

## **FINDING OF EMERGENCY**

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

### **Specific Facts Showing the Need for Immediate Action**

Assembly Bill (AB) 127, Chapter 35, Statutes of 2006 provided \$100 million for High Performance Incentive (HPI) grants to encourage designs and materials in school projects for efficiencies in sustainable sites, energy, water, materials, and indoor environmental quality. There is \$69.7 million in HPI grant funding that remains available to school districts under the School Facility Program (SFP), and increased school district participation is needed. These proposed emergency regulations will expedite the earliest apportionments to school facility projects, thereby improving pupil health and safety, conserving California's water and energy resources, creating an estimated 1,300 jobs while stimulating the State's economy.

The proposed emergency regulations implement the California Green Building Standards Code, California Code of Regulations, Title 24, Part 11, which becomes effective January 1, 2011 (hereinafter referred to as CalGreen). The "Purpose" declaration of the CalGreen Code states that it is necessary for the health, safety and general welfare of Californians. The benefits of schools built to CalGreen specifications include, but are not limited to the following:

**Building Moisture Reduction for Improved Health.** Excess moisture and mold growth in buildings have been associated with upper respiratory symptoms including nasal congestion, sneezing, runny or itchy nose, and aggravation of asthma, in children and adults. Asthma is a common cause of absence from schools and the workplace. Moisture in buildings comes from rain, snowmelt, groundwater, plumbing systems, kitchens, shower rooms, pools, wet surfaces such as mopped floors, condensation and other sources. Meeting the HPI criteria in new construction and modernization projects will help alleviate this problem and improve occupant health.

**Indoor Air Quality Improvements for Better Health.** Reduced indoor air quality results from pollutants, building materials, climate, thermal and sensory controls, and affects the health of pupils and teachers. Pollutants include ozone, allergens, mold, dust, dander, bacterial and fungal agents, organic compounds and particulate matter. Relative humidity is a factor in the survival rates of viruses, bacteria, and fungi. Symptoms include asthma, eye, nose and throat irritation, headaches, fatigue, shortness of breath, itching, and dry skin. The earliest effective date to fund the HPI building components into our schools will encourage faster implementation of systems and materials to promote cleaner, healthier air, better circulation, sanitary ducting, daylighting, and other health-promoting measures.

**Acoustical Quality Impacts Health and Learning.** Good acoustical quality in classrooms is critical for student health and learning. Research confirms that noise exposure diminishes educational outcomes. Studies show that students' ability to recognize speech sounds is decreased by even modest levels of ambient noise, and the effect is heightened for younger children. Speaking and listening are primary communication and learning methods in classrooms. Multiple reflected reverberations, poor acoustical design and materials, heating/air conditioning noise, and too thin walls and windows degrade the learning environment. The U.S. General Accounting Office estimated that the acoustical quality in approximately 22,000 U.S. schools attended by 11 million students was unsatisfactory. The earliest effective date to fund the HPI criteria into our schools will encourage faster implementation of designs and components to reduce or eliminate these detriments to learning.

### **Specific Facts Showing the Need for Immediate Action** (cont.)

HPI Building Standards Help Reduce the Spread of Infectious Diseases. The HPI criteria in the proposed emergency regulations promotes systems and components that can help control and reduce the spread of infections and diseases in California's schools. The majority of infections causing absenteeism in schools are respiratory and gastrointestinal illnesses, which occur throughout the year. Increased pupil illnesses result in increased health care costs, lost public funding for schools, added administrative costs, and parent absences from their jobs. The earliest effective date to fund the HPI criteria into our schools will encourage faster implementation of designs and components to reduce these health detriments.

The SAB, at its November 3, 2010 meeting, adopted the emergency regulatory amendments to the SFP Regulations to encourage greater participation by school districts to apply for HPI grants by increasing the HPI grant amounts for new construction and modernization projects.

The Governor and Legislature concur in the State's need to take aggressive action to implement energy and resource efficiencies for buildings owned or funded by the State, including K-12 schools. It is estimated that the earliest apportionment of the available \$69.7 million in HPI grant funding will lead to the creation of an estimated 1,300 jobs in the green technology, manufacturing, construction, and trades industries.

All projects must meet the mandatory measures of the "CalGreen." The "Purpose" section of CalGreen states that "**this code is to improve public health, safety and general welfare** by enhancing the design and construction of buildings through the use of building concepts having a reduced negative impact or positive environmental impact and encouraging sustainable construction practices in the following categories:

1. Planning and design
2. Energy efficiency
3. Water efficiency and conservation
4. Material conservation and resource efficiency
5. Environmental quality"

The CalGreen was developed through the collaboration of the Division of the State Architect (DSA), California Energy Commission, Building Standards Commission, Office of the State Fire Marshal, Department of Housing and Community Development, and the Office of Statewide Health Planning and Development.

Governor Arnold Schwarzenegger in Executive Order S-20-04, December 14, 2004, stated that:

- The State's Energy Action Plan places conservation and energy efficiency first in the loading order of energy resources and environmental protection;
- Cost effective energy efficiency practices can save more than \$2 billion per year in the operation of State commercial and institutional buildings;

The Governor ordered that:

- The State take aggressive action to implement energy and resource efficiencies for buildings owned or funded by the State, plus cities, counties and schools;
- The DSA and the Department of General Services adopt guidelines to enable and encourage schools built with State funds to be resource and energy efficient;
- That State agencies take measures to reduce grid-based energy costs for State buildings by 20 percent by 2015.

### Specific Facts Showing the Need for Immediate Action (cont.)

The Governor's press release about the CalGreen stated:

"By adopting this first-in-the-nation statewide green building code, California is again leading the way to fight climate change and protect the environment. . . . to ensure that when we break ground on all new buildings in the Golden State we are promoting green building and energy efficient new technologies . . . these new building standards will ensure that California remains at the forefront of reducing our carbon footprint and conserving valuable natural resources while also protecting our economy . . . this statewide code will reduce greenhouse gas emissions, improve energy efficiency and conserve water in all new buildings." July 17, 2008.

The water conservation provisions of the proposed emergency regulations are also of vital importance to the State. The Department of Water Resources (DWR) reports that California experienced drought conditions from 2007 to 2009, and in 2010 below normal runoff from the Sierra snowpack. Its Web site reports that "conservation is critically important to maintaining our water supply." The California Water Plan, 2009 update, states that "California is facing one of the most significant water crises in its history" - - citing reduced water supplies and a growing population. "Climate change is reducing our snowpack storage and is increasing sea level . . ." it warns. "In some areas of the state, our ecosystems and quality of underground and surface waters are unhealthy." Its "Integrated Water Management" plan includes the kinds of water reduction and conservation measures which will be hastened into effect by the early implementation of the HPI criteria. These HPI criteria include required water budgeting, reduced potable water use for recreation, non-recreation, and landscaping, and reduced indoor potable water use from toilets and urinals.

Governor Schwarzenegger on February 27, 2009 was forced to declare a state of emergency because of the third consecutive year of drought. The Governor stated "This is a **crisis**, just as severe as an earthquake or raging wildfire, and we must treat it with the same urgency . . . to ensure a clean and reliable water supply for our growing State." He warned that continued emergency drought conditions could require water rationing and mandatory reductions in water use.

The Governor asked all local, State, and federal agencies to take immediate water conservation actions. The Governor's action followed the DWR's announcement that its State Water Project delivery allocations as of that month were just 15 percent of the requested amounts. The Water Conservation Act of 2009, SBX7-7 2009, became law on November 10, 2009, requiring measured incremental reductions in water use by urban and agricultural users. The Legislature declared it "essential that the State manage its water resources as efficiently as possible." They sought to implement "improved technology and management practices." They found that "reduced water use through conservation provides significant energy and environmental benefits." These are exactly the criteria which these proposed emergency regulations will bring and facilitate to the school building industry.

The regulatory amendments add 14 additional "points" to the High Performance Rating Criteria (HPRC) categories for new construction projects, and 16 additional "points" to the HPRC categories for new construction additions to sites and modernization projects, which will facilitate projects achieving more "points" and qualifying for HPI grants. The DSA reviews construction plans and scores the project if high performance building components are included in the project.

### **Specific Facts Showing the Need for Immediate Action** (cont.)

A High Performance Base Incentive Grant (HPBIG) has also been added to encourage participation in acquiring HPI grants and to help offset some of the added costs incurred by districts to design and install high performance building components. There will be one HPBIG allowed per school site.

- New Construction Projects - \$150,000 will be added to the HPI grants meeting the minimum of 27 points on the HPRC point system.
- Modernization and New Construction Addition Projects - \$250,000 will be added to the HPI grants meeting the minimum of 20 points on the HPRC point system.

Therefore, it is extremely important that these regulations be in effect as soon as possible, in order to allow school districts and county offices of education to proceed with the State's vital tasks of resource and energy savings and conservation, while creating new jobs and stimulating the State's economy. The State of California is in a time of severe financial crisis. The proposed emergency regulations will allow for greater participation for the \$69.7 million remaining for HPI funding and will stimulate the State's economy with the creation of an estimated 1,300 new jobs.

The SAB's intent for the proposed emergency regulatory amendments is to incentivize school districts to commit to building K-12 school facilities with greener building components. This is a cultural shift from the way the State has constructed school facilities in the past, but now it is time to re-evaluate and re-consider not only the State's resources but how we can connect those resources into greener school facilities. This will be trail-blazing for the State of California. School districts and architects are ready to submit plans to the DSA in order to take advantage of these proposed regulatory amendments, and the DSA is ready to process the plans that contain HPI building components.

### **Authority and Reference Citations**

Authority: Sections 17070.35, 17070.96, 17075.15, 17079.30 and 101012(a)(8) of the Education Code and Section 15503 of the Government Code.

Reference: Sections 17070.35, 17070.99, 17072.12, 17072.13, 17072.20, 17072.33, 17074.15, 17074.16, 17076.10, 17079.20, 17079.30 and 101012(a)(8) of the Education Code.

### **Informative Digest/Policy Overview Statement**

Senate Bill 50, Chapter 407, Statutes of 1998, established the School Facility Program which streamlined funding processes, eliminated State oversight, and made school districts more accountable for their projects. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were adopted by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

Assembly Bill (AB) 127, Chapter 35, Statutes of 2006 (Perata/Nunez), the Proposition 1D school bond measure, was approved by voters at the November 7, 2006 general election. It authorized \$100 million for school districts with projects that meet "high performance" rating criteria for components such as energy, water, natural lighting, air quality, use of recycled and low-toxin materials, and learning-enhancing acoustics for construction projects.

The SAB, at its August 22, 2007 meeting, adopted regulations for the purpose of implementing the HPI grant provisions of AB 127, which were approved by the OAL and filed with the Secretary of State on October 1, 2007.

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments add the definition of "High Performance Base Incentive Grant," meaning \$150,000 State share funding for qualifying new construction projects or \$250,000 State share funding for qualifying new construction additions to an existing site or modernization projects.

Existing Regulation Section 1859.71.6 sets forth a point system based upon construction industry-recognized High Performance Rating Criteria, for school districts to qualify for a SFP additional grant for including "high performance" designs and materials in their new construction projects. The proposed amendments add the requirement to meet the mandatory measures of CalGreen, and the following additional changes:

**Sustainable Sites:**

- Code compliance ~~equals~~ is a prerequisite.
- Avoiding Environmentally sensitive land equals one point;
- Greenfields equals one point;
- Bicycles / Human-powered transportation equals one point;
- Construction site runoff control ~~equals~~ is a prerequisite;
- Outdoor Surfaces and Spaces:

**Water:**

- Create water use budget ~~equals~~ is a prerequisite;
- Reduce potable water use for non-recreational landscaping areas, equals one to two points.
- Reduce potable water use for recreational area landscaping equals one point.
- Reduce sewage conveyance from toilets and urinals equals one point;
- Reduce indoor potable water use equals one to ~~two~~ three points.

**Energy:**

- Minimum energy performance based on 2008 California Energy Code ~~equals~~ is a prerequisite.
- Superior energy performance based on 2008 California Energy Code equals one to 13 points;
- Plug loads monitored by an energy management system equals one point.
- Alternate Energy Sources: Renewable energy equals one to ~~seven~~ 15 points; one point for each five percent of the site's annual power consumption that is produced on site ~~not to exceed 35~~ up to 40 percent and one point for each ten percent above ~~zero~~ 40 percent of the site's annual power consumption that is produced on site up to 90 percent and two points if 95 percent or more of the site's annual power consumption is produced on site.
- Fundamental building systems testing and training ~~equals~~ is a prerequisite.
- Enhanced commissioning equals one to ~~two~~ four points.

**Materials:**

- Recycling: Storage and collection of recyclables ~~equals~~ is a prerequisite.
- Construction site waste management ~~equals~~ is a prerequisite.
- Construction site waste management at 75 percent or above diverted equals one to two points.
- Reuse of interior ~~partitions~~ non-structural elements equals one point.
- Rapidly renewable materials and organically grown materials equals one point;

### Indoor Environmental Quality:

- Five existing criteria are set forth in different order.
- Minimum requirements for minimum HVAC and construction indoor environmental quality equals is a prerequisite.
- Minimum requirements for thermal comfort and moisture control is a prerequisite.
- Minimum requirements for minimum filtration is a prerequisite.
- Enhanced Filtration equals one point.
- Low emitting materials equals one to ~~four~~two points.
- Mercury reduction equals one point.
- Minimum acoustical performance ~~equals is a prerequisite and equals two points.~~
- ~~American Society of Heating, Refrigerating and Air-Conditioning Engineers 55 code compliance equals prerequisite.~~
- The titles of the applicable California CHPS criteria are clarified as the “2002 CA-CHPS Criteria,” “2006 CA-CHPS Criteria,” and “2009 CA-CHPS Criteria.”
- For those projects accepted by the DSA utilizing the 2009 CA-CHPS Criteria, in which the level of high performance attained as concurred by the DSA is a minimum of 27 points, the Board shall provide \$150,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction Grant will be multiplied by:
  - 2.35 percent at 27 points; or
  - 2.59 percent at 28 points plus 0.24 percent for each point attained from 29 through 33 points; or
  - Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
  - 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 90-88 points.
- Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC).

Because of the new CalGreen compliance requirement being added as “(a)(1),” the existing subsection numbers (a)(1) - (7) were renumbered as (a)(2) - (8).

Existing Regulation Section 1859.77.4 sets forth criteria based upon the HPRC point system with review/approval by the Division of the State Architect (DSA), to provide qualifying school districts a percentage increase in their new construction addition project or modernization project grants for meeting the point value threshold. The proposed amendments add the requirement to meet the mandatory measures of CalGreen, and the following additional changes:

- The reference to Section 1859.71.6(a)(2)(3)(C) 2. adds its title “Alternate Energy Sources.”
- An exception to the HPRC point system applicable to this Section is added: Low emitting materials has an amended point allowance equal to one to four points.
- The titles of the applicable California CHPS criteria are clarified as the “2002 CA-CHPS Criteria,” “2006 CA-CHPS Criteria,” and “2009 CA-CHPS Criteria.”
- For those projects accepted by the DSA utilizing the 2009 CA-CHPS Criteria, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the Board shall provide \$250,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction or Modernization Grant, as appropriate will be multiplied by:
  - 2.18 percent at 20 points plus 0.025 percent for each point attained from 21 through 26 points; or

- 2.35 percent at 27 points plus 0.24 percent for each point attained from 28 through 33 points; or
- Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
- 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 84.
- Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC).

Because of the new CalGreen compliance requirement being added as “(a)(1),” the existing subsection numbers (a)(1) - (7) were renumbered as (a)(2) - (8).

Existing Regulation Section 1859.81.1 specifies that school districts meeting financial hardship criteria are eligible for a separate apportionment for site acquisition and design costs. The proposed amendments will add to this separate apportionment:

- \$150,000 for new school projects and \$250,000 for new construction addition projects that will be pursuing high performance incentive grants as indicated on the school district governing board resolution that shall be submitted to the OPSC as part of a funding request pursuant to this Section; and
- \$250,000 for modernization projects that will be pursuing high performance incentive grants as indicated on the school district governing board resolution that shall be submitted to the OPSC as part of a funding request pursuant to this Section.

In addition, Sections “1859.71.6” and “1859.77.4” are added to other Section numbers in referring to the amount of the district’s New Construction Adjusted Grant or Modernization Adjusted Grant.

Existing Regulation Section 1859.104 sets forth the program reporting requirements for school districts receiving SFP funds, including progress reports and expenditure reports. The proposed amendment requires school districts receiving HPI Grants to submit a Project Information Worksheet (PIW) reporting all expenditures related to the additional design and construction costs of the high performance building components, and to provide information related to resulting energy savings and efficiency, as well as other resulting benefits. The proposed amendments will require the PIW to be submitted with the Form SAB 50-05, and with the District’s first and final Form SAB 50-06 pursuant to Section 1859.104(a)(1) and (2).

Existing Form SAB 50-04, *Application for Funding*, is submitted by school districts to apply for State funding for new construction or modernization projects. The proposed amendments:

- add project categories of “Design Only – New Construction with High Performance” and “Design Only – Modernization with High Performance;”
- clarify for purposes of Certification No. 22 that the High Performance Base Incentive Grant is not part of the “total grant amount” when determining whether the work in a submitted project is at least 60 percent of the total grant amount;
- clarify for purposes of Certification No. 22 that a New Construction Grant request does not include Overcrowding Relief Grant; and
- add in Certification No. 23 the requirement that the school district governing board must have a resolution on file that demonstrates support for the HPI grant and intent to incorporate HPI features in their projects.

Existing PIW is submitted by school districts to report new construction project costs at the times of requesting SFP fund release (Form SAB 50-05) and upon submitting their

Expenditure Report (Form SAB 50-06) for the purpose of the SAB analyzing the current costs to build schools and making an additional adjustment of the new construction per-unhoused pupil grant amount not to exceed six percent in a fiscal year, as authorized by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez). The proposed amendments provide direction to school districts for completing specific areas of the form when requests have been submitted for HPI grant funding. The form was amended to collect HPI information in order for the OPSC to ensure that the HPI grant funds are being expended on HPI-related components in SFP new construction projects.

### **Mandate on Local Agencies or School Districts**

The Executive Officer of the SAB has determined that the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

### **Cost Estimate**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.