Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1221 (Senator Serafini)
Budget and Taxation

Public School Construction - Incentive Program and Pilot Program - Established

This bill requires the Interagency Committee on School Construction (IAC) to (1) complete and maintain a statewide assessment of all public school facilities in the State; (2) implement a Public School Facility Construction Incentive Program to encourage local school systems to substantially reduce the cost of public school construction projects; (3) develop standard school designs and corresponding per-pupil funding amounts for each design; and (4) implement a pilot program that exempts eligible school construction projects from specified State requirements. **The bill takes effect July 1, 2018, and the pilot program terminates June 30, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by $17.7 million in FY 2019 to conduct the facilities assessment, develop standard school designs, and implement the incentive and pilot programs. Out-year costs reflect annualization and ongoing operating expenses. No effect on total State capital expenditures for school construction, which are established annually by the Governor and General Assembly through the capital budget process. No effect on revenues.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	$0	$0	$0	$0	$0
GF Expenditure	17,701,200	499,200	498,500	515,600	533,500
Net Effect	($17,701,200)	($499,200)	($498,500)	($515,600)	($533,500)

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

Local Effect: Local school systems that participate in either the incentive program or the pilot program benefit from not having to comply with some State requirements. Total State funds for school construction likely do not change significantly but may potentially be applied to a larger number of projects, as discussed below. Local school systems that use

the standard school designs may spend less on architectural and engineering (A&E) fees for school construction.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Public School Facilities Assessment

By July 1, 2018, IAC must adopt educational facilities sufficiency standards, which are defined as a uniform set of criteria and measures for evaluating the physical condition and educational suitability of public elementary and secondary school facilities in the State.

By January 1, 2019, IAC must complete an initial statewide facilities assessment using the sufficiency standards. In completing the assessment, IAC must contract with an independent third-party vendor to conduct the data collection and assessment, use existing data sources to the extent possible, and coordinate with local school systems to identify data elements to be used.

Following the completion of the initial assessment, IAC must develop standards to comprehensively update the facilities assessment. Local school systems must then provide updated information annually based on the standards. After the initial assessment and each annual update, IAC must determine a ranking of each public school facility.

Public School Facility Construction Incentive Program

The Public School Facility Construction Incentive Program (incentive program) is established to provide incentives to encourage public school systems to pursue innovative public school facility construction projects by (1) providing additional State funding and (2) exempting projects from specified statutory and regulatory requirements. Systemic renovation projects are excluded from the program, but all other major construction and renovation projects are included. IAC must develop an application process for the program, implement and administer the program, and promote the program.

For each fiscal year, IAC must calculate the rolling State average of public school construction costs for elementary schools, preK-8 schools, middle schools, and high schools. 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 type of school.

A local school system is eligible to apply for participation in the incentive program if a public school construction project has an *estimated* cost that is 30% or more below the rolling State average for the appropriate type of school, and the system has demonstrated a strong commitment to maintenance. For qualifying projects, the State must award an incentive payment equal to the State cost share for that system applied to the cost differential between the project and the rolling State average. A local school system may use the incentive payment to fund a current or future public school construction project. However, if the actual construction costs of a project in the incentive program are not at least 30% below the rolling State average, the county board is not eligible for the incentive payment. In making incentive awards, IAC must take into consideration the facility rankings.

Projects that receive an incentive payment are not subject to oversight by IAC or the Board of Public Works (BPW), except for:

- the State and local cost-share formula;
- the maximum State construction allocation for each project approved for State funding;
- IAC recommendations regarding approval of funding by BPW;
- minority business enterprise requirements;
- environmental requirements; and
- the requirement that the procurement process include public notice and award to the most advantageous proposal.

Public School Facility Construction Pilot Program

IAC must implement and administer a pilot program. A public school construction project that is eligible to participate in the pilot program and receives less than 50% of the money used for the project from State money is waived from:

- high performance building standards;
- Maryland Emergency Management Agency (MEMA) requirements;
- smart growth requirements; and
- prevailing wage requirements.

BPW may not waive specified provisions of current law for projects in the pilot program but may identify other sources of funding to support projects receiving less than 50% of their funding from the State. Local school boards must report annually on the effect of the exemptions granted to projects in the pilot program.

Standard School Designs and Funding Levels

IAC must develop standard design models for elementary, middle, and high schools and per pupil allocations for each standard design. The standard per pupil funding levels must be based on criteria that include:

- the fulfillment of a standardized set of needs for elementary, middle, and high schools, considering existing State-rated capacity guidelines;
- current statewide per pupil average cost for school construction, as established by IAC for each school type; and
- an independent industry index established in consultation with industry experts.

Current Law: For an overview of the State's role in supporting public school construction, please see the **Appendix – State Funding for Public School Construction**.

Public Schools Facilities Assessment

Chapters 306 and 307 of 2004 required that the State conduct a facility assessment every four years, but no assessment has been done since 2003 as funds have not been appropriated for one.

Procurement of Public School Construction Services

State regulations establish a requirement for competitive sealed bidding in the procurement of school construction contracts, with limited exceptions. Competitive sealed bidding generally requires that contracts be awarded on the basis of lowest price, as long as the bidder is deemed responsible, and the proposal is responsive to the procurement specifications.

High Performance School Buildings

Chapter 124 of 2008 requires most new or renovated public school buildings to be constructed as high-performance buildings, subject to waiver processes established by the Department of Budget and Management (DBM) and the Department of General Services (DGS).

Chapter 124 defines a high-performance building as one that:

- meets or exceeds the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) criteria for a silver rating; or
- achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate standard approved by DBM and DGS. Based on a

unanimous recommendation from the Maryland Green Building Council, in 2017, DGS and DBM approved the use of the Green Globes rating system developed by the Green Building Initiative as an alternative to LEED Silver. The Green Building Council's supplement to the International Green Construction Code enacted in November 2014 is also an approved alternative.

Maryland Emergency Management Agency Requirements

For any project that involves constructing a new or replacement school building or upgrading the electrical system of a school building, a local school system must install emergency power supplies for any area of the building determined by MEMA to be necessary for emergency management shelters.

Prevailing Wage Requirements

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category based on annual surveys of contractors and subcontractors working on both public works and private construction projects.

Public works projects that are eligible for payment of prevailing wages are:

- those carried out by the State;
- an elementary or secondary school for which at least 25% of the money used for construction is State money; and
- any other public work for which at least 50% of the money used for construction is State money.

Any public works contract valued at less than $500,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government or (2) specified construction projects carried out by public service companies under order of the Public Service Commission.

Background: During the 2016 legislative session, the President of the Senate and Speaker of the House announced the formation of the 21st Century School Facilities Commission. The commission was 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 met 17 times over two years, including six subcommittee meetings, and submitted its findings and recommendations to the Governor and General Assembly in January 2018. The report includes five major conclusions in the areas of (1) flexibility; (2) streamlining the process; (3) providing incentives; (4) focusing the role of the State on providing technical assistance and serving as a clearinghouse for best practices; and (5) transparency, as well as 36 recommendations that stem from the conclusions. The bill implements the commission's recommendations. The commission's website contains the final report and all meeting agendas and materials presented to the commission.

State Expenditures:

Statewide Facilities Assessment

- The one-time cost of the facilities assessment by a third-party vendor is estimated to be $3.5 million.
- The one-time cost of developing the cloud-based library to maintain and update the assessment data is $350,000, with annual maintenance costs of $25,000.
- The Department of Legislative Services (DLS) has determined that IAC requires four assessors to visit schools and update the facility condition data on a continuous, rotating basis. These assessors will be merged with two existing maintenance inspectors, for a total of six. One assessor is hired in fiscal 2019 to assist with designing the facilities assessment and the electronic library, and the remaining three assessors are hired in fiscal 2020, after the assessment is completed.
- IAC requires a database development specialist to help develop and maintain the library system.

Incentive Program

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. In fact, State funding for individual projects does not change significantly because projects in the incentive program receive roughly the same amount of State funding they would have received otherwise (assuming their total project costs are close to average). However, since the overall cost of the project in the incentive program is less, they can apply the incentive payment they receive to other projects. As a result, the program has an effect on local finances, but very little on State expenditures

assuming that the funds applied to other projects are considered part of the State share of eligible costs for those projects.

Exhibit 1 provides the average costs of major public school construction projects (new, replacement, and substantially renovated or expanded schools) across all grade configurations since 2012. The exhibit reflects all 84 major school construction projects that have either issued bids for construction or will be issuing bids in fiscal 2018 (13 schools), including 21st Century Schools in Baltimore City. The average cost per student across all 84 schools is $49,674. The average cost for elementary, middle, and preK-8 schools is less, but the average cost of high schools is higher.

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

	State Rated Capacity	Square Footage	Sq. Ft. Per Student	Construction Cost	Cost Per Student	Cost Per Sq. Ft.
All	806	123,561	154	$39,341,609	$49,674	$322
Elementary	669	94,392	144	30,546,593	47,324	327
PreK-8	710	109,970	155	35,207,226	49,431	318
Middle	937	145,115	154	39,254,023	42,408	276
High	1,261	213,454	176	70,051,871	57,549	330

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

Pilot Program

A significant number of local school construction projects are less than 50% funded with State funds. Although the State pays at least 50% of *eligible* costs for all projects, ineligible costs are at least 15% of total project costs, and often more. Therefore, most school construction projects in local school systems whose State share is 65% or less may qualify for the pilot program, depending on the criteria IAC adopts to implement the pilot program, including the number of projects that are approved to participate in the pilot program. Some projects in counties with higher State shares may also qualify. That includes three of the five largest school systems in the State (Anne Arundel, Baltimore, and Montgomery counties) and several mid-sized systems (including Frederick and Howard counties).

Standard School Designs

The development of standard design models (prototypes) requires IAC to contract with one or more A&E firms to design the prototypes. IAC and Anne Arundel County Public Schools advise that the industry standard for A&E costs is that they typically comprise 6% to 8% of the total cost of a project. DLS believes that the additional work needed to make the designs adaptable, as required by the bill, means that the cost will be closer to 8%. Therefore, assuming an average cost of $30.0 million for an elementary school, $40 million for a middle school, and $100 million for a high school, the cost of developing three prototypes is approximately $13.6 million.

Summary of Personnel and Other Costs

The bill requires IAC to administer the new incentive and pilot programs, including calculating and updating the rolling average State average of per student construction costs, developing and reviewing applications for both programs, and monitoring actual project costs to determine any adjustments to the State share. The pilot program terminates after five years, but the incentive program is ongoing. Therefore, IAC requires one staff person to administer the two programs.

IAC also requires a contractual employee to manage and oversee the work of the A&E contractors and develop the standard funding levels for each level of prototype in collaboration with local school systems.

Finally, as noted above, IAC requires four new facilities assessors, one in fiscal 2019 and the remaining three in fiscal 2020, and a database developer to develop and manage the cloud-based library of facility assessment data.

Therefore, general fund expenditures increase by $17,701,192 in fiscal 2019, which accounts for a 90-day start-up delay from the bill's July 1, 2018 effective date for most positions, except the contractual position, as discussed below. This estimate reflects the cost of hiring a program manager to administer the incentive and pilot programs, a facilities assessor to help plan the assessment, a database developer to develop the cloud-based library, and a contractual position to oversee the development of the standard school designs. It also includes the cost of the assessment, developing three standard school design models, and the cloud-based library. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The assumptions used to develop this estimate include:

- the facilities assessment cannot begin until the sufficiency standards are completed, so it is carried out entirely in fiscal 2019, although it is not clear that it can be completed in six months, as required by the bill;

- the program manager is a permanent position to administer the incentive program, even after the pilot program terminates;
- the contractual position can begin on July 1, 2018, because IAC already has a contractual staff person in place who can be extended for one year. The contractual position terminates after June 30, 2019; and
- one facilities assessor is hired in fiscal 2019 to assist in planning the initial assessment, and three more are hired in fiscal 2020 to begin doing the follow-up assessments.

Contractual Position	1
Regular Positions	3
Salary and Fringe Benefits	$229,601
Facilities Assessment	3,500,000
Standard School Designs	13,600,000
Cloud-based Library	350,000
Other Operating Expenses	21,591
Total FY 2019 State Expenditures	**$17,701,192**

Out-year costs reflect full salaries with salary increases and ongoing operating costs and the addition of the remaining three assessors. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Local Fiscal Effect: The bill requires local school systems to provide annual updates on their facilities' conditions. However, most of that work will be done by the assessors, although local school systems will have to support the work of the assessors and contribute supplemental information on occasion. It is anticipated that they can do so with existing resources.

Local school systems with projects that qualify for the incentive program receive roughly the same level of State funding for school construction, but because some project costs are less, the State funding can be applied to a larger number of projects. They also benefit from not having to comply with some State mandates that can, in some instances, add to the cost of school construction projects, as is also the case for local school systems that participate in the pilot program.

The bill does not require that local school systems use the prototype designs, nor does it require that future school construction funding decisions be based on the standard funding levels developed for each prototype design. Therefore, it appears that the prototypes and funding levels tied to them are discretionary options available to local school systems that wish to save money on A&E costs by using a State-developed design. To the extent that a

local school system elects to use a prototype design, it may experience reduced A&E costs for school construction projects.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Harford County; Public School Construction Program; Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Planning; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2018
mag/rhh

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Appendix – State Funding for Public School Construction

School Construction Review and Approval Process

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 to BPW on which projects to fund. 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.

Eligible School Construction Costs

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 2019, the cost per square foot is $302 for new construction *without* site development (up from $293 in fiscal 2018) and $360 for new construction *with* site development (up from $348.67 in fiscal 2018). In general, multiplying the cost per square foot allocation by the allowable

square feet (based primarily 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 an eligible 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. 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.

State Share of Eligible Costs

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 was completed in 2014. The most recent recalculation was completed in 2017. IAC recommended updating the formula for the next three years, but BPW approved new cost shares *only* for fiscal 2019, which held harmless several jurisdictions that otherwise would have experienced a decrease in State support based on the 2017 recalculation of the formula. **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2017 through 2019, as approved by BPW.

Exhibit 1
State Share of Eligible School Construction Costs
Fiscal 2017-2019

County	FY 2017	FY 2018	FY 2019
Allegany	83%	83%	85%
Anne Arundel	50%	50%	50%
Baltimore City	93%	93%	93%
Baltimore	52%	52%	56%
Calvert	53%	53%	53%
Caroline	80%	80%	81%
Carroll	59%	59%	59%
Cecil	63%	63%	66%
Charles	61%	61%	61%
Dorchester	76%	76%	76%
Frederick	64%	64%	64%
Garrett	50%	50%	50%
Harford	63%	63%	63%
Howard	55%	55%	55%
Kent	50%	50%	50%
Montgomery	50%	50%	50%
Prince George's	63%	63%	70%
Queen Anne's	50%	50%	51%
St. Mary's	58%	58%	58%
Somerset	100%	100%	100%
Talbot	50%	50%	50%
Washington	71%	71%	71%
Wicomico	97%	97%	97%
Worcester	50%	50%	50%
MD School for the Blind	93%	93%	93%

Source: Interagency Committee on School Construction

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 2010 through 2018, by county.

The Governor's proposed fiscal 2019 budget includes $309.0 million in general obligation (GO) bonds and $4.9 million in general funds 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 2019 *Capital Improvement Program* includes $280.0 million annually for PSCP in fiscal 2020 through 2023 and $40.0 million annually for the supplemental grant program.

Exhibit 2
State Public School Construction Funding
Fiscal 2010-2018
($ in Thousands)

County	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY2015	FY 2016	FY 2017	FY 2018
Allegany	$0	842	$727	$1,999	$2,496	$6,597	$10,837	$24,242	12,873
Anne Arundel	25,020	26,200	32,400	33,349	34,870	36,200	39,419	42,598	36,829
Baltimore City	27,733	28,559	41,000	46,102	39,478	35,329	36,788	37,500	37,303
Baltimore	28,000	29,000	39,000	47,394	52,068	34,561	42,177	45,775	45,186
Calvert	8,181	8,450	7,317	7,129	5,577	2,653	1,500	9,964	14,575
Caroline	6,000	3,767	235	756	7,788	0	2,902	36	1,646
Carroll	10,520	8,444	9,079	15,211	4,874	3,915	6,415	3,418	3,853
Cecil	1,538	1,744	2,830	1,915	1,268	8,194	4,723	6,650	6,730
Charles	8,898	8,335	9,180	12,480	9,426	8,200	12,817	8,951	10,516
Dorchester	6,469	5,436	3,639	979	1,590	768	179	5,009	10,975
Frederick	16,226	14,000	16,532	19,254	20,163	15,901	21,000	21,295	19,564
Garrett	666	0	382	319	134	0	0	0	1,567
Harford	16,253	13,835	17,040	16,573	13,214	12,791	9,309	8,732	13,592
Howard	18,262	18,290	26,936	32,811	25,931	20,772	27,820	31,206	21,066
Kent	388	0	104	123	95	817	615	0	0
Montgomery	28,350	30,183	42,000	43,794	38,592	39,950	45,708	50,128	59,194
Prince George's	28,200	29,500	40,348	42,192	39,371	38,539	41,729	44,675	49,625
Queen Anne's	3,947	5,750	5,374	649	4,371	5,112	0	249	2,455
St. Mary's	4,028	6,600	3,354	3,172	7,472	11,876	7,015	1,273	815
Somerset	6,000	6,000	3,371	289	3,811	2,752	2,222	1,771	14,720
Talbot	436	344	135	35	634	0	308	0	0
Washington	7,965	7,970	8,571	9,117	8,494	7,467	8,404	4,847	2,592
Wicomico	13,170	9,975	1,864	11,290	13,327	10,991	7,440	10,373	11,847
Worcester	403	0	165	166	4,882	0	72	0	0
MD School for the Blind				2,800	6,063	14,733	8,616	6,000	9,376
Statewide		500		100	500	660	175	300	500
Total	**$266,653**	**$263,724**	**$311,583**	**$349,997**	**$347,277**	**$318,778**	**$338,190**	**$364,992**	**$387,399**
Amount Over $250M	**$16,653**	**$13,724**	**$61,583**	**$99,997**	**$97,277**	**$68,778**	**$88,190**	**$114,992**	**$137,399**

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 2016-2018 include funds allocated for the Enrollment Growth and Relocatable Classroom program totaling $20 million in fiscal 2016, $40 million in fiscal 2017, and $62.5 million in fiscal 2018. Fiscal 2017 total for Baltimore County includes $5 million withheld by the Board of Public Works and later reauthorized by the General Assembly in fiscal 2018.

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