

June 26, 2020

TO: ALL SCHOOL DISTRICTS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND REGULATION SECTIONS 1860 THROUGH 1860.21, INCLUDING ASSOCIATED FORMS AND GRANT AGREEMENT, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO THE FULL-DAY KINDERGARTEN FACILITIES GRANT PROGRAM

PROPOSED AMENDMENTS TO THE FOLLOWING REGULATION SECTIONS:

- 1860, 1860.2, 1860.3, 1860.4, 1860.5, 1860.6, 1860.10, 1860.11, 1860.13, 1860.15, 1860.18, AND 1860.19

PROPOSED AMENDMENTS TO THE FOLLOWING FORMS:

- *Application for Funding*, Form SAB 70-01 (Rev. 10/19), which is incorporated by reference and referenced in Regulation Section 1860.2
- *Fund Release Authorization*, Form SAB 70-02 (Rev. 10/19), which is incorporated by reference and referenced in Regulation Section 1860.2
- *Expenditure Report*, Form SAB 70-03 (Rev. 10/19), which is incorporated by reference and referenced in Regulation Section 1860.2
- *Grant Agreement*, (Rev. 10/19), which is incorporated by reference and referenced in Regulation Section 1860.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, including associated forms and grant agreement, 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 amend the above-referenced regulation sections under the authority provided by Sections 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(b)(3), 17375(b)(4), 17375(c), 17375(e), 17375(f), 17375(g), 17375(h) of the Education Code; 16304 and 16304.1 of the Government Code. The proposals interpret and make specific reference Sections 8973, 17070.15, 17072.10(b), 17072.10(d), 17072.10(e), 17074.10,

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(e), 17375(f), 17375(g), 17375(h), 41024, and 42238.01 of the Education Code; 14608 and 15490(c), Government Code; 1771.3 and 1771.5, Labor Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018 (Committee on Budget, Education Finance: Education Omnibus Trailer Bill), established the Full-Day Kindergarten Facilities Grant Program (FDKFGP). The FDKFGP allows school districts that lack the facilities to provide full-day kindergarten to apply for one-time grants to construct new school facilities or retrofit existing school facilities 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, The Education Finance: Education Omnibus Trailer Bill. This bill appropriated an additional \$300,000,000 from the General Fund for the 2019/2020 fiscal year to the SAB to continue funding the program. In addition, the statute limits a portion of the program's funding to school districts that will use the funding to convert part-day kindergarten facilities to full-day kindergarten facilities. At its meeting on October 23, 2019, the SAB adopted proposed regulatory amendments on an emergency basis. The emergency regulations were approved by the Office of Administrative Law, filed with the Secretary of State and became effective on February 18, 2020.

Funds Impacted

- General Fund appropriation in the amount of \$300,000,000

Attached to this Notice is the specific regulatory language of the proposed regulations, including three associated forms. The *Grant Agreement*, will not be included because the document is very large. However, the proposed regulations, forms and the *Grant Agreement* will be accessible and can be reviewed 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 "Full-Day Kindergarten Facilities Grant Program, FDK Pending Regulatory Changes." Copies of the proposed regulations, associated forms and *Grant Agreement* 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 FDKFGP 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 Full-Day Kindergarten Facilities Grant Program.

Background and Problem Being Resolved

As mentioned above, The Education Finance: Education Omnibus Trailer Bill, SB 75, Chapter 51, Statutes of 2019, was signed by the Governor on July 1, 2019. This bill appropriated to the SAB an additional \$300 million from the General Fund for the 2019/2020 fiscal year to provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of providing full-day kindergarten facilities.

The statute limits a portion of the program's funding to school districts that will use the funding to convert part-day kindergarten facilities to full-day kindergarten facilities. In addition, the statute changes the local matching share for these conversion projects from 50 percent for new construction projects and 40 percent for retrofit projects to 25 percent for both types of project

scopes. For those districts that will not be converting, the local matching share remains at 50 percent and 40 percent, respectively.

The OPSC, on behalf of the SAB, conducted two stakeholder meetings to discuss the proposed regulatory amendments to address statutory changes to the FDKFGP. As a reminder, the projects must provide classrooms to house existing kindergarten students and not add capacity to bring new students to the school site. This remains a self-certification program.

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, determined that SB 75, Chapter 51, Statutes of 2019, the Education Finance: Education Omnibus Trailer Bill, was created to clarify and make modifications to the existing FDKFGP. There are no other programs or regulations in existence that address the lack of kindergarten facilities or the conversion of part-day kindergarten facilities to full-day kindergarten facilities. 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 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 non-monetary benefits associated with these proposed regulatory amendments. The proposed regulations promote fairness to all school districts, especially those school districts that may not otherwise qualify for State funding under the School Facility Program. The proposed regulations also promote social equity by providing one-time general fund funding to those school districts that wish to convert part-day kindergarten facilities to full-day kindergarten facilities, and for those school districts lacking the facilities to provide full-day kindergarten instruction to construct new school facilities or retrofit existing school facilities in an effort to provide kindergarten facilities. Additionally, there are benefits to health, safety, and welfare of California residents (school children and school faculty) because kindergarten facilities will be built stronger and safer. School districts utilize construction and trades employees to work on school construction projects and although the proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force. Further, public health and safety is 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. Lastly, the State will benefit because kindergarten facilities will be constructed thereby increasing the State's inventory of school facilities.

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 SB 75, Chapter 51, Education Finance: Education Omnibus Trailer Bill, was created to clarify and make modifications to the existing FDKFGP. There are no other programs or regulations in existence that address the lack of kindergarten facilities or the conversion of part-day kindergarten facilities to full-day kindergarten facilities. 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 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.

These proposed regulations may have a positive impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities, along with the creation of an unknown amount of jobs. The proposed regulations may also provide a positive impact to 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 regulations is as follows:

Existing Regulation Section 1860 states the purpose of the regulations, which is to implement the FDKFGP. The proposed regulatory amendment deletes language that refers to grant funding in the amount of \$100 million dollars since there is an additional appropriation and adds the word “funding” to represent all of the funding appropriated to the FDKFGP.

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 regulatory amendments add additional defined words and terms for purposes of clarifying the differences between Full-Day Kindergarten Program and Part-Day Kindergarten Program.

Existing Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. This regulation also specifies that school districts may only apply for program funding for a project that entered into a construction contract on or after the program start date of June 27, 2018. The proposed regulatory amendments make structure changes to this Section since the funding is separated between the \$100 million provided in the 2018/2019 budget and the \$300 million provided in the 2019/2020 budget; each funding source has specific requirements and timelines. In addition, the FDKFGP was revised through Senate Bill 75 which was signed by the Governor effective July 1, 2019, not June 27, 2019.

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all school districts 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 regulatory amendments delete language and restructures the Section by delineating the funding from the 2018/2019 budget which must be encumbered by a certain date and provides specificity regarding funds from the 2019/2020 budget that must be encumbered by June 30, 2022 or the funding shall be returned to the General Fund. In order to encourage participation in the FDKFGP, consistent with the statutory change, the regulations now clarify that new facilities built with full-day kindergarten program funds will not impact a school district’s School Facility Program (SFP) eligibility.

Existing Regulation Section 1860.5 sets forth several criteria that all school districts must meet in order to apply for 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 will be required to prove 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 regulatory amendments delete language and restructures the Section for improved readability due to program modifications. School districts participating in the FDKFGP must convert from a part-day to a full-day kindergarten program for the 2019/2020 and 2020/2021 fiscal years; and for the 2021/2022 fiscal year, funding will not be limited to conversion projects. School districts requesting funding from the 2019/2020 Budget Act are required to submit four years of enrollment data to determine a project's overall need for funding based on enrollment patterns. OPSC will collaborate with the California Department of Education (CDE) to determine if a project's need for funding will be limited to retrofit. This is to ensure funds are appropriately spent. In addition, Subsection (d)(1)(C), the word "Section" was added, which is considered a non-substantive change.

Existing Regulation Section 1860.6 sets forth the application submittal process, which authorizes the SAB to establish two 30-calendar day funding rounds for school districts to request apportionments of available program funds. The proposed regulatory amendments delete the words "Full-Day Kindergarten Facilities Grant" as these are the regulations for the Program and do not require reiteration. The funding was made available in the third and fourth funding rounds to give priority to school districts converting from a part-day kindergarten program to a full-day kindergarten program. These additional funding rounds will allow the SAB to promptly expend the funds by the statute driven deadline of June 30, 2022. Any applications that do not receive an apportionment during each funding round will be returned to the school district.

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 FDKFGP projects is similar to what is used in the SFP Regulations. The proposed regulatory amendment deletes wording that is no longer applicable because it is more appropriate to provide an accurate appraisal within six months of purchasing a site for reimbursement projects.

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 regulatory amendments delete language and restructures the Section to include new funding ratios for state/district shares based on whether a school district is converting from a part-day kindergarten program to a full-day kindergarten program. If a school district is converting, then the district share is 25 percent and the state share is 75 percent. If a school district is not converting, then the funding ratio for state/district shares remains at 50/50.

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 regulatory amendments delete language and restructures the Section to include new funding ratios for state/district shares based on whether a school district is converting from a part-day kindergarten program to a full-day kindergarten program. If a school district is converting, then the district share is 25 percent and the state share is 75 percent. If a school district is not converting, then the funding ratio for state/district shares remains at 60/40.

Existing Regulation Section 1860.15 specifies the funding priority based on a school district's preference points. Education Code Section 17375(b)(2) states that priority for FDKFGP 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 FRPM, 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 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 they will be placed into a lottery to determine who will be funded first. The proposed regulatory amendments add an additional tiebreaker for school districts with the same total preference points by using a school district's exact Low Income percentage to one decimal place identified on the most recent FRPM data on file. This tiebreaking method should reduce the likelihood of having to do a lottery and to remain in alignment with the statute to prioritize funding to lower-income school districts. However, if there is still a tie then a lottery system will take place.

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 FDKFGP projects comply with statute and other applicable State requirements pertaining to construction. The proposed regulatory amendment adds an additional reference citation that relates to the new funding ratio of 75/25, state/district shares.

Existing Regulation Section 1860.19 specifies how remaining funding may be used after project completion. Project savings and unexpended funds are the different types of remaining funds from FDKFGP projects. School districts that are not financial hardship are able to expend their project savings, including interest, that are not needed for the FDKFGP 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 FDKFGP project and that were not spent on eligible expenditures, 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 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. The proposed regulatory amendments allow school districts receiving funding from the 2019/2020 Budget Act to expend project savings, regardless of Financial Hardship status. In addition, project savings may be expended on professional and instruction materials to build capacity for the implementation of a full-day kindergarten program.

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 FDKFGP 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 regulatory amendments provide 1) the ability for a school district to apply for both new construction and retrofit as a dual scope type of application [pages 1 and 3]; 2) deletes language regarding the labelling of current kindergarten classrooms, including the submission of certain documentation [pages 1 and 2]; and 3) adds new language instructing school districts to label all facilities and identify their current uses as well as all classrooms constructed or previously retrofitted to house kindergarten pupils [pages 1 and 2]. All of the proposed amendments pertain to the different types of applications listed under “Specific Instructions of this Form. In addition, there are two new Certifications being added on page 4 as well as two Certifications being amended and deleted.

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 an FDKFGP apportionment has been made by the Board, 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 regulatory amendment reminds school districts to submit an updated Form SAB 70-01 if funding was previously received for design and/or site approvals.

Existing Form SAB 70-03, *Expenditure Report*, 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 FDKFGP 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 FDKFGP projects comply with statute and other applicable State requirements pertaining to construction. The proposed regulatory amendments include the addition of professional development or instruction materials to build capacity for the implementation of the full-day kindergarten program, which is in alignment with Education Code Section 17375(a)(4)(B)(i).

Existing *Grant Agreement* template (which is incorporated by reference) includes sections relevant to the FDKFGP for new construction and retrofit funding. It is the intent that the grant agreement will be entered into for every 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 FDKFGP. The proposed regulatory amendments incorporate 1) the submittal of annual expenditure reports 12 months from the date of the full fund release, and 2) the ability for financial hardship districts to retain savings and the retention of savings may be expended on professional development or instructional materials to build capacity for the implementation of a full-day kindergarten program. There are minor changes incorporated on page 9, under F.2.: added the word "Section"; page 18, 3.f., under the heading Authority: struck out the extra "1" in 20114; page 28, 3.e.and f., under the heading Authority: added "." after Ed Code; pages 29 & 30, 5.a-j, under the heading Authority: added "." after Ed Code. These minor changes are considered non-substantive changes.

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 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 FDKFGP under Education Code Section 17375(g) and Government Code Section 15503.

Statutory Authority and Implementation

Education Code Section 17375(g). 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

The Education Finance: Education Omnibus Trailer Bill, SB 75, Chapter 51, Statutes of 2019, was signed by the Governor on July 1, 2019. This bill appropriated to the SAB an additional \$300 million from the General Fund for the 2019/2020 fiscal year to provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of providing full-day kindergarten facilities.

The statute limits a portion of the program's funding to school districts that will use the funding to convert part-day kindergarten facilities to full-day kindergarten facilities. In addition, the statute changes the local matching share for these conversion projects from 50 percent for new construction projects and 40 percent for retrofit projects to 25 percent for both types of project scopes. For those districts that will not be converting, the local matching share remains at 50 percent and 40 percent, respectively.

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, determined that SB 75, Chapter 51, Statutes of 2019, the Education Finance: Education Omnibus Trailer Bill, was created to clarify and make modifications to the existing FDKFGP. There are no other programs or regulations in existence that address the lack of kindergarten facilities or the conversion of part-day kindergarten facilities to full-day kindergarten facilities. 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 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

- *Application for Funding*, Form SAB 70-01, (Rev. 10/19), referenced in Regulation Section 1859.2 and is incorporated by reference.
- *Fund Release Authorization*, Form SAB 70-02 (Rev. 10/19), referenced in Regulation Section 1860.2 and is incorporated by reference.
- *Expenditure Report*, Form SAB 70-03 (Rev. 10/19), referenced in Regulation Section 1860.2 and is incorporated by reference.
- *Grant Agreement*, (Rev. 10/19), referenced in Regulation Section 1860.2 and is incorporated by reference.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of 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 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 clarify and make modifications to the existing FDKFGP, which allows school districts that wish to convert part-day kindergarten facilities to full-day kindergarten facilities, and for those districts that lack the facilities to provide full-day kindergarten facilities to apply for one-time grants to construct new school facilities or retrofit existing school facilities for the sole purpose of providing full-day kindergarten classrooms.

Many aspects of the FDKFGP continue to be based on similarities in the Leroy F. Greene School Facilities Act of 1998 (School Facility Program), such as Financial Hardship, site acquisition guidelines, etc. just to name a few. The School Facility Program is a \$42 billion voter-approved school facilities construction program. Although the FDKFGP is not the primary school facilities construction program, it does provide funding dedicated to construction of new facilities and/or retrofit of existing facilities for kindergarten classrooms only. In making these statements, manufacturing and construction-related industries may be competing for construction jobs for both the FDKFGP and the School Facility Program because of funds apportioned to school districts from both programs. The funds will be released once the school districts submit the fund release form and associated grant agreement. It is anticipated that there will be a positive impact to the State's economy and the potential for job creation because school districts are able to utilize these funds right away for their construction projects.

Therefore, the proposed regulations will most likely have a positive effect on the State's economy, creation of jobs, creation of new businesses, expansion of businesses, and will not eliminate jobs or eliminate existing businesses within California.

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

- The proposed regulations promote the State's general welfare, including protection of public health and safety, by assisting in increasing the State's infrastructure investment of school facilities.
- The proposed regulations also promote fairness and/or social equity by providing one-time general fund dollars to those school districts that may be able to construct new facilities or retrofit existing facilities in an effort to provide kindergarten facilities.
- There are benefits to health, safety, and welfare of California residents (school children and school faculty) because kindergarten facilities will 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 these proposed regulations do not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is 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. Although the proposed regulations only apply to school districts for purposes of funding kindergarten facilities, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of small businesses in these areas because of funds being released to school districts from both the FDKFGP and School Facility Program.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at OPSC no later than August 10, 2020. 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, 6th 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 (916) 376-1753. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (916) 376-1646.

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 "Full-Day Kindergarten Facilities Grant Program, FDK Pending Regulatory Changes" and click on one of the linked documents, such as the 45-day Public Notice, the Initial Statement of Reasons and the proposed regulatory text.

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. The proposed regulations clarify and make modifications to the existing FDKFGP based on statute. There are no other programs or regulations in existence that address the lack of kindergarten facilities or the conversion of part-day kindergarten facilities to full-day kindergarten facilities.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be 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.