

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, August 15, 2018

PROPOSED REGULATORY AMENDMENTS TO THE  
CAREER TECHNICAL EDUCATION FACILITIES PROGRAM

PURPOSE OF REPORT

To present proposed regulatory amendments for additional criteria for tie-breakers in the funding order of Career Technical Education Facilities Program (CTEFP) applications in the School Facility Program (SFP) Regulations.

DESCRIPTION

SFP Regulations stipulate that CTEFP funds be apportioned based on the highest scored application from each locale (Urban, Suburban, and Rural) with at least one application from each locale. If two or more applications share the same score and locale, the application with the highest number of points in all weighted areas will be funded first. During the processing of applications for the fourth funding cycle of the CTEFP, there were multiple instances of tied rankings in the funding order. SFP Regulations currently do not address how to resolve tied scores. This item seeks Board approval for regulatory amendments, included as Attachment A, which add additional criteria to determine the ranking of funding applications.

AUTHORITY

See Attachment B.

BACKGROUND

On May 23, 2018, the State Allocation Board approved applications for the fourth funding cycle of the CTEFP. In accordance with SFP Regulations, the funding order for applications is determined by career technical education (CTE) plan score and locale (to determine locale, OPSC uses the National Center for Education Statistics). The highest scoring application in each of the three designated locales (Urban, Suburban and Rural) is presented for funding and then the process repeats until applications or funding is exhausted, whichever comes first.

During the processing of the fourth funding cycle, Staff encountered 42 instances of ties in the funding order of CTEFP applications. SFP Regulations state that funding for applications receiving the same CTE plan score will be funded in order of highest total points in all weighted areas identified in Education Code Section 17078.72(j). If two or more applications have the same CTE plan score and locale, the complete score (extended by two decimal points) was taken into consideration. If two or more applications had the same extended score, the California Department of Education (CDE) provided OPSC with the applications' total weighted score as a tie-breaker. However, there were some occurrences of multiple applications having the same total weighted score.

Current SFP Regulations for the CTEFP do not identify additional criteria to determine the ranking of applications that share the same total weighted score. Absent a regulation to provide further direction, Staff placed these applications in order of Form SAB 50-10 date received and then alphabetically. For projects that received approval in the fourth funding cycle so far, the tied scores did not impact whether or not an application received funding, only the order of the list.

*Stakeholder Feedback*

On July 18 and August 2, 2018, Staff held meetings to obtain stakeholder feedback on additional criteria for tie-breakers in the funding order of CTEFP applications for future amendments to the SFP Regulations.

BACKGROUND (cont.)

At the first meeting, Staff provided an overview of the program, the application process, the components of an application score, and the funding order of applications. For reference, the statutorily required elements of the overall and weighted scores are included below.

*Application Score*

The CTE plan score is determined by CDE and is based on relevant career technical education curriculum and facility needs to increase student achievement, as required by statute. CDE's review is based on a scoring rubric across eight categories, with a maximum score of 141 points. The eight categories are based on the following:

- |                                 |                             |
|---------------------------------|-----------------------------|
| 1. The CTE Plan                 | 5. Education Specifications |
| 2. Pupil Enrollment Projections | 6. Budget Justification     |
| 3. Feeder School Identification | 7. Unique Conditions        |
| 4. Accountability Plan          | 8. Overall Feasibility      |

*Weighted Score*

Six components across the eight categories are used to determine a weighted score to decide additional funding priority components such as:

1. Labor market demand for highly qualified technical employees in the selected industry sector.
2. The total annual number of students expected to attend the proposed CTE program that will be supported with grant funds.
3. Geographic proximity of similar CTE programs in the area and how the project would complement, enhance or differ from the existing CTE offerings available in the area.
4. School accountability plan for enrollment and expected outcome(s).
5. Estimated annual capital cost per student and the rationale/method used for calculating this cost.
6. Financial participation and ongoing support plan of all business and industry partners in the construction and equipping of the facility.

At the second meeting, Staff presented proposed regulatory amendments based on the stakeholder feedback received from the first meeting.

STAFF ANALYSIS/STATEMENTS

Staff presented several options for stakeholders' consideration on additional criteria to be used to resolve tied scores in future CTEFP funding cycles. A summary of the options, the feedback received, and an overview of the proposed regulatory amendments is included below. The proposed regulatory amendments are included as Attachment A.

*Summary of Feedback on the Options*

Of the options discussed, participating stakeholders were generally in favor of tie-breaker criteria that give priority to first time recipients of CTEFP funding in the current cycle for which the applications were being considered or the cycle prior to the current one. Doing so would fit with the statutory intent to distribute CTEFP funds throughout the state. If the tie was still not broken, participants recommended that a lottery system could be used.

## STAFF ANALYSIS/STATEMENTS (cont.)

Stakeholders were generally not in favor of options that would give priority to the date of receipt of an application to CDE or OPSC ahead of the established deadlines. They stated that it could incentivize applicants to submit an application as soon as possible, instead of submitting the application within the filing round deadline and may impact the amount of time the applicant can spend creating a quality application. Participants were also not in favor of options that could result in over-emphasis of elements that are already included in the CTE plan score.

Based on these discussions, Staff has prepared the proposed regulatory amendments summarized below.

### *Summary of Proposed Changes*

The proposed regulatory amendments are included in SFP Regulation Section 1859.196(d)(3). Three new subsections are proposed to define the criteria for funding order when a tie exists among two or more Approved Applications for Career Technical Education Facilities Project Funding. The proposed order is as follows:

1. Section 1859.196(d)(3)a. – first, the application with the highest total score in all weighted areas.
2. Section 1859.196(d)(3)b. – next, the applicant that does not have another application that will receive funding in the current cycle or did not receive funding in the prior funding cycle.
3. Section 1859.196(d)(3)c. – if the tie is still not resolved, funding order may be based on a lottery.

### *Technical Changes*

Staff is proposing technical changes as well to enumerate previously unnumbered paragraphs that appear below the existing Section 1859.196(d). These paragraphs would be numbered sections (e) and (f). In the review of this section, Staff also noticed that the defined term used in these two paragraphs to reference CTEFP applications was not correct. Therefore, the term Career Technical Education Facilities Project is being replaced by the term, Approved Application for Career Technical Education Facilities Project Funding, which refers to an application that has not yet been funded. The current term refers to an application that has been approved by the Board for funding. The current definitions are as follows:

“Approved Application for Career Technical Education Facilities Project Funding” means an applicant has submitted an *Application for Career Technical Education Facilities Funding*, Form SAB 50-10, including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

“Career Technical Education Facilities Project” means a project approved by the Board pursuant to Education Code Section 17078.72.

Additionally, Staff proposes to update a reference in SFP Regulation Section 1859.194 that defines the conditions for how an applicant who received a loan for its matching share can qualify for a one-time extension to the 10-year repayment plan. The proposed change mirrors the conditions for repayments outlined in SFP Regulation Section 1859.106.1. The statute referenced is no longer operative, which necessitates the change to make the requirements of CTEFP consistent with other School Facility Programs.

## RECOMMENDATIONS

1. Adopt the proposed regulations as shown in Attachment A, which established additional criteria for breaking ties in the funding order of CTEFP applications in SFP Regulations.
2. Authorize the Executive Officer to file the proposed regulations with the OAL and make the regulations permanent.

This Item was approved by the State Allocation Board on August 15, 2018.

## ATTACHMENT A

### CAREER TECHNICAL EDUCATION FACILITIES PROGRAM REGULATORY AMENDMENTS

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

...

Upon apportionment, the OPSC will prepare a loan agreement on behalf of the Board for the applicant.

...

(b) The loan agreement shall stipulate the following:

(1) The loan term shall be set at ten years with a one-time extension of five years if the applicant is in jeopardy of becoming financially insolvent and becoming subject to the requirements of Assembly Bill (AB) 1200, Chapter 1213, Statutes of 1991 (Eastin) a severe hardship condition as evidenced by at least one of the following criteria:

(A) For a school district or county office of education, the district or county office of education is listed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.

(B) For a school district or county office of education, the amount due to the State for one or more projects would cause the district or county office of education to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education report. Where the financial condition of a school district is involved, the county office of education must submit a letter to the OPSC on behalf of its representative school districts for consideration substantiating that the repayment will place the district on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education. Where the financial condition of a county office of education is involved, the CDE must submit a letter to the OPSC on behalf of the county office of education for consideration substantiating that the repayment will place the county office of education on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.

(C) For a joint powers authority, the amount due to the State for one or more projects would cause the joint powers authority severe financial hardship. The joint powers authority's authorizing agencies must submit a letter to the OPSC on behalf of the joint powers authority for consideration substantiating that the repayment may result in the joint powers authority being unable to meet its financial obligations for the current or subsequent two fiscal years.

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 1859.196. Career Technical Education Facilities Program Funding Order.

...

(d) For the third and any subsequent cycles, the Board shall apportion funds regardless of Service Region.

(1) Funds shall be apportioned to the highest ranked project in each locale. In order to continue this funding process, one project from each locale must be apportioned. If there are no applications in a given locale(s), projects will be apportioned in the remaining locale(s).

(2) The process will continue until the applications or funds are exhausted, whichever comes first.

(3) In the event two or more applications have the same career technical education plan score and are in the same locale, the applicant with the highest total points in all weighted areas of the career technical education plan score identified in Education Code Section 17078.72(j) will be funded first. the Board shall approve the applications in the following order:

(A) The application with the highest total score in all weighted areas of the career technical education plan score identified in Education Code Section 17078.72(j).

## ATTACHMENT A

(B) The applicant without a Career Technical Education Facilities Project in the immediate prior funding cycle or without an Approved Application for Career Technical Education Facilities Project Funding that will receive funding in the current cycle.

(C) After the above criteria have been applied, a lottery system may be used to determine the final funding order.

(e) If ~~ana Approved Application for Career Technical Education Facilities Project Funding~~ Career Technical Education Facilities Project within any funding cycle cannot be fully apportioned because insufficient funding is available, the applicant may either accept the available funding as the full and final apportionment for the project or refuse funding entirely. If funding is refused, the Board shall consider funding the next project eligible for an apportionment pursuant to this Section.

(f) For any ~~Career Technical Education Facilities Project~~ Approved Application for Career Technical Education Facilities Project Funding not apportioned pursuant to this Section, the application shall be returned to the applicant. ~~A Career Technical Education Facilities Project~~ An Approved Application for Career Technical Education Facilities Project Funding returned to the applicant may be resubmitted during a subsequent application acceptance period identified in Section 1859.191, provided the application meets the eligibility criteria in Section 1859.192.

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

Reference: Section 17078.72, Education Code.

## ATTACHMENT B

### AUTHORITY

Education Code (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 17078.72 states in part:

(k) The Office of Public School Construction shall develop and the board shall approve regulations to implement this article on or before April 19, 2007, and the board may promulgate those regulations first on an emergency basis, which shall be effective for no more than 12 months, after which any permanent regulations shall be promulgated in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).