

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 994

(Senator Rosapepe)

Budget and Taxation

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**School Overcrowding Reduction Act of 2017**

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This bill (1) alters the membership and primary role of the Interagency Committee on School Construction (IAC); (2) specifies that public school construction costs that exceed \$30,000 per student, adjusted annually for inflation, are ineligible for State funding, subject to waivers; (3) expands the use of alternative financing for public school construction projects and limits the authority of the State and local governments to approve and regulate the use of alternative financing; and (4) provides a higher State share of school construction costs for projects that meet specified conditions. It also renames the Maryland Stadium Authority (MSA) to be the Maryland Construction Authority (MCA), alters its mission to include public school construction, and authorizes it, upon request, to provide technical assistance to develop or manage a public school facility construction project under the terms of a memorandum of understanding (MOU) that can waive most statutory and regulatory provisions that govern the Public School Construction Program.

The bill takes effect July 1, 2017.

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**Fiscal Summary**

**State Effect:** No effect on total State spending for public school construction, which is established annually by the Governor and General Assembly through the capital budget process. However, State support for *individual* school construction projects decreases, likely resulting in more projects receiving State funding depending on the availability of local matching funds. Any additional MSA staff needed to provide project management services to local governments will be provided through the MOU and are not funded with State funds. No change in overall staffing levels for IAC, but current authorized positions may need to be reoriented to providing technical assistance rather than perform current functions. No effect on revenues.

**Local Effect:** State support for individual public school construction projects decreases, requiring local school systems to provide a greater share of funding for each project. Assuming that local capital budgets are fixed, fewer projects may receive funding in any given year. However, counties and local school systems have greater flexibility to use alternative financing or project management strategies that have the potential to reduce the cost of school construction projects, thereby freeing up local capital resources for more projects.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary/Current Law:

#### *Interagency Committee on School Construction Membership and Function*

*The Bill:* IAC consists of nine members, three each appointed by the Governor, President of the Senate, and Speaker of the House. Membership of IAC must include representation of public- and private-sector individuals and, to the extent practicable, reflect regional diversity. The members elect a chair annually. The primary role of IAC is to provide technical assistance on school construction, including research-based best practices in all areas of school design and construction, to local school boards, counties, and county revenue authorities.

*Current Law:* IAC consists of five members: the State Superintendent of Schools or designee, the Secretary of Planning or designee, the Secretary of General Services or designee, and two public members, one each appointed by the President of the Senate and Speaker of the House. The State Superintendent chairs IAC. Statute does not specify a primary role of IAC, but it generally reviews local school construction project plans and funding requests and recommends to the Board of Public Works (BPW) projects that should be approved for State funding (see the **Appendix – State Funding for Public School Construction Projects**). Under the bill, it retains that function.

#### *Eligible Funding*

*The Bill:* Public school construction costs that exceed \$30,000 per student, adjusted annually for construction cost inflation in the State, are not eligible for State funding. However, IAC may grant a waiver of that requirement for good cause shown.

*Current Law:* IAC establishes a range of appropriate per student square foot allocations for elementary, middle, and high schools as well as for special education students, career

and technology students, and specialized programs. IAC also establishes, on an annual basis, a cost per square foot that is applicable to major school construction projects. For fiscal 2018, the cost per square foot was lowered from fiscal 2017 levels. The current cost per square foot is \$265.00 for new construction *without* site development (down from \$282.00), and \$315.35 for new construction *with* site development (down from \$335.58). In general, multiplying the cost per square foot allocation by the allowable square feet (based on the State-rated capacity of a building) yields the maximum allowable cost that is subject to the State/local cost share formula.

The cost of acquiring land may not be considered a construction cost and may not be paid by the State. Otherwise, BPW regulations specify public school construction-related costs that are eligible and ineligible for State funding. The bill does not repeal BPW's authority to establish those by regulation, so they are assumed to still be in effect. In general, the following costs are included among eligible expenses:

- construction of a new facility, a renovation of a new facility, an addition to an existing facility, or a replacement of an existing building or building portion (*i.e.*, "bricks and mortar");
- building and site development;
- modular construction that meets specified standards;
- State-owned relocatable facilities and temporary facilities that are required to be on-site during construction; and
- built-in equipment and furnishings.

Beginning in fiscal 2018, BPW approved the use of State funding for window air-conditioning units and associated electrical upgrades, installation, and security in schools where more than one-half of the classrooms are not temperature controlled.

Among the major items that explicitly are not eligible for State funding (besides site acquisition) are (1) architectural, engineering, and other consulting fees; (2) master plans and feasibility studies; (3) projects or systemic renovations for buildings and systems that have been replaced, upgraded, or renovated within the last 15 years; and (4) movable equipment and furnishings.

### *Alternative Financing*

*The Bill:* Subject to specified exceptions, State law and regulations governing the financing of public school construction projects do not apply to projects that use alternative financing methods authorized in statute. BPW's authority to adopt regulations requiring projects that use alternative financing to meet specified requirements and guidelines is repealed. Projects that use alternative financing do not need to be approved by the county

governing body, the State Superintendent, or IAC and BPW; however, State funding for the projects is still contingent on the approval of IAC and BPW. Local school boards are authorized to use alternative financing.

The types of alternative financing methods that are authorized for public school construction are expanded to include “design-construct-operate-maintain-finance,” which allows a local school board to contract with a county (including a county revenue authority) or private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties. Alternative financing methods may include reserves sufficient to cover operation, facility renewal, maintenance, and energy costs as part of a contract. A county or local school board may solicit proposals for the development of public schools and may lease property from a county or a private entity for use as a public school facility.

For projects that use alternative financing, a local school board may transfer title to property used for a public school or local school system to a county, county revenue authority, or private entity if any of those parties is contractually obligated to operate and maintain the property until it outlives its useful life, is not needed for school purposes, or as otherwise agreed to by the parties. A county, county revenue authority, or private entity may hold title to a property leased by a local school board for a public school under terms agreed to by the parties. The bill makes conforming changes to reflect that counties may hold title to public school property.

School construction projects that use alternative financing must still comply with existing requirements related to (1) the State/local cost share for each county; (2) the maximum State construction allocation for each project approved for State funding; (3) IAC’s recommendation to BPW regarding project funding; (4) approval of project funding by BPW; (5) requirements related to Smart Growth, use of minority business enterprises (MBEs), payment of prevailing wages, environmental impacts, and procurement methods; and (6) the bill’s requirement that per pupil construction costs in excess of \$30,000 are not eligible for State funding.

*Current Law:* Counties (not local school boards) may use any of six alternative financing methods authorized by statute. They may accept unsolicited proposals for the development of public schools in limited circumstances, but they are not authorized to solicit proposals. BPW must adopt regulations that require projects using alternative financing to meet specified requirements regarding scope, risk sharing, public need, and other factors. The projects must also meet educational and design standards, and they must be approved by the county governing body, the State Superintendent, and both IAC and BPW. They must also meet State requirements related to the payment of prevailing wages and use of MBEs.

In general, only local school boards may hold title to a property that is used as a public school; in Baltimore City, title to real property used for public schools is held by the Mayor and City Council of Baltimore. However, a private entity may hold title to property for a public school if the private entity is contractually obligated to transfer title for the property to the local school board on a specified date.

### *State Share of School Funding*

*The Bill:* The “rolling State average of public school construction costs” means the average State cost per student for public school construction projects and capital improvements over the previous three years. For each fiscal year, IAC must calculate the rolling State average of public school construction costs. If a county’s public school construction costs for a particular project are at least 30% below the rolling State average, the State share of eligible costs must increase by 10% for that project.

*Current Law:* Information on the calculation of the State share of eligible costs is provided in the Appendix. There are no provisions in current law that allow the State share to be altered for an individual project.

### *The Maryland Stadium Authority Becomes the Maryland Construction Authority*

*The Bill:* MSA is renamed as MCA, whose mission includes the exploration and promotion of efficient, effective, economical, and innovative ways to construct public school facilities in the State. “Construction” is defined as new construction or major renovation or replacement of a public school facility; it does not include a systemic renovation.

A governmental unit may ask MCA to provide assistance in the development of a public school facility construction project, or with managing the construction of such a public school facility. Before MCA may provide such assistance, a four-party MOU must be executed among MCA, the county, the local school board, and IAC specifying the roles and responsibilities of each party. The MOU must grant MCA the same level of flexibility that it has regarding the construction and revitalization of Baltimore City public school facilities. The MOU may waive requirements in statute related to State support of public school financing, except for the same requirements that may not be waived for alternative financing projects, as specified above.

*Current Law:* MSA was established in 1986 as an independent unit in the Executive Department responsible for the construction, operation, and maintenance of facilities for professional baseball and football teams.

Since the Ravens football and Orioles baseball stadiums were constructed, MSA’s authority has been extended to include construction and financing for other projects.

Legislation enacted in 1992 assigned MSA the responsibility for the expansion of the Baltimore City Convention Center, and in 1995 the authority was authorized to handle construction management of the Ocean City Convention Center expansion. Legislation in 1996 authorized MSA to participate with Montgomery County in the construction of a conference center, and in 2000 the authority was authorized to participate in the construction of the Hippodrome Performing Arts Center in Baltimore. Finally, in 2013, MSA's responsibilities were expanded to include the financing and construction management of a new program of school construction and renovation in Baltimore City.

**Background:** During the 2016 legislative session, the President of the Senate and Speaker of the House announced the formation of the 21<sup>st</sup> Century School Facilities Commission. The commission is charged with multiple responsibilities, including (1) identifying areas where innovative financing mechanisms including public-private partnerships, as well as alternatives to traditional general obligation debt can be used for construction; (2) determining areas for efficiencies and cost-saving measures for construction and maintenance; and (3) reviewing the relationship between State agencies and local governments. The commission held eight meetings during the 2016 interim and will submit its findings and recommendations by December 2017. An interim report submitted in December 2016 advises that the commission has agreed on four principles for further exploration: (1) providing flexibility for local school boards; (2) streamlining the review process for school construction projects; (3) offering incentives for local school boards to try new ideas and approaches; and (4) making IAC a clearinghouse for best practices and a provider of technical assistance to local school boards.

Chapter 647 of 2013 authorized MSA to sell up to \$1.1 billion in bonds to finance the construction or renovation of 23 to 28 public schools in Baltimore City by 2020. Financing for the resulting 21<sup>st</sup> Century Schools initiative is shared among the State, Baltimore City, and Baltimore City Public Schools (BCPS), with each contributing \$20.0 million annually to cover the debt service and operating expenses for the initiative until the bonds are paid off. The State contribution comes from State Lottery proceeds. The initiative operates under the terms of an MOU among MSA, Baltimore City, BCPS, and IAC.

**State Fiscal Effect:** The bill does not affect the total amount of State funding dedicated to public school construction, which is established annually by the Governor and General Assembly through the capital budget process. However, it does affect the level of State funding provided to individual projects. To the extent that it reduces State support for individual projects, more projects receive State funding.

**Exhibit 1** shows that, under current law and practice, the average per student cost of major public school construction projects (new, replacement, and substantially renovated or expanded schools) across all grade configurations far exceeds \$30,000, the limit established by the bill. (It is assumed that the amount is adjusted for inflation beginning in

fiscal 2019.) The exhibit reflects all 74 major school construction projects that issued bids for construction since 2012, including 21<sup>st</sup> Century Schools in Baltimore City. For most schools, it reflects actual bid amounts, but for 10 schools it reflects anticipated bids. The average cost per student across all 74 schools is \$47,793. The average cost for elementary and middle schools is less, but the average cost of high schools and preK-8 schools is higher.

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**Exhibit 1**  
**Average State Funding for Recent Public School Construction Projects,**  
**Per student and Per Square Foot**

	<u>State Rated Capacity</u>	<u>Square Footage</u>	<u>Sq. Ft. Per Student</u>	<u>Construction Cost</u>	<u>Cost Per Student</u>	<u>Cost Per Sq. Ft.</u>
All	794	119,747	151	\$37,435,740	\$47,793	\$314
Elementary	664	93,297	143	29,319,020	45,905	318
PreK-8	710	109,970	155	35,207,226	49,431	318
Middle	901	133,947	149	38,150,359	42,776	284
High	1,178	198,636	176	63,600,290	56,131	322

Source: Interagency Committee on School Construction; Department of Legislative Services

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As State support for public school construction projects far exceeds the cap established by the bill, State support for individual school construction projects is reduced. **Exhibit 2** shows two examples of the effect the bill would have had on recent projects that received State funding, including a high school in Anne Arundel County and an elementary school in Baltimore County. As the exhibit shows, the effects can vary widely from project to project, but in general, local school systems receive less support from the State for individual projects. However, the bill likely has no effect on systemic renovation projects because they typically are not large enough to approach the bill’s \$30,000 per student limit. Instead, it likely only affects major construction projects.

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**Exhibit 2**  
**Comparison of Funding Levels**

**Severna Park High School**  
**Anne Arundel County**

	<u>Actual</u>	<u>The Bill</u>
Total Cost	\$134,165,000	\$134,165,000
State Rated Capacity	2,141	2,141
Construction Cost	\$116,870,000	\$116,870,000
Cost Per Student	\$54,587	\$30,000
Eligible Construction	\$82,174,000	\$64,230,000
<b>State Share (50%)</b>	<b>\$41,087,000</b>	<b>\$20,543,500</b>

**Westowne Elementary School**  
**Baltimore County**

Total Cost	\$40,050,000	\$40,050,000
State Rated Capacity	700	700
Construction Cost	\$35,200,000	\$35,200,000
Cost Per Student	\$50,286	\$30,000
Eligible Construction	\$21,679,000	\$21,000,000
<b>State Share (52%)</b>	<b>\$11,273,080</b>	<b>\$10,920,000</b>

Source: Interagency Committee on School Construction; Department of Legislative Services

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*Rolling State Average:* A rolling State average cost per student for public school construction could not be calculated from the data provided by IAC for this analysis because it did not include data on systemic renovation projects. As the per student costs of those projects are substantially less than for large construction projects and there are many more of those projects annually than there are major construction projects, the per student average is likely significantly lower than the average shown in Exhibit 1. Under the bill, any project that requests funding that has a per student cost that is at least 30% below that figure receives a 10% increase in the State share.

*Maryland Stadium Authority*

The bill authorizes, but does not require, MSA to provide technical assistance to and/or manage school construction projects under the terms of an MOU. To the extent that it agrees to carry out the functions authorized by the bill, MSA may require additional staff

to fulfill its duties under the terms of an MOU. However, those staffing costs are not covered by the State; any costs of services provided by MSA are determined by the MOU between MSA and the local governmental unit. The change in name for MSA has no practical fiscal effect.

### *Interagency Committee on School Construction*

The bill establishes the primary role of IAC to be providing technical assistance to local school systems, including research-based best practices. This clearly represents a new role for IAC that will likely require new staff. However, the bill also relieves IAC of many of its current duties with respect to alternative financing projects and projects subject to an MOU that includes MSA. In both cases, the bill authorizes the waiver of IAC's review of project design under current law, which represents a major component of IAC's current function. However, State funding is still contingent on IAC's recommendation to BPW. These provisions likely result in IAC requiring fewer staff to review project proposals. The Department of Legislative Services believes that the net effect is no change in the overall staffing level for IAC, but rather a reorientation of existing positions from their current functions to a technical assistance function.

**Local Fiscal Effect:** Total local revenues for public school construction projects are not affected, but local school systems receive less State support for each public school construction project. Assuming that local capital budgets, like the State capital budget, are also fixed, this likely results in fewer projects being funded each year, unless local school systems submit funding proposals that have substantially lower costs than those that are currently being funded. In that case, more projects may be funded due to the bill.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education; Public School Construction Program; Department of General Services; Maryland Department of Planning; Board of Public Works; Maryland Stadium Authority; Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2017  
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## Appendix – State Funding for Public School Construction Projects

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Subject to the final approval of the Board of Public Works (BPW), the Interagency Committee on School Construction (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 and/or funding approval for the upcoming fiscal year, which may include projects that the local system has forward funded. In addition to approval from the local school board, the request for the upcoming fiscal year 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 executive and county council president or chair of the board of county commissioners.

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 makes recommendations for which projects to fund to BPW. By December 31 of each year, IAC must recommend to BPW projects comprising 75% of the preliminary school construction allocation projected to be available by the Governor for the upcoming fiscal year. Local school boards may then appeal the IAC recommendations directly to BPW. By March 1 of each year, IAC must recommend 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, no earlier than May 1.

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. The Public School Facilities Act (Chapters 306 and 307 of 2004) requires that the cost-share formula be recalculated every three years. The first recalculation occurred in 2007, the second recalculation occurred in 2010, and the third, begun in 2013, was completed in 2014. **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2015 through 2018, as determined by the 2014 recalculation. Reductions in the State shares for Allegany, Cecil, and St. Mary's counties were phased in over two years because of the magnitude of the reductions. The State share of eligible expenses for fiscal 2019 through 2022 will be established by the 2017 recalculation.

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**Exhibit 1**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2015-2018**

<b>County</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
Allegany	93%	88%	83%	83%
Anne Arundel	50%	50%	50%	50%
Baltimore City	93%	93%	93%	93%
Baltimore	50%	52%	52%	52%
Calvert	56%	53%	53%	53%
Caroline	78%	80%	80%	80%
Carroll	58%	59%	59%	59%
Cecil	69%	64%	63%	63%
Charles	63%	61%	61%	61%
Dorchester	69%	76%	76%	76%
Frederick	60%	64%	64%	64%
Garrett	50%	50%	50%	50%
Harford	63%	63%	63%	63%
Howard	60%	55%	55%	55%
Kent	50%	50%	50%	50%
Montgomery	50%	50%	50%	50%
Prince George's	62%	63%	63%	63%
Queen Anne's	50%	50%	50%	50%
St. Mary's	64%	59%	58%	58%
Somerset	82%	100%	100%	100%
Talbot	50%	50%	50%	50%
Washington	71%	71%	71%	71%
Wicomico	96%	97%	97%	97%
Worcester	50%	50%	50%	50%
MD School for the Blind	93%	93%	93%	93%

Source: Public School Construction Program

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Chapters 306 and 307 also established the State's intent to provide \$2.0 billion of funding for school construction by fiscal 2013, an average of \$250.0 million each year for eight years. The State achieved the \$2.0 billion target ahead of schedule, and Public School Construction Program (PSCP) funding has remained above the \$250.0 million target each year since. **Exhibit 2** shows annual State public school construction funding from fiscal 2009 through 2017, by county.

The Governor's proposed fiscal 2018 budget includes \$280.0 million in general obligation (GO) bonds for PSCP and an additional \$40.0 million in GO bonds for a supplemental grant program for school systems that have high enrollment growth or a large number of relocatable classrooms, as established by statute. The fiscal 2018 *Capital Improvement Program* includes \$280.0 million annually for PSCP in fiscal 2019 through 2022 and \$40.0 million annually for the supplemental grant program.

**Exhibit 2**  
**State Public School Construction Funding**  
**Fiscal 2009-2017**  
**(\$ in Thousands)**

<b>County</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Allegany	\$0	\$0	\$842	\$727	\$1,999	\$2,496	\$6,597	\$10,837	\$24,242
Anne Arundel	27,420	25,020	26,200	32,400	33,349	34,870	36,200	39,419	42,598
Baltimore City	41,000	27,733	28,559	41,000	46,102	39,478	35,329	36,788	37,500
Baltimore	40,985	28,000	29,000	39,000	47,394	52,068	34,561	42,177	45,775
Calvert	7,824	8,181	8,450	7,317	7,129	5,577	2,653	1,500	9,964
Caroline	8,100	6,000	3,767	235	756	7,788	0	2,902	36
Carroll	11,741	10,520	8,444	9,079	15,211	4,874	3,915	6,415	3,418
Cecil	2,674	1,538	1,744	2,830	1,915	1,268	8,194	4,723	6,650
Charles	11,704	8,898	8,335	9,180	12,480	9,426	8,200	12,817	8,951
Dorchester	10,400	6,469	5,436	3,639	979	1,590	768	179	5,009
Frederick	14,759	16,226	14,000	16,532	19,254	20,163	15,901	21,000	21,295
Garrett	3,020	666	0	382	319	134	0	0	0
Harford	14,751	16,253	13,835	17,040	16,573	13,214	12,791	9,309	8,732
Howard	18,265	18,262	18,290	26,936	32,811	25,931	20,772	27,820	31,206
Kent	0	388	0	104	123	95	817	615	0
Montgomery	53,312	28,350	30,183	42,000	43,794	38,592	39,950	45,708	50,128
Prince George's	41,000	28,200	29,500	40,348	42,192	39,371	38,539	41,729	44,675
Queen Anne's	4,951	3,947	5,750	5,374	649	4,371	5,112	0	249
St. Mary's	7,266	4,028	6,600	3,354	3,172	7,472	11,876	7,015	1,273
Somerset	0	6,000	6,000	3,371	289	3,811	2,752	2,222	1,771
Talbot	0	436	344	135	35	634	0	308	0
Washington	9,368	7,965	7,970	8,571	9,117	8,494	7,467	8,404	4,847
Wicomico	12,960	13,170	9,975	1,864	11,290	13,327	10,991	7,440	10,373
Worcester	5,483	403	0	165	166	4,882	0	72	0
MD School for the Blind					2,800	6,063	14,733	8,616	6,000
Statewide			500		100	500	660	175	300
<b>Total</b>	<b>\$346,983</b>	<b>\$266,653</b>	<b>\$263,724</b>	<b>\$311,583</b>	<b>\$349,997</b>	<b>\$347,277</b>	<b>\$318,778</b>	<b>\$338,190</b>	<b>\$364,992</b>
<b>Amount Over \$250M</b>	<b>\$96,983</b>	<b>\$16,653</b>	<b>\$13,724</b>	<b>\$61,583</b>	<b>\$99,997</b>	<b>\$97,277</b>	<b>\$68,778</b>	<b>\$88,190</b>	<b>\$114,992</b>

Note: Includes new general obligation bonds, pay-as-you-go funds, and reallocated funds that were previously authorized. Counties receiving \$0 did not request any eligible projects to be funded in that year. Fiscal 2016 and 2017 include funds allocated for the Enrollment Growth and Relocatable Classroom Program totaling \$20 million in fiscal 2016 and \$40 million in fiscal 2017. Fiscal 2017 total for Baltimore County includes \$5 million withheld by the Board of Public Works.

Source: Public School Construction Program; Department of Legislative Services