

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 473 (Senator Rosapepe, *et al.*)
 Budget and Taxation

Prince George’s County – School Overcrowding Reduction Act of 2018

This bill establishes a voluntary incentive program to encourage the Prince George’s County Public Schools to pursue innovative, cost-saving public school construction projects. Projects participating in the program with a below-average cost per student receive a higher State share of eligible project costs, as specified in the bill. The bill also expands the use of alternative financing for public school construction projects in Prince George’s County and limits the authority of the State to approve and regulate the use of alternative financing in the county. **The bill takes effect July 1, 2018.**

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 may increase or decrease, depending on the impact of the incentive program on the actual costs of participating projects in Prince George’s County. General fund expenditures increase by \$10,000 in FY 2019 to develop new regulations and procedures for projects in Prince George’s County that use alternative financing. No effect on revenues.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	10,000	0	0	0	0
Net Effect	(\$10,000)	\$0	\$0	\$0	\$0

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

Local Effect: State support for individual public school construction projects in Prince George’s County may increase or decrease, depending on the impact of the incentive program on the actual costs of participating projects, which could affect total revenues that the county receives for public school construction. Prince George’s County has greater

flexibility to use alternative financing strategies that have the potential to reduce the cost of school construction projects.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

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 in Prince George’s County that use alternative financing methods authorized in statute. The authority of the Board of Public Works (BPW) to adopt regulations requiring projects that use alternative financing to meet specified requirements and guidelines does not apply to school construction projects in Prince George’s County. Projects in Prince George’s County that use alternative financing do not need to be approved by the State Superintendent or the Interagency Committee on School Construction (IAC) and BPW; however, State funding for the projects is still contingent on the approval of IAC and BPW. In addition to the Prince George’s County Board of Education, the Prince George’s County Government and the Revenue Authority of Prince George’s County are authorized to use alternative financing.

The types of alternative financing methods that are authorized for public school construction in Prince George’s County are expanded to include:

- public-private partnership agreements in which the Prince George’s County Board of Education contracts with the county government or the Revenue Authority of Prince George’s County for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school. The agreements may include provisions for cooperating use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school; and
- “design-construct-operate-maintain-finance,” which allows the Prince George’s County Board of Education to contract with the county government, the Revenue Authority of Prince George’s County, or a private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties.

The bill includes additional provisions to enable and facilitate the use of alternative financing arrangements for school construction in Prince George's County, including allowing the county government and revenue authority to hold title to public school facilities under specified circumstance and allowing the school board, county government, and revenue authority to solicit proposals for the development of public schools.

School construction projects that use alternative financing in Prince George's County 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; and (5) requirements related to Smart Growth, use of minority business enterprises (MBEs), payment of prevailing wages, environmental impacts, and procurement methods.

Current Law: Local school boards (not counties or county revenue authorities) 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.

Public School Facility Construction Innovation Incentive Program

The Bill: The Prince George's County School Facility Construction Innovation Incentive Program (program) is established to accelerate public school construction projects in the county by providing State incentives for Prince George's County to reduce the costs of construction and renovation. Systemic renovation projects are excluded from the program, but all other major construction and renovation projects in the county are included. IAC must develop an application process for the program, implement and administer the program, and promote the program.

If a public school construction project in Prince George's County has an estimated cost that is 30% or more below the rolling State average for the appropriate type of school, IAC

must approve that project for participation in the incentive 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.

The State share of eligible costs is 20% higher than under current law for projects approved for the incentive program before January 1, 2020. Beginning January 1, 2020, the State share of eligible costs for projects approved on or after that date is 10% higher than under current law. However, if *actual* total project costs of approved projects are not at least 30% below the rolling State average, the portion of costs that exceed the 30% threshold are not eligible for the higher State share.

In addition, projects in the incentive program are not subject to the oversight and approval of IAC with respect to many State regulations. However, they remain subject to the same requirements as projects using alternative financing, which are specified above. For any project in the incentive program, a local school system may use any other source of financing or system of bidding under current law to fund the project.

Current Law: Information on the calculation of the State share of eligible costs is provided in the **Appendix – State Funding for Public School Construction**. There are no provisions in current law that allow the State share to be altered for an individual project. The State share for Prince George’s County is 70% in fiscal 2019.

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 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 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 [commission’s website](#) contains all meeting agendas and materials presented to the commission; when it is finalized, the commission’s final report will also be available on the website.

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, to the extent that Prince George’s County submits school construction projects that meet the 30% threshold, it affects the level of State funding provided to *individual* projects in the county.

Under the bill, any project from Prince George’s County that requests funding that has a per student cost that is at least 30% below the rolling average receives a 20% increase in the State share until January 1, 2020, and then a 10% increase in the State share. Since the State share for fiscal 2020 and beyond have not been developed or approved by BPW, it is not known what the State share will be for projects in the incentive program.

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

	<u>State Rated Capacity</u>	<u>Square Footage</u>	<u>Square Foot Per Student</u>	<u>Construction Cost</u>	<u>Cost per Student</u>	<u>Cost per Square Foot</u>
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

Overall, if the incentive program is successful in reducing total project costs, both the State and Prince George’s County will pay less for individual projects, which results in more school construction projects being funded by the State and the county within the same overall funding level for school construction. However, the incentive program will have differing effects on the level of State funding for individual projects in the county, depending on the cost, type, and timing of each project. Prior to January 1, 2020, projects

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in the program receive a State share that is 20% higher than it otherwise would be. For many projects, this results in State funding for the project being higher (in total dollars) than it would have been had the project cost approximated the State average. After January 1, 2020, when the State share increases by only 10% for projects in the program, State funding for many projects in the program will be lower (in total dollars) than it otherwise would be because the increase in the State share is less than the savings created by building less expensive schools. Individual project results will vary, however.

Administrative Costs

The bill requires IAC to administer the new incentive program, including calculating and updating the rolling State average of per student construction costs, developing and reviewing applications for the program, and monitoring actual project costs to determine any adjustments to the State share.

Given that the incentive program applies only to one county, the Department of Legislative Services believes that IAC can administer the program with existing resources. IAC already collects cost data on all school construction projects, so calculating the average cost can be done with minimal additional effort. Moreover, Prince George's County submits a limited number of projects for State funding each year (for fiscal 2019, it requested funding for 10 renovation, replacement, or new school construction projects). To the extent that any of its submissions qualify for the incentive program, IAC can make that determination and calculate any cost share adjustments with existing resources.

The changes made by the bill to the alternative financing provisions, however, do require additional resources for IAC but only for a limited time. Overall, the new provisions ultimately reduce the role of IAC in overseeing and monitoring alternative financing projects; as there have been very few of these over the years, this provision has little actual effect on IAC. However, the expansion of alternative financing projects in Prince George's County, and particularly the addition of the design-construct-operate-maintain-finance alternative financing model for the county, as well as the change in IAC's oversight of alternative financing projects, will require the development of new regulations and procedures. Therefore, general fund expenditures increase by \$10,000 in fiscal 2019 for legal and financial consulting services to develop the new alternative financing regulations for Prince George's County.

Local Fiscal Effect: Revenues for public school construction projects in Prince George's County may increase or decrease to the extent that State support for individual projects increases or decreases for projects in the county that qualify for the bill's incentive program. The effects will vary according to the cost, type, and timing of each project.

Additional Information

Prior Introductions: None.

Cross File: HB 195 (Prince George's County Delegation) - Ways and Means.

Information Source(s): Prince George's County; Maryland State Department of Education; Public School Construction Program; Board of Public Works; Department of Legislative Services

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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