

July 22, 2022

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO
ADOPT REGULATION SECTIONS 1860.5.1 AND 1860.5.2, AND AMEND
REGULATION SECTIONS 1860 THROUGH 1860.21, ALONG WITH THREE
ASSOCIATED FORMS AND THE GRANT AGREEMENT TEMPLATES,
TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO
THE CALIFORNIA PRESCHOOL, TRANSITIONAL KINDERGARTEN AND
FULL-DAY KINDERGARTEN FACILITIES GRANT PROGRAM

PROPOSED AMENDMENTS TO THE FOLLOWING REGULATION SECTIONS:

- 1860, 1860.2, 1860.3, 1860.4, 1860.5, 1860.6, 1860.7, 1860.8, 1860.9, 1860.10, 1860.10.1, 1860.10.2, 1860.10.3, 1860.11, 1860.12, 1860.13, 1860.15, 1860.16, 1860.18, 1860.19, 1860.20, AND 1860.21

PROPOSED ADOPTION OF THE FOLLOWING REGULATION SECTIONS:

- 1860.5.1 AND 1860.5.2

PROPOSED AMENDMENTS TO THE FOLLOWING FORMS:

- Form SAB 70-01, *Application for Funding*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- Form SAB 70-02, *Fund Release Authorization*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- Form SAB 70-03, *Expenditure Report*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- *Grant Agreement*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt and amend the above-referenced regulation sections, as well as three associated forms and the grant agreement templates, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to adopt and amend the above-referenced regulation sections under the authority provided by Sections 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(3), 17375(b)(4), 17375(c), 17375(f), 17375(h), 17375(i) of the Education Code; 16304 and 16304.1 of the Government Code. The proposals interpret and make specific reference Sections 8973, 17072.10(b), 17072.10(d), 17072.10(e), 17074.10(e), 17075.10, 17075.15, 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(b)(2)(B), 17375(b)(3), 17375(b)(4), 17375(c), 17375(d), 17375(f), 17375(h), 17375(i), 41024, and 42238.01(a) of the Education Code; 1771.3 and 1771.5, Labor Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

At its meeting on January 26, 2022, the SAB adopted on an emergency basis proposed regulatory amendments, as well as amendments to three associated forms and the grant agreement templates. The emergency regulations were approved by the Office of Administrative Law, filed with the Secretary of State and became effective March 21, 2022.

Initially the Full-Day Kindergarten Facilities Grant Program was created through Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018, the Education Finance: Education Omnibus Trailer Bill 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 and rescinded general fund dollars. Under current law (AB 130, Chapter 44, Statutes of 2021) the Governor appropriated \$490 million from the General Fund to the SAB and charged the SAB with the responsibility for apportioning one-time grants to school districts that lack the facilities to provide full-day California preschool, transitional kindergarten and kindergarten programs.

Funds Impacted

- General Fund appropriation in the amount of \$490 million for the 2021/2022 fiscal year.

Attached to this Notice is the specific regulatory language of the proposed regulations, the three associated forms and the grant agreement templates. The Grant Agreement templates will not be included because the document is very large. The proposed regulations, the three associated forms and the Grant Agreement will be accessible and can be viewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, scroll down to "California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program, FDK Pending Regulatory Changes." Copies of the proposed regulations, the three associated forms and the grant agreement templates will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulations implement the Program's Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.8, Regulations relating to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program (Program).

Background and Problem Being Resolved

As mentioned above, 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 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 are 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, provides \$490 million from the General Fund for the 2021/22 fiscal year to the SAB to provide one-time grants. School districts that lack the facilities to provide full-day California preschool, full-day transitional kindergarten, and/or full-day kindergarten can apply for these one-time grants to construct new school facilities and retrofit existing school facilities for preschool, transitional kindergarten, and kindergarten pupils in full-day programs.

The problem being resolved is not so much a problem, but rather an opportunity. The Program adds eligibility for school districts to construct new classrooms or retrofit existing classrooms to house full-day transitional kindergarten programs and allows for school districts and county offices of education to construct new or retrofit existing classrooms to house full-day California state preschool programs. In addition to statutory changes for program eligibility, funding criteria, eligible expenditures and the use of savings, the filing rounds have been established in regulation along with the available funding associated with each filing round. The first filing round began April 1, 2022 and ended April 30, 2022 in which applicants submitted applications for the Program. OPSC and the California Department of Education (CDE) will work collaboratively, on a project-by-project basis, to determine if an application should be limited to a retrofit project or whether the applicant can choose to apply either for funding to retrofit existing facilities, or to build new facilities. This will ensure a prudent use of general fund dollars, integrity of school projects, and allows for the funding to be distributed to more school district projects without unnecessarily constructing new classrooms.

OPSC, on behalf of the SAB, conducted three stakeholder meeting to discuss the statutory changes to the Program as well as the proposed regulatory amendments. Most of the stakeholder feedback was incorporated into the Action Item the SAB approved on January 26, 2022. Feedback not incorporated was addressed during the discussion portions of the stakeholder meetings.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, determined that AB 130, Chapter 44, Statutes of 2021, [the Committee on Budget. Education Finance: Education Omnibus Trailer Bill], was created to clarify, expand and make modifications to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of housing full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments, forms and the grant agreement 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.

Anticipated Benefits of the Proposed Regulations

There are benefits associated with the proposed regulations. School districts benefit in order to provide kindergarten classrooms if they lack the facilities and have the need to operate full-day transitional kindergarten and full-day kindergarten programs. School districts and county offices of education will also benefit in order to build new or expand existing classrooms to house full-day California state preschool programs. In addition, 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 and county offices of education to complete their projects. Another benefit for the State of California is the inventory of school facilities will increase due to the expansion of the Program to include California preschool and transitional kindergarten classrooms.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. As stated above, OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 130, Chapter 44, Statutes of 2021, [the Committee on Budget. Education Finance: Education Omnibus Trailer Bill], was created to clarify, expand and make modifications to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of housing 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, forms and the grant agreement 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, forms and the grant agreement 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.

Summary of the Proposed Regulatory Amendments

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

Existing Regulation Section 1860 states the purpose of the regulations, which is to implement the Full-Day Kindergarten Facilities Grant Program. The proposed amendments expand the name of the Program to the California Preschool, Transitional Kindergarten and Full-day Kindergarten Facilities Grant Program and expands the Program to include the construction of new preschool classrooms, the modernization of existing preschool classrooms, or the modernization of existing classrooms that would be converted to provide California state preschool programs operated by school districts on public school sites.

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. The proposed amendments add newly defined words and terms for purposes of the expanded Program and are in alignment with the statute. There are also words and terms being deleted as they are no longer applicable under the expanded Program. The Program forms are being revised which changes the revision dates.

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 amendments set forth the statute by which these amendments are being made and sets forth the General Fund appropriation for the expanded Program. Additionally, in order for the SAB to provide funding, construction contracts must be signed on or after July 1, 2018 for full-day kindergarten programs while construction contracts must be signed on or after July 1, 2021 for preschool or transitional kindergarten programs. The Authority and Reference citations are being corrected to align with the statute.

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all applicants that participate in the program. This Section clarifies that any funds returned prior to June 30, 2021 will be returned to the program account, while funds returned after June 30, 2021 will be returned to the General Fund. The proposed amendments specify where the funding is being made available (2021-22 Budget Act) and sets forth the date by which the funding must be encumbered (June 30, 2024). It is further clarified that any funds returned prior to this date will be returned to the program account, while funds returned after this date will be returned to the General Fund. In addition, Program funds shall not be used to purchase or install portable classrooms.

Existing Regulation Section 1860.5 sets forth eligibility criteria that school districts must meet in order to apply for full-day kindergarten program funding. School districts are required to provide a school board resolution providing approval to provide full-day kindergarten instruction at the project school site at completion of the project, pursuant to Education Code Section 8973. Additionally, school districts are required to provide that they currently lack full-day kindergarten facilities. This Section also requires school districts to provide a description of the proposed project that contains certain criteria. The proposed amendments specify that an applicant's need for funding be based on the school site's enrollment patterns and introduces the use of the California Longitudinal Pupil Achievement Data System, which is used to determine the current enrollment at a school site and then reported to the CDE. OPSC and CDE will work collaboratively prior to the Approved Application's need for funding based on the school site's enrollment pattern. Additional amendments add the words "preschool, transitional kindergarten, and kindergarten" to designate all three types of classrooms. Language is deleted because it refers to July 1, 2019 and that has already happened. The Reference citation is corrected to align with the statute.

Proposed adoption of Regulation Section 1860.5.1 sets forth eligibility criteria that school districts must meet in order to apply for transitional kindergarten program funding. School districts are required to provide a school board resolution providing approval to provide full-day transitional kindergarten instruction at the project school site on or after July 9, 2021. Additionally, school districts will be required to prove that they currently lack full-day transitional kindergarten facilities if the calculated transitional kindergarten need exceeds the existing

transitional kindergarten classroom capacity prior to the construction of the project. The current state loading standard of 25 kindergarten pupils per classroom shall be used. Statute provides the SAB the ability to provide funding for classrooms for projected transitional kindergarten students. This Section also requires school districts to provide a description of the proposed project that contains certain criteria. OPSC and CDE will work collaboratively prior to the Approved Application's need for funding based on the school site's enrollment pattern in order to determine what type of funding the school district will qualify. This is to ensure that funds are appropriately spent.

Proposed adoption of Regulation Section 1860.5.2 sets forth eligibility criteria that school districts and county offices of education must meet in order to apply for California preschool program funding. Applicants will be required to provide a school board resolution providing approval to provide full-day preschool instruction at the project school site on or after July 9, 2021. Applicants must provide the most recent childcare needs assessment conducted by its regional local planning council for preschool age children and a current or future contract with the CDE to operate a preschool program. Additionally, school districts will be required to prove that they currently lack the facilities to provide full-day preschool instruction if the calculated preschool need exceeds the existing preschool classroom capacity prior to the construction of the project. The current state loading standard of 25 preschool pupils per classroom shall be used. Statute provides the SAB the ability to provide funding for classrooms for projected preschool students. This Section also requires applicants to provide a description of the proposed project that contains certain criteria. OPSC and CDE will work collaboratively prior to the Approved Application's need for funding in order to determine what type of funding the applicant will qualify based on the school site's enrollment pattern. This is to ensure that funds are appropriately spent.

Existing Regulation Section 1860.6 sets forth the application submittal process, which established two 30-calendar day funding rounds for school districts to request apportionments of available program funds. The proposed amendments set forth two additional new filing rounds; the first begins on or after April 1, 2022 and ends on or before April 30, 2022, with applications being retained until December 31, 2022; the second begins April 1, 2023 and ends on or before April 30, 2023, with applications being retained until June 30, 2024. These additional filing rounds will allow the SAB to promptly encumber the funds by the statute driven deadline of June 30, 2024. Applications that do not receive an Apportionment by June 30, 2024 will not be processed. The Program will operate after June 30, 2024; however, the funds not encumbered prior to this date will revert back to the General Fund. The proposed amendments also allow for the SAB to establish additional filing rounds as necessary. The Authority and Reference citations are corrected to align with the statute.

Existing Regulation Section 1860.7 specifies the type of applications that applicants may submit. Applicants may apply for funding with or without an advance release of funds. This Section specifies that in order to receive a grant with an advance release of funds, applicants must have received Division of the State Architect (DSA) and CDE final plan approval along with several additional criteria if the applicant is applying for a new construction grant that includes site acquisition. The proposed amendments specify that construction contracts for the construction or retrofit of classrooms in a full-day kindergarten project must be signed on or after July 1, 2018, and for preschool or transitional kindergarten projects, construction contracts for the construction or retrofit of classrooms must be signed on or after July 1, 2021. In addition, applicants cannot request funding for more than four classrooms per school site for preschool and transitional kindergarten programs. For those applicants that receive an advance fund release, an updated Form SAB 70-01 must be submitted once CDE and the DSA plan

approvals have been obtained. The Authority and Reference citations have been corrected to align with the statute.

Existing Regulation Section 1860.8 specifies that school districts must hold title to the real property where the proposed facilities are or will be located. Education Code Section 17375 does not provide the SAB the explicit ability to provide funding to school districts if their proposed projects are located on land other than district-owned land, such as leased land. The proposed amendments correct the Authority and Reference citations to align with the statute.

Existing Regulation Section 1860.9 sets forth the determination for a new construction apportionment. The per-pupil grant is determined by the School Facility Program (SFP) Regulations as stipulated in Education Code Section 17375(d). These grants are provided by the SFP Regulations as stipulated in Education Code Section 17074.50. If a school district would like assistance with costs associated with site development, such as service site, off-site, utilities, and/or general site, they may request it on the Form SAB 70-01, *Application for Funding*. If approved for a site development grant, the school district will be awarded 35 percent of the base grant. The site development increase of 35 percent was determined by an historical average of site development grants allocated to projects in the SFP. If a school district would like assistance with costs associated with multilevel construction, they may request it on the Form SAB 70-01, *Application for Funding*. This Section also sets forth the process by which new construction grant funding will be determined. Education Code Section 17375(d) requires the SAB to allocate funds using the same maximum grant eligibility amounts that are used in the SFP Regulations, as set forth in Education Code Sections 17072.10 and 17072.11. Just like in the SFP, the grant amounts, excluding grants for site development and for multilevel construction, will be adjusted annually based on the change in the Class B Construction Cost Index, which is approved every January by the SAB. The proposed amendments delete the word “elementary” in subsections (a), (b), and (c) because these grant amounts apply not only apply to elementary pupils, but with the expansion of the Program, to preschool and transitional kindergarten pupils. Additionally, the loading standard of 25 pupils per classroom is reiterated. The Reference citation has been corrected to align with the statute.

Existing Regulation Section 1860.10 sets forth the process by which the amount for an additional grant for site acquisition will be determined. Education Code Section 17375(f) authorizes the SAB to allocate funding necessary to acquire property adjacent to the existing school site. The site acquisition funding determination for Program projects is similar to what is used in the SFP Regulations. This Section specifies that the SAB will provide additional funding for site acquisition with the amount being the lesser of one half of the actual cost of the site or one half of the appraised value of the site acquired adjacent to an existing school site. Additionally, this Section specifies that the amount of acreage eligible for site acquisition funding for the Program will be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the eligible acreage allowed for a kindergarten classroom project (0.3 acres) pursuant to Title 5, California Code of Regulations, Section 14010(a). The proposed amendments correct the Authority and Reference citations to align with the statute.

Existing Regulation Section 1860.10.1 explains the requirements necessary for school districts to meet in order to obtain additional new construction funding for site acquisition costs. Specifically, school districts will have to certify on the Form SAB 70-01, *Application for Funding*, that the appraisal of the property to be acquired will be appraised in as is condition. This requirement must be met, but there are exceptions such as the site being appraised as if it were a clean site, safe of all toxic contaminants in compliance with appropriate guidelines and laws and if the site valuation included only proposed site improvements associated with grading the

site to certain conditions specified in this section. School districts must also verify that consideration was made for net useable acreage and severance damages, appraisal services have been contracted, and that the appraisal complies with appropriate practices. These site acquisition guidelines are similar to those in the SFP. The proposed amendments correct the Authority and Reference citations to align with the statute.

Existing Regulation Section 1860.10.2 sets forth the process of allocating a new construction additional grant for hazardous waste removal costs on an acquired site. Statute authorizes the SAB to allocate funding necessary to remove hazardous substances at a new school site. This Section determines that the grant amount will not be greater than 50 percent of one and one half times the value of the appraisal. However, exceptions to this grant calculation will be made for relocation costs and site other costs. Site other costs are to fund appraisals, escrows, surveys, site testing for acquisition, CDE review/approvals, and the preparation of the Phase One Environmental Site Assessment (POESA) and Preliminary Endangerment Assessment (PEA). The process for determining funding for hazardous waste removal costs on an acquired site is similar to the process used in the SFP Regulations. The main difference between the two is that the funding for the costs described in this section will be reduced on a prorated basis, as with the site acquisition grant. The proposed amendments correct the Authority and Reference citations to align with the statute.

Existing Regulation Section 1860.10.3 sets forth the process of allocating a new construction additional grant for hazardous waste removal costs required on an existing school site by the Department of Toxic Substances Control (DTSC). Statute authorizes the SAB to allocate funding necessary to remove hazardous substances at an existing school site. This Section provides that school districts may only receive this additional funding if they are not requesting site acquisition funding and if their project will be adding facilities on an existing and functioning school site. This Section also specifies that funding for these costs will be equal to one half of the costs for preparation of the POESA, the PEA, and the Response Action (RA) as well as the costs to implement the RA. The process for determining funding for hazardous waste removal costs required on an existing school site mirrors the same process used in the SFP Regulations. The proposed amendments correct the Authority and Reference citations to align with the statute.

Existing Regulation Section 1860.11 specifies the matching share requirement for school districts applying for a new construction grant. With the exception of school districts that receive financial hardship funding, school districts that apply for a new construction grant must provide 50 percent and the state will provide 50 percent, pursuant to Education Code 17375(b)(3). The proposed amendments set forth the matching share requirements for existing full-day kindergarten programs, new and existing transitional kindergarten programs, new and existing preschool programs, and programs converting from part-day to full-day programs.

Existing Regulation Section 1860.12 sets forth the determination for a retrofit apportionment. The per-pupil grant is determined by the SFP Regulations as stipulated in Education Code Section 17375(d). These grants are also provided by the SFP Regulations as stipulated in Education Code Section 17074.50. If a school district would like assistance with costs associated with site development, such as service site, off-site, utilities, and/or general site, they may request it on the Form SAB 70-01, *Application for Funding*. If approved for a site development grant, the school district will be awarded 35 percent of the base grant calculated in Section 1860.12(a). The site development increase of 35 percent was determined by an historical average of site development grants allocated to projects in the SFP. If a school district is retrofitting a 50-year old or older building, they may request an increase of 15 percent to the

base grant to help upgrade the existing 50-year old utilities. The increase of 15 percent was determined by an historical average of 50-year old utilities grants provided for modernizing 50-year old or older buildings in the SFP. The grant amounts shall be adjusted annually based on the Class B Construction Cost Index, which is approved every January by the SAB, which is identical to the SFP. The proposed amendments delete the word “elementary” in subsections (a) and (b) because these grant amounts apply not only apply to elementary pupils, but with the expansion of the Program, to preschool and transitional kindergarten pupils. Additionally, the loading standard of 25 pupils per classroom is reiterated. The Authority and Reference citations have been corrected to align with the statute.

Existing Regulation Section 1860.13 specifies the matching share requirement for school districts applying for a retrofit grant. With the exception of school districts that receive financial hardship funding, school districts that apply for a retrofit grant must provide 40 percent and the state will provide 60 percent, pursuant to Education Code 17375(b)(3). The proposed amendments set forth the matching share requirements for existing full-day kindergarten programs, new and existing transitional kindergarten programs, new and existing preschool programs and programs that convert from a part-day to full-day program.

Existing Regulation Section 1860.15 specifies that if the number of Approved Applications received exceeds the funding available for the funding round, then the funding priority will be based on a school district's preference points. Education Code Section 17375(b)(2) states that priority for Program grants will be given to school districts that qualify for financial hardship and/or that have a high population of pupils who are eligible for Free and Reduced Price School Meals (FRPM). This Section creates a system of preference points in order to determine project funding order. A maximum of 80 preference points may be earned in each funding round for each school district. A school district's preference points will be calculated into two categories. Based on a sliding scale currently used in the SFP for the Charter School Facilities Program, a sliding scale was created to determine the percentage of students a school district has eligible for FRPM. Points begin at four points for 60-65 percent of students eligible for FRMP, while 40 points will be earned if 100 percent of students within the school district qualify for FRPM. If a school district has been qualified for financial hardship by OPSC and is unable to contribute a portion or all of its matching share, the school district earns 40 points. Once OPSC has determined the number of school districts Approved Applications, school districts will be placed in a preference order based on the preference points earned. School districts will be ordered from highest to lowest points (80 points to zero points). If sufficient funds are available in that funding round, then all approved applications will be funded. If the amount of funding requested is more than the amount allocated for that round, then OPSC will begin with the highest preference point school district and fund their first priority project as stated on the Form SAB 70-01, *Application for Funding*. If two or more school districts have the same amount of preference points, then the project with the higher Low Income percentage (rounded to one decimal place) will be funded first. If the school districts are still tied based on the Low Income percentage, the projects will be placed into a lottery system to determine the order. The first school district pulled will have their first priority project funded, and OPSC will continue to the next school district with the same number of preference points. If OPSC has funded all school districts' first priority projects and funding still remains in that funding round, then OPSC will go back to the highest preference point school district and fund all of their remaining projects, up to the total funding available in the filing round. As stated above, if two or more school districts have the same amount of preference points, they are placed into a lottery to determine who will go first in the funding order. Using the same funding order determined in the lottery to fund a school district's first priority project with the same number of preference points, each school district's second and subsequent priority projects (as identified by the school district on their Form SAB 70-01,

Application for Funding), with the same number of preference points will be funded until funds are exhausted. If funds are still available, funding will continue to the next highest school district(s) based on total preference points. If the Board does not have sufficient funding to fully fund a school district's project, that school district has the option to accept the partial funding as full and complete. If the school district chooses to decline the partial funding, then OPSC may offer the partial funding to the next approved application in the preference order. The proposed amendments correct the Authority and Reference citations to align with the statute.

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. When a school district is requesting two percent for other site costs for site acquisition assistance, a grant agreement must be executed and received by OPSC. For funds other than two percent site other to be released for either site acquisition, design or site other, a grant agreement must be executed and received by OPSC.

OPSC must ensure that specific requirements have been met and those requirements are: the school district has entered into escrow for the site and the escrow must be valid, there has been a final appraisal of the site, the school district has either received contingent or final site approval from CDE, a valid Form SAB 70-02, *Fund Release Authorization*, has been received; for a new construction or retrofit project, all unreleased funds will be released once an executed full grant agreement has been received by OPSC, along with verification of these documents: the school district's applicable matching share has been deposited or expended by the school district for the project, with the exception of financial hardship projects which are exempt from this requirement (requirements for financial hardship may be found in 1860.14); the school district has entered into a binding contract(s) for the completion of the project; the plans and specifications for the project have been approved by DSA. If there has been site acquisition then a final appraisal of the site, the site received written final approval from CDE, and the school district has entered into escrow for the site. Finally, for all remaining funds to be released, all requirements above must be met, as well as a valid Form SAB 70-02, *Fund Release Authorization*, and grant agreement has been received by OPSC.

For school districts that request either a new construction or retrofit grant that did not request an advance release of funding, a valid Form SAB 70-02, *Fund Release Authorization*, must be submitted with all the required approvals within 180 days of apportionment. If a valid Form SAB 70-02, *Fund Release Authorization*, request is not submitted within 180 days, the apportionment will be rescinded. For school districts that receive an advance release of funding for either new construction or retrofit projects, a valid Form SAB 70-02, *Fund Release Authorization*, must be submitted to OPSC with 12 months of apportionment. If a valid Form SAB 70-02, *Fund Release Authorization*, is not received within 12 months, then the apportionment shall be rescinded and returned to the Program for reallocation. Subject to available funds, site acquisition grants shall be adjusted based on actual costs prior to the release of funds. The proposed amendment corrects the Authority citation to align with the statute.

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*. A project is considered complete when either of the following occurs: 1) When the notice of completion has been filed; all outstanding invoices, claims, and change orders have been satisfied and the facility is currently in use by the school district; or 2) One year from the final fund release. A final expenditure report shall be due one year after the first expenditure report. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for their Program projects comply with statute and other applicable State requirements pertaining to construction. The proposed amendments correct the Authority and Reference citations to align with the statute.

Existing Regulation Section 1860.19 specifies how remaining funding may be used after project completion. Project savings and unexpended funds are different types of remaining funds from Program projects. School districts that are not financial hardship are able to expend their project savings, including interest, that are not needed for the Program project on other high priority capital facility needs of the school district. Any savings not expended within one year of project completion must be returned to the State. School districts that are financial hardship that have any unexpended funds from the Program project, that were not spent on eligible expenditures, and the project was funded from the funding in Section 1860.3(a), must be returned to the State upon completion of the project. Any interest earned on State funds for financial hardship grant funding that is not expended on eligible project expenditures must also be returned to the State to help reduce the financial hardship contribution for that project. A school district is only required to return unexpended funds up to the amount of the financial hardship grant provided by the SAB. All projects receiving funding under Section 1860.3(b) are not required to return savings, including interest earned on State funds, if expended or encumbered for professional development to build capacity for the implementation of full-day kindergarten programs. The proposed amendments specify that school districts may also expend or encumber the savings, as well as interest earned on State funds, on professional development and instruction materials to build capacity for implementing a California state preschool program or a transitional kindergarten program for the classrooms in the project. In addition, the proposed amendments add and correct the Authority and Reference citations by adding new citations and correcting existing citations to align with the statute.

Existing Regulation Section 1860.20 specifies the audit process and requirements that school districts who receive Program funding will be subject to, as required in Education Code Section 17375(h). Projects will be subjected to an audit conducted pursuant to Education Code Section 41024 to ensure the expenditures incurred by the school district were made in accordance with Education Code Section 17375. School districts must retain all documents and records referring to the Program project and should be able to provide them if an auditor requests the documents. If an audit determines that funding was spent on ineligible expenditures, CDE shall ensure that the school district corrects the audit exception by implementing an equal penalty payment of funds. The proposed amendments add an additional document(s) for school districts to be aware of should the local auditor request the documentation. Also, the Authority and Reference citations are corrected to align with the statute.

Existing Regulation Section 1860.21 sets forth the requirement for school districts receiving Program funds to certify that a restricted account within the school districts' general fund has been established for the purpose of providing on-going and major repair of its facilities. The proposed amendments correct the Authorize and Reference citations to align with the statute.

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) change the name of the program to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program (Program); 2) require school site enrollment data which is consistent with the Program Regulations (Regulation Sections 1860.5, 1860.5.1 and 1860.5.2); and 3) the remainder of the changes on this Form are consistent with the changes in the Program Regulations and aligned with the statute.

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 change the name of the program to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program (Program) and delete a construction delivery method that no longer pertains to this Program.

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 1) change the name of the program to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program (Program); 2) require approved school board resolutions for California preschool and transitional kindergarten programs which is consistent with Program Regulations (Regulation Sections 1860.5, 1860.5.1 and 1860.5.2); 3) clarifies the Expenditure Worksheets by deleting this term and replaces it with "Detailed Listing of Project Expenditures (DLOPE), which is a term used in the SFP and is familiar with the school district community; and 4) allows for the submittal of forms electronically due to the current business environment (the COVID-19 pandemic).

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 12 months from the date of the full fund release, 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 also incorporate the regulatory references throughout the document which aligns with statute.

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.

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.

Determination of Inconsistency or Incompatibility with Existing State Regulations

As mentioned above, AB 130, Chapter 44, Statutes of 2021, provides \$490 million from the General Fund for the 2021/22 fiscal year to the SAB to provide one-time grants. School districts that lack the facilities to provide full-day California preschool, full-day transitional kindergarten, and/or full-day kindergarten can apply for these one-time grants to construct new school facilities and retrofit existing school facilities for preschool, transitional kindergarten, and kindergarten pupils in full-day programs.

The Program adds eligibility for school districts to construct new classrooms or retrofit existing classrooms to house full-day transitional kindergarten programs and allows for school districts and county offices of education to construct new or retrofit existing classrooms to house full-day California state preschool programs. In addition to statutory changes for program eligibility, funding criteria, eligible expenditures and the use of savings, the filing rounds have been established in regulation along with the available funding associated with each filing round. OPSC and CDE will work collaboratively, on a project-by-project basis, to determine if an application should be limited to a retrofit project or whether the applicant can choose to apply either for funding to retrofit existing facilities, or to build new facilities. This will ensure a prudent

use of general fund dollars, integrity of school projects, and allows for the funding to be distributed to more school district projects without unnecessarily constructing new classrooms.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, determined that AB 130, Chapter 44, Statutes of 2021, [the Committee on Budget. Education Finance: Education Omnibus Trailer Bill], was created to clarify, expand and make modifications to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of housing full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments, forms and the grant agreement 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.

Forms Incorporated by Reference

- Form SAB 70-01, *Application for Funding*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- Form SAB 70-02, *Fund Release Authorization*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- Form SAB 70-03, *Expenditure Report*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- *Grant Agreement*, (Rev. 01/22), which is incorporated by reference and referenced in Regulation Section 1860.2

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations, along with three associated forms and the Grant Agreement templates, 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 local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

The proposed regulations expand the Program to include California preschool and transitional kindergarten classrooms in addition to full-day kindergarten classrooms. School districts benefit in order to provide kindergarten classrooms if they lack the facilities and have the need to operate full-day transitional kindergarten and full-day kindergarten programs. School districts and county offices of education benefit in order to build new or expand existing classrooms to house full-day California state preschool programs. Additionally, the proposed 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 and county offices of education to complete their projects.

The proposed regulations, forms and the grant agreement 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 providing general fund dollars to those school districts/county offices of education that may be able to construct new facilities or retrofit existing facilities in an effort to provide preschool, transitional kindergarten and/or kindergarten facilities.
- The State of California will benefit because its inventory of school facilities will increase due to the expansion of the Program to include California preschool and transitional kindergarten classrooms.
- 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.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulations will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The proposed regulations expand the Program to include California preschool and transitional kindergarten classrooms in addition to full-day kindergarten classrooms.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, email or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, email or fax must be received at OPSC no later than September 6, 2022. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, email or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 4th Floor
West Sacramento, CA 95605

E-mail Address: Lisa.Jones@dgs.ca.gov

Fax No.: (916) 375-6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946-8463.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, scroll down to "California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program, then "California Preschool, Transitional Kindergarten and FDK Pending Regulatory Changes" and click on one of the linked documents, such as the 45-day Public Notice, the Initial Statement of Reasons, the proposed regulatory text, forms and the Grant Agreement templates.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. OPSC held three stakeholder meetings in which stakeholders provided comments/feedback to help with the implementation of the expansion and modifications to the Program. Statute requires the implementation of this Program through regulations. If no regulations, the SAB would be in violation of the statute.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be made available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.