



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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Building Condition Survey deadline extension

As in the past, we are experiencing problems with bandwidth and load balancing with our servers for the Building Condition Survey, occasionally resulting in premature termination of data input by the user. Under normal circumstances, upon successful completion of data entry, the user will receive an e-mail response from the server indicating completion. If, after hitting the submit button, you either get an error message or no e-mail response, your data were not saved to our system and, unfortunately will need to be resubmitted.

Because of the technical problems, we are extending the deadline for submission of the BCS data to June 30th, 2011. This date coincides with the requirements for submission of aid claims through the State Aid Management System (SAMS).

PLEASE NOTE: We are extending the deadline the maximum amount possible. It cannot be extended again. If data is not submitted by this date, it will not be accepted, and there will be no aid paid, and perhaps most importantly, future approvals may be significantly delayed due to the lack of a BCS on file.

Project submission notes

We are noticing an increase in the number submissions that are missing several documents at the time of submission, or have incomplete documents. Not only does this require follow up by the project management team, it causes unnecessary confusion for school districts and their designers when they see something like “unusual problem – call project manager” on our project management screen. Deficient submissions frequently result in delayed approvals and thus, delays in bidding projects. Checklist FP-CL identifies all required paperwork for a project submission. If there are any questions about what is required for a submission, call your project manager. We’re here to help. A few minutes spent before a submission can save many minutes after submission. Below is a “crib sheet” of needed items for a submission and a few particulars to keep in mind about the form. We hope you find it useful.

EVERY project must include the following “front end” paperwork (these items are in addition to the plans and specifications):

- Checklist, form FP-CL. The official version of this “crib sheet.” This form should be completed and sent for each project in a submission. When in doubt, please call your project manager!

- Application form, form FP-F. Please make sure to itemize the sources of funding on page 1, and the expenses on page 2. Make sure the total of funding equals the expenses. This form must have the signature and seal of the architect/engineer designer in the lower left corner of page one. We frequently find the seal missing from this form. Please also make sure to put the date of authorization for the project in line 1.
- Bond resolution or budget referendum. Every submission must include documentation proving authorization for funding the project. In most cases, this is a bond resolution. In other cases, it's a budget referendum. If the project is an emergency, the authorization will be in the form of a board resolution.
- Vote tally. We need to see that the above bond resolution or budget referendum were passed by the voters. Please include a clerk-certified vote tally for each. In the case of an emergency project, please include the tally for the board vote.
- Evaluation of Existing Building, form EEB. Please carefully review and sign this worksheet, making sure to check a box for question 51 and to place the designer's seal in the box in the lower left corner of page 2. This form is required for all instructional buildings in all but "Big 5" school districts.
- Scope of Proposed Project form, FP-SP. Please make sure to fill in the date of submission of the board resolution for the type of project, type 1, 2 or unlisted. Make sure the form is signed on page 2.
- SHPO letter. Please submit a copy of the SHPO cover letter sent to their office for new building construction, additions and work to be done on buildings 50 or more years old. Please note that we now offer a form developed with SHPO under a memorandum of agreement with them to expedite the procedure for certain projects on 50 year old or older buildings. Please check our [website](#) for further information on use of this process. You might find this a tremendous timesaver to your process.
- SHPO response letter. Official signoff by the State Historic Preservation Office for projects that require this approval
- SEQR resolution. In addition to the Scope of Proposed Project form, please include a copy of the board resolution declaring the district as lead agency and the type designation, type 1, 2 or unlisted action.
- Highway letter. Please make sure to include a copy of the notification of the project to the appropriate highway official and make sure it indicates the impact to entrances, exits and storm drainage, if any.
- Asbestos letter. This letter, submitted by the designer, must include the following information: that the design does not include the use of ACM in the design and that the project will not encounter ACM "*as evidenced by bulk or destruct testing.*" If the project will encounter ACM, the letter must instead indicate that work will be done in accordance with Industrial Code Rule #56 and attach a photocopy of the designer's current asbestos license indicating they are still currently licensed as a project designer.
- Floodplain certification. For new buildings and additions, please submit the documentation as indicated in the Checklist FP-CL. If the project does not include a new building or addition, there is no need to submit this documentation.
- Code Compliance Checklist for FP-CCC. Required for every project submission.
- Executive Summary of the Five Year Plan. Each submission must include a copy of this document. There is much confusion in the field about what an executive summary should

look like. Carl Thurnau prepared a very helpful summary of [what this document should include](#).

- Application for Apportionment of Building Aid. Some districts are subject to reorganization. For districts with a class 2 or 3 rank, we need an application form. For districts with a class 1 rank, we need an application form plus a letter from the District Superintendent (the BOCES superintendent), indicating approval for the project. This requirement is frequently the subject of much confusion. To find your district, check the list [here](#). If there are any questions regarding this requirement, please call your project manager before sending your submission.
- NEW REQUIREMENT EFFECTIVE JANUARY 11, 2011: Smart Growth Public Infrastructure Impact Statement. Please see new process identified in this newsletter and on the facilities website.

By following this ad hoc list of requirements, we believe you will be able to submit a complete project submission 99 percent of the time. Complete submissions are critical to your projects' approval. If, after submission of a project, a file is found missing items, your project manager will contact the designer. Most missing documents may be sent as pdf attachments to e-mails. In the even of multiple documents, we would prefer these be sent in the mail. We are unable to print large volumes of documents or photocopy quantities of missing forms for submissions with multiple projects. We would appreciate your sending all missing documents for a submission in one package, rather than one at a time.

Resolutions 101

Project submissions require two types of resolutions: SEQR and financial. Hopefully, we can shed some light on these to make your submissions go smoothly.

SEQR resolutions. Every project submitted for review must include a copies of the SEQR resolutions adopted by the board of education for the district. The first resolution is where the board declares itself as "lead agency." The second resolution declares whether the project is a Type 1, 2 or Unlisted action and the determination. Accompanying the resolutions, make sure to include the page indicating the board vote – the "yeas" and "nays."

Financial resolutions. Every project requires proper authorization. Authorization for capital construction usually comes from the taxpayers in a district, with two exceptions: emergencies and energy performance contracts.

In the case of a project deemed to be a health and safety issue of such a level that it constitutes a safety hazard to either a facility or its students or staff, a board has the power to declare an emergency. In the case of an emergency, your submission must include a certified (by the board clerk) copy of the resolution and the yeas and nays. A district must fund emergency projects using cash on hand, usually from the general fund. Borrowed funds, as authorized by voters for other capital construction projects, may not be used for funding emergency projects.

In the case of energy performance projects, a simple board authorization is all that is required.

Regular capital projects will be authorized by the district taxpayers at either the annual budget vote or at some other time as the board decides to hold a vote for a capital project. In either case, authorization will be for the approval of the construction and for its means and amount of financing, whether it is a budget appropriation or, more commonly, a bond authorization.

In the case of a budget appropriation, the voters will approve the allocation of a sum certain or an “amount not to exceed” for a construction project. For purposes of a project submission, we must receive a copy of the budget referendum and a clerk-certified copy of the popular vote tally. Many referenda are lengthy, so it would help to flag the pertinent resolution, either with a highlighter or some other means to identify the correct language.

For bond propositions, we need a copy of the referendum that includes the bond resolution language and the clerk-certified popular vote tally. Please call out the language specific to the project submitted so that we can see that the proposed work matches the language in the resolution(s).

Capital outlay exception –“\$100,000” – projects. Law provides that a district may receive building aid in the following aid year for one project each year in the district not to exceed \$100,000. These projects also require full voter authorization and must be paid by budget appropriation. Districts may not use borrowed money for these projects.

Rebates: how to account for them in your submission

As fuel prices rise, many districts are entering energy performance contracts or doing energy projects. In some cases, there are rebates offered, as with some power company programs, which can offset the cost of these projects. Please be aware that these rebates must be identified on the Application for Approval of Final Plans and specifications, form FP-F, under “other” as a rebate. Since these funds offset the actual cost of a project, they are not aidable.

Potential PCB contamination in public schools

Recently, several NYC school facilities were inspected by the United States Environmental Protection Agency under a pilot program to determine the extent of PCB contamination in City public schools. All five of the facilities were found to have varying levels of PCB contamination, from installed products, and action was taken to remove and replace the contaminated material. This pilot study has demonstrated that PCB’s may exist throughout the New York State public school systems due to the average age of our facilities.

Polychlorinated biphenyls (PCBs) were developed in the 1940's and are a group of chemicals that have extremely high boiling points and are practically nonflammable. Because of this, they were used extensively in the manufacture of caulking materials and transformers, capacitors, and other electrical heat transfer devices through the late 1970's. In 1979 their manufacture and importation was banned in the United States, based on evidence that long term exposure was potentially toxic to humans and wildlife and today they are classified as probable human carcinogens.

People can still be exposed to PCB’s from older electrical equipment in use for 30 years or more. Old fluorescent lighting fixture ballasts, HID lighting ballasts, and old electrical equipment devices may contain PCBs if they were made before 1979. When these electric devices get hot during operation, small amounts of PCBs may get into the air and raise the level of PCBs in indoor air.

Because devices that contain PCBs can leak with age, the leakage could also be a source of exposure to PCBs.

If your facility was constructed prior to 1979, it is possible that the facility contains caulking or electrical equipment that may contain PCB's. Caulking was used mostly as a sealant around masonry openings and windows, doors, louvers, and expansion joints, and may be installed both inside and outside the facility. PCB's in electrical equipment may be found in electrical transformers, lighting ballasts, and other electrical equipment.

The department previously collaborated with the NYS Department of Health, Division of Environmental Health Assessment, Bureau of Toxic Substance Assessment to address concerns about properly managing caulk containing PCBs that will be disturbed during building renovation and maintenance. The protocol did not address potential PCB contamination as a result of electrical equipment or fluorescent lighting

That protocol for PCB caulking can be reviewed at:

<http://www.p12.nysed.gov/facplan/HealthSafety/PCBinCaulkProtocol-070615.html>

Although intact PCB-containing lighting ballasts pose no immediate health threat, based on the potential long term exposure concerns, the department recommends that school districts take a prudent approach to potential PCB contamination and inspect lighting systems in particular to investigate whether PCB's exist in the facility. Failed or leaking PCB-containing lighting ballasts may result in elevated levels of PCBs in indoor air. If ballasts are found to be leaking, they should be immediately replaced. If the product was manufactured prior to 1979, it should be assumed to be PCB containing and properly disposed of as a hazardous material.

It is important to understand that while there is no requirement to test for the presence of PCB's, if leaking PCB equipment is found in a building, the federal Toxic Substances Control Act requires that steps must be taken to decrease any potential exposure and to remove and dispose of the PCBs in accordance with local, state and federal laws. PCBs should be removed by trained professionals using protective equipment and proper disposal procedures. A threshold of 50 ppm of PCB concentration will determine the proper disposal method for PCB waste.

When construction, renovation and maintenance activities are performed, existing fixtures and equipment scheduled to be replaced should be investigated for the presence of PCB's and dealt with properly during the course of the project.

Numerous school buildings across the state have undergone extensive lighting retrofits since 1979 in an effort to conserve energy, and in many cases may have removed PCB containing light fixtures during previous renovations. Those facilities may no longer have PCB's in electrical lighting components in the school, but this should be verified during the planning stages for future capital projects. Other electrical components such as transformers should also be checked.

The EPA has released guidance recommending that schools take steps to reduce potential exposure to PCBs from older fluorescent lighting fixtures. Please read the guidance document online at: <http://www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/ballasts.htm> .

Of course the removal and replacement of PCB lighting fixtures is eligible for state building aid. Please contact the Office of facilities planning with any additional questions you may have.

Wage Rates

In an effort to streamline project specifications, we were recently asked if it was possible to avoid the printing and inclusion of wage rates in project specifications. We contacted the DOL and determined that it is possible by following the process outlined below.

General information about public works projects and prevailing wages can be found on the DOL website at: <http://www.labor.ny.gov/workerprotection/publicwork/PWContents.shtm>

On that website in the third group down, entitled Prevailing Wage Schedule Links, you will find a link for the following topic: [Online "Request for Wage and Supplement Information" \(PW39\)](#)

By following this link you will request a PRC number for the specific school project in question. This form can be completed by either the school district or the consultant. DOL will assign a PRC number and forward a PDF copy of the wage rates for the project to the appropriate email address on the form.

The PRC number can be used by all prospective bidders to see the appropriate wage rates for the project by following the next link in the Prevailing Wage Schedule Links: [View of Previously Requested Prevailing Wage Schedule using PRC#](#) . The previously obtained PRC number is simply entered into this site to see all applicable wage rates for the specific project.

Therefore, for SED purposes, the PRC number and the third link must be included in the specifications. Please continue to paper clip it for us so it's easy to find. You may use this process for SED approval and for the actual bidding process, which will eliminate the printing of all those copies. Prospective bidders must go to the DOL website with the PRC number you provide and make certain their bid price is reflective of the actual wage rates for the particular project.

Once the district has identified a low bidder, DOL states that the contract must include the actual wage rates for the project. So for a normal wick's job, only 4 copies of wage rates will be required instead of potentially many more for prospective bidders. For SED operations alone, this can save almost 200,000 printed pages on more than 2000 annual projects. When multiplied by the significantly more copies printed in the field, this will save tremendous resources for all.

Reminder regarding the operation of electrically operated partitions:

Prior to operation of electrically operated partition: occupants and all other items must be removed from the stacking area; occupants (other than trained operators) must be removed from the space between the coverage areas of the sensors serving the partition; and all items that may block the sensors beam from covering it's entire range must be removed. Occupants located between the coverage area of the sensors and the partition path will not be picked up by a sensor, and thus, will

not be protected by the sensor portion of the safety system. (It is strongly recommended that all occupants be removed as far from the path of the partition as possible.) Items such as banners, signs, poles, portable basketball backboards, etc, may block the coverage of sensor(s) providing leading edge protection of the partitions. Certain types of sensors such as passive infrared sensors will not provide adequate protection, if the field of view is blocked. Other types of sensors such as infrared beams will not allow partition to operate, if beam is blocked.

Please ensure electrically operated partitions are properly maintained in accordance with the manufacturer's instructions, including the manufacturer's recommended service interval, and records of such maintenance is retained and available for inspection during the annual fire safety inspection process. Safety systems, sensors pressure sensitive mats and all other system components must never be bypassed, overridden or otherwise rendered inoperable.

What must be done when an electrically operated partition safety system is not operating properly?

Please recall the temporary provisions that allowed movement of a partition under special conditions when the law was first enacted. This allowed time for the safety systems to be installed after enactment of the law. They included a written certification to the Commissioner by the BOE that the partition would only be moved in accordance with 155.25(d)(5) when: movement did not occur during normal school hours, when there were no other individuals in the space being divided, when operated by properly trained individuals, and when proper operating procedures were posted.

THESE TEMPORARY PROVISIONS HAVE LONG SINCE EXPIRED ON JUNE 1, 2003.

Therefore, if a safety system is found to be non compliant, the partition must not be used under any circumstances. It must be locked out, tagged out at the electrical panel and remain inoperative until all safety systems are in proper working order. No exceptions. This should also be apparent when viewing the maintenance log.

State Smart Growth Public Infrastructure Policy Act

A new law entitled State Smart Growth Public Infrastructure Policy Act was signed by the Governor on December 23, 2010, and became effective on January 22, 2011. The Act amends environmental conservation law and its intent is to prevent sprawl development from public infrastructure projects through the consideration of smart growth criteria.

As noted in the law Section 6-0105:

STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY.

IT IS THE PURPOSE OF THIS ARTICLE TO AUGMENT THE STATE'S ENVIRONMENTAL POLICY BY DECLARING A FISCALLY PRUDENT STATE POLICY OF MAXIMIZING THE SOCIAL, ECONOMIC AND ENVIRONMENTAL BENEFITS FROM PUBLIC INFRASTRUCTURE DEVELOPMENT THROUGH MINIMIZING UNNECESSARY COSTS OF SPRAWL DEVELOPMENT INCLUDING ENVIRONMENTAL DEGRADATION, DISINVESTMENT IN URBAN AND SUBURBAN COMMUNITIES AND LOSS OF OPEN SPACE INDUCED BY SPRAWL FACILITATED BY THE FUNDING OR DEVELOPMENT OF NEW OR EXPANDED TRANSPORTATION, SEWER AND WASTE WATER TREATMENT,

WATER, EDUCATION, HOUSING AND OTHER PUBLICLY SUPPORTED INFRASTRUCTURE INCONSISTENT WITH SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA.

The actual smart growth criteria are as listed in Section 6-0107 as follows:

STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA.

1. IN ADDITION TO MEETING OTHER CRITERIA AND REQUIREMENTS OF LAW GOVERNING APPROVAL, DEVELOPMENT, FINANCING AND STATE AID FOR THE CONSTRUCTION OF NEW OR EXPANDED PUBLIC INFRASTRUCTURE OR THE RECONSTRUCTION THEREOF, NO STATE INFRASTRUCTURE AGENCY SHALL APPROVE, UNDERTAKE, SUPPORT OR FINANCE A PUBLIC INFRASTRUCTURE PROJECT, INCLUDING PROVIDING GRANTS, AWARDS, LOANS OR ASSISTANCE PROGRAMS, UNLESS, TO THE EXTENT PRACTICABLE, IT IS CONSISTENT WITH THE RELEVANT CRITERIA SPECIFIED IN SUBDIVISION TWO OF THIS SECTION.
2. THE FOLLOWING ARE THE STATE SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA:
 - A. TO ADVANCE PROJECTS FOR THE USE, MAINTENANCE OR IMPROVEMENT OF EXISTING INFRASTRUCTURE;
 - B. TO ADVANCE PROJECTS LOCATED IN MUNICIPAL CENTERS;
 - C. TO ADVANCE PROJECTS IN DEVELOPED AREAS OR AREAS DESIGNATED FOR CONCENTRATED INFILL DEVELOPMENT IN A MUNICIPALLY APPROVED COMPREHENSIVE LAND USE PLAN, LOCAL WATERFRONT REVITALIZATION PLAN AND/OR BROWNFIELD OPPORTUNITY AREA PLAN;
 - D. TO PROTECT, PRESERVE AND ENHANCE THE STATE'S RESOURCES, INCLUDING AGRICULTURAL LAND, FORESTS, SURFACE AND GROUNDWATER, AIR QUALITY, RECREATION AND OPEN SPACE, SCENIC AREAS, AND SIGNIFICANT HISTORIC AND ARCHEOLOGICAL RESOURCES;
 - E. TO FOSTER MIXED LAND USES AND COMPACT DEVELOPMENT, DOWNTOWN REVITALIZATION, BROWNFIELD REDEVELOPMENT, THE ENHANCEMENT OF BEAUTY IN PUBLIC SPACES, THE DIVERSITY AND AFFORDABILITY OF HOUSING IN PROXIMITY TO PLACES OF EMPLOYMENT, RECREATION AND COMMERCIAL DEVELOPMENT AND THE INTEGRATION OF ALL INCOME AND AGE GROUPS;
 - F. TO PROVIDE MOBILITY THROUGH TRANSPORTATION CHOICES INCLUDING IMPROVED PUBLIC TRANSPORTATION AND REDUCED AUTOMOBILE DEPENDENCY;

- G. TO COORDINATE BETWEEN STATE AND LOCAL GOVERNMENT AND INTERMUNICIPAL AND REGIONAL PLANNING;
- H. TO PARTICIPATE IN COMMUNITY BASED PLANNING AND COLLABORATION;
- I. TO ENSURE PREDICTABILITY IN BUILDING AND LAND USE CODES; AND
- J. TO PROMOTE SUSTAINABILITY BY STRENGTHENING EXISTING AND CREATING NEW COMMUNITIES WHICH REDUCE GREENHOUSE GAS EMISSIONS AND DO NOT COMPROMISE THE NEEDS OF FUTURE GENERATIONS, BY AMONG OTHER MEANS ENCOURAGING BROAD BASED PUBLIC INVOLVEMENT IN DEVELOPING AND IMPLEMENTING A COMMUNITY PLAN AND ENSURING THE GOVERNANCE STRUCTURE IS ADEQUATE TO SUSTAIN ITS IMPLEMENTATION.

The Law goes on to state that the State Infrastructure Agency may not make any commitment to a project or provide any funding, until satisfied that the project, to the extent practicable, complies with the above referenced smart growth principles. As NYSED is deemed to be a State Infrastructure Agency, we will not be able to support, approve or fund any capital projects unless they have complied with the legislation.

NEW SED APPROVAL PROCESS for State Smart Growth Public Infrastructure Policy Act

In order to comply with these new criteria, the department has developed a new form for inclusion on every capital project submitted to Facilities Planning for a building permit whether the project is eligible for building aid or not. The new process involves a written smart growth impact statement signed by the school district that the project, to the extent practicable, meets the relevant criteria set forth in the law, or alternatively that the project is not in compliance with the smart growth criteria because compliance is impractical. A written statement of justification of the district's position is required.

On behalf of the department, the Office of Facilities Planning will review the information provided and evaluate the district's conclusions. If the department agrees with the district's conclusions, the project approval will be issued in the normal course of business. If we disagree with the conclusions in the smart growth impact statement, or determine that the project justification for non-compliance is insufficient, or question the process followed to arrive at the conclusions, we may ask for additional information, or if necessary, reject the application and return it to the district for a more thorough smart growth review process.

In this regard, the Smart Growth process can be considered very similar to the State Environmental Quality Review Act (SEQRA). We recommend that the district's best course of action is to follow a very open and public process to address all smart growth concerns during the SEQR process and mitigate any concerns *to the extent practicable* by changing the project design accordingly.

This new process is not expected to be a burden to the approval process for 95% of the capital projects submitted to SED. Most public school capital projects will fall into the first smart growth

criteria category: TO ADVANCE PROJECTS FOR THE USE, MAINTENANCE OR IMPROVEMENT OF EXISTING INFRASTRUCTURE; and therefore satisfy the smart growth legislation. A greater amount of work will be required for those larger additions, new construction, and new site acquisitions to demonstrate a considered course of action to prevent sprawl development.

The new State Smart Growth Public Infrastructure Impact Statement form FP-SGIS can be found on our website at the following location:

<http://www.p12.nysed.gov/facplan/documents/DRAFTSGImpactStatementForm.xls>.

Effective immediately all project submissions must contain this information.

SED has been reviewing projects in accordance with the law since its inception and have approved renovation projects without additional information as compliant with the first criteria while the new process was developed. New construction projects have required additional information regarding Smart Growth prior to approval. This new process will allow consistent review of project compliance with the new Smart Growth Law in the future.

Please send any general comments, requests, or questions to Curt Miller at hmiller2@mail.nysed.gov or 518-474-3906.

An Index of our Newsletters is available on our website at
<http://www.emsc.nysed.gov/facplan/NewsLetters.htm>