San Diego Unified
SCHOOL DISTRICT

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California Energy Commission
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Robert P. Oglesby, *Executive Director*
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Docket#: 13-CCEJA-1
Comments on Proposition 39 *Draft Guidelines*

Dear Mr. Oglesby:

The San Diego Unified School District respectfully submits the following comments for consideration by the California Energy Commission (CEC) and the agencies with which it consulted in the development of the Proposition 39 *Draft Guidelines*.

We commend the CEC for promulgating the *Draft Guidelines* under tremendous time constraints as school districts statewide eagerly await their funding allocations in order to reduce energy consumption and/or generate energy to offset energy use of our facilities. We appreciate the opportunity to comment and to provide our perspective since we will be charged with deploying the funds consistent with the ballot initiative. The comments below are intended to provide specific feedback that we believe will help expedite the disbursement of funds in order to meet the broader provisions of the Proposition 39 initiative of improving energy efficiency and creating jobs statewide.

We are committed to complying with the requirements set forth in Proposition 39 and the enacted statute; however, given that an Local Educational Agency's (LEA) main mission is to educate students and improve student achievement so they are college and career ready, we ask that the *Proposition 39 Guidelines* be revised to state clearly that school districts retain the full discretion to determine how best to allocate Proposition 39 funds to meet our unique needs, while meeting the intent and requirements of the ballot initiative and statute.

One of our primary concerns is that the *Draft Guidelines* develop a cumbersome, complex process for submitting the required expenditure plan as a condition of Proposition 39 funding. The *Draft Guidelines* fail to recognize the other processes school districts are required to go through in order to realize their projects, including obtaining certain authorizations from the Office of Public School Construction and the Division of the State Architect, and being compliant with our local bond measures that pay for the majority of our modernization and new construction projects. We are concerned that the proposed process will unnecessarily delay the disbursement of funds to school districts, which in turn will delay project commencement and job creation.

The San Diego Unified School District understands the intent of the *Draft Guidelines* is to take a whole-building approach by providing deep retrofits at individual school sites. This approach applies to districts that have not had the means or opportunity to previously invest in comprehensive energy efficiency measures. While we have primarily relied on our local bond programs to have a positive impact on the conditions of our more than 200 facilities, we intend to use the Proposition 39 funds to leverage some of the projects we have previously financed with local funds.

Over the past two decades, the San Diego Unified School District has performed a multitude of district-wide comprehensive, deep energy efficiency retrofits, including but not limited to interior lighting re-lamp (two separate district-wide projects previously completed) and heating, ventilation and air conditioning (HVAC), lighting and irrigation central automated controls. Whether a project is completed solely for energy efficiency or as a major maintenance project, the San Diego Unified School District meets the Collaborative High Performance Schools (CHPS) energy standards. Efforts from our current capital bond programs will produce continued energy efficiencies through whole site deep retrofits, and, by providing new buildings, building additions and demolishing inefficient buildings. We will also add HVAC systems at some of our existing sites and will include other components designed to address the building envelope, such as replacing windows, adding insulation and installing new roofing systems that help to curb energy consumption. These efforts will have an impact on the District's energy consumption.

Based on the District's energy management best practices, previous efficiency measures, current and future bond initiatives, our mild weather, and only 40% of our sites being air conditioned, the *Draft Guidelines* as written will not reflect the most effective and efficient measures needed to reduce the energy consumption and utility costs because the most inefficient site per square foot ***is not*** the site with the highest quantity of savings or Return On Investment (ROI). Additionally, the overhead costs of providing the data, methods and approaches are not suitable for either our needs or local conditions, but rather are counter-productive with the intent of Proposition 39 and related laws. As described in the subsequent sections, we ask that the *Proposition 39 Guidelines* be revised to provide the greatest discretion, that reporting requirements be kept simple and that funding be locally controlled. We believe that Proposition 39 and implementing statutes provide for local discretion and local decision-making to prioritize energy-related projects while meeting the intent of the initiative.

In the event that the *Guidelines* are not simplified as requested above, it is imperative that the following items be clarified, revised and/or removed:

1. **Issue:** The authorizing statute, SB 73, calls for simple documentation requirements in various sections of the statute. As noted in the two subsections below, LEAs are expected to use a simple preinstallation verification form and a simple form expenditure plan. However, neither of these forms have been made public for review and comment by the LEAs and other stakeholders, and based on the extensive steps described in the *Draft Guidelines*, it raises concerns that the forms and information we will be required to submit will not be as simple as envisioned in statute.

   Proposed Resolution: The CEC shall make the proposed preinstallation verification form and the sample expenditure plan available for public comment as soon as possible. While developing these two templates, we strongly encourage the CEC to consider the simplicity as envisioned in statute, and to minimize the additional data and information currently required in the *Draft Guidelines*.

   Reference: Public Resource Code Section 26235(a)(4) states: "The Energy Commission shall develop a simple preinstallation verification form that includes project description, estimated energy savings, expected number of jobs created, current energy usage and costs."

Furthermore, Public Resources Code Section 26235(f) states: "The Superintendent of Public Instruction shall not distribute funds to an LEA unless the LEA has submitted to the Energy Commission, and the Energy Commission has approved, an expenditure plan that outlines the energy projects to be funded. An LEA shall utilize a simple form expenditure plan developed by the Energy Commission. The Energy Commission shall promptly review the plan to ensure that it meets the criteria specified in this section and in the guidelines developed by the Energy Commission."

2. **Issue:** SB 73 requires LEAs to release information on the utility data of school buildings. As indicated in the following section, the statute states its interest in collecting this data so that "the costs and benefits of funded projects" for an "entity that receives funds from the Job Creation Fund" can document the energy savings achieved through the Proposition 39 funds. However, the statute does not require information for ALL school sites, but merely states LEAs are required to provide information at the school facility site level. Releasing information on all of our school facilities may cause confusion about which sites benefited from the Proposition 39 funding, when it is likely that only a few of our school sites will benefit from the funding given the statutory requirements on the size of total project costs and how the funds can be spent.

   Proposed Resolution: Since the statute does not require LEAs to release utility data on ***all*** school sites, we strongly encourage the CEC to revise the language in the *Draft Guidelines* to only require utility information for the specific school sites benefiting from Proposition 39 funds. For a school district, like the San Diego Unified School District, there is a goal to touch all district sites and provide equity with the Proposition 39 funds, though with our more than 200 school site facilities and administrative offices, releasing information on all facilities will be a cumbersome process and quite challenging for the utility providers in the state.

   Reference: Public Resources Section 26240(a) states: "In order to later quantify the costs and benefits of funded projects, an entity that receives funds from the Job Creation Fund shall authorize its local electric and gas utilities to provide 12 months of past and ongoing usage and billing records at the school facility site level to the Energy Commission." However, as the *Draft Guidelines* are currently written and as described in Step 1: Electric and Gas Usage/Billing Data, the CEC is requiring that "Each LEA must identify all electric, natural gas, propane, or fuel oil accounts for all its schools and facilities, and provide a utility data release form allowing the Energy Commission to access both historical (the past 12 months) and future utility billing data and time-of-use interval data. Access to utility data will include all schools and facilities within an LEA that is receiving funding, not just schools and facilities with planned or active projects."

3. **Issue:** SB 73 outlines minimal reporting requirements, which is not reflected in the *Draft Guidelines.* As described in statute, the only required reports are the a) initial simple expenditure plan in order to receive the funds and b) a final report when a project has been completed. However, as the *Draft Guidelines* are currently written, the CEC is requiring LEAs to comply with additional reporting requirements that will result in significant staff resources and time allocated to revising and updating status progress reports.

<u>Proposed Resolution</u>: We strongly encourage the CEC to revise the proposed front-end requirements to provide a simpler project substantiation process that will expedite fund disbursement, and to revise the *Draft Guidelines* to eliminate the quarterly progress status reports and the annual report since these are not required in statute and will add significant workload to LEAs.

<u>Reference</u>: Public Resource Code Section 26240(b) states: "As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with a grant, loan, or other assistance from the Jobs Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board created pursuant to Chapter 3 (commencing with Section 26210). To the extent practical, this report shall also contain information on an of the following: …..{lists information to potentially include in the report}."

Furthermore, Public Resource Code Section 26240(c) states: "If an LEA completes more than one project, the required information for a second and any subsequent project shall be submitted no later than the first full quarter following project completion."

<u>Background</u>: The *Draft Guidelines* have additional reporting requirements not included in statute, such as completing quarterly reports and submitting a revised expenditure plan whenever there are changes in the LEAs original expenditure plan proposal.

As described in Step 8: Project Tracking and Reporting under Quarterly Reports, " LEAs are required to submit a quarterly progress status report for each approved energy expenditure plan to the Energy Commission, until all projects within an energy expenditure plan are completed." This quarterly progress status report is not required in statute, and will result in an increased and unnecessary workload for LEAs whose main mission is to educate children and improve academic achievement. LEAs have existing obligations for other reporting requirements to the state and federal government on a variety of areas, and we must also comply with our own reports for the use of our local bond funds. Given that LEAs have until June 30, 2018 to encumber the funds, and LEAs will be required to submit a final report at the end of each completed projects, it is unnecessary that the CEC require quarterly reports at a time when the Governor and the Legislature have provided more local control and local distraction for LEAs.

These additional onerous and timely requirements will require additional staff resources to comply with the *Draft Guidelines*. As currently written, the San Diego Unified School District estimates the additional reporting and compliance requirements not required in statute will add significant workload and costs for LEAs, and could result in two Full Time Employees at more than $200,000 in annual salary costs. This estimate does not include the costs associated with the project management, but simply to comply with the administrative processes and procedures outlined in the *Draft Guidelines*. While we are the second largest school district in the state and may be able to find a way to integrate these reporting requirements within our existing compliance reports for other local and state funds, we are concerned that the majority of the LEAs will not have the staff resources or time to devote to meeting all the requirements prescribed in the *Draft Guidelines*. This extensive and ongoing requirements for status and progress reports could result in either a) LEAs forfeiting their funding allocation due to the complexity of the requirements, or b) result in LEAs having to rely on outside consultants and third-party administrators to complete the documentation.

4. **Issue:** The $250,000 large expenditure plans are too restrictive in its project definition. Specifically, the current *Draft Guidelines* define a project as: "A large expenditure plan project is defined as a project at a school site whose project costs total more than $250,000."

   Proposed Resolution: Revise the definition of a project to state: "A large expenditure plan project is defined as a project whose costs total more than $250,000."

   Reference: Page 11 of the Draft Guidelines, Large Expenditure Plan Award Requirements (TIER 4). Public Resources Code Section 26233 (b)(3) states "For every LEA that receives over one million dollars ($1,000,000) pursuant to this subdivision, not less than 50 percent of the funds shall be used for projects larger than two hundred fifty thousand dollars ($250,000) that achieve substantial energy efficiency, clean energy and jobs benefits."

   Background: The *Draft Guidelines* are more prescriptive than what is required in the statute, since the *Draft Guidelines* states *"A large expenditure plan project is defined as a project at a school site whose project costs total more than $250,000."* This language requiring project costs to be considered at individual school sites would limit our ability to perform needed lighting retrofit measures at a small elementary school, for example. It would also require more expense in the implementation of the work by site rather than at multiple sites or across the district as we strive to leverage our other funding resources. We request the sentence read as follows: *"A large expenditure plan project is defined as a project whose costs total more than $250,000."* Our intent would be to perform the most efficient cost effective approach to one of the District's highest energy efficient measures, such as lighting retrofits at multi-site projects or at a district-wide level.

5. **Issue:** Life expectancies are used to calculate the Savings to Investment Ratio or SIR. The inaccurate and unrealistic life expectancies reflected on "Exhibit F: Effective Useful Life for Measures in Years" will artificially reduce the number of projects that meet the SIR.

   Proposed Resolution: Revise the draft guidelines to reflect more realistic life expectancies.

   Reference: Step 3: Energy Project Prioritization Considerations, Public Resources Code Section 26235(e) (1-11) states: "each participating LEA shall prioritize the eligible projects within its jurisdiction taking into consideration, as applicable, at least the following factors:" Item number (6) states "The estimated financial return on investment over the expected life cycle of the project, in terms of net present value and return on investment." In "Exhibit F: Effective Useful Life for Measures in Years," the table reflects interior lighting lamp replacements to have an effective useful life of 4 years which is unrealistic, thereby making the return on investment unreasonable. We ask that a more realistic life cycle be applied.

6. **Issue:** The validation process for analytics or "no touch" audits is not clearly defined and when the issue was discussed at previous Proposition 39 Program Implementation public workshops, the CEC stated further clarification would come in years 2-5.

Proposed Resolution: Revise the *Draft Guidelines* to clearly define the process for validation of auditing with Analytics.

Reference: Step 5: Energy Project Identification, Perform Energy Surveys or Energy Audits states "LEAs shall choose one of three options to identify energy projects: 1) an energy survey, 2) an ASHRAE level 2 energy audit or 3) data analytics." Under Option 3: Other Tools Data Analytics it states "Data analytics refers to what is typically called a "no-touch" or Web-based "virtual" energy audit assessment." The last sentence of the first paragraph on page 19 of the Draft Guidelines states: "In order to expend Proposition 39 award funds for these data analytics, an LEA must provide documentation of prior technical validation of the technology by a local utility." This needs more clarification. However, when clarification was requested at one of the Proposition 39 Program Implementation public workshops in October, the answer was further clarification would be coming in years 2-5. Districts need to know this is a viable solution that can be validated prior to performing their audits in year 1.

7. **Issue:** The energy expenditure plan options are not clearly defined and when discussed at the Proposition 39 Program Implementation public workshops, CEC stated Option 1-3 also applied to energy expenditure plan award levels of $50,001 or greater.

   Proposed Resolution: Revise the draft guidelines to state **"**Option 1-3 also applied to energy expenditure plan award levels of $50,001 or greater."

   Reference: Step 7: Complete and Submit an Energy Expenditure Plan, A: Submission of Energy Expenditure Plans, the fourth paragraph on page 20 of the Draft Guidelines states: "An LEA can submit its energy expenditure plan depending on the options provided for its award level as illustrated below in table 6." Table 6 reflects; Award levels of 50,000 or less have three options as follows: Option 1: Yearly award energy expenditure plan, Option 2: Two-Year (bundled) award energy expenditure plan, Option 3: A five-year complete award energy expenditure plan. However award levels of $50,001 or greater only reflects one option that states: *"Up to four energy expenditure plans may be submitted per fiscal year."* LEAs with an award level of $50,001 or greater should be allowed to provide options 1-3 as well in order to have a comprehensive review of how we intend to use our allocated funds over the course of the 5 year program.

8. **Issue:** The benchmarking process outlined in the *Draft Guidelines* will create inaccuracies based on weather, change of use, square footage increase or decreases, among other factors. It is possible that air conditioned sites will rise to the top of the Energy Use Intensity (EUI) ratings even though the largest overall energy savings was identified at a non-air conditioned site.

   Proposed Resolution: Revise the benchmarking process.

   Reference: Step 2: Benchmarking or Energy Rating System, Public Resources Code Section 26235(a)(3)(A) states the Energy Commission shall establish guidelines for "*benchmarks or energy rating systems to select best candidate facilities."* The guidelines require: Benchmarking results must include total energy cost/square footage/year and annual total KBTUs/square footage/year. LEAs will report this information as part of the energy expenditure plan. This benchmarking is going to have challenges and limited accuracy. Energy Use Intensity (EUI) will be affected by conditions that have nothing to do with the energy measures. The first would be weather. The temperature conditions have to be identical for the benchmarking year and the first reporting year for the change to be a good indicator. For a district like the San Diego Unified School District, whose sites are approximately 40% air conditioned at this time, the EUI sites that are at the top of the priority list are going to be air conditioned rather than indicating the sites that utilize energy inefficiently. In a preliminary survey of four sites of our District, the air conditioned site uses more than double of the non-air conditioned sites per square foot. Yet the largest overall energy savings was identified at a non-air conditioned site. The conclusion here is that EUI will not direct our District to utilize our district best practices for energy management. Other EUI inaccuracies will occur as a site has additions or subtractions that change the accuracy of energy use for the base year. Some examples of these would be the addition or removal of buildings, the addition of air conditioning to a site, the remodel of a woodshop into regular classrooms or the addition of on-site energy generation.

In summary, we appreciate the *Draft Guidelines* support of school district efforts to leverage other fiscal resources to optimize the opportunities provided by Proposition 39. However, as reflected in our comments, we are concerned that the overly prescriptive provisions related to benchmarking, project prioritization, and expenditure plan submittals will significantly curb these opportunities. The Proposition 39 funding options and the requirements to access Proposition 39 funds should be sufficiently flexible to allow school districts to manage our program needs and optimize other local, state and federal fiscal resources available to us.

Should you have any questions regarding our comments, please contact Martha Alvarez, San Diego Unified School District's Director of Government Relations, at martha.alvarez@sandi.net or (916) 798-1338.

Sincerely,

Cindy Marten

Cindy Marten
Superintendent of Public Education
San Diego Unified School District

Copy: Martha Guzman-Aceves, Deputy Legislative Secretary, Governor Edmund G. Brown Jr.
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