



November 9, 2010

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, AND
OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on November 3, 2010. These amendments to the School Facility Program (SFP) Regulations will stimulate greater participation by school districts to apply for High Performance Incentive (HPI) grants by increasing the HPI grant amounts for new construction and modernization projects. These grants are achieved by using designs and materials in school facility projects for efficiencies in sustainable sites, energy, water, materials, and indoor environmental quality. Education Code Section 101012(a)(8) authorized \$100 million for HPI grants, but \$69.7 million continues to remain available and increased school district participation is needed.

All projects must meet the mandatory measures of the California Green Building Standards, California Code of Regulations, Title 24, Part 11, effective January 1, 2011, hereinafter referred to as "CalGreen."

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 Division of the State Architect (DSA) reviews construction plans and scores the project if high performance building components are included in the project.

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.

Attached to this Notice is the specific regulatory language of the proposed emergency action and the Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. The proposed emergency regulations would amend the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

The OPSC, on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during November 2010. The following is an overview of the proposed regulatory amendments.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the SFP through Senate Bill 50, Chapter 407, Statutes of 1998. The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the 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 school construction projects.

The SAB, at its August 22, 2007 meeting, adopted regulations for the purpose of implementing the high performance incentive 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 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 HPBIG 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.

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as “State Allocation Board – High Performance Incentive Grant Emergency Regulations,” addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of 1) the OAL at www.oal.ca.gov under the heading "Emergency Regulations," and 2) the OPSC Web site at www.dgs.ca.gov/opsc under the Tab "Resources" and then click "Laws and Regulations."

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, Room 1-430
West Sacramento, CA 95605

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 376-5332

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 375-5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Ms. Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.