr. Chairman, and thank you, Secretary.

12 I want to circle back, if I could, and
13 talk about how we wound up with the encumbrance of
14 the Farm Show Complex. I realize sometimes context
15 is very important. And I realize you were put into
16 the difficult position of playing bond council for
17 the Commonwealth.

18 I think anyone who's ever been involved
19 in those types of transactions would tell you the
20 tremendous detail that go into it. But I think
21 sometimes it's better to step back from 30,000 feet
22 and kind of set the table for how we wound up in
23 this situation. I say we, because I think everyone
24 in the General Assembly has ownership.

25 I can't help but think that when we

1 passed a 32-billion-dollar general appropriation
2 budget on June 30th of last year, we authorized
3 spending, and we did that with absolutely no way to
4 fund it, and we waited four months. The Governor
5 governed, and he tried to govern when the
6 legislature failed to do so. And I think when the
7 arsonist yells fire, and we go back and place
8 incriminations on individual secretaries for the
9 failure of the legislature, I think we do a
10 disservice to the Commonwealth. But I think we
11 also fail to take responsibility for the failures
12 of this body to enact a revenue plan.

13 The simple reality is, we now go back
14 and talk about how debt instruments were
15 structured, but it was this body that decided that
16 it was going to securitize funds. Why get dollars
17 tomorrow when you can get pennies today. And to do
18 everything possible to avoid doing reoccurring
19 revenue; things like severance tax and stuff that
20 gets us far afield from the discussion with the
21 Department of General Services. But, again, that's
22 my point.

23 Asking the Secretary of the Department
24 of General Services about budget issues is absurd
25 if we're not going to take any ownership of our

1 failure as a legislature to timely pass a revenue
2 package.

3 For four months, the Governor was handed
4 a mess. And now, almost a year later, to go back
5 with these incriminations and claim there's
6 gambling in this facility. Well, yeah, they were
7 borrowing. And you know what? There was also
8 gambling in this facility, because that's all we
9 did in last year's budget to crash land it. And
10 that was a decision of the leadership of the
11 General Assembly. And again, to now put that at
12 the feet of the Secretary, I just find a willful
13 suspension of disbelief.

14 Borrowing for operating expenses is
15 absorbed, and this legislation needs to take
16 ownership of it and stop trying to pass the buck
17 onto individual Secretaries. It is shameful.

18 Now, I have a couple issues that I want
19 to address specifically, and I hate to be so
20 parochial, because they all come from my part of
21 the Commonwealth, but they are with tremendous
22 importance.

23 One of them is the Phoenix project in
24 Montgomery County. That was a debacle coming back
25 from the days when the first PLA was removed from

1 that project, and it's gone kind of haywire since.
2 Where are we with the Phoenix and where are we with
3 pursuing Walsh Scherri for a complete and utter
4 inability to deliver?

5 SECRETARY TOPPER: Thank you for the
6 question, Representative.

7 So, we are close. As you know, the
8 SCI-Phoenix project was to have been completed
9 originally by the 20th of November 2015. Since
10 that day, and as of this month, you know, Walsh
11 Scherri, the contractor, has been accumulating
12 liquidated damages in the amount of \$35,000 a day,
13 and now totalling more than \$28 million.

14 I can say definitively that, when this
15 project is ultimately concluded, the Commonwealth
16 will not incur additional costs. We have not made
17 payments to Walsh Scherri in the main since the
18 amount of liquidated damages began to exceed the
19 amount of money that was left in the project.

20 We're continuing to work with them using
21 the tools that we have available to try to hold
22 them accountable and to try to get the job done.
23 We are now at a point where we have certificates of
24 occupancy either completed or pending for roughly
25 half of the facility. We are working on a schedule

1 that has us completing those certificates of
2 occupancy within the next month or two.

3 I'm being intentionally vague, in part,
4 because there are security concerns associated with
5 moving into the new facility. I've been advised
6 that I shouldn't talk specifically about when we're
7 gonna be transitioning.

8 But, I fully anticipate we will finally
9 have the project done within the next few months,
10 and we'll be able to transition into the new
11 facility with the Department of Corrections here by
12 the end of the fiscal year.

13 CHAIRMAN BRADFORD: Two issues, again,
14 parochial and really quick answers because the
15 Chairman has given me his indulgence.

16 The Department of Revenue, and this is
17 pretty parochial in my district, getting a lease.
18 This has drug on for longer than either of us would
19 like. I know I speak to your legislative assistant
20 more than you would like.

21 Can we get that resolved in a timely
22 manner once and for all, because I would love to
23 stop fielding those phone calls from our landlord
24 who's looking to make some improvements through a
25 transfer, and I think that would be good for a

1 community that could use a shot in the arm and,
2 obviously, looks for the Commonwealth to be a good
3 partner.

4 And I would go on and say, that same
5 community deals with the Norristown State Hospital.
6 If you can give me a quick update on that, and then
7 I'll turn it over to the Chairman because I don't
8 want to take advantage of his generosity. Thank
9 you.

10 SECRETARY TOPPER: Thank you.

11 Steven brought the lease to my attention
12 again this morning. I'll be pleased to get
13 involved directly with the Department of Revenue on
14 behalf -- on your behalf and on behalf of the
15 landlord, and we'll see if we can get it shaken
16 loose.

17 CHAIRMAN BRADFORD: And the state.

18 SECRETARY TOPPER: And the state
19 hospital. I've lost the question. Forgive me.

20 CHAIRMAN BRADFORD: I was so inspired by
21 the talk of Susquehanna Township's efforts.
22 Obviously, Norristown has tremendous issues and
23 concerns about the property and transition to,
24 hopefully, a better future for everyone involved.
25 I would just hope you give me a quick update on

1 that.

2 SECRETARY TOPPER: Sure. Mr. Chairman,
3 as you know, we've been working very actively with
4 you, with DHS and with members of the local
5 community. We've done a couple of things.

6 One is, we've taken a lesson from the
7 success we had in Harrisburg, and we have funded
8 and are currently competing for a study similar to
9 the one we did in Harrisburg to look for -- with a
10 third-party planner to help us understand what the
11 best disposition for the property ought to be.

12 The process in Harrisburg was very
13 successful because it involved a lot of community
14 involvement; a lot of public meetings, and we plan
15 to do the same in Norristown.

16 In the meantime, I'm aware -- I know my
17 staff has been working with DHS staff and members
18 of the local community to look at different options
19 for subdividing the property and different --
20 different schedules for potentially conveying
21 portions of it sooner rather than later. I'm
22 pleased with the progress that they're making.

23 I think we'd be better to have an
24 offline conversation to talk about the details.

25 MAJORITY CHAIRMAN SAYLOR: I wanted to

1 mention, we've been joined by Representative
2 Barbin, and we were joined by Representative
3 Barrar. Representative Barrar chairs the Veterans
4 Affairs Committee. He has stepped out, but he was
5 here as well observing.

6 With that, we will move to Chairman
7 Metcalfe.

8 CHAIRMAN METCALFE: Good afternoon --

9 SECRETARY TOPPER: Good afternoon.

10 CHAIRMAN METCALFE: -- almost. Still
11 morning. I thought after Representative Bradford's
12 questions, we would have been into the afternoon,
13 but we weren't yet. Good we have a timer.

14 Back to the Farm Show grounds, I had
15 some other questions, but I think the importance of
16 the issue that occurred here around the Farm Show
17 grounds, and then, ultimately, the money that you
18 have borrowed and that we're going to pay back that
19 was initially put out as an RFP, but then was
20 changed then to the financing agreement.

21 So when the RFP was put out for the
22 lease/lease-back, four companies had responded to
23 that RFP, and one of those companies was the
24 company that ultimately signed this financing
25 agreement?

1 SECRETARY TOPPER: Yes, sir.

2 CHAIRMAN METCALFE: So, do you believe
3 the RFP is the same as the financing agreement?

4 SECRETARY TOPPER: I do.

5 CHAIRMAN METCALFE: So, do the other
6 three parties that bid on the RFP -- through the
7 RFP process, do you believe that they would be
8 under the same understanding that it's the same
9 thing, the financing agreement?

10 SECRETARY TOPPER: I do.

11 CHAIRMAN METCALFE: It's just that -- I
12 think for all of us that have been concerned about
13 the direction this was going, I think there's a lot
14 of us that don't believe it's the same thing, of
15 course, and --

16 Have you had any indication that any of
17 the other three parties that they're all okay with
18 the way this process played out, or are any of them
19 aggrieved to the point that they might actually be
20 following up with some action in addition to what's
21 already been taken to try and intervene in what's
22 occurring?

23 SECRETARY TOPPER: We have had no
24 protests.

25 CHAIRMAN METCALFE: So you had mentioned

1 earlier that the Attorney General had signed off on
2 this, and I have the document here that was issued
3 by his office. Actually, this was from the General
4 Counsel's office.

5 So, did the Attorney General sign off on
6 the contract itself in full and its entirety? And
7 did he, in addition to that, sign off on you
8 executing this agreement; that DGS has not been
9 involved in executing in the past in the way of
10 financing agreements?

11 SECRETARY TOPPER: Yes, sir. The
12 contract followed the normal contract signature
13 process in the Commonwealth, which involves the
14 Office of Attorney General.

15 CHAIRMAN METCALFE: But, as far as a
16 contract, I mean, it's still a financing agreement
17 which is outside of the norm for what you're
18 normally signing and what he's approving through
19 those processes; is that correct? You said this
20 was the first time anything -- that this type of an
21 agreement had been executed by DGS.

22 SECRETARY TOPPER: I believe that's
23 correct, yes.

24 CHAIRMAN METCALFE: So in the -- in the
25 financing agreement memo that I have that is dated

1 January 29th from the Governor's Office of Chief
2 Counsel, it says towards the end of it: To the
3 extent applicable to the referenced document, no
4 approval or opinion is offered as to the fiscal
5 authority of the agency to commit funds not yet
6 appropriated.

7 But within the agreement -- but within
8 -- Then I have the memo also from the Office of the
9 Attorney General which gives the same line is there
10 also: To the extent applicable to the referenced
11 contract, no approval or opinion is offered as to
12 fiscal authority of the agency to commit funds not
13 yet appropriated.

14 So, in the agreement -- financing
15 agreement, were you not committing funds for that
16 \$2-plus million that was being paid in fees and
17 such that were part of the agreement? Isn't that
18 committing funds? And if it --

19 I mean, either way, it seems like the
20 little disclaimers that seem to be in Attorney
21 General's memo and the Chief Counsel's memo, both
22 seemed like they've got their own disclaimers in
23 here that would lead you to believe that they
24 really didn't approve the document in full; the
25 proposal.

1 SECRETARY TOPPER: Mr. Chairman, I'm
2 told that that language is the standard cover memo
3 that they put on every contract.

4 CHAIRMAN METCALFE: The language in the
5 memos from the Chief Counsel and the Attorney
6 General's office?

7 SECRETARY TOPPER: That's correct.

8 CHAIRMAN METCALFE: So they have a
9 standard disclaimer for any contract they're
10 reviewing that might lead you to believe that they
11 didn't really, fully approve the entirety of the
12 document that they're claiming that they've
13 approved?

14 SECRETARY TOPPER: As I tended -- As I
15 testified earlier, virtually all the Commonwealth's
16 expenditures are sub -- and long-term contract
17 obligations are subject to appropriations from the
18 General Assembly. That is -- That's pretty
19 standard.

20 CHAIRMAN METCALFE: I would think they
21 are subject to the appropriations from the General
22 Assembly, which is what concerns me that, in number
23 12 of the financial agreement, the fees,
24 commissions and expenses, DGS shall pay all
25 expenses incident to the issuance of the

1 certificates of participation, not to exceed \$2.375
2 million.

3 Did the General Assembly approve that
4 money to be spent; to be appropriated?

5 SECRETARY TOPPER: The payments aren't
6 scheduled until -- until fiscal year '19-20.

7 CHAIRMAN METCALFE: So you're expecting
8 that we're still going to have to approve an
9 appropriation to pay that \$2.375 million?

10 SECRETARY TOPPER: Just as we would for
11 every other loan -- for every other multi-year
12 financial obligation that every agency in the
13 Commonwealth enters into through contract.

14 CHAIRMAN METCALFE: But you said this is
15 the first time your agency has ever executed a
16 document like this.

17 SECRETARY TOPPER: It's the first time
18 this agency has executed a document with this
19 intent. We execute contracts on a daily basis.

20 CHAIRMAN METCALFE: But not to -- Not to
21 borrow \$200 million and pay back almost
22 \$400 million.

23 SECRETARY TOPPER: All of the contracts
24 that the agency executes involve financial
25 obligations that are subject to appropriations.

1 CHAIRMAN METCALFE: So the interest on
2 the \$200 million that you, for the first time ever,
3 assigned the financial agreement on as a
4 Department, you have a real sweetheart deal here,
5 because you borrowed \$200 million, and we get to
6 pay back 177 and a half plus million; along with
7 paying another 2 to 2 and a half million dollars in
8 fees and service fees.

9 For the average person out there, it's
10 looking like you're paying back close to
11 400 million to borrow 200. It's really around
12 \$380 million that we're paying back to borrow
13 \$200 million. I think that the General Assembly
14 really needs to work with our legal team to
15 thoroughly vet this before we would ever give a
16 dime to an appropriations that's going to pay
17 what's been entered into through this financing
18 agreement for the first time ever.

19 I would strongly advise you not to
20 consider entering any more financial agreements
21 like this until the General Assembly has vetted
22 this one and determine whether or not this was a
23 proper use of your Department's resources to
24 actually do something like this for the very first
25 time and commit the Commonwealth, that we've been

1 told from one of your advisors isn't a
2 constitutional debt issuance; but that you're
3 committing us to paying back debt, almost
4 \$200 million in addition to \$180 million, in
5 addition to 200 million that you're borrowing for
6 the first time ever through this type of an
7 agreement.

8 Thank you, Mr. Chairman.

9 MAJORITY CHAIRMAN SAYLOR: We have a
10 request by Representative Quinn for another
11 question or round, so we will start the second
12 round. Representative Quinn, I did want to
13 recognize before you start that we have been joined
14 by Dom Costa.

15 REPRESENTATIVE QUINN: Thanks, Mr.
16 Chairman.

17 Mr. Secretary, I appreciate you being
18 through here. I'm going to go back to a kinder
19 gentler subject, the Employee Liability Self-
20 Insurance Program.

21 And in bringing that back up, I
22 recognize this falls under -- that a lot of this is
23 not something that's new to you or your
24 Administration. It's just come to -- come under
25 our purview; you know, realization that there's

1 been payouts on this.

2 When I asked about how many agencies,
3 and we learned that all the agencies are in this
4 self-insurance program, I didn't ask, if an
5 employee left employment from the Commonwealth, and
6 if there's a complaint brought about that employee
7 for the time they were with the Commonwealth, does
8 that still come, or now that the employee is gone,
9 are they on their own with their own attorney's
10 fees and their own dollars out of their own pocket
11 for any potential settlement?

12 Is there a Statute of Limitation that
13 applies here?

14 SECRETARY TOPPER: We would have to
15 evaluate it on a case-by-case basis.

16 REPRESENTATIVE QUINN: So there's a
17 discretionary component?

18 SECRETARY TOPPER: There is.

19 REPRESENTATIVE QUINN: Thank you.

20 You said you bring in -- the payments
21 come in as revenue to that fund, about
22 \$5.75 million a year. Last year it was about
23 \$3 million in claims. I'm gonna even go with the
24 year that has no claims at all and say we bring in
25 5.75 million.

1 However, there could be a year with an
2 awful lot of claims, and we've seen it sadly in the
3 last few years where Penn State has had -- it
4 surpassed the hundred-million-dollar mark. Is
5 there a backup insurance plan on this, like a
6 reinsurance plan, or is the backup insurance the
7 taxpayers of Pennsylvania?

8 SECRETARY TOPPER: So, the maximum claim
9 that can be paid is \$250,000 through the ELSIP
10 program. Anything over that would have to be paid
11 by the agency. So, we're confident in the solvency
12 of the fund based on the -- based on the process
13 and the building model that's in place.

14 REPRESENTATIVE QUINN: Are the agencies
15 told or do they have to keep a separate account for
16 any claim that would come in over two hundred
17 fifty? Because, if you have someone who's been
18 maltreating, to put it very nicely, that's not
19 typically an isolated event. So that's not a
20 250-million-dollar claim against one perpetrator.
21 That's per claim if there were a couple men or
22 women who cried foul and had a case, that at your
23 discretion or whomever's discretion would be paid
24 out.

25 SECRETARY TOPPER: The agencies are

1 aware of the 250,000-dollar limit. And I can't
2 speak to what specifically they're doing from a
3 budgetary perspective in order to --

4 REPRESENTATIVE QUINN: If I were to look
5 to where they would be keeping this in a budget,
6 where would it be?

7 SECRETARY TOPPER: I --

8 REPRESENTATIVE QUINN: That's a question
9 I'll ask for another person.

10 SECRETARY TOPPER: I would suspect
11 somewhere in their operating budgets.

12 REPRESENTATIVE QUINN: So, to my
13 question about any reinsurance program, it goes
14 back to the agency, which is funded by the General
15 Fund or the taxpayers and all that.

16 What amount do your actuaries say should
17 be the amount -- we see -- I wish I was playing in
18 a hypothetical world here, but we're not. We've
19 seen hundreds -- we've seen millions and millions
20 of dollars payout. And if this Employee Liability
21 Self-Insurance Program covers all state agencies,
22 yet, brings in only \$5.75 million a year of
23 revenue, I get concerned that a bad actor could not
24 only deplete that 5.75, but could go to any one of
25 the agencies, under which he's employed right now,

1 and you know where I'm going. I don't even have to
2 articulate it.

3 SECRETARY TOPPER: Sure. The fund is
4 evaluated annually by an actuary.

5 REPRESENTATIVE QUINN: Outside actuary
6 or in-house?

7 SECRETARY TOPPER: Outside actuary. And
8 they look at a 10-year claims history. And based
9 on that 10-year claims history, they establish the
10 rates. So we -- We're comfortable that the fund is
11 sufficient. Based on the claims history, the fund
12 is adequately funded.

13 REPRESENTATIVE QUINN: My concern, and
14 you mentioned it a couple hours ago when we
15 started, was with the recognition and the
16 involvement of the "Me Too" movement, that claim
17 history might be blown out of the water with people
18 understanding that they have a valid claim as they
19 find their voice.

20 SECRETARY TOPPER: I would only just
21 point out that, of that \$3 million in claims, it
22 was only a very small portion that could be
23 characterized as part of the "Me Too" movement.

24 ELSIP covers a wide array of claims from
25 wrongful termination to --

1 REPRESENTATIVE QUINN: You did make that
2 clear, and I appreciate that. I'm just concerned
3 that, as we have from, you know, any walk of life
4 right now, especially, you know, Hollywood or
5 anything else, there will be a rush -- an
6 understanding to say, damn it, all this behavior is
7 not acceptable. I have grounds for a claim. And I
8 just want to make sure the people of Pennsylvania
9 will not be on the hook, ultimately, for all of
10 this. And if we need to explore a reinsurance
11 program to back this up, then we should be doing
12 so.

13 Thank you.

14 SECRETARY TOPPER: Thank you.

15 MAJORITY CHAIRMAN SAYLOR:

16 Representative Kim.

17 REPRESENTATIVE KIM: Secretary, over
18 here. Good afternoon.

19 SECRETARY TOPPER: Good afternoon.

20 REPRESENTATIVE KIM: Thanks for being
21 here. I just wanted to clean up some
22 misinformation about the City of Harrisburg, so if
23 you'll just indulge me for a little bit. The City
24 of Harrisburg has a \$26 million public safety
25 budget and about half of that is for fire. The

1 states owns about 40 buildings in the City of
2 Harrisburg, and the fire department has to have the
3 potential and be ready with trained personnel and
4 functioning equipment to be able to combat anything
5 that happens, whether it be fire or gas leaks.

6 The city's population doubles during the
7 workweek, during work hours, because of all the
8 state workers that come into the city, which we're
9 happy to host, but we have to have a fire
10 department. If the Keystone Building, if this
11 Capitol Building and Strawberry Square with the
12 Attorney General's office starts to go on fire, and
13 we're not ready, we would have a whole different
14 conversation right now, and we'd say, why aren't we
15 funding the fire department more with more than
16 \$5 million. You can't win with this, Secretary.

17 I appreciate the \$5 million. It's so
18 helpful, and I think it's money well spent for the
19 safety of the state workers here in Harrisburg.

20 The second thing is not a question.
21 It's just more of a -- I'm part of the Capitol
22 Preservation Committee. I just would exhort that
23 you will work with DGS and that committee to make
24 sure that we preserve this Capitol Building. When
25 something breaks down, that we don't just slob on

1 concrete, you know, because it's, you know,
2 financially cheaper to do that; that we preserve
3 this Capitol Building because it's a gem and a
4 beautiful building to do that.

5 SECRETARY TOPPER: Count on it. I'm
6 honored to also serve on that committee with you.
7 It really is a highlight of getting to do this job.
8 You can absolutely count on my commitment.

9 I'm really pleased that we just are
10 beginning design work on the Forum. And we'll be
11 working hand in hand with the CPC as design begins,
12 and we make progress here to finally conduct the
13 renovation that's necessary on the Forum Building
14 and end more than two decades of vacancy in that --
15 in that building, so we'll get more efficient.
16 We'll have more of our employees on state-owned
17 property instead of leased property, and we will
18 effectively preserve more of the gem that is this
19 complex. So I couldn't be more excited about it.

20 REPRESENTATIVE KIM: Thank you for your
21 work, Secretary.

22 That's all I have, Mr. Chairman.

23 MAJORITY CHAIRMAN SAYLOR:

24 Representative Heffley.

25 REPRESENTATIVE HEFFLEY: Thank you, Mr.

1 Speaker. Just a brief question because of the
2 conversation that's been going on today.

3 I obviously want to make sure that our
4 state buildings are safe here in Harrisburg, and
5 God forbid, that if something happens, the fire
6 department will be able to respond. So we give
7 \$5 million to the fire department in Harrisburg.

8 Is there an audit that is done? Does
9 the Auditor General audit to make sure that
10 \$5 million goes directly to the fire department?
11 Is there a way that we pursue it just to ensure
12 that it is going to the fire department? We want
13 to make sure they have the resources that are
14 needed.

15 SECRETARY TOPPER: We provide the money
16 pursuant to an invoice from the city. I'm not
17 aware of any --

18 REPRESENTATIVE HEFFLEY: Is there a way
19 that --

20 SECRETARY TOPPER: -- audit.

21 REPRESENTATIVE HEFFLEY: Is there a way
22 we could request back from the city proof of an
23 audit to say this \$5 million went to the fire
24 department? I would hate that we're giving this
25 money -- I believe that every intention -- but just

1 to kind of clear the air to ensure that \$5 million
2 is going to the fire department.

3 I mean, we appropriate money. We're
4 going to have this much money is going to schools,
5 this much is going to go here. If we say, we're
6 going to give you this money for the fire
7 department, are we making sure it is going to the
8 fire department. Is there a way you can ask them
9 to just verify that?

10 SECRETARY TOPPER: We could certainly
11 make the request. My agency is not an -- is not an
12 agency that performs that sort of audit.

13 REPRESENTATIVE HEFFLEY: So if you would
14 request the Auditor General's office or somebody,
15 would that be the appropriate agency to do that
16 type of audit?

17 SECRETARY TOPPER: I --

18 REPRESENTATIVE HEFFLEY: I mean, I don't
19 think it would be -- it would be a big ask to say,
20 okay, just show us the receipt for the money that
21 went to the fire department. I mean, I think
22 that's a reasonable request.

23 SECRETARY TOPPER: Sure.

24 REPRESENTATIVE HEFFLEY: We do it all
25 the time. We get grants for fire departments in

1 the 122nd District and all across the state, and
2 they need to show exactly -- they need to do audit
3 reports so they can even apply for those grants. I
4 would just ask that we have something in place like
5 that.

6 SECRETARY TOPPER: I'd be happy to look
7 into it, Representative. I think the mechanism is
8 such that we receive an invoice for services; we
9 pay the invoice.

10 So, what the city does ultimately with
11 the proceeds, and whether or not that's subject to
12 audit from a Commonwealth perspective, is a
13 question I have to look into.

14 REPRESENTATIVE HEFFLEY: I would just
15 want to make sure that the money is going into
16 that; that they're gonna have the equipment and the
17 resources that they need that we're kind of
18 providing that funding for, if we needed it. I
19 mean, I don't think it's an unreasonable request.

20 Like, with the fire grant program that's
21 out there now, all the volunteer organizations and
22 those fire departments, they need to complete all
23 their paperwork and turn it in before they can even
24 apply for that money the next year. That would be
25 my comment.

1 Thank you for your time.

2 SECRETARY TOPPER: Sure.

3 MAJORITY CHAIRMAN SAYLOR:

4 Representative Markosek.

5 MINORITY CHAIRMAN MARKOSEK: Thank you.

6 And just to say thank you -- And you in many ways
7 have a thankless job. I mentioned when I started
8 early in the -- made comments earlier about the
9 safety of not only state employees, but all
10 Pennsylvanians.

11 And I know, just echoing a little bit of
12 Representative Kim's -- talking about the
13 Harrisburg Fire Department, that's part of safety
14 too. So we're all involved in trying to make
15 everything as safe as possible, and give our
16 police, EMS responders, the best resources that we
17 can to make every Pennsylvanian and every Capitol
18 employee, state employee; people that come in and
19 out of Harrisburg in all state buildings as safe as
20 possible.

21 Again, you know, we're here to help you.
22 It's a task that is enormous, and we're not going
23 to solve it all in a short period of time. But I
24 appreciate you coming today and answering the
25 questions to the best of your ability. Thank you.

1 SECRETARY TOPPER: Thank you.

2 MAJORITY CHAIRMAN SAYLOR: Mr.

3 Secretary, my closing comment really is, you know,
4 Representative Bradford brought up about the
5 legislature. The real point of this whole thing
6 when it comes down to this agreement is, this is
7 not about debt or gaming. This is about the role
8 of the legislature and the Governor and the rule of
9 law. I believe, and I think many members believe,
10 that the Governor willfully subverted the
11 legislative process to make that \$200 million loan.
12 It is a loan. It is pure and simple a loan. It is
13 not a lease.

14 I think that, at some point, if the
15 Governor--And this is any Governor--decides that
16 they just want to go out and borrow \$200 million or
17 a billion dollars, because that's what this
18 is--This is an agreement--that's not the
19 legislative process. That's not our Constitution
20 here in Pennsylvania.

21 There is constitutional and there's law
22 written on this. And I believe just because the
23 Governor doesn't like the outcome of the
24 legislative process, subverting that is not the
25 appropriate way to do it and to have a good-working

1 relationship with the General Assembly.

2 The General Assembly was very clear that
3 the funds that were to be transferred were the
4 existing funds in the Special Fund account; not to
5 take out a loan to supplement 200 million of it.

6 So, with that, I thank you for coming,
7 and I appreciate both of you, Deputy Secretary, as
8 well being here and answering the questions. If
9 you would get the information that's requested to
10 us, and then we'll submit some additional questions
11 possibly as well as other documentation we may
12 want.

13 With that, we will reconvene at 1:15
14 today with the Liquor Control Board. With that,
15 this hearing is adjourned.

16 SECRETARY TOPPER: Thank you.

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I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript, to the best of my ability, of a public hearing taken from a videotape recording and reduced to computer printout under my supervision.

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Karen J. Meister
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