

INITIAL STATEMENT OF REASONS

Section 1860. Purpose.

Specific Purpose of the Regulation

To inform applicants of the additional moneys allocated to the Full-Day Kindergarten Facilities Grant Program (FDKFGP).

Need for the Regulation

It was necessary to 1) delete existing language that refers to grant funding in the amount of \$100 million since there is an additional appropriation, and 2) add the word “funding” to represent all of the funding appropriated to the FDKFGP.

Section 1860.2. Definitions.

Specific Purpose of the Regulation

To set forth additional words and terms that are essential to these Subgroup 5.8 Regulations.

Need for the Regulation

It was necessary to define additional terms such as “Full-Day Kindergarten Program” and “Part-Day Kindergarten Program” for purposes of clarifying the differences between the two kindergarten programs.

Section 1860.3. General.

To set forth general requirements that all school districts seeking FDKFGP funding must meet.

Need for the Regulation

It was necessary to 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.

Subsection (b): It was also necessary to change the effective date of when the FDKFGP was revised because Senate Bill (SB) 75 was signed by the Governor on July 1, 2019, not June 27, 2019.

Section 1860.4. Funding Guidelines.

Specific Purpose of the Regulation

To provide general funding guidelines that apply to all school districts that participate in the FDKFGP.

Need for the Regulation

It was necessary to delete existing language and restructure this Section by delineating the funding from the 2018/2019 budget which must be encumbered by a certain date and provide specificity regarding funds from the 2019/2020 budget that must be encumbered by June 30,

2022 or the funding reverts to the General Fund. In order to encourage participation in the FDKFGP and consistent with statute, the regulations now clarify that new facilities built with full-day kindergarten program funds will not impact a school district's School Facility Program eligibility.

Section 1860.5. Program Eligibility Criteria.

Specific Purpose of the Regulation

To set forth program criteria that all school districts must meet in order to participate in the FDKFGP.

Need for the Regulation

It was necessary to delete existing language and restructure this 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. Statute does not provide the SAB the ability to provide funding for classrooms for projected kindergarten students. It was also necessary to add the word Section in Subsection (d)(1)(C), which is considered a non-substantive change.

Section 1860.6. Application Submittals.

Specific Purpose of the Regulation

To set forth the application submittal process.

Need for the Regulation

It was necessary to delete the words "Full-Day Kindergarten Facilities Grant" as these are the regulations for the Program and do not require reiteration. It was also necessary to add additional funding rounds to the FDKFGP. 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 funds 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.

Section 1860.10. New Construction Additional Grant for Site Acquisition Cost.

Specific Purpose of the Regulation

To set forth the process by which the amount for an additional grant for site acquisition will be determined.

Need for the Regulation

Education Code Section 17375(f)(1)(A) authorizes the SAB to allocate funding necessary to acquire property adjacent to the existing school site. The site acquisition determination for

FDKFGP projects is similar to what is used in the SFP Regulations. It was necessary to delete 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.

Section 1860.11. New Construction School District Matching Share Requirement.

Specific Purpose of the Regulation

To specify the matching share requirement for school districts applying for a new construction grant.

Need for the Regulation

It was necessary to delete existing language and restructure this Section in order 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 funding ratio is 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. This is in alignment with Education Code Sections 17375(b)(3) and 17375(b)(4).

Section 1860.13. Retrofit School District Matching Share Requirement.

Specific Purpose of the Regulation

To specify the matching share requirement for school districts applying for a retrofit grant.

Need for the Regulation

It was necessary to delete existing language and restructure this 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 funding ratio is 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 remain at 60/40. This is in alignment with Education Code Sections 17375(b)(3) and 17375(b)(4).

Section 1860.15. Application Funding Criteria.

Specific Purpose of the Regulation

To specify the funding priority based on a school district's preference points.

Need for the Regulation

This Section specifies the funding priority as stipulated in Education Code Section 17375(b)(2). Statute 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. Similar to 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 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 indicated 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. If the SAB 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 final. 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.

It was necessary to delete existing language in order to provide an additional tiebreaker for school districts with the same total preference points by using a school district's 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. If there is still a tie then a lottery system will take place.

Section 1860.18. Program Reporting Requirements.

Specific Purpose of the Regulation

To set forth reporting requirements for the FDKFGP.

Need for the Regulation

This Section provides instruction regarding reporting requirements that school districts receiving FDKFGP 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.

It was necessary to specify an additional reference citation that relates to the new funding ratio of 75/25, state/district shares. This is in alignment with Education Code Section 17375(b)(4).

Section 1860.19. Project Savings and Unexpended Funds.

Specific Purpose of the Regulation

To specify the use of remaining FDKFGP after project completion.

Need for the Regulation

This Section provides specificity on how remaining program 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.

It was necessary to 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 development or instructional materials to build capacity for the implementation of a full-day kindergarten program. This is in alignment with Education Code Section 17375(a)(4)(B).

FULL-DAY KINDERGARTEN FACILITIES GRANT PROGRAM FORMS

Application for Funding, Form SAB 70-01 (Rev. 10/19).

Specific Purpose of the Form

To provide instructions on when to use this Form.

Need for the Form

This Form is used to inform school district to use this Form when applying for FDKFGP funding. This Form serves as a certification from the school districts regarding compliance with requirements of law and FDKFGP Regulations. School districts must submit this form during the funding rounds set forth in Regulation Section 1860.6. OPSC will use this Form to collect information necessary to calculate the amount of grants applicable to the project and to determine project funding order.

It was necessary to provide 1) for 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) for the deletion of 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 well as all classrooms constructed or previously retrofitted to house kindergarten pupils [pages 1 and 2]. All of these pertain to the different types of applications listed under "Specific Instructions" of this Form. Additionally, there are two new Certifications added on page 4 as well as two Certifications being amended and deleted.

Fund Release Authorization, Form SAB 70-02 (Rev. 10/19).

Specific Purpose of the Form

To provide instructions on when to file this Form.

Need for the Form

This Form is used to inform school districts to use this Form when requesting the release of funds once FDKFGP projects have received apportionments by the SAB. The applicant certifies

on this Form that it has already submitted the signed Grant Agreement, or the signed Grant Agreement is accompanying the Form. After an FDKFGP 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 submit this Form with all required approvals within 12 months of apportionment.

Page 1, General Information: It was necessary to remind school districts to submit an updated Form SAB 70-01, *Application for Funding*, if funding was previously received for design and/or site approvals.

Expenditure Report, Form SAB 70-03 (Rev. 10/19).

Specific Purpose of the Form

To provide instructions on when school districts will use this Form.

Need for the Form

This Form is used to inform school districts when 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.

It was necessary to include the addition of professional development or instructional 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).

Grant Agreement, (Rev. 10/19).

Specific Purpose of the Form

To make non-substantive changes to the Grant Agreement for the FDKFGP.

Need for the Form

The *Grant Agreement* ensures compliance with Education Code Section 17375(e) and 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 the FDKFGP.

It was necessary to incorporate 1) under F.2.: the submittal of annual expenditure reports 12 months from the date of the full fund release [page 9], 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 [page 11]. There are minor changes incorporated on page 9, under F.2.:

added the word "Section"; page 19, 3.f., under the heading Authority: struck out the extra "1" in 20114; page 32, 3.e.and f., under the heading Authority: added "." after Ed Code; pages 34 & 35, 5.a-j, under the heading Authority: added "." after Ed Code. These minor changes are considered non-substantive changes.

Anticipated Benefits and Economic Impact 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.

Technical Documents Relied Upon

OPSC Stakeholder Meetings/Items, dated September 26 and October 9, 2019, entitled "Full-Day Kindergarten Facilities Grant Program." (The same agenda item was used for both stakeholder meetings.)

The State Allocation Board's Action item, dated October 23, 2019, entitled "Proposed Amendments to the Full-Day Kindergarten Facilities Grant Program."

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

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. OPSC held two stakeholder meetings to discuss and receive input from stakeholders regarding program modifications made to the FDKFGP based on the provisions contained in SB 75, Chapter 51, Statutes of 2019. Other than these two stakeholder meetings, no other alternatives were considered. In addition, statute required the implementation of this program through regulations. If there were no SAB-approved regulations, then the SAB would be in violation of the statute.

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

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

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the proposed regulations will not have a negative economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulation, nor will they be disadvantaged by the regulations. In fact, the demand on the manufacturing and construction-related industries could potentially stimulate the creation of businesses/small businesses in these areas. This will benefit school districts in order to provide full-day kindergarten programs for their kindergarten pupils, especially if the school districts want to convert from part-day kindergarten programs to full-day kindergarten programs, or if the school districts lack the facilities and have the need to provide the classrooms.

Impact on Local Agencies or School Districts

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

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

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

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

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

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS

“Proposed Amendments to the Full-Day Kindergarten Facilities Grant Program”

Proposed State Allocation Board Regulations

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

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.

Description of Regulations to Implement Law

The proposed regulations are summarized 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 20, 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 19, 3.f., under the heading Authority: struck out the extra “1” in 20114; page 32, 3.e.and f., under the heading Authority: added “.” after Ed Code; pages 34 & 35, 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.

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.

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.

Impact to California Businesses and Jobs

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.

The number of school districts that receive funding under the FDKFGP and the School Facility Program will be/are many and are at different stages in the construction process. Nevertheless, with all the construction activity and funding flowing into the economy, it is reasonable and logical that the extent of the proposed regulations will have a positive impact to job creation and business expansion/creation, which is why it is difficult to quantify the number of jobs and businesses.

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.