

INITIAL STATEMENT OF REASONS

Section 1860.2. Definitions.

Specific Purpose of the Regulation

To revise the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program's (Program) forms and grant agreement master templates which are essential to these Subgroup 5.8 Regulations.

Need for the Regulation

It was necessary to revise the Program's three forms (SAB 70-01, SAB 70-02, and SAB 70-03) and the grant agreement master templates to align with the proposed amendments to the Program's regulations. With the forms being revised, the revision dates must change.

Section 1860.3. General.

To update the fiscal year in which the Legislature may provide additional funding.

Need for the Regulation

It was necessary to align subsection (c) with the statute, specifically Education Code Section 17375(a)(4)(C).

Section 1860.4. Funding Guidelines.

Specific Purpose of the Regulation

To extend the amount of time that Program funds shall be available for encumbrance or expenditure by the State Allocation Board (SAB).

Need for the Regulation

It was necessary to align subsections (b), (b)(1), (b)(2), (c), (c)(1), (c)(2), (d), (d)(1), and (d)(2) with the statute, specifically Education Code Section 17375(a)(4)(A) through Section 17375(a)(4)(C).

Section 1860.16. Fund Release Process.

Specific Purpose of the Regulation

To inform school districts of extended deadlines for the fund release process.

Need for the Regulation

It was necessary to provide additional time to help school districts meet full fund release requirements and deadlines for the larger and more complicated projects under the Program. Extending these deadlines may also enable school districts to choose permanent construction because school districts will have more time to design and complete projects. The lengthened timeline aligns the Program with the timeline used for School Facility Program (SFP) projects by which school districts have 18 months to show substantial progress on their project(s). This is in

alignment with SFP Regulation Section 1859.105(a)(2). Previously, school districts were required to submit a fund release request after entering into binding contracts for 100 percent of the project within 180 days from Apportionment if an advance release of funding was not requested. The proposed regulation provides up to 18 months and only requires school districts to enter into binding agreements for at least 90 percent of the building construction activities for the project. This aligns with the requirement outlined in SFP Regulation Section 1859.105(a)(2).

Additionally, school districts unable to meet the 18-month deadline may submit in writing other evidence satisfactory to the SAB beyond the control of the district that precludes the submittal of required documents. This will allow school districts additional time to submit valid plan approvals and the Form SAB 70-02; however, in no circumstance shall the time be extended more than three years from Apportionment as specified in Regulation Section 1860.18.

Section 1860.18. Program Reporting Requirements.

Specific Purpose of the Regulation

To inform school districts of extended deadlines for project completion.

Need for the Regulation

It was necessary to provide additional time to help school districts meet program reporting requirements and deadlines for the larger and more complicated projects under the Program. Extending these deadlines may also enable school districts to choose permanent construction because school districts will have more time to design and complete projects. School districts are also facing lingering impacts on construction timelines and access to materials, due in part to the COVID-19 pandemic. The lengthened timeline better aligns the Program with the timeline used for SFP projects by which school districts have a project completion deadline of three years for elementary school projects.

CALIFORNIA PRESCHOOL, TRANSITIONAL KINDERGARTEN AND FULL-DAY KINDERGARTEN FACILITIES GRANT PROGRAM FORMS

Application for Funding, Form SAB 70-01 (Rev. 09/23).

Specific Purpose of the Form

To provide additional instructions to school districts when using this Form.

Need for the Form

It was necessary to: 1) align and provide consistent language on page 5 under 12. Certification, in the second and third bullets from the bottom of the page, with the fund release language in Program Regulation Section 1860.16; and 2) add a comma after DSA on page 1 under Specific Instructions, third line. The grammatical change is considered a non-substantive change.

Fund Release Authorization, Form SAB 70-02 (Rev. 09/23).

Specific Purpose of the Form

To provide additional instructions to school districts when using this Form.

Need for the Form

It was necessary to provide language that is consistent and aligns with the fund release process outlined in Program Regulation Section 1860.16(d)(2). In addition, school districts who receive grants with an advance release of funds must then submit this form with all required approvals within 18 months of the first apportionment.

Expenditure Report, Form SAB 70-03 (Rev. 09/23).

Specific Purpose of the Form

To provide additional instructions to school districts when using this Form.

Need for the Form

It was necessary to make school districts aware of the Program's reporting requirements and when to submit the Form. This language reiterates and aligns with Program Regulation Section 1860.18.

Grant Agreement, (Rev. 09/23).

Specific Purpose of the Form

To provide additional instructions to school districts.

Need for the Form

It was necessary to incorporate the regulatory references that align with the fund release process as set forth in Program Regulation Section 1860.18.

Anticipated Benefits and Economic Impact of the Proposed Regulations

There are benefits associated with the proposed amendments. School districts will benefit because of the extended fund release and project completion deadlines to be applied to the third, fourth and future funding rounds. By providing additional time for school districts to meet full fund release and project completion requirements it will help school districts meet deadlines for the larger and more complicated projects under the Program. Extending these deadlines may also enable school districts to choose permanent construction because school districts will have more time to design and complete the projects. These extended deadlines align the Program with the timelines used for SFP projects wherein school districts have 18 months to show substantial progress on its project and have a project completion deadline of three years for elementary school projects. Additionally, the State of California will benefit from the proposed regulations as the regulations may generate the need for school construction-related industries to expand their businesses, or in some cases may create new businesses, based on the demand on these industries when general fund dollars are released to school districts, county offices of education, and community colleges to complete their projects.

The proposed regulations promote fairness and/or social equity by extending the deadlines for the full fund release and project completion requirements for those school districts, county offices of education, and/or California community colleges that continue to face lingering impacts on construction timelines and access to materials, due in part to the COVID-19

pandemic, and may have larger and more complex California preschool, transitional kindergarten and full-day kindergarten program projects.

OPSC performed a search on whether the proposed regulations are consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that Senate Bill 114, Chapter 48, Statutes of 2023, [the Education Finance: Education Omnibus Budget Trailer Bill], was created to provide clarity to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts, or include California community colleges, for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments, the three associated forms and the grant agreement master templates will enhance applicants' awareness when partnering with the State while defining the responsibilities of funding applicant projects. This will ensure program oversight and expenditure accountability.

The proposed regulations, the three associated forms and the grant agreement master templates will not have a negative impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities. In addition, the proposed regulations will not impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

Technical Documents Relied Upon

The State Allocation Board's Action item, dated September 27, 2023, entitled "REPORT OF THE EXECUTIVE OFFICER, Proposed Amendments to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. No alternatives were considered. Statute requires the implementation of this Program through regulations. If no regulations, the SAB would be in violation of the statute.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations will not have a negative impact on small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the proposed regulations will not have a negative economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulation, nor will they be disadvantaged by the regulations. In fact,

the demand on the manufacturing and construction-related industries could potentially stimulate the creation of businesses/small businesses in these areas.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs in order to comply with the proposed regulations.

Office of Administrative Law Regulations, Title 1, Section 20(c)(1)

Because the State Allocation Board's California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program Forms are cumbersome documents, it would be unduly expensive and otherwise impractical to publish the Forms in the California Code of Regulations. Therefore, it is not necessary to publish the Forms in the California Code of Regulations.

Office of Administrative Law Regulations, Title 1, Section 20(c)(2)

The State Allocation Board's California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program Forms are made available upon request and through our website and continue to be made available upon request and through our website.

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS

“Proposed Amendments to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program”

Proposed State Allocation Board Regulations

At its meeting on September 27, 2023, the State Allocation Board (SAB) adopted proposed regulatory amendments, including amendments to three associated forms and the grant agreement master templates. Initially, the [California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program] (Program) was created through AB 1808, Chapter 32, Statutes of 2018, and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full-day kindergarten classrooms. Since that time, however, several bills became law that appropriated, rescinded, and re-appropriated general fund dollars to the SAB for apportioning one-time grant to school districts that lack the facilities to provide full-day California preschool, transitional kindergarten and kindergarten programs. In addition, the Legislature through Senate Bill 114, Chapter 48, Statutes of 2023, has declared its intent to appropriate an additional \$550 million from the General Fund in the 2024/25 fiscal year to the SAB for the same purposes.

Funds Impacted

- Potential General Fund appropriation in the amount of \$550 million for the 2024/2025 fiscal year.

Background and Problem Being Resolved

Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018 [Committee on Budget. Education Finance: education omnibus trailer bill] was originally signed by the Governor on June 27, 2018 and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full-day kindergarten classrooms. On July 1, 2019, the Governor signed Senate Bill (SB) 75, Chapter 51, Statutes of 2019, into law [the Education Finance: Education Omnibus Trailer Bill]. This bill appropriated an additional \$300 million from the General Fund to the SAB for the 2019/20 fiscal year. School districts that wished to convert part-day kindergarten programs to full-day kindergarten programs, and for those school districts lacking the facilities to provide full-day kindergarten instruction could apply for these one-time grants to construct new school facilities or retrofit existing school facilities. On June 29, 2020, the Governor signed SB 98, Chapter 24, Statutes of 2020, which rescinded the \$300 million in additional program funding previously appropriated in SB 75 but maintained Program provisions such as the local matching share for school districts that were converting from a part-day program to a full-day program and allowed school districts to retain project savings. AB 130, Chapter 44, Statutes of 2021, provided \$490 million from the General Fund for the 2021/22 fiscal year to the SAB to provide one-time grants. School districts that lacked the facilities to provide full-day California preschool, full-day transitional kindergarten, and/or full-day kindergarten programs could apply for these one-time grants to construct new school facilities and retrofit existing school facilities. AB 181, Chapter 52, Statutes of 2022, provided \$100 million in the 2022/23 fiscal year to the SAB to continue providing one-time grants for the construction of new school facilities and the retrofitting of existing school facilities for preschool, transitional kindergarten, and kindergarten pupils in full-day programs. The bill also expanded the Program to allow California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria. It is the Legislature’s intent to appropriate an additional \$550 million from the General Fund in the 2024/25 fiscal year for the same one-time purposes.

The problem being resolved is the Program's current fund release and project completion timelines and requirements. These have remained unchanged since the inception of the Program in 2018. However, under the expanded Program, which allowed for funding of facilities to support existing or expand programs for California preschool students and transitional kindergarten students, school district projects funded in the third and fourth funding rounds experienced more complexities than the projects funded during the first and second funding rounds. The expansion of the grade levels that the Program serves have resulted in projects generally becoming larger and more complex. School districts continue to face lingering impacts on construction timelines and access to materials, due in part to the COVID-19 pandemic. In addition, school districts who opted for modular construction to meet Program deadlines were also impacted by the implementation of changes to the California Building and Energy Code at the beginning of the year because the code updates, while regularly occurring, do require updated approvals for modular designs, which lengthen the design and approval timeframes. In addition to these issues, four appeal requests have been submitted by school districts with projects Apportioned during the third funding round and are requesting a 12-month extension to the fund release deadline. Other school districts with Apportioned third funding round applications have communicated similar concerns to OPSC.

The proposed amendments allow for extended fund release and project completion deadlines to be applied to applications Apportioned in the third funding round that were received from April 1, 2022 through April 30, 2022, and to applications Apportioned in the fourth funding round that were received from February 1, 2023 through March 2, 2023. These extended deadlines will apply to future funding rounds. By providing additional time for school districts to meet full fund release and project completion requirements it will help school districts meet deadlines for the larger and more complicated projects under the Program. Extending these deadlines may also enable school districts to choose permanent construction because school districts will have more time to design and complete the projects. These extended deadlines align the Program with the timelines used for School Facility Program (SFP) projects wherein school districts have 18 months to show substantial progress on its project and have a project completion deadline of three years for elementary school projects.

OPSC performed a search on whether the proposed regulatory amendments are consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that Senate Bill 114, Chapter 48, Statutes of 2023, [the Education Finance: Education Omnibus Budget Trailer Bill], was created to provide clarity to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts, or include California community colleges, for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs. Therefore, proceeding with the implementation of the proposed regulatory amendments, the three associated forms and the grant agreement master templates will enhance applicants' awareness when partnering with the State and will help to maintain Program integrity.

Description of Regulations to Implement Law

A summary of the proposed regulatory amendments, including three associated forms and the grant agreement master templates, are as follows:

Existing Regulation Section 1860.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. Because there are proposed amendments on the Program's three associated forms (SAB 70-01, SAB 70-02 and SAB 70-03) and the grant agreement master templates, the revision dates of these documents will change.

Existing Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. Specifically, participating school districts are required to complete and file with OPSC the Form SAB 70-01, *Application for Funding*, (which is incorporated by reference), and all required documents as identified in the Specific Instructions section of the Form SAB 70-01. The proposed amendment in subsection (c) aligns with statute, specifically Education Code Section 17375(a)(4)(C).

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all applicants that participate in the program. The proposed amendments extend the amount of time that Program funds shall be available for encumbrance or expenditure by the SAB [subsection (b) for the 2021/22 Budget Act is June 30, 2027; subsection (c) for the 2022/23 Budget Act is June 20, 2028; and subsection (d) for the 2024/25 Budget Act is June 30, 2030]. The dates are in alignment with statute, specifically Education Code Section 17375(a)(4)(A) through Section 17375(a)(4)(C).

Existing Regulation Section 1860.16 specifies the process in which funds will be released to school districts with SAB-approved applications. School districts that have none or only a portion of the supporting documents required for a full fund release, may indicate that they will need an advance for design or site acquisition. This advance of funds will help school districts move forward with their projects. If a school district is doing a new construction project with an advance release of funding, then they will receive 40 percent of the new construction base grant. If a school district is applying for a retrofit project, and they have none or only a portion of appropriate supporting documentation then they may apply for an advance release of funding of 25 percent of the base grant. These percentages are identical to those in the SFP Regulations for standard new construction and modernization projects. School districts were required to submit a fund release request after entering into binding contracts for 100 percent of the project within 180 days from Apportionment if an advance release of funding was not requested. The proposed amendments provide up to 18 months and only requires school districts to enter into binding agreements for at least 90 percent of the building construction activities for the project. This aligns with the requirement outlined in SFP Regulation Section 1859.105(a)(2). In addition, school districts unable to meet the 18-month deadline may submit in writing other evidence satisfactory to the SAB beyond the control of the district that precludes the submittal of required documents. This will allow school districts additional time to submit valid plan approvals and the Form SAB 70-02; however, in no circumstance shall the time be extended more than three years from Apportionment as specified in Program Regulation Section 1860.18.

Existing Regulation Section 1860.18 sets forth reporting requirements that school districts receiving program funding must meet. A school district that has received funds in accordance with the program must submit an expenditure report at the completion of the project. School districts must submit a valid Form SAB 70-03, *Expenditure Report*. The proposed amendments provide additional time and will help school districts meet project completion requirements and deadlines for larger and more complicated projects under the Program. Extending these deadlines may also enable school districts to choose permanent construction because school districts will have more time to design and complete projects. The lengthened deadline better aligns the Program with the timeline used for SFP projects by which school districts have a project completion deadline of three years for elementary school projects.

Existing Form SAB 70-01, *Application for Funding*, (which is incorporated by reference) is used by school districts to apply for program funding. The form also serves as a certification from the district regarding compliance with requirements of the law and Program Regulations. School districts must submit this form during the funding rounds described in Regulation Section 1860.6. OPSC will use this form in order to collect the information necessary to calculate the

amount of grants applicable to the project and to determine project funding order. The proposed amendments: 1) page 1, under "Specific Instructions," third line: a comma was added after (DSA) because it is part of a list; and 2) page 5, under "Certification," second and third bullets from the bottom of the form: this language was added for consistency purposes and to align with the fund release process outlined in Program Regulation Section 1860.16.

Existing Form SAB 70-02, *Fund Release Authorization*, (which is incorporated by reference) is used by school districts to request the release of funds when projects have received an apportionment by the SAB. The applicant will certify on this form that it has already submitted the signed grant agreement, or the signed grant agreement is accompanying the Form SAB 70-02. After a Program apportionment has been made by the SAB, OPSC will release the apportioned funds once the school district completes and submits this form to OPSC. School districts who receive grants without an advance release of funds must submit this form with all required approvals within 180 days of apportionment. School districts who receive grants with an advance release of funds must then submit this form with all required approvals within 12 months of apportionment. The proposed amendments on page 1, under "Specific Instructions" and page 2, under "Part 2. New Construction/Retrofit," second box: this language was added for consistency purposes and to align with the fund release process set forth in Program Regulation Section 1860.16(d)(2). In addition, school districts who receive grants with an advance release of funds must then submit this form with all required approvals within 18 months of the first apportionment.

Existing Form SAB 70-03, *Expenditure Report*, (which is incorporated by reference) is used by school districts to report their project savings and unexpended funds. Expenditure reports must be submitted within one year of final fund release or at the completion of the Program project. A final savings report must be submitted within one year of the completion of the project. Financial hardship projects must submit their unexpended funds at the completion of their project. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for Program projects comply with statute and other applicable State requirements pertaining to construction. The proposed amendments on page 1 under "Instructions" at the top of the form: this language was added to make school districts aware of the Program's reporting requirements and when to submit the form. This language reiterates and aligns with Program Regulation Section 1860.18.

The existing Grant Agreement templates (which is incorporated by reference) includes sections relevant to the Program for new construction and retrofit funding. It is the intent that the grant agreement will be entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant project information. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount eligible state funding to the reporting of all project funds, including any savings achieved. This will ensure greater transparency and accountability for the program grants being awarded under the Program. The Grant Agreement templates also incorporate the submittal of annual expenditure reports, and the ability for financial hardship districts to retain savings and the retention of savings, including the interest on State funds, may be expended on professional development or instructional materials to build capacity for the implementation of a California state preschool program, transitional kindergarten program, or a full-day kindergarten program. The proposed amendments on pages 8 and 9 incorporate the regulatory references that align with the fund release process as set forth in Program Regulation Section 1860.18.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area (construction of and/or retrofit of existing school facilities for the sole purpose of providing preschool, transitional kindergarten and kindergarten classrooms), and therefore, the

proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulations are within the SAB's authority to enact regulations for the Program under Education Code Section 17375(h) and Government Code Section 15503.

Anticipated Benefits of the Proposed Regulations

There are benefits associated with the proposed amendments. School districts will benefit because of the extended fund release and project completion deadlines to be applied to the third, fourth and future funding rounds. By providing additional time for school districts to meet full fund release and project completion requirements it will help school districts meet deadlines for the larger and more complicated projects under the Program. Extending these deadlines may also enable school districts to choose permanent construction because school districts will have more time to design and complete the projects. These extended deadlines align the Program with the timelines used for SFP projects wherein school districts have 18 months to show substantial progress on its project and have a project completion deadline of three years for elementary school projects. Additionally, the State of California will benefit from the proposed regulations as the regulations may generate the need for school construction-related industries to expand their businesses, or in some cases may create new businesses, based on the demand on these industries when general fund dollars are released to school districts, county offices of education, and community colleges to complete their projects.

Statutory Authority and Implementation

Education Code Section 17375(h). The State Allocation Board may adopt regulations to implement this section. Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Impact to California Businesses and Jobs

The proposed regulations, the three associated forms, and the grant agreement master templates will not have a negative impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities. In addition, the proposed regulations will not negatively impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- The proposed regulations promote fairness and/or social equity by extending the deadlines for the full fund release and project completion requirements for those school districts, county offices of education, and/or California community colleges that continue

to face lingering impacts on construction timelines and access to materials, due in part to the COVID-19 pandemic, and may have larger and more complex California preschool, transitional kindergarten and full-day kindergarten program projects.

- The State of California will benefit because its inventory of school facilities will increase due to the expansion of the Program to include preschool, transitional kindergarten, and California community colleges.
- There are benefits to health, safety, and welfare of California residents (school children and school faculty) because California preschool, transitional kindergarten and kindergarten facilities would be built stronger and safer. There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although the proposed regulations would not directly impact worker's safety, existing law provides for the availability of a skilled labor force. Further, public health and safety would be enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulations.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.