

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to approve proposed regulatory amendments, including associated forms and the grant agreement templates for the Full-Day Kindergarten Facilities Grant Program (FDKFGP). Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018 [Committee on Budget. Education Finance: education omnibus trailer bill] was originally signed by the Governor on June 27, 2018 and included a one-time General Fund appropriation in the amount of \$100,000,000 for the sole purpose of providing full-day kindergarten classrooms. Since that time, the Governor signed into law, on July 1, 2019, 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 to the SAB for the 2019/20 fiscal year. School districts that wish to convert part-day kindergarten facilities to full-day kindergarten facilities, and for those districts lacking the facilities to provide full-day kindergarten instruction can apply for these one-time grants to construct new school facilities or retrofit existing school facilities. At its meeting on October 23, 2019, the SAB adopted the proposed regulatory amendments on an emergency basis.

Education Code Section 17375(g) states:

“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.”

Background and Problem Being Resolved

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 2019/20 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 Office of Public School Construction (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 as a self-certification Program.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has 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 regulatory amendments 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.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulatory amendments, along with the three forms and the grant agreement templates to the Office of Administrative Law (OAL) in January 2020, pursuant to Government Code Section 11346.1(a)(2). The proposed regulatory amendments and the three associated forms will be attached, but due to the voluminous amount of information for the grant agreement templates, this information will not be attached and may be viewed on [OPSC's website](https://www.dgs.ca.gov/OPSC/Resources/Laws-and-Regulations) at: <https://www.dgs.ca.gov/OPSC/Resources/Laws-and-Regulations>.

Authority and Reference Citations

Authority: 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.

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, 42238.01 of the Education Code; 14608 and 15490(c), Government Code; 1771.3 and 1771.5, Labor Code.

Information Digest/Policy Overview Statement

At its meeting on October 23, 2019, the SAB adopted proposed regulatory amendments on an emergency basis. The Full-Day Kindergarten Facilities Grant Program was created through AB 1808, Chapter 32, Statutes of 2018, the Education Finance: Education Omnibus Trailer Bill. On July 1, 2019, the Governor signed SB 75, Chapter 51, Statutes of 2019, The Education Finance: Education Omnibus Trailer Bill. This bill appropriates an additional \$300,000,000 from the General Fund for the 2019/2020 fiscal year to the SAB 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. 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.

Summary of the Proposed Regulations

A summary of the proposed regulatory amendments are 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.

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 programs will not impact a school district's School Facility Program 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 are 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 that funds are appropriately spent.

Existing Regulation Section 1860.6 sets forth the application submittal process, which established two 30-calendar day funding rounds for school districts to request apportionments of available program funds. The proposed regulatory amendments delete the words “Full-Day Kindergarten Facilities Grant” as these are the regulations for the Program and do not require reiteration. The proposed regulatory amendments also 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 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 Section 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 Section 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 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 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) will be 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) will be 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*, will be 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 future funding application that is processed; therefore, each grant agreement will contain the relevant project information. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount eligible state funding to the reporting of all project funds, including any savings achieved. This will ensure greater transparency and accountability for the program grants being awarded under 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.

Mandate 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 school districts to incur additional costs in order to comply with the proposed regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts 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.

Documents Incorporated by Reference

Application for Funding, Form SAB 70-01, (Rev. 10/19), referenced in Regulation Section 1860.2 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.

Technical Documents Relied Upon

The SAB's Action Item, dated October 23, 2019, entitled "Proposed Amendments to the Full-Day Kindergarten Facilities Grant Program."

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 SFP. 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.