Amend Regulation Section 1859.2

Regulation Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

….

"High Performance Base Incentive Grant" means the $150,000 State share portion of the high performance incentive grant provided as part of a New Construction Adjusted Grant for a new school, or the $250,000 State share portion of the high performance incentive grant provided as part of a New Construction Adjusted Grant for an addition to an existing site or a Modernization Adjusted Grant.

….

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

Amend Regulation Section 1859.71.6

Regulation Section 1859.71.6. New Construction Additional Grant for High Performance Incentive.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in Subsection (b) if all the following are met:

(1) The project includes all the prerequisites in each of the five HPRC to include Sustainable Sites, Water, Energy, Materials and Indoor Environmental Quality and related subcategory credits.

(2) Once the prerequisites in (a)(1) have been met, the district may select the criteria and credits it wishes to pursue to determine point award. Category, criteria and associated points are as follows:

(A) Sustainable Sites.

1. Site Selection:

a. Code compliance ~~equals~~ is a prerequisite.

b. Avoiding ~~E~~environmentally sensitive land equals one point;

~~c. Greenfields equals one point;~~

~~d~~. c. Central location equals one point;

~~e~~. d. Joint-use of facilities equals one point;

~~f.~~ e. Joint-use of parks equals one point;

~~g~~. f. Reduced footprint equals one point.

2. Transportation:

a. Public transportation equals one point;

b. Bicycles / Human-powered transportation equals one point;

c. Minimize parking equals one point.

3. Stormwater Management:

a. Construction site runoff control ~~equals~~ is a prerequisite;

b. Limit stormwater runoff equals one point;

c. Treat stormwater runoff equals one point.

4. Outdoor Surfaces and Spaces:

a. Reduce heat islands – landscaping equals one point;

b. Reduce heat islands – cool roofs equals one point.

5. Outdoor lighting: light pollution reduction equals one point.

(B) Water.
1. Outdoor Systems:
a. Create water use budget ~~equals~~ is a prerequisite;
b. Reduce potable water use for non-recreational landscaping areas, equals one to two points.
c. Reduce potable water use for recreational area landscaping equals one point.
2. Indoor Systems:
a. Reduce sewage conveyance from toilets and urinals equals one point;
b. Reduce indoor potable water use equals one to ~~two~~ three points.
(C) Energy.
1. Energy Efficiency:
a. Minimum energy performance based on 2008 California Energy Code ~~equals~~ is a prerequisite.
b. Superior energy performance based on 2008 California Energy Code equals one to 13 points;
c. Natural ventilation equals one point;
d. Energy management system equals one point.
e. Plug loads monitored by an energy management system equals one point.
2. 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.
3. Commissioning and Training:
a. Fundamental building systems testing and training ~~equals~~ is a prerequisite.
b. Enhanced commissioning equals one to ~~two~~ four points.
(D) Materials
1. Recycling: Storage and collection of recyclables ~~equals~~ is a prerequisite.
2. Construction Waste Management:
a. Construction site waste management ~~equals~~ is a prerequisite.
b. Construction site waste management at 75 percent or above diverted equals one to two points.
3. Building Reuse:
a. Reuse of structure or shell equals one to two points;
b. Reuse of interior ~~partitions~~ non-structural elements equals one point.
4. Sustainable Materials:
a. Recycled content equals one to two points;
b. Rapidly renewable materials and organically grown materials equals one point;
c. Organically grown materials equals one point;
d. Certified wood equals one point;
e. Salvaged materials equals one to two points.
f. Alternative: environmentally preferable products in lieu of a. through e. above equals one to seven points.
(E) Indoor Environmental Quality.
1. Lighting and Daylighting:
a. Daylighting equals one to four points;
b. View windows equals one point;
c. Electric lighting equals one point.
2. Indoor Air Quality and Thermal Comfort:
a. Minimum requirements for minimum HVAC and construction indoor environmental quality ~~equals~~ is a prerequisite.
b. ~~Thermal displacement ventilation equals two points.~~ Minimum requirements for thermal comfort and moisture control is a prerequisite.
c. ~~Low-emitting materials equals one to four points;~~ Minimum requirements for minimum filtration is a prerequisite.
d. ~~Chemical and pollutant source control equals one point;~~ Thermal displacement ventilation equals two points.
e. ~~Ducted returns equals one point;~~Enhanced filtration equals one point.
f. ~~Filtration equals one point.~~ Low-emitting materials equals one to four points.
g. Ducted returns equals one point.
h. Controllability of systems equals one to two points.
i. Chemical and pollutant source control equals one point.
j. Mercury reduction equals one point.

3. Acoustics:
a. Minimum acoustical performance ~~equals~~ is a prerequisite and equals two points.
b. Improved acoustical performance equals one to three points.
~~4. Thermal Comfort:~~
~~a. American Society of Heating, Refrigerating and Air-Conditioning Engineers 55 code compliance equals prerequisite.~~
~~b. Controllability of systems equals one to two points.~~
(3) A minimum of four points must come from either (a)(2)(C)1.b. and/or 2.
(4) The project, which includes a complete set of plans, must be submitted to and accepted by the DSA on or after May 20, 2006.
(5) The DSA has reviewed the proposed project and concurs with the points specified in the HPRC.
(6) The project will not receive funding from the Energy Efficiency Account.
(7) For those projects accepted by the DSA prior to October 1, 2007, districts may utilize the *2002 CA-CHPS* ~~*Best Practices Manual Volume III 2002 Edition*~~ *Criteria*, and the point standard will be in the range of 23 to 72 points. All prerequisites, credits and points obtained must be based on the *2002 Edition* requirements. Criteria and associated prerequisite or points as indicated in (a)(2)(D)2.a. and 4.c. and f. and (E)1.c. and 2.b. and district resolutions are ineligible, and (a)(3) is optional.
(b) To determine the High Performance Incentive grant, multiply the New Construction Grant by the percentage allowance in accordance with the eligible high performance points as follows:
(1) For those projects accepted by the DSA prior to October 1, 2007, pursuant to (a)(7), in which the level of high performance attained, as concurred by the DSA, is a minimum of 23 points, the New Construction Grant will be multiplied by:
(A) Two percent at 23 points plus 0.03 percent for each point attained from 24 through 33 points; or
(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or
(C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or
(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 72 points.
(2) For those projects accepted by the DSA utilizing the *2006 CA-CHPS* ~~*Best Practices Manual Volume III 2006* Edition~~ *Criteria*, in which the level of high performance attained as concurred by the DSA is a minimum of 27 points, the New Construction Grant will be multiplied by:
(A) Two percent at 27 points plus 0.050 percent for each point attained from 28 through 33 points; or
(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or
(C) four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or
(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 75 points.
(3) 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:
(A) 2.35 percent at 27 points; or
(B) 2.59 percent at 28 points plus 0.24 percent for each point attained from 29 through 33 points; or
(C) Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
(D) 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 90 points.

If there are no funds remaining in the High Performance School Account or the funds remaining are insufficient to fully fund the additional grant authorized in Subsection (b), the district may either withdraw its application and resubmit it should additional funds be made available in the High Performance School Account or continue with the new construction project and accept a full and final apportionment without the additional grant authorized by Subsection (b).

Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC.)

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 101012(a)(8), Education Code.

Amend Regulation Section 1859.77.4

Regulation Section 1859.77.4. Addition to a Site and Modernization Grant for High Performance Incentive.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in Subsection (b) if all the following are met:

(1) The project includes all the prerequisites in each of the five HPRC to include Sustainable Sites, Water, Energy, Materials and Indoor Environmental Quality that are within the scope of the project, and related subcategory credits.

(2) Once the prerequisites in (a)(1) have been met, the district may select the criteria and credits it wishes to pursue to determine point award. The category, criteria and associated points are as indicated in Section 1859.71.6 (a), with the exception of (a)(2)(C) 2. that has an amended point allowance that equals three to nine points; three points for the first five percent plus one point for each additional five percent thereafter of the site's annual power consumption that is produced on site not to exceed 35 percent.

(3) A minimum of four points must come from either Section 1859.71.6 (a)(2)(C)1.b. and/or 2.

(4) The project, which includes a complete set of plans, must be submitted to and accepted by the DSA on or after May 20, 2006.

(5) The DSA has reviewed the proposed project and concurs with the points specified in the HPRC.

(6) The project will not receive funding from the Energy Efficiency Account.

(7) For those projects accepted by the DSA prior to October 1, 2007, districts may utilize the *2002 CA-CHPS* ~~*Best Practices Manual Volume III 2002 Edition*~~ *Criteria*, and the point standard will be in the range of 23 to 72 points. All prerequisites, credits and points obtained must be based on the *2002 Edition* requirements. Criteria and associated prerequisite or points as indicated in Section 1859.71.6 (a)(2)(D)2.a. and 4.c. and f. and (E)1.c. and 2.b. and district resolutions are ineligible, and (a)(3) is optional.

(b) To determine the High Performance Incentive grant, multiply the New Construction or Modernization Grant, as appropriate, by the percentage allowance in accordance with the eligible high performance points as follows:

(1) For those projects accepted by the DSA prior to October 1, 2007, pursuant to (a)(7), in which the level of high performance attained, as concurred by the DSA, is a minimum of 23 points, the New Construction or Modernization Grant, as appropriate, will be multiplied by:

(A) Two percent at 23 points plus 0.03 percent for each point attained from 24 through 33 points; or

(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or

(C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or

(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 72 points.

(2) For those projects accepted by the DSA utilizing the *2006 CA-CHPS* ~~*Best Practices Manual Volume III 2006 Edition*~~ *Criteria*, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the New Construction or Modernization Grant, as appropriate, will be multiplied by:

(A) Two percent at 20 points plus 0.025 percent for each point attained from 21 through 33 points; or

(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or

(C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or

(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 77 points.

(3) 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:

(A) 2.18 percent at 20 points plus 0.025 percent for each point attained from 21 through 26 points; or

(B) 2.35 percent at 27 points plus 0.24 percent for each point attained from 28 through 33 points; or

(C) Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or

(D) 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 84.

If there are no funds remaining in the High Performance School Account or the funds remaining are insufficient to fully fund the additional grant authorized in Subsection (b), the district may either withdraw its application and resubmit it should additional funds be made available in the High Performance School Account or continue with the addition to an existing site/modernization project and accept a full and final apportionment without the additional grant authorized by Subsection (b).

Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC.)

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 101012(a)(8), Education Code.

Amend Regulation Section 1859.81.1

Regulation Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition, with the exception of site acquisition funding authorized by Section 1859.81.2 or for projects receiving funding pursuant to the Overcrowding Relief Grant, Section 1859.180, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met on a site that does not require a RA, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than $50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) If the conditions in (a) are met on a site that will require a RA, the district is eligible for a separate site apportionment not to exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (c)(1) and (c)(4) plus the additional costs included in (c)(2) and (c)(3). The costs included in (c)(2) and (c)(3) are in addition to 50 percent of one and one half times the appraisal value cap.

(1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.

(2) Fifty percent of the estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Fifty percent of four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than 50 percent of $50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

(d) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (c), (c)(1) and (c)(4) may be exceeded when the Board finds that unforeseen circumstances exist, and when both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to the minimum required to complete the evaluation and RA approved by the DTSC.

(e) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a), plus $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. For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before April 29, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after April 29, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a), plus $250,000 for 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.

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project. Those projects requesting an Overcrowding Relief Grant, pursuant to Section 1859.180, do not qualify for these separate apportionments.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.71.6, 1859.77.4, 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before April 29, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after April 29, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

Note: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code.

Reference: Sections 17072.12, 17072.20, 17072.33, 17074.15, 17074.16 and 17079.20, Education Code.

Amend Regulation Section 1859.104

Section 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the Form SAB 50-06. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

(d) If an apportionment was made for a district-owned site pursuant to Section 1859.74.5, a certification that the non-school function currently taking place on the district-owned site has been discontinued or relocated. The certification must be submitted to the OPSC no later than the following dates:

(1) If the project is for an elementary school, 66 months from the date of the site apportionment.

(2) For all other projects, 78 months from the date of the site apportionment.

(e) If an Apportionment was made under the Small High School Program pursuant to:

(1) Section 1859.78.9 or Section 1859.93.2, a cost evaluation report shall be due to the OPSC no later than two complete school years after the Occupancy of the approved project.

(2) Section 1859.93.2, the district must provide a preliminary report on any academic data requested by CDE two complete school years after the Occupancy of the approved project. The final report shall be due no later than two complete school years after the OPSC notifies the district of the Occupancy of the last approved project.

(f) If an Apportionment was made under the Overcrowding Relief Grant pursuant to Section 1859.180, the School District must provide a certification that the replaced portables were removed from the eligible site and from service pursuant to Education Code Section 17079.30.

(g) A School District receiving an Apportionment for high performance incentive grants pursuant to Section 1859.71.6 or 1859.77.4 shall submit a completed Project Information Worksheet to the OPSC for all expenditures related to the additional design and construction costs of the high performance building components. In addition, the School District shall provide information related to resulting energy savings and efficiency, as well as other resulting benefits. The Project Information Worksheet shall be submitted with the Form SAB 50-05 and the District's first and final Forms SAB 50-06 pursuant to (a)(1) and (2) above.

Note: Authority cited: Sections 17070.35, 17072.13, and 17079.30, Education Code.

Reference: Sections 17070.35, 17070.99, 17072.12, 17072.13, 17076.10 and 17079.30, Education Code.