REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 23, 2017

CAREER TECHNICAL EDUCATION FACILITIES PROGRAM REGULATORY AMENDMENTS

PURPOSE OF REPORT

To present the State Allocation Board (Board) with recommendations to establish additional funding cycles for the Career Technical Education Facilities Program (CTEFP) and to present conforming regulatory amendments due to recent statutory changes.

DESCRIPTION

The Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51) provided the CTEFP $500 million in bond authority. Therefore, the Board must consider establishing additional CTEFP funding cycles in order to allocate the funds. After collaborating with the California Department of Education (CDE), Staff is presenting schedules for a fourth and fifth funding cycle to accept applications to the program for the Board's consideration and regulatory amendments to allow for future cycles.

In addition, Education Code (EC) Section 17078.73 which restricted the Board's authority to approve CTEFP projects was recently repealed by Chapter 15, Statutes of 2017 (Assembly Bill 99) and took effect immediately. In accordance with this change, Staff is presenting conforming regulatory amendments to the School Facility Program (SFP) Regulations.

AUTHORITY

EC Section 17070.35 states in part:

> (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:
> (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter….

EC Section 17078.73 previously stated that "On or after January 1, 2015, the board shall not approve any projects pursuant to this article." (Repealed as of June 27, 2017)

EC Section 101012 states in part:

> (4)(B) Of the amount not yet approved for allocation by the State Allocation Board pursuant to this paragraph by January 1, 2015, 50 percent shall be available for the purpose of paragraph (1), and 50 percent shall be available for purposes of paragraph (3). If an apportionment or State Allocation Board approval pursuant to this paragraph is rescinded after January 1, 2015, the rescinded amount shall be available for the purposes of paragraphs (1) and (3). The State Allocation Board shall determine the percentage of the rescinded amount to be used for purposes of paragraph (1) and the percentage of the rescinded amount to be used for purposes of paragraph (3).

EC Section 101122(a)(4) states: "The amount of five hundred million dollars ($500,000,000) for facilities for career technical education programs pursuant to Article 13 (commencing with Section 17078.70) of Chapter 12.5 of Part 10 of Division 1 of Title 1."

BACKGROUND

On November 8, 2006 the Kindergarten University Public Education Facilities Bond Act of 2006 (Proposition 1D) took effect and established the CTEFP within the SFP and made $500 million available for CTEFP projects. Due to the anticipated high interest in the program and to make it equitably available to as many applicants as possible statewide, the Board established funding cycles with specific amounts of funding allocated to each cycle. It also established a funding matrix system to ensure that the funds were divided among different geographic locales and service regions. Within the first two funding cycles, funds were distributed by Service Region, and projects were funded in order of CDE score and geographical locale. For the third and any subsequent cycles, regulations prescribe that projects will be ordered by CDE score and geographic locale. The first cycle had $350 million allotted and the second had $150 million allotted. At the end of the second cycle, sufficient funds remained to hold a third funding cycle, which was oversubscribed.

From 2006 to 2014, the Board held three funding cycles where $466.7 million was allocated to construct new, or modernize existing facilities for career technical education programs and to purchase equipment for these programs. As of August 23, 2017 and upon Board approval of the Consent Agenda, the CTEFP Proposition 1D fund balance will be $2.4 million due to returned funds.

On June 20, 2014 Chapter 39, Statutes of 2014 (Senate Bill 869), was signed into law. The new law restricted the Board's authority to approve any CTEFP projects on or after January 1, 2015 and established EC Sections 17078.73 and 101012(a)(4)(B). In accordance with the new statute, the Board adopted amendments to SFP Regulation Sections 1859.190, 1859.195(c), and 1859.198 to reflect the cessation of CTEFP project approvals and to formalize how funds returning to the program would be allocated.

Proposition 51 provided $500 million in bond authority for CTEFP to continue the program. Therefore, EC Section 17078.73 was repealed by Chapter 15, Statutes of 2017 (Assembly Bill 99) on June 27, 2017. In accordance with this change in statute, Staff is presenting conforming regulatory amendments for the Board's consideration.

STAFF ANALYSIS/STATEMENTS

Considering that Proposition 51 provided $500 million to continue the CTEFP and the statutory restrictions on approving CTEFP projects have been repealed, Staff is presenting dates for future funding cycles for the Board's consideration. In order to be eligible for funding, statute requires that CTEFP projects must first be evaluated by CDE. Therefore, Staff has collaborated with CDE to determine potential dates/timeframes for the fourth and fifth funding cycles and prepared regulatory amendments to address the changes in statute.

Disposition of Proposition 1D CTEFP Funds

In accordance with the provisions of EC Section 101012(a)(4)(B), the Board amended SFP Regulation Section 1859.190 to allow any funds remaining in the CTEFP account to be allocated to New Construction and Modernization projects in order of receipt with health and safety projects receiving first priority. Staff administered this regulation as adopted for the last two years. With the passage of Proposition 51 in November 2016, and the repeal of EC Section 17078.73 on June 27, 2017, Staff is recommending the Board allocate all remaining CTEFP funds and future recovered funds, such as loan repayments, to future CTEFP projects. Upon approval of the August 23, 2017 agenda, the available balance in the Proposition 1D CTEFP account will be $2.4 million. Staff has prepared regulatory amendments to retain the Proposition 1D funds to the CTEFP account.

STAFF ANALYSIS/STATEMENTS (cont.)

Proposed Funding Cycles: Allotments and Schedules
Funding cycles for CTEFP occur in two steps. First, applicants must submit a grant application to CDE and receive a score. If a minimum passing score is achieved, the applicant is eligible to submit a funding application to the Office of Public School Construction (OPSC). In considering timing for new funding cycles, Staff acknowledges that some applicants may have viable projects that are ready and others may need more time to develop complete grant and funding applications to be successful.

The Board could consider adopting funding cycle schedules to accommodate these considerations. Knowing the future schedule of other funding cycles would allow districts time to carefully plan their submittals if they are still in the early stages of development. In the past, the Board allocated a maximum amount of bond authority to each funding cycle. Doing so now could ensure that funding is available for future cycles creating broader opportunity for all potential applicants.

Under Proposition 1D, OPSC held three funding cycles. Staff proposes opening the first funding cycle under Proposition 51 (the fourth CTEFP funding cycle) on September 27, 2017 with program applications submitted to CDE on or before November 29, 2017. Those with passing scores would submit funding applications to OPSC by February 21, 2018. For this initial Proposition 51 funding cycle, Staff recommends the Board make a maximum of $125 million available.

Fourth Funding Cycle Key Dates
OPSC Staff collaborated with CDE to develop the schedule listed below for the fourth funding cycle of the CTEFP:

- CDE Grant Applications submitted to CDE September 27, 2017 through November 29, 2017.
- Grant Application scores published by CDE February 14, 2018.
- Application for *Career Technical Education Facility Funding* (Form SAB 50-10) due to OPSC by close of business February 21, 2018.
- Presentation to the Board by June 2018.

In addition, Staff proposes adopting a schedule for the fifth CTEFP funding cycle to begin no later than September 2018 with a maximum allocation of $125 million to provide applicants with more opportunity to fully develop a project. OPSC and CDE staff will provide more specific dates regarding the fifth cycle in 2018.

The remaining $250 million in CTEFP funds from Proposition 51 will be announced and made available in a future funding cycle(s).

District Matching Funds
Districts applying for funds in the CTEFP may use any source to provide their own matching funds for the CTEFP grants with one exception. The district's matching share shall not be provided from any funds from another state or federal program. Other state and federal programs may include, but are not limited to the following:

- Career Technical Education Incentive Grant Program
- Career Technical Education Pathways Trust Program
- Career Technical Education Initiative Program
- Perkins Federal Career and Technical Education Grant Program

STAFF ANALYSIS/STATEMENTS (cont.)

Proposed Regulatory Amendments
In order to open funding cycles and accept applications for CTEFP, Staff is presenting the following amendments to be adopted by the Board:

SFP Regulation Section 1859.190 - General
Staff proposes deleting the statement in this section that states that the Board shall not approve any CTEFP projects pursuant to EC 17078.73. Staff is also proposing to delete the language pertaining to the treatment of funds returning to CTEFP.

SFP Regulation Section 1859.194 – Career Technical Education Facilities Program Matching Share Requirement
Staff proposes amending this section to state that funds generated from other state or federal grant programs, such as the Career Technical Education Incentive Grant Program cannot be used as a local match.

SFP Regulation Section 1859.195(c) - Career Technical Education Facilities Project Apportionment
Staff proposes amending this section to provide the Board the flexibility to establish subsequent cycles, as it deems necessary and practical.

SFP Regulation Section 1859.198 - Time Limit on Apportionment and Substantial Progress
Staff proposes amending this section to allow funds being returned to the program as a result of a project being rescinded or reduced to costs incurred to be available for Apportionment in subsequent cycles.

The full text of these regulatory amendments is included as an Attachment.

RECOMMENDATIONS

1. Adopt regulatory amendments as shown in the Attachment. Authorize the Executive Officer to file the proposed regulations with the Office of Administrative Law on an emergency basis.

2. Require that applications for Career Technical Education Facilities Project Funding for the fourth funding cycle be submitted to OPSC by February 21, 2018.

3. Allocate a maximum of $125 million to fund eligible projects received in the fourth CTEFP funding cycle.

4. Require that the Career Technical Education Facilities Project Funding for the fifth funding cycle begin no later than September 2018.

5. Allocate a maximum of $125 million to fund eligible projects received in the fifth CTEFP funding cycle.

BOARD ACTION

In considering this Item, the SAB adopted the staff's recommendations, including the modified language for the proposed regulatory amendments to Regulation Section 1859.194 as follows:

> " . . . . Notwithstanding local fund sources previously identified in this paragraph, a grant recipient's local match shall not include funding from any state or federal sources that provide funding for Career Technical Education including, but not limited to the Career Technical Education Incentive Grant Program, the Career Technical Education Pathways Trust Program, the Career Technical Education Initiative and the Perkins Federal Career and Technical Education Grant Program."

Section 1859.190. General.

…

~~On or after January 1, 2015, the Board shall not approve any Career Technical Education Facility projects pursuant to Education Code Section 17078.73.~~

~~Funds in the Career Technical Education Facilities Program account on or after January 1, 2015 shall be made available to Approved Applications pursuant to Section 1859.93(a) or Section 1859.93.1(a) in order of receipt pursuant to Education Code Sections 17075.15(a) and (b). Funds remaining in excess of the aforementioned Approved Applications shall be allocated as follows:~~

~~(a) 50 percent to Approved Applications pursuant to Section 1859.93(b); and,~~

~~(b) 50 percent to Approved Applications pursuant to Section 1859.93.1(b).~~

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Sections 17078.72, ~~17078.73, and~~ 101012(a)(4), and 101122(a)(4), Education Code.

Section 1859.194. Career Technical Education Facilities Program Matching Share Requirement.

Any funding provided by these regulations, including funding as prescribed in Sections 1859.71.6 and 1859.77.4, shall require an applicant matching share contribution on a dollar-for-dollar basis. The applicant matching share may come from any source including, but not limited to, private industry groups, school districts, county offices of education, and joint powers authorities, excluding funds from another state or federal grant program including, but not limited to, the Career Technical Education Incentive Grant Program, the Career Technical Education Pathways Trust Program, the Career Technical Education Initiative and the Perkins Federal Career and Technical Education Grant Program.

…

Note: Authority cited: Sections 17070.35, 17078.72(k), and 17078.72(l), Education Code.

Reference: Sections 17076.10 and 17078.72, Education Code.

Section 1859.195. Career Technical Education Facilities Project Apportionment…

(c) ~~On or after January 1, 2015, the Board may no longer apportion any or all remaining available Career Technical Education Facilities funds in subsequent cycles, as deemed necessary and practical by the Board pursuant to Education Code Section 17078.73.~~The Board may apportion any or all remaining available Career Technical Education Facilities funds in subsequent cycles, as deemed necessary and practical by the Board.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72 ~~and 17078.73~~, Education Code.

Section 1859.198. Time Limit on Apportionment and Substantial Progress.

…

~~On or after January 1, 2015, any Career Technical Education Facilities Project funds returned due to projects being rescinded or reduced to cost incurred shall no longer be made available for apportionment in subsequent funding cycles pursuant to Education Code Section 17078.73.~~

ATTACHMENT

Any Career Technical Education Facilities Project funds returned due to projects being rescinded or reduced to cost incurred shall be made available for Apportionment in subsequent funding cycles.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, ~~17078.73, and~~ 101012(a)(4), and 101122(a)(4), Education Code.

THE SCHOOL FACILITY PROGRAM

APPLICATION PROCESSING REGULATORY

AMENDMENTS ACTION ITEM

HAS BEEN WITHDRAWN

179 – 195b