
California's Prop 39 Fund: Up to \$2.75 Billion for Energy Projects at Public Schools, Colleges

By Philip Tendler, Brian Scaccia, and Emily Burkett

On June 27, Governor Jerry Brown signed SB 73 into law as part of the state budget package. The bill established a Clean Energy Job Creation Fund, into which up to \$550 million each year will be transferred from California's general fund to be allocated primarily as grants to public schools and community college districts for energy efficiency upgrades. Contracts awarded for projects that involve Prop 39 funding will have to be put out for public bid and may be awarded on a "best value" basis, which considers price alongside other objective criteria as the basis for an award.

The implementing legislation for the California Clean Energy Jobs Act, passed by voters as Proposition 39 last year, will make an estimated \$2.75 billion of additional tax revenue available for energy projects (both energy efficiency and clean energy generation) over the next five years. (Prop 39 required multi-state businesses to calculate their state income tax liability based on the percentage of their sales in California, increasing anticipated state revenue by \$1.1 billion each year.)

Funding will be available primarily through grants to K-12 public schools and community colleges to improve the energy efficiency of their facilities and install new clean energy generation. While guidelines for eligible projects are still forthcoming, the availability of additional funds may help catalyze a number of energy-related projects in the education sector that have been delayed due to budget constraints in prior years.

The 2013-2014 annual state budget allocates \$428 million to the fund, of which \$381 million is available for K-12 schools and \$47 million for community colleges.

Grants received under this program may be combined with other incentives, either from the government, public utilities or other sources, to provide greater financing flexibility. The fund will also support clean energy job training and public-private partnerships. Accordingly, private sector energy firms doing business with public educational institutions should investigate whether the financing of their projects would benefit from Prop 39 funding.

The California Energy Commission is expected to work with education officials to develop and promulgate guidelines for distribution of funds and project qualifications, including: standard methods for estimating energy benefits; contractor qualifications, licensing, and certifications; and project evaluations to select candidate facilities, relying on benchmarks such as energy surveys and achievement of the maximum feasible benefits. Because these guidelines have not yet been developed, it remains unclear whether Prop 39 funds could be applied to pay for project costs after they have been incurred. In addition, because a primary focus of the implementing legislation is on job creation, it appears unlikely that these funds could be combined with additional sources to refinance a project that has already been constructed.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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