

# SENATE BILL 1221

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By: **Senator Serafini**

Introduced and read first time: February 28, 2018

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public School Construction – Incentive Program and Pilot Program –**  
3 **Established**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations that establish  
5 per-pupil State school construction funding amounts under certain conditions;  
6 requiring the Interagency Committee on School Construction to adopt certain  
7 standards on or before a certain date; requiring the Interagency Committee to  
8 conduct a certain facility assessment under certain conditions on or before a certain  
9 date; requiring the Interagency Committee to develop certain standards, and  
10 requiring local education agencies to follow certain standards and contribute certain  
11 data to update a certain facility assessment each year; requiring the Interagency  
12 Committee to establish rankings annually based on certain criteria; requiring the  
13 Interagency Committee to adopt certain regulations; establishing the Public School  
14 Facility Construction Incentive Program; specifying the purpose of the Incentive  
15 Program; declaring the intent of the General Assembly for the Incentive Program;  
16 requiring the Interagency Committee to implement, administer, and promote the  
17 Incentive Program; requiring the Interagency Committee to establish an application  
18 process for the Incentive Program; requiring the Interagency Committee to calculate  
19 a certain rolling State average of public school construction costs for certain schools;  
20 specifying the eligibility criteria for a county board of education to apply for  
21 participation in the Incentive Program; requiring the State to award a certain county  
22 board a certain incentive payment under the Incentive Program; authorizing a  
23 county board to use the incentive payment for a certain construction project;  
24 requiring the Interagency Committee to take into consideration certain criteria in  
25 awarding an incentive payment under the Incentive Program; specifying that, if  
26 actual public school construction costs for a certain project are not a certain  
27 percentage below the rolling State average, the county board is not eligible for a  
28 certain incentive payment; exempting a certain project from certain requirements;  
29 requiring a certain project to comply with certain requirements; providing that  
30 certain provisions of law do not prohibit county boards from utilizing a certain source  
31 of financing or system of bidding to fund a certain project; establishing the Public

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 School Facility Construction Pilot Program; requiring the Interagency Committee to  
2 implement and administer the Pilot Program; requiring the Board of Public Works,  
3 in consultation with the Interagency Committee, to grant a waiver of certain  
4 requirements for a public school facility construction project that is receiving less  
5 than a certain percentage of funding from the State; prohibiting the Board of Public  
6 Works from waiving certain requirements for a certain project that is part of the  
7 Pilot Program; authorizing the Board of Public Works to identify other sources of  
8 State funds that may be provided to certain county boards; requiring certain county  
9 boards to report to the Board of Public Works on the impact of certain exemptions on  
10 or before a certain date each year; providing for the application of certain provisions  
11 of this Act; defining certain terms; providing for the termination of certain provisions  
12 of this Act; and generally relating to school construction in public schools in the  
13 State.

14 BY repealing and reenacting, without amendments,  
15 Article – Education  
16 Section 5–301(a)  
17 Annotated Code of Maryland  
18 (2014 Replacement Volume and 2017 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Education  
21 Section 5–301(d)(3)  
22 Annotated Code of Maryland  
23 (2014 Replacement Volume and 2017 Supplement)

24 BY adding to  
25 Article – Education  
26 Section 5–302.1, 5–314, and 5–315  
27 Annotated Code of Maryland  
28 (2014 Replacement Volume and 2017 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
30 That the Laws of Maryland read as follows:

31 **Article – Education**

32 5–301.

33 (a) In this subtitle, “Interagency Committee” means the Interagency Committee  
34 on School Construction established under § 5–302 of this subtitle.

35 (d) (3) The regulations adopted by the Board of Public Works shall contain  
36 provisions:

37 (i) Establishing a State and local cost–share formula for each county  
38 that identifies the factors used in establishing the formulas;

1 (ii) Requiring local education agencies to adopt educational facilities  
2 master plans and annual capital improvement programs;

3 (iii) Providing a method for establishing a maximum State  
4 construction allocation for each project approved for State funding;

5 (iv) Referencing the policies stated in § 5-7B-07 of the State Finance  
6 and Procurement Article;

7 (v) Requiring local school systems to adopt procedures consistent  
8 with the minority business enterprise policies of the State as required under the Code of  
9 Maryland Regulations;

10 (vi) Establishing a process for the appeal of decisions by the  
11 Interagency Committee to the Board of Public Works;

12 (vii) Requiring local education agencies to adopt, implement, and  
13 periodically update comprehensive maintenance plans; [and]

14 (viii) Authorizing the Board of Public Works to withhold State public  
15 school construction funds from a local education agency that fails to comply with the  
16 requirements of item (vii) of this paragraph; AND

17 **(IX) ESTABLISHING STANDARD PER-PUPIL SCHOOL**  
18 **CONSTRUCTION STATE FUNDING AMOUNTS FOR STANDARD DESIGN MODELS OF**  
19 **ELEMENTARY, MIDDLE, AND HIGH SCHOOLS BASED ON CRITERIA THAT INCLUDE:**

20 **1. THE FULFILLMENT OF A STANDARDIZED SET OF**  
21 **NEEDS FOR ELEMENTARY, MIDDLE, AND HIGH SCHOOLS, CONSIDERING THE**  
22 **EXISTING STATE-RATED CAPACITY GUIDELINES;**

23 **2. THE CURRENT STATEWIDE PER-PUPIL AVERAGE**  
24 **COST FOR SCHOOL CONSTRUCTION AS ESTABLISHED BY THE INTERAGENCY**  
25 **COMMITTEE FOR ELEMENTARY, MIDDLE, AND HIGH SCHOOLS; AND**

26 **3. AN INDEPENDENT INDUSTRY INDEX ESTABLISHED IN**  
27 **CONSULTATION WITH INDUSTRY EXPERTS.**

28 **5-302.1.**

29 **(A) IN THIS SECTION, “EDUCATIONAL FACILITIES SUFFICIENCY**  
30 **STANDARDS” MEANS A UNIFORM SET OF CRITERIA AND MEASURES FOR EVALUATING**  
31 **THE PHYSICAL CONDITION AND EDUCATIONAL SUITABILITY OF PUBLIC**  
32 **ELEMENTARY AND SECONDARY SCHOOL FACILITIES IN THE STATE.**

1           **(B) ON OR BEFORE JULY 1, 2018, THE INTERAGENCY COMMITTEE ON**  
2 **SCHOOL CONSTRUCTION SHALL ADOPT EDUCATIONAL FACILITIES SUFFICIENCY**  
3 **STANDARDS.**

4           **(C) (1) ON OR BEFORE JANUARY 1, 2019, THE INTERAGENCY**  
5 **COMMITTEE SHALL COMPLETE AN INITIAL STATEWIDE FACILITIES ASSESSMENT.**

6                   **(2) IN COMPLETING THE ASSESSMENT THE INTERAGENCY**  
7 **COMMITTEE SHALL:**

8                           **(I) CONTRACT WITH AN INDEPENDENT THIRD-PARTY VENDOR**  
9 **TO CONDUCT DATA COLLECTION AND ASSESSMENT;**

10                           **(II) UTILIZE THE EDUCATIONAL FACILITIES SUFFICIENCY**  
11 **STANDARDS ADOPTED UNDER SUBSECTION (B) OF THIS SECTION;**

12                           **(III) UTILIZE, TO THE EXTENT POSSIBLE, EXISTING DATA**  
13 **SOURCES, INCLUDING THE EDUCATIONAL FACILITIES MASTER PLAN; AND**

14                           **(IV) COORDINATE WITH LOCAL EDUCATION AGENCIES TO**  
15 **IDENTIFY DATA ELEMENTS TO BE USED IN THE FACILITY ASSESSMENT.**

16           **(D) (1) THE INTERAGENCY COMMITTEE SHALL DEVELOP STANDARDS TO**  
17 **COMPREHENSIVELY UPDATE THE FACILITIES ASSESSMENT EACH YEAR.**

18                   **(2) LOCAL EDUCATION AGENCIES SHALL:**

19                           **(I) FOLLOW THE STANDARDS DEVELOPED IN PARAGRAPH (1)**  
20 **OF THIS SUBSECTION; AND**

21                           **(II) CONTRIBUTE DATA ANNUALLY TO REGULARLY AND**  
22 **COMPREHENSIVELY UPDATE THE ASSESSMENT.**

23           **(E) AFTER COMPLETION OF THE INITIAL ASSESSMENT, AND AFTER EACH**  
24 **ANNUAL STATEWIDE FACILITIES ASSESSMENT, THE INTERAGENCY COMMITTEE**  
25 **SHALL DETERMINE A RANKING OF EACH PUBLIC ELEMENTARY AND SECONDARY**  
26 **SCHOOL FACILITY.**

27           **(F) THE INTERAGENCY COMMITTEE SHALL ADOPT REGULATIONS TO**  
28 **CARRY OUT THIS SECTION.**

1           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
2 INDICATED.

3                   (2) (I) “CONSTRUCTION” MEANS NEW CONSTRUCTION OR MAJOR  
4 RENOVATION OR REPLACEMENT OF A PUBLIC SCHOOL FACILITY.

5                           (II) “CONSTRUCTION” DOES NOT INCLUDE SYSTEM  
6 RENOVATION PROJECTS AS DEFINED IN COMAR 23.03.02.15.

7                   (3) “INCENTIVE PROGRAM” MEANS THE PUBLIC SCHOOL FACILITY  
8 CONSTRUCTION INCENTIVE PROGRAM.

9                   (4) “PUBLIC SCHOOL FACILITY” MEANS A PROPERTY PRIMARILY  
10 USED FOR EDUCATIONAL INSTRUCTION.

11                   (5) “ROLLING STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION  
12 COSTS” MEANS THE AVERAGE STATE COST PER STUDENT FOR PUBLIC SCHOOL  
13 CONSTRUCTION PROJECTS AND CAPITAL IMPROVEMENTS OVER THE PREVIOUS 3  
14 FISCAL YEARS.

15                   (6) “STATE COST SHARE PERCENTAGE” HAS THE MEANING STATED IN  
16 COMAR 23.03.02.05 FOR THE CURRENT FISCAL YEAR.

17           (B) (1) THERE IS A PUBLIC SCHOOL FACILITY CONSTRUCTION  
18 INCENTIVE PROGRAM IN THE STATE.

19                   (2) THE PURPOSE OF THE INCENTIVE PROGRAM IS TO PROVIDE  
20 INCENTIVES TO ENCOURAGE PUBLIC SCHOOL SYSTEMS TO PURSUE INNOVATIVE  
21 PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECTS BY:

22                           (I) PROVIDING ADDITIONAL STATE FUNDING; AND

23                           (II) EXEMPTING THE PROJECTS FROM THE STATUTORY AND  
24 REGULATORY REQUIREMENTS SPECIFIED IN SUBSECTION (I) OF THIS SECTION.

25                   (3) THROUGH THE ESTABLISHMENT OF THE INCENTIVE PROGRAM, IT  
26 IS THE INTENT OF THE GENERAL ASSEMBLY TO:

27                           (I) ENCOURAGE PUBLIC SCHOOL SYSTEMS TO USE THE  
28 INCENTIVE PROGRAM; AND

29                           (II) ACCELERATE PUBLIC SCHOOL CONSTRUCTION AND

1 RENOVATION BY PROVIDING INCENTIVES TO REDUCE THE COSTS OF CONSTRUCTION  
2 AND RENOVATION.

3 (C) (1) THE INTERAGENCY COMMITTEE SHALL IMPLEMENT AND  
4 ADMINISTER THE INCENTIVE PROGRAM AS PROVIDED IN THIS SECTION.

5 (2) THE INTERAGENCY COMMITTEE SHALL PROMOTE THE  
6 INCENTIVE PROGRAM.

7 (D) THE INTERAGENCY COMMITTEE SHALL ESTABLISH AN APPLICATION  
8 AND APPROVAL PROCESS FOR THE INCENTIVE PROGRAM.

9 (E) FOR EACH FISCAL YEAR, THE INTERAGENCY COMMITTEE SHALL  
10 CALCULATE THE ROLLING STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION  
11 COSTS FOR ELEMENTARY SCHOOLS, PREKINDERGARTEN THROUGH EIGHTH GRADE  
12 SCHOOLS, MIDDLE SCHOOLS, AND HIGH SCHOOLS IN THE STATE.

13 (F) A COUNTY BOARD IS ELIGIBLE TO APPLY FOR PARTICIPATION IN THE  
14 INCENTIVE PROGRAM IF:

15 (1) THE ESTIMATED PUBLIC SCHOOL CONSTRUCTION COST FOR A  
16 PROPOSED PROJECT OF THE COUNTY BOARD IS 30% OR MORE BELOW THE ROLLING  
17 STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION COSTS FOR THE APPROPRIATE  
18 TYPE OF SCHOOL; AND

19 (2) THE QUALITY OF THE PUBLIC SCHOOL SYSTEM'S MAINTENANCE  
20 PLANS AND REPORTS DEMONSTRATES A STRONG COMMITMENT TO MAINTENANCE.

21 (G) (1) SUBJECT TO SUBSECTION (H) OF THIS SECTION, IF A COUNTY  
22 BOARD IS APPROVED TO PARTICIPATE IN THE INCENTIVE PROGRAM, THE STATE  
23 SHALL AWARD THE COUNTY BOARD AN INCENTIVE PAYMENT EQUAL TO THE STATE  
24 COST SHARE PERCENTAGE FOR THAT COUNTY APPLIED TO THE ESTIMATED COSTS  
25 THAT THE PROPOSED PROJECT IS BELOW THE ROLLING STATE AVERAGE OF PUBLIC  
26 SCHOOL CONSTRUCTION COSTS FOR THE APPROPRIATE TYPE OF SCHOOL.

27 (2) THE COUNTY BOARD MAY USE AN INCENTIVE PAYMENT TO FUND  
28 A CURRENT OR FUTURE PUBLIC SCHOOL CONSTRUCTION PROJECT.

29 (3) IN AWARDING AN INCENTIVE PAYMENT TO A COUNTY BOARD, THE  
30 INTERAGENCY COMMITTEE SHALL TAKE INTO CONSIDERATION THE CURRENT  
31 RANKINGS UNDER § 5-302.1 OF THIS SUBTITLE OF THE PUBLIC SCHOOL FACILITIES  
32 THAT ARE UNDER THE JURISDICTION OF THE COUNTY BOARD.

1           **(H) IF THE ACTUAL PUBLIC SCHOOL CONSTRUCTION COSTS OF THE**  
2 **PROJECT FOR WHICH THE COUNTY BOARD APPLIED FOR AN INCENTIVE PAYMENT**  
3 **UNDER THE INCENTIVE PROGRAM ARE NOT 30% OR MORE BELOW THE ROLLING**  
4 **STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION COSTS, THE COUNTY BOARD IS**  
5 **NOT ELIGIBLE FOR THE INCENTIVE PAYMENT DESCRIBED IN SUBSECTION (G) OF**  
6 **THIS SECTION.**

7           **(I) EXCEPT AS PROVIDED IN SUBSECTION (J) OF THIS SECTION, § 5-301 OF**  
8 **THIS SUBTITLE AND THE REGULATIONS THAT GOVERN THE PUBLIC SCHOOL**  
9 **CONSTRUCTION PROGRAM DO NOT APPLY TO A PUBLIC SCHOOL FACILITY**  
10 **CONSTRUCTION PROJECT FOR WHICH THE COUNTY BOARD RECEIVES AN INCENTIVE**  
11 **PAYMENT UNDER THE INCENTIVE PROGRAM.**

12           **(J) A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT FOR WHICH THE**  
13 **COUNTY BOARD RECEIVES AN INCENTIVE PAYMENT UNDER THE INCENTIVE**  
14 **PROGRAM SHALL COMPLY WITH:**

15                   **(1) EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION, THE**  
16 **STATE AND LOCAL COST-SHARE ESTABLISHED FOR EACH COUNTY IN REGULATIONS;**

17                   **(2) THE MAXIMUM STATE CONSTRUCTION ALLOCATION FOR EACH**  
18 **PROJECT APPROVED FOR STATE FUNDING;**

19                   **(3) THE RECOMMENDATIONS OF THE INTERAGENCY COMMITTEE TO**  
20 **THE BOARD OF PUBLIC WORKS REGARDING PROJECT FUNDING;**

21                   **(4) THE APPROVAL OF PROJECT FUNDING BY THE BOARD OF PUBLIC**  
22 **WORKS;**

23                   **(5) MINORITY BUSINESS ENTERPRISE REQUIREMENTS;**

24                   **(6) ENVIRONMENTAL REQUIREMENTS; AND**

25                   **(7) A REQUIREMENT FOR A PROCUREMENT PROCESS THAT INCLUDES**  
26 **PUBLIC NOTICE AND RESULTS IN THE MOST ADVANTAGEOUS PROPOSAL.**

27           **(K) IF A COUNTY BOARD PARTICIPATES IN THE INCENTIVE PROGRAM,**  
28 **NOTHING IN THIS SECTION PROHIBITS THE COUNTY BOARD FROM UTILIZING ANY**  
29 **OTHER SOURCE OF FINANCING OR SYSTEM OF BIDDING UNDER CURRENT LAW TO**  
30 **FUND A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT.**

31           SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
32 as follows:

## Article – Education

5-315.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “CONSTRUCTION” MEANS NEW CONSTRUCTION OR MAJOR RENOVATION OR REPLACEMENT OF A PUBLIC SCHOOL FACILITY.

(II) “CONSTRUCTION” DOES NOT INCLUDE SYSTEM RENOVATION PROJECTS AS DEFINED IN COMAR 23.03.02.15.

(3) “PILOT PROGRAM” MEANS THE PUBLIC SCHOOL FACILITY CONSTRUCTION PILOT PROGRAM.

(4) “PUBLIC SCHOOL FACILITY” MEANS A PROPERTY PRIMARILY USED FOR EDUCATIONAL INSTRUCTION.

(B) THERE IS A PUBLIC SCHOOL FACILITY CONSTRUCTION PILOT PROGRAM.

(C) THE INTERAGENCY COMMITTEE ON SCHOOL CONSTRUCTION SHALL IMPLEMENT AND ADMINISTER THE PILOT PROGRAM AS PROVIDED IN THIS SECTION.

(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF LESS THAN 50% OF THE MONEY USED FOR A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT IS STATE MONEY, THE PROJECT IS ELIGIBLE FOR THE PILOT PROGRAM AND THE BOARD OF PUBLIC WORKS, IN CONSULTATION WITH THE INTERAGENCY COMMITTEE, SHALL GRANT A WAIVER OF THE FOLLOWING REQUIREMENTS FOR THAT PROJECT:

(1) HIGH PERFORMANCE BUILDING STANDARDS;

(2) MARYLAND EMERGENCY MANAGEMENT AGENCY REQUIREMENTS;

(3) SMART GROWTH REQUIREMENTS; AND

(4) PREVAILING WAGE REQUIREMENTS.

(E) THE BOARD OF PUBLIC WORKS MAY NOT WAIVE THE FOLLOWING REQUIREMENTS FOR A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT THAT IS

1 **PART OF THE PILOT PROGRAM:**

2 **(1) THE MAXIMUM STATE GROSS AREA ALLOWANCE FOR EACH**  
3 **PROJECT APPROVED FOR STATE FUNDING;**

4 **(2) THE RECOMMENDATION OF THE INTERAGENCY COMMITTEE TO**  
5 **THE BOARD OF PUBLIC WORKS REGARDING PROJECT FUNDING;**

6 **(3) THE APPROVAL OF PROJECT FUNDING BY THE BOARD OF PUBLIC**  
7 **WORKS; AND**

8 **(4) MINORITY BUSINESS ENTERPRISE REQUIREMENTS.**

9 **(F) THE BOARD OF PUBLIC WORKS MAY IDENTIFY OTHER SOURCES OF**  
10 **STATE FUNDS THAT MAY BE PROVIDED TO A COUNTY BOARD TO SUPPORT A PUBLIC**  
11 **SCHOOL FACILITY CONSTRUCTION PROJECT THAT IS RECEIVING LESS THAN 50% OF**  
12 **ITS FUNDING FROM THE STATE.**

13 **(G) ON OR BEFORE DECEMBER 30 EACH YEAR, EACH COUNTY BOARD SHALL**  
14 **REPORT TO THE BOARD OF PUBLIC WORKS ON THE IMPACT OF THE EXEMPTIONS**  
15 **GRANTED TO THE COUNTY BOARD UNDER THE PILOT PROGRAM.**

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
17 1, 2018. Section 2 of this Act shall remain effective for a period of 5 years and, at the end of  
18 June 30, 2023, Section 2 of this Act, with no further action required by the General  
19 Assembly, shall be abrogated and of no further force and effect.