

LOS ANGELES UNIFIED SCHOOL DISTRICT
Office of Government Relations

John E. Deasy, Ph.D.
Superintendent of Schools



Edgar Zazueta
Chief of Staff,
External Relations

October 25, 2013

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



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

Dear Mr. Oglesby:

The Los Angeles Unified School District (LAUSD) respectfully submits the following comments for consideration by the California Energy Commission (CEC), and the other state agencies consulted with in the development of the Proposition 39 – California Clean Energy Jobs Act – Draft *Guidelines*.

The development of any grant program is generally a very difficult process. However, this process has been made more difficult due to the pressures to allocate the Proposition 39 funds in a relatively short period of time. For this, the CEC should be commended for its efforts to put forth a comprehensive grant program that seeks to assist school districts with the planning and construction of energy efficiency and renewable energy projects. The CEC should also be commended for its leadership in seeking industry and school community input in the development of the *Guidelines*. With that said, we are pleased to offer our comments and recommendations.

The stated purpose of the legislation is to establish objectives for clean energy job creation that promotes private sector jobs to save energy and money. In doing so, school districts will be able to create long-term savings and budgetary flexibility so they can focus their limited resources on the needs of the classroom and not utility bills. Furthermore, the intent of the legislation was to develop simple guidelines so all school districts can be successful in achieving the goals of the legislation. Therefore, our comments and recommendations have been tailored to focus on those aspects of the *Guidelines* that we believe will assist in streamlining or providing clarity to the process.

Eligibility – Publicly Owned Leased Facilities Without a Separate Meter

1. There are a large number of charter schools that occupy LAUSD properties and there are a number of site configurations (single-occupant, co-location, multiple occupants) that we are evaluating in context to the *Guidelines*. Can you confirm if the section under ‘Publicly-Owned Leased Facilities Without a Separate Meter’ applies to the lessee and not the owner. To reduce the workload on school districts, we would prefer that school districts not be required to get one or more lessees to sign our expenditure plan for work a school district would like to complete on school district property.

Schedule

2. What mechanism(s) trigger release of planning funds in November 2013? Are they automatically released? If not, what are we supposed to be doing in advance of the approved guidelines to request and receive those funds?

Award Allocation – Energy Planning Reservation Option

3. The maximum energy planning award funding request for Local Educational Agency (LEA) with a first year award of more than \$433,000 may request 30% of their first year award (up to \$1 million) for planning activities. LAUSD would request that the award be a percentage of the total award in the first year and remove the \$1 million cap. The inclusion of a dollar cap restricts large LEAs from being able to properly conduct the necessary screening and energy audits.

In the example provided in the *Guidelines*, a Tier 4 LEA who receives \$5 million will be able to receive \$850,000 for screening and energy audits and another \$150,000 for program assistance. Assuming this represents the proper level of funding to complete the necessary screening and energy audits for an LEA receiving \$5 million, LAUSD would be grossly underfunded. Based on LAUSD's expected allocation of \$27 million, it would be unreasonable to expect LAUSD to conduct the same level of screening and energy audit as the LEA receiving \$5 million.

The *Guidelines* have already established a cap based on a percentage for the majority of LEAs. The *Guidelines* also state that any unused energy planning funds may be applied toward energy project implementation approved as part of an expenditure plan. It would seem unnecessary, restrictive, and inconsistent with other LEA's to apply a dollar cap that only limits the planning efforts of large LEA's.

Award Allocation – Large Expenditure Plan Award Requirements

4. The submittal of a large project in excess of \$250,000 has the potential for triggering other building code requirements, including access compliance. We would ask that the *Guidelines* identify these additional costs as eligible expenditures as this work must be completed in order to implement the energy savings project. Not every school district has access to local bond funds to fund the additional requirements and the use of the Proposition 39 funds will be critical in completing these projects. If there isn't recognition of these additional costs, many large energy projects will be jeopardized. A recommendation that may help alleviate some concerns in the planning stages would be if the CEC and the DSA coordinated efforts to identify pre-approved projects that meet CEC requirements and do not trigger additional building code requirements.

Understanding there will be additional costs associated with large projects, it may make it difficult for these projects to meet the minimum Savings to Investment Ratio (SIR) of 1.05 if the "project installation cost" is inclusive of all project costs. We would ask that the SIR calculator account for only those costs that contribute to the energy savings and exclude those additional costs as previously discussed. Another recommendation to address this issue may be to authorize the use of non-Proposition 39 grant funds to be used to "buy-down" costs in the SIR calculation.

LAUSD would also ask the CEC to consider an alternative Net Present Value (NPV) calculation in the SIR calculation. LAUSD seeks to be able to compare tomorrow's estimated consumption, without any site changes, to tomorrow's estimated consumption, with site changes. LAUSD believes this will provide a better representation of the benefit received after the completion of the project.

Leveraging Award Funding

5. We would request a change to the title of this section to “Other Award Funding”. It appears this section is intended to clarify that receipt of these funds shall not impact an LEA’s ability to pursue other programs or incentives. However, the use of “leverage” in the *Guidelines* suggests a link between the Proposition 39 funds and whatever other awards we obtain. If the sentiment is to avoid other awards making us ineligible for Proposition 39 (or Prop 39 making us ineligible for other, existing programs), then that can be accomplished without the confusion that the word “leverage” creates.

Award Funding for Training

6. Community colleges are allowed to use this money to train K-12 students. We would request that K-12 LEAs be allowed to use this money to train K-12 students.

Award Funding for Energy Manager

7. The Guidelines indicate that “Each fiscal year, an LEA will have the option of requesting up to 10% of its award or \$100,000, which ever is greater to hire or retain an energy manager” Due to the size of our district, we would request that Guidelines permit an LEA to hire or retain one or more energy managers. In a smaller school setting, it would be reasonable to think a single “energy manager” would be able to actively reduce the school district’s energy operational costs. In a school district the size of LAUSD, it would require additional personnel.

Process to Receive K-12 Energy Project Award Funding

Step 1: Electric and Gas Usage/Billing Data

8. Public Resources Code 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*”. The intent of this Section is to collect usage data and track the energy benefit achieved as a result of a project that received funding from the Job Creation Fund. It is not clear what can be determined by collecting electric and gas usage for all school sites, especially those that will not receiving any funding from the Job Creation Fund.

In an effort to streamline the program and minimize any unnecessary workload, LAUSD would recommend the collection of electric and gas usage is consistent with the statute in that it is limited to only those sites that are requesting funding so an analysis can be conducted to later quantify the costs and benefits of the projects.

9. The above referenced Section requires a school district, as a condition of receiving funds, to “*authorize its local electric and gas utilities to provide 12 months of past and ongoing usage and billing records at the school site level to the Energy Commission*”. It is unclear from this language if the requirement will continue in perpetuity or if there will be some point in time in the future when this requirement will cease.

As with anything that is submitted to the State, a school district will need to review the documents. In this instance, a school district will need to monitor the usage and billing data. If the expectation is to collect this information from the utilities in perpetuity, it is unreasonable to expect school districts

to do the same. The *Guidelines* do authorize a school district to utilize its funding to hire an energy manager to provide more controls over its energy costs. However, this funding is only available for the span of the program which will cease in 5 years. LAUSD would recommend the authority to collect electric and gas utility data cease at the conclusion of the program or at some reasonable point after the final expenditure report is submitted.

Step 2: Benchmarking or Energy Rating System

10. The statutes require the Energy Commission to “*establish guidelines for “benchmarks or energy rating systems to select best candidate facilities.”* Understanding not every school district has the capacity or resources to identify and prioritize projects that may be determined as the best candidates for Proposition 39 funding, it is appropriate to develop such tools and resources. As the *Guidelines* suggest, benchmarks provide important information about a building’s energy usage. However, the *Guidelines* also state that only the school sites applying for Proposition 39 funding need to be benchmarked. With a school district as large as LAUSD, it is unreasonable to think each site will be benchmarked and ultimately ranked to determine which sites will be applying for Proposition 39 funding. In reality, school districts already know which sites need funding to complete energy efficiency projects. School districts take into consideration many of the factors contained in Step 3 when sites are being prioritized.

Public Resources Code section 26235(e)(5) requires an LEA to take into consideration when prioritizing eligible projects “*the school’s energy intensity as determined from an energy rating or benchmark system.*” In an effort to streamline the process and reduce any unnecessary steps in the program, LAUSD would recommend Step 2 be removed from the *Guideline* as the requirement is currently contained in Step 3. Additionally, LAUSD would recommend that Step 2 be reassigned as an appendix for school districts to use as a resource or tool.

Step 4: Sequencing of Facility Improvements

11. In an effort to ease the workload on school districts, LAUSD would recommend the CEC develop a list of pre-approved projects, by project type, that would require no analysis or data reporting. In the development of the *Guidelines*, the CEC created Exhibit B in the appendix to assist school districts with the sequencing approach and identify potential energy projects. The energy projects contained in Exhibit B were identified by the CEC because these projects have proven to reduce energy consumption and reduce costs; otherwise these projects would not have been identified in the Exhibit B of the appendix.

If funds were expended on a pre-approved list of energy projects, similar to those identified in Exhibit B, a larger percentage of Proposition 39 funds would go to actual projects. As currently drafted, the *Guidelines* create a system in which a niche market will be created to assist school districts in meeting the Proposition 39 *Guidelines*. LAUSD understands the State’s desire to capture energy data, and we recognize not every energy project may fall under this proposed pre-approved list. That being said, we would encourage the CEC to re-evaluate the process to ensure we are maximizing the Proposition 39 dollars. Again, the intent of the legislation is to save energy and money so school districts can focus their limited resources on the needs of the classroom and not their utility bills. This can not be accomplished if the process requires a large percentage of a school district’s allocation be spent on data analysis.

Step 5: Energy Project Identification – Perform Energy Surveys or Energy Audits

12. Public Resource Code section 26235(a)(3)(B) states “*the Energy Commission shall establish guidelines for the use of energy surveys or audits to inform project opportunities costs and savings.*” The *Guidelines* indicate that if an LEA has an existing energy survey, ASHRAE level 2 energy audit or data analytics report completed within the past three years, it may use this information to identify projects. LAUSD appreciates the flexibility this provides but would recommend that the length of time be extended to coincide with the length of the program.

For projects submitted in the first year, it is helpful to know that an energy survey conducted on or after July 1, 2010 would be accepted when identifying eligible projects. However, considering only the first year allocation can be spent for surveying and planning purposes, LAUSD would recommend that the energy survey remain valid for the remaining four years of the program. With school districts able to submit 5-year expenditure plans, it would seem appropriate the energy survey conducted in Year One should remain valid for projects that will be constructed in Year 5.

With respect to the 5-year expenditure plan, it has been stated at numerous community forums that Tier 4 school districts should be allowed the same “Option 3” as Tier 1-3 school district, in that they are permitted to submit a 5-year expenditure plan. LAUSD would concur with this recommendation. Requiring a Tier 4 school district to submit an annual expenditure plan, yet limit Year One allocation funds for planning purposes is problematic in that it would limit a Tier 4 school district from properly planning. At a minimum, LAUSD would encourage the CEC to amend the *Guidelines* in a consistent and equitable fashion to ensure there is only one set of rules all school district must follow. Doing so will ensure continuity throughout the state and ease of understanding for those folks administering the program.

Step 7: Complete and Submit and Energy Expenditure Plan - Energy Expenditure Plan Content

13. The *Guidelines* indicate “*the energy expenditure plan will also include the following certifications*”. The wording in the first two certifications suggests some of the recommendations are actually requirements. LAUSD would seek clarification as to what specifically an LEA is certify to in this Section.
14. Under the same Section as above, LAUSD would recommend changing the third certification, which states “*The LEA commits to use the funds for the project(s) approved in the energy expenditure plan.*” to “The LEA commits to complete the project(s) approved in the energy expenditure plan.” The current wording may not align with acceptable accounting practices used in other grant programs that we may want to employ in this grant program. In cases in which a school district front funds a project, and/or have various funding sources whose combined values exceed total project cost, we want to be able to redirect the reimbursements in order to avoid unnecessary accounting transactions. The current wording in the *Guideline* may force us to unnecessarily create accounting transactions. We’d prefer to book the revenue and track the expenses so that they’re auditable, but avoid the accounting steps to swap the funding sources on the projects, where appropriate.
15. Under the same Section as above, LAUSD seeks clarity in understanding the type of audit the CEC intends to perform. The statute makes two references to audits: Public Resources Code section 26202(e) states “*All projects will be subject to audit*”; and Public Resources Code section 26240(g) states “*Funding provided to LEAs pursuant to this chapter is subject to annual audits required by Section 41020 of the Education Code.*” Education Code section 41020 is a reference to a school

district's annual audit. Is it the intention of the CEC to review the school district's annual audit to verify if grant funds are spent in accordance with Proposition 39?

Step 8: Project Tracking and Reporting - Project Reporting Requirements

16. The *Guidelines* require an LEA to report between 12 – 15 months after the completion of the first energy expenditure plan. LAUSD seeks clarity in understanding if this requirement is upon completion of all scope approved in the expenditure plan or if this means upon completion of the preparation of the expenditure plan.

Additionally, LAUSD previously recommended the *Guidelines* be amended to permit Tier 4 school districts the ability to submit a 5-year expenditure plan. If the recommendation is approved, we would trust this section would be amended to reflect this change.

17. LAUSD seeks further clarification on what is meant by the term “eligible project”. As the district moves forward with planning there appears to be opportunities to maximize cost efficiencies as a result of the type of contracting method we utilize. In some instances, a cost benefit may be achieved by issuing a single contract for a single scope of work at multiple sites. LAUSD seeks clarification if an “eligible project” will be determined based simply on the work performed at a single site, or based on the energy benefit provide from the entirety of the contract. In order to achieve maximum efficiency with the limited funds a school district can expect to receive from Proposition 39, LAUSD would recommend the CEC provide school districts maximum flexibility in determining what constitutes an “eligible project”.

Quarterly Reports

18. As previously stated, LAUSD is seeking to identify opportunities to streamline the process in light of the fact that many school districts do not have the resources or capacity to complete the required paperwork. Additionally, LAUSD is concerned about the number of requirements to participate in this program when balanced against the level of funding a school district is expected to receive. Does it make sense for a school district to spend more than \$15,000 to a consultant to conduct the analysis and prepare the documentation requested when that school district is only receiving \$15,000? At what point does the level of requirements exceed the benefit the school district is receiving?

LAUSD understands the need to collect energy and cost data as this is the stated goal of Proposition 39 and the legislation. However, there are some requirements contained within the *Guidelines* that do not contribute to these goals, such as the requirement to collect quarterly reports. LAUSD would recommend that this requirement and any other requirement that does not directly support the stated goals of Proposition 39 be removed from the *Guidelines* to reduce the workload on school districts.

Energy Expenditure Plan Implementation Changes

19. The *Guidelines* require any significant change in the energy expenditure plan will require change of scope approval. The *Guidelines* identify a “project cost increase by more than 15 percent” and “a change of more than 15 percent in the approved equipment quantity installed” as significant changes that would require change of scope approval. Due to the nature, age and condition of the sites and the requirement to meet current building code standards, it would not be unexpected for cost increases or equipment changes to occur. Therefore, LAUSD recommends that these “significant changes” be removed from the list under this Section in the *Guidelines*.

Contracts

20. Public Resources Code section 26206(d) requires all projects shall have a contract that identifies the project specifications, cost, and projected energy savings. In review of the energy projects identified in Exhibit B of the Appendix, many of the projects listed could be completed with in-house staff. The *Guidelines* are silent in respect to the use of in-house staff to complete Proposition 39 projects; therefore LAUSD seeks clarification that the use of in-house staff is permissible within the force account labor provisions.

No Retroactive Funding of Projects

21. LAUSD seeks to clarify the term “implemented”. It is unclear what is intended when the Guidelines state “If energy projects implementation took place prior to the final Guidelines approval date, those energy projects are not eligible for retroactive Program award funding.
22. LAUSD requests the Program allow reimbursement of other funding sources so that LEAs can avoid waiting for Proposition 39 funds in order to begin work. If the Guidelines are amended to allow Tier 4 school districts the ability to submit an expenditure plan under “Option 3”, similar to our counterparts in Tier 1-3, it would allow a school district to take advantage of a positive bidding climate currently available. Under this scenario, a school district would utilize its own local bond funds or other revenue source to front fund the project and reimburse its local bond funds later when Proposition 39 funds become available. In addition, the completion of energy projects in advance of the expenditure plan allows a school district to realize the energy and cost savings much sooner which ultimately is the goal of Proposition 39.

Again, the LAUSD would like to commend the CEC for promulgating the draft *Guidelines* and for actively seeking industry and school community input. We appreciate the opportunity to comment and share with you our perspective on the proposed *Guidelines*. If you have any questions, I can be reached at (916) 446-6641.

Sincerely,



Eric Bakke
Legislative Advocate