
OLR Bill Analysis

sSB 428

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES RELATING TO SCHOOL CONSTRUCTION.

SUMMARY

This bill makes the following changes in the public school construction statutes:

1. requires the Department of Administrative Services (DAS) to administer a reimbursement grant program beginning in FY 23 for the cost of school indoor air quality improvements, including the installation, replacement, or upgrading of heating, ventilation, and air-conditioning (HVAC) systems (§ 1);
2. extends the allowable 25% increase in per-pupil square footage limits in current law for school buildings built before 1950 to include those built before 1959 (§ 2);
3. requires the DAS commissioner to create an addendum to the school construction priority list project report to include grants awarded by DAS for certain school construction projects without legislative approval (“emergency grants”) (§ 3);
4. removes the requirement that a superintendent notify the DAS commissioner of the need for an emergency grant and formally apply within a certain timeframe (§ 4);
5. eliminates the DAS commissioner’s authority to approve emergency school construction reimbursement grants for administrative and service facility and school safety projects (§ 4);
6. requires school construction grant recipients to submit a project completion notice to DAS within three years after the date when

a certificate of occupancy for the project was issued (§ 5);

7. eliminates the School Safety Infrastructure Council (SSIC) and generally reassigns its duties to the School Building Projects Advisory Council (§§ 6 & 7); and
8. eliminates from current law the (a) newspaper advertising requirement for public invitations to bid on orders and contracts for school construction services and (b) option for a construction manager to self-perform any school construction project element, which takes effect under current law beginning on July 1, 2022 (§ 8).

The bill also makes several technical and conforming changes, including eliminating references to SSIC (§§ 3 & 9-11).

EFFECTIVE DATE: July 1, 2022

§ 1 — INDOOR AIR QUALITY GRANT PROGRAM

Beginning in FY 23, the bill allows local or regional boards of education or regional education service centers (RESCs) to apply for the reimbursement grant with the DAS commissioner when and in a manner she determines. It prohibits boards of education and RESCs from using these grant funds to replace local matching requirements for other federal or state funding received for indoor air quality improvement or HVAC projects.

Under the bill, if there are insufficient funds to give grants to all applicants, then the commissioner must prioritize applicants with schools that have the greatest need for HVAC systems or other indoor air quality improvements. She must use the eligibility criteria described below when determining priority among applicants.

Eligibility Criteria

The bill requires the DAS commissioner to develop eligibility criteria to use when determining whether to award a grant for air quality improvements to a school. These criteria must include the following:

1. the age and condition of the school's current HVAC system,
2. current air quality issues at the school,
3. the overall school building's age and condition,
4. the school district's master plan,
5. maintenance records availability,
6. a contract or plans for the HVAC system's routine maintenance cleaning, and
7. the board's or RESC's ability to finance the project's remainder cost after receiving a program grant.

Grant Amount Calculations

The bill establishes different grant award calculations for local boards of education, regional boards of education, and RESCs.

Local Boards of Education. Under the bill, a local board may receive a reimbursement grant for 20-80% of its eligible expenses, based on its town ranking. The bill establishes the following formula for DAS to use to determine the ranking:

1. Rank each town in descending order (from 1 to 169) using its adjusted equalized net grant list per capita (AENGL) (a measure of town wealth as defined in the education cost sharing (ECS) grant statutes (see BACKGROUND)) from two, three, and four years prior to the fiscal year of the grant application.
2. Assign a reimbursement rate from 20%-80% for each town on a continuous scale, with the first-ranked town receiving a 20% rate and the last-ranked town receiving an 80% rate.

Regional Boards of Education and RESCs. Under the bill, a regional board or RESC may receive a reimbursement grant for a percentage of its eligible expenses under the following ranking formula, which is based on the local boards' formula and the regional district's

or RESC's member towns' populations:

1. Multiply each member town's total population by its AENGL ranking calculated above.
2. Add together the above products for each member town.
3. Divide the total sum by the total population of all member towns.
4. Round each regional board's or RESC's ranking to the next higher whole number.
5. Assign to each regional board or RESC the same reimbursement percentage as a town with the same rank (presumably, under the AENGL-based formula for local boards of education).
6. For regional boards only, add 10% to this amount, up to a maximum reimbursement of 85%.

Grant Increases for Contracting With Minority Business Enterprises

The bill requires that a board of education's or RESC's reimbursement grant percentage increase by an additional 5% if the DAS commissioner, in consultation with the Commission on Human Rights and Opportunities, determines that it has exceeded the minority business enterprises requirements in state law for the air quality or HVAC improvements for which the grant was awarded (existing law makes a municipal public works contractor, rather than a municipal entity, responsible for complying with MBE requirements; see BACKGROUND). (The bill does not specify for how long the increase applies or a how a board's or RESC's performance is measured with respect to the requirements.)

The bill also requires a 5% reimbursement increase if the board or RESC has contracted with a minority business enterprise for at least 10 years for the routine maintenance and cleaning of the HVAC system for which the grant was awarded.

Ineligible Costs

The bill makes the following costs ineligible for grant reimbursement: (1) routine HVAC system maintenance and cleaning, (2) work that is otherwise eligible for a state school construction reimbursement grant, and (3) work on a public school administrative or service facility that is located outside of a public school building.

Project Completion and Maintenance

Under the bill, any project that receives an indoor air quality improvement grant award must be completed by the end of the next calendar year. However, the DAS commissioner may extend the project duration if the recipient board or RESC shows good cause.

The bill places the responsibility for an HVAC system’s routine maintenance and cleaning with the grant recipients and requires them to train to school personnel and building maintenance staff about the system’s proper use and maintenance.

§ 2 — SPACE STANDARDS

By law, reimbursement grants for school building projects authorized by the legislature must follow per-pupil square footage limits set in state law or regulation. Currently, any building constructed before 1950 receives a 25% increase for any square footage limit. The bill expands eligibility for this increase to include any building constructed before 1959.

§§ 3 & 4 — DAS-APPROVED EMERGENCY GRANTS

Priority List Addendum

The law allows the DAS commissioner to award school construction grants for certain projects without legislative approval (“emergency grants”), within the limit of appropriated funds.

Beginning July 1, 2022, the bill requires the commissioner to create an addendum to the school construction priority list project report. By law, she must send this report to the legislature’s school construction committee before December 31 each year (see BACKGROUND). Under the bill, the report addendum must contain all emergency grants approved by the DAS commissioner during the previous fiscal year. The

law allows her to approve emergency grants for the following purposes:

1. remedy fire and catastrophic damage;
2. correct safety, health, and other code violations;
3. replace roofs, including skylight installation;
4. remedy a certified school indoor air quality emergency;
5. insulate exterior walls and attics; or
6. purchase and install a limited use and limited access elevator, windows, photovoltaic panels, wind generation systems, building management systems, or portable classrooms.

(The bill also eliminates emergency grant authority for certain projects; see below.)

The bill also removes the requirement that a superintendent notify the DAS commissioner of the need for an emergency grant and formally apply within a certain timeframe. Under current law, a superintendent has seven calendar days after discovering the emergency to notify the commissioner in writing about the reason for the emergency grant, and to receive the grant he or she must apply to the commissioner within six months after submitting the written notice.

§ 4 — ELIMINATED EMERGENCY PROJECTS

The bill subjects the following projects to legislative approval by eliminating the DAS commissioner's authority to approve reimbursement grants on an emergency basis: (1) public school administrative or service facilities and (2) school security projects, including improvements to existing school security infrastructure or new infrastructure. Accordingly, these types of projects must instead appear on the school priority list and the project report that the DAS submits to the legislature's school construction committee for approval every December.

§ 5 — PROJECT COMPLETION AND CLOSURE

Beginning July 1, 2022, the bill requires towns and regional school districts that are grant recipients to submit a project completion notice to DAS within three years after the date when a certificate of occupancy for the project was issued. If a grant recipient does not submit this notice on time, then the DAS commissioner must deem the project complete and begin a final project audit. By law, DAS must conduct an audit within five years after a school district files a notice of project completion (CGS § 10-286e(a)).

Additionally, the bill requires the commissioner to deem a project authorized before July 1, 2022, as complete if its grant recipient has received a certificate of occupancy and has not submitted a project completion notice to DAS on or before July 1, 2025.

§§ 6 & 7 — SCHOOL SAFETY INFRASTRUCTURE COUNCIL

The bill eliminates the School Safety Infrastructure Council (SSIC) and generally reassigns its duties to the School Building Projects Advisory Council. SSIC is 10-member council of agency heads and gubernatorial and legislative appointees, chaired by the DAS commissioner and tasked under current law with developing the school safety infrastructure criteria for projects that are awarded state school building project reimbursement grants and school security infrastructure competitive grants. The School Building Projects Advisory Council is an eight-member council of agency heads and executive branch appointees, also chaired by the DAS commissioner, that conducts studies, research, and analyses and makes recommendations for improvements to the school building projects processes to the governor and legislature (CGS § 10-292q).

The bill eliminates provisions in current law requiring SSIC to develop the grants' criteria and meet at least annually to review and update the criteria and make them available to boards of education. The bill instead requires the advisory council to periodically review and update the criteria as necessary, and submit any updates to the education and emergency services and public protection commissioners, along with the Public Safety and Security and Education committees.

§ 8 — BIDDING REQUIREMENTS AND CONSTRUCTION MANAGEMENT SERVICES***Public Invitations to Bid***

The bill eliminates the newspaper advertising requirement for public invitations to bid on orders and contracts for (1) school building construction projects receiving state grants, (2) architectural services, and (3) construction management services. Under current law, these public invitations to bid must be advertised in a newspaper having circulation in the town where the construction will take place, except for certain projects such as those using a state contract. The bill retains provisions in current law requiring a public bidding process, but does not specify a particular method for giving public notice of bidding opportunities.

Construction Manager Self-Performance

The bill eliminates the option for a construction manager to self-perform any project element, which under current law becomes effective beginning July 1, 2022. Current law conditions this option upon the (1) DAS commissioner and the awarding authority determining that the construction manager can self-perform the work more cost-effectively than a subcontractor could and (2) commissioner's written approval.

For subcontractor bids on school building projects, the bill requires the construction manager to invite bids on project elements and give notice of bidding opportunities on the State Contracting Portal. It explicitly deems the construction manager ineligible to bid on any project element.

The bill requires that each bid be kept sealed until opened publicly at the time and place stated in the bid solicitation notice. After consultation with and approval by the employing town or regional school district, the construction manager must award any related contracts for project elements to the lowest responsible qualified bidder. As under current law, construction cannot begin before the guaranteed maximum price is determined (except for site preparation and demolition work).

BACKGROUND

Related Bills

SB 423, reported favorably by the Labor Committee, requires the labor commissioner to set up a school indoor air quality assessment and ventilation monitoring program and also makes certain school HVAC projects eligible for state reimbursement grants.

HB 5479, reported favorably by the Public Health Committee, requires the Department of Public Health to set up an indoor air quality monitoring program for public schools.

Adjusted Equalized Net Grand List (AENGL) Per Capita

AENGL per capita is a measure of town property wealth. It is calculated using the following formula:

1. Take the net grand list of the town upon which taxes were levied for the town's general expenses three years before the fiscal year when the grant will be paid, equalized by the Office of Policy and Management secretary to calculate ECS grants consistent with state law.
2. Divide the above number by the product of the (a) town's total population and (b) ratio of the town's per capita income to the per-capita income of the town at the 100th percentile among all towns when ranked from lowest to highest in per capita income (CGS § 10-261).

Minority Business Enterprise Contracting Requirements

Under the state set-aside program, state agencies and political subdivisions (other than municipalities, see below) must set aside at least 25% of the total value of all contracts they let for construction, goods, and services each fiscal year for exclusive bidding by certified small contractors. The agencies must further reserve at least 25% of the set-aside value (i.e., at least 6.25% of the total) for exclusive bidding by certified minority business enterprises (MBEs). Contractors awarded municipal public works contracts must comply with these requirements if the (1) contract includes state financial assistance and (2) total contract

value exceeds \$50,000. MBEs are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical competence and experience directly related to his or her principal business activities (CGS §4a-60g).

School Construction Priority List Project Report

By law, the project report must contain all school building projects the DAS commissioner has placed on the priority list as eligible for a school construction reimbursement grant, listed with each project's estimated grant amount, enrollment projections, estimated total cost, and readiness to begin construction, among other things.

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute

Yea 39 Nay 0 (03/25/2022)