

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 626

(Senator Glassman, *et al.*)

Budget and Taxation

**Public School Construction Funding Reform Act of 2011**

This bill eliminates the oversight role of the Interagency Committee on School Construction (IAC) and the Board of Public Works (BPW) in establishing standards for eligible school construction expenditures and allocating State funds to projects that meet State standards. It also allocates school construction funds to local school boards as block grants using an enrollment-based formula and enhances local authority regarding the expenditure of State school construction funds and selection of alternative financing arrangements such as sale-leaseback or design-build arrangements.

The bill takes effect June 1, 2011, and applies to State funds for school construction beginning in fiscal 2013.

**Fiscal Summary**

**State Effect:** General fund expenditures decline by \$122,300 in FY 2011 and by \$1.5 million in FY 2012 due to the elimination of IAC. That reduction is partially offset by an increase in expenditures by the Maryland State Department of Education (MSDE) of \$19,000 in FY 2011 and \$228,000 in FY 2012 to carry out some of IAC's responsibilities transferred to MSDE by the bill. Out-year expenditure reductions reflect inflation. No effect on total State funding for school construction projects.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	(103,300)	(1,269,900)	(1,325,900)	(1,377,000)	(1,430,000)
Net Effect	\$103,300	\$1,269,900	\$1,325,900	\$1,377,000	\$1,430,000

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** No effect on the total amount of local revenues from State school construction aid, but the distribution of that aid among local school systems changes

based on the new funding formula. Changes for individual school systems cannot be estimated because the level of aid for each jurisdiction varies annually under the current system. The absence of State standards and oversight may increase project costs for local jurisdictions.

**Small Business Effect:** Potential meaningful.

---

## Analysis

**Bill Summary:** School construction projects in each county must be approved by the county's governing body and the county board of education, but not by the State. Any State school construction funds not encumbered by a local board of education within two years of their distribution revert to the State.

The bill delegates remaining authority for regulating school construction at the State level from BPW and IAC to the State Superintendent of Schools and MSDE, including responsibility for reviewing capital improvement and maintenance plans, the solar energy pilot program, high-performance building waivers, and other related responsibilities. However, IAC's role in reviewing and approving construction plans, building specifications, and change orders for school construction projects, and other related responsibilities, is repealed and not transferred to any other State agency.

The bill also eliminates the provision that sale-leaseback arrangements require that private entities transfer title of the school building back to the county board on a specified date.

**Current Law:** The State pays at least 50% of eligible costs of school construction and renovation projects, based on a funding formula that takes into account numerous factors including each local school system's wealth and ability to pay. Chapters 306 and 307 of 2004 (The Public School Facilities Act) require that the cost-share formulas be recalculated every three years. The first recalculation occurred in 2007, and the second recalculation occurred in 2010. **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2012, which was determined by the 2007 recalculation, and for fiscal 2013 through 2015, as determined by the 2010 recalculation.

IAC is charged with developing standards and criteria for State approval of school construction projects, including the calculation of the cost per square foot of building construction that forms the basis for the calculation of school construction and renovation project costs.

---

**Exhibit 1**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2012-2015**

<b><u>County</u></b>	<b><u>FY 2012</u></b>	<b><u>FY 2013</u></b>	<b><u>FY 2014</u></b>	<b><u>FY 2015</u></b>
Allegany	91%	93%	93%	93%
Anne Arundel	50%	50%	50%	50%
Baltimore City	94%	93%	93%	93%
Baltimore	50%	50%	50%	50%
Calvert	61%	56%	56%	56%
Caroline	86%	81%	78%	78%
Carroll	61%	58%	58%	58%
Cecil	75%	70%	69%	69%
Charles	77%	72%	67%	63%
Dorchester	71%	69%	69%	69%
Frederick	72%	67%	62%	60%
Garrett	59%	54%	50%	50%
Harford	59%	63%	63%	63%
Howard	61%	60%	60%	60%
Kent	50%	50%	50%	50%
Montgomery	50%	50%	50%	50%
Prince George's	73%	68%	63%	62%
Queen Anne's	55%	50%	50%	50%
St. Mary's	75%	70%	65%	64%
Somerset	88%	83%	82%	82%
Talbot	50%	50%	50%	50%
Washington	73%	71%	71%	71%
Wicomico	87%	96%	96%	96%
Worcester	50%	50%	50%	50%

Source: Public School Construction Program

---

Subject to the final approval of BPW, IAC manages State review and approval of local school construction projects. Each year, local systems develop and submit to IAC a facilities master plan that includes an analysis of future school facility needs based on the current condition of school buildings and projected enrollment. The master plan must be approved by the local school board. Subsequently, each local school system submits a

capital improvement plan to IAC that includes projects for which it seeks planning approval, projects for which it seeks funding approval, and projects that the local system has forward funded. In addition to approval from the local school board, the capital improvement plan must be approved by the county's governing body. Typically, the submission letter to IAC contains signatures of both the school board president and either the county council president or chair of the board of county commissioners. School construction projects cannot receive State funding unless they are included in a local school system's annual capital improvement plan.

Based on its assessment of the relative merit of all the project proposals it receives, and subject to the projected level of school construction funds available, IAC determines which projects to recommend to BPW for State funding. By December 31 of each year, IAC recommends to BPW projects comprising 75% of the preliminary school construction allocation projected to be available. Local school districts may then appeal the IAC recommendations directly to BPW. By March 1 of each year, IAC recommends to BPW and the General Assembly projects comprising 90% of the allocation for school construction submitted in the Governor's capital budget. Following the legislative session, IAC recommends projects comprising the remaining school construction funds included in the enacted capital budget for BPW approval.

**State Fiscal Effect:** The bill has no effect on total State spending on school construction projects, as spending levels are set by the Governor and the General Assembly in the annual capital budget. However, general fund expenditures decrease due to the elimination of IAC. The proposed fiscal 2012 State budget includes 18 full-time equivalent (FTE) general fund positions in IAC, totaling \$1.5 million in personnel and related operating costs. MSDE requested 17 new FTE positions at a total cost of about \$1.1 million to implement the bill. However, the Department of Legislative Services (DLS) estimates that two of the existing IAC positions would need to be transferred to MSDE to carry out oversight responsibilities delegated to MSDE and the State Superintendent by the bill, including reviewing facility master plans and maintenance plans. Therefore, the bill results in the net elimination of 16 FTE positions and a total annual savings of approximately \$1.3 million. Based on the bill's June 1, 2011 effective date, the expenditure reduction begins in the final month of fiscal 2011 and continues on an annualized basis into fiscal 2012 and beyond. Out-year savings reflect inflation. Eliminating the BPW's oversight role with respect to school construction funding allocations does not have a fiscal effect as most of that responsibility is delegated to IAC.

**Local Fiscal Effect:** Although the school construction cost-shares are determined by a complex formula, the actual distribution of available school construction funds to local jurisdictions varies each year based on local needs and project viability, as recommended by IAC to BPW. Therefore, DLS cannot assess the bill's effect on school construction

funding levels for local school systems. In some years, a jurisdiction may get more school construction funds under the proposed block grant formula than it would under the current discretionary system, but in other years it may receive less. Nevertheless, it is clear that distribution of those funds to local school boards would no longer be discretionary, but instead would be driven by the enrollment-based formula beginning in fiscal 2013. *For illustrative purposes only*, **Exhibit 2** compares the actual average allocation for fiscal 2009 to 2011 of school construction funding under the current system with the allocation that would have occurred under the bill.

Under the bill's provisions, each local jurisdiction would have a great deal of discretion in the use of school construction funds to support projects that fall under its education facilities master plan, including increased discretion to engage in alternative financing arrangements. To the extent that such arrangements generate project cost savings, or the lack of State oversight allows projects to start faster, some local jurisdictions may recognize savings in financing of school construction projects. DLS cautions, however, that in the absence of uniform IAC standards for project planning, cost per square foot, and financing arrangements, the costs of some projects may exceed current standards and guidelines, resulting in higher costs for some projects. The lack of uniform standards and oversight may also lead to poor work quality, requiring remediation that increases project costs. Since the State and local cost-share formula is repealed under the bill, higher project costs will be borne solely by local jurisdictions.

Moreover, the elimination of the requirement that private entities transfer the title of school buildings built under sale-leaseback arrangements to the local school systems jeopardizes State funding for those projects as State law requires that State funds can be spent only to build schools on public land.

In smaller counties, the annual allocations provided to the local school system may not be sufficient, or may not accumulate fast enough, to fund large projects such as new or replacement schools. Although the bill allows local school systems to encumber funds, IAC advises that the State Treasurer's Office has determined, in line with Internal Revenue Service guidelines, that tax-exempt bond proceeds may be used to reimburse construction costs only within 18 months of the bond sale. In some cases, allocations to local boards of education under the bill will not be sufficient to meet that timeline, which may cause some projects to be delayed or foregone if local resources are not sufficient to fill the funding gap.

**Exhibit 2**  
**Fiscal 2009-2011 Distribution of Public School Construction Program Funding**  
**(\$ in Thousands)**

	<b>2007-09 Average Enrollment</b>	<b>2007-09 % of Total Enrollment</b>	<b>FY 2009-11 SB 626 Funding</b>	<b>FY 2009-11 Average Actual Funding</b>	<b>Difference</b>
Allegany	8,814	1.1%	\$3,159	\$281	\$2,878
Anne Arundel	72,118	8.8%	25,847	26,213	-366
Baltimore City	77,677	9.5%	27,840	32,431	-4,591
Baltimore	99,610	12.2%	35,701	32,662	3,039
Calvert	16,747	2.1%	6,002	8,152	-2,150
Caroline	5,275	0.6%	1,891	5,956	-4,065
Carroll	27,679	3.4%	9,920	10,235	-315
Cecil	15,672	1.9%	5,617	1,985	3,632
Charles	25,867	3.2%	9,271	9,646	-375
Dorchester	4,389	0.5%	1,573	7,435	-5,862
Frederick	39,182	4.8%	14,043	14,995	-952
Garrett	4,289	0.5%	1,537	1,229	309
Harford	37,840	4.6%	13,562	14,946	-1,384
Howard	49,001	6.0%	17,562	18,272	-710
Kent	2,098	0.3%	752	129	622
Montgomery	136,219	16.7%	48,821	37,282	11,539
Prince George's	121,403	14.9%	43,511	32,900	10,611
Queen Anne's	7,481	0.9%	2,681	4,883	-2,201
St. Mary's	16,127	2.0%	5,780	5,965	-185
Somerset	2,714	0.3%	973	4,000	-3,027
Talbot	4,255	0.5%	1,525	260	1,265
Washington	21,270	2.6%	7,623	8,434	-811
Wicomico	13,944	1.7%	4,997	12,035	-7,038
Worcester	6,319	0.8%	2,265	1,962	303
Statewide			167	167	0
<b>State Total</b>	<b>815,987</b>	<b>100%</b>	<b>\$292,453</b>	<b>\$292,453</b>	

PSCP: Public School Construction Program

Source: Maryland State Department of Education, Interagency Committee on School Construction, Department of Legislative Services

**Small Business Effect:** IAC, in conjunction with the Governor's Office of Minority Affairs, has made minority business enterprise (MBE) participation in school construction contracts a priority since 2008. Revised MBE contracting procedures for school construction projects have increased participation of MBEs, many of which are

small businesses, in those contracts from 12.55% in 2008 to 24.0% in fiscal 2011 to date. Using its authority to approve contracts, IAC has emphasized to local school systems the importance of following State MBE requirements when procuring school construction contracts. In the absence of IAC (or any State) oversight of school construction contracts, MBE participation levels may revert to pre-2008 levels.

**Additional Comments:** DLS notes that proceeds from State tax-exempt bonds may be used only for projects whose lifespan exceeds the term of the bonds (typically 15 years). In the absence of State oversight of school construction projects, there is no mechanism to ensure that school construction projects approved by local boards and governing bodies meet that standard.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Harford, and Montgomery counties; Department of Budget and Management; Department of General Services; Maryland Association of Boards of Education; Public School Construction Program; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 21, 2011  
ncs/rhh

---

Analysis by: Michael C. Rubenstein

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510