Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 153 (The Speaker, *et al.*) (By Request - Administration)
Appropriations

Building Opportunity Act of 2019

This Administration bill authorizes the Maryland Stadium Authority (MSA) to issue up to $1.8 billion in revenue bonds, backed by annual payments of $125 million from the Education Trust Fund (ETF) beginning in fiscal 2021, to be used for public school construction projects in the State. MSA's sale of bonds under the bill is subject to the approval of the Board of Public Works (BPW), and the bill establishes mechanisms and procedures for MSA and the Interagency Commission on School Construction (IAC) to manage the program. **The bill takes effect July 1, 2019, and authorization for payments from ETF takes effect July 1, 2020.**

Fiscal Summary

State Effect: A portion of ETF revenue ($125 million) that the constitution requires the Governor to allocate for supplemental State funding for education is dedicated to debt service on revenue bonds beginning in FY 2021 (not shown in the table). General fund expenditures increase by $153,600 beginning in FY 2020 to administer the program. Increases in nonbudgeted revenues and expenditures for MSA are not shown in the table but are discussed below. **This bill establishes a mandated appropriation beginning in FY 2021.**

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	$0	$0	$0	$0	$0
GF Expenditure	153,600	191,500	197,900	204,600	211,600
Net Effect	($153,600)	($191,500)	($197,900)	($204,600)	($211,600)

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

Local Effect: Local revenues for public school construction projects increase by an estimated $1.8 billion over several years beginning in FY 2021. Local capital expenditures increase for the local share of school construction projects.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Bill Summary:

Facilities and Financing Funds

The bill establishes two nonbudgeted funds, administered by MSA, to finance improvements to public school facilities in the State: the Building Opportunities Facilities Fund and the Building Opportunities Financing Fund. Both funds are continuing, nonlapsing funds. The Treasurer must invest assets of both funds in the same manner as other State funds; all investment earnings accrue to each respective fund. No part of either fund may revert or be credited to the State's general fund or any special fund. As needed to pay debt service and other specified purposes, monies may be transferred between the funds. Both funds must be used to supplement, but not supplant, money appropriated to the Public School Construction Program.

The financing fund includes (1) proceeds from the sale of bonds for public school facilities that are not under a trust agreement, (2) revenues collected or received from any other source, (3) the annual payment of $125 million from ETF, and (4) any additional money from any public source. Monies in the financing fund are pledged to and used to pay (1) debt service on bonds issued by MSA to construct and improve public school facilities, (2) debt service reserves under a trust agreement, (3) all reasonable charges and expenses related to the issuance of bonds, and (4) all reasonable expenses related to MSA's management of the fund and its project oversight responsibilities. MSA may not use any current sources of funds, whether appropriated or nonbudgeted, to pay for any costs related to financing public school facilities under the bill, except for specified start-up costs before bond revenues are available. Any expenditures for start-up costs must be reimbursed from the financing fund.

The facilities fund includes (1) revenue transferred from the financing fund and (2) any additional funding from public sources. MSA may use the facilities fund as a revolving fund to pay (1) debt service on bonds; (2) design and construction costs relating to public school facilities; (3) to the extent authorized by federal law, any start-up costs, administration, overhead, and operations related to management of improvements to public school facilities; and (4) all reasonable charges and expenses related to MSA's oversight and project management responsibilities. MSA may transfer funds from the facilities fund to the Local Share of School Construction Costs Revolving Loan Fund.

Sale of Revenue Bonds

The issuance of a bond under the bill is not directly, indirectly, or contingently a moral or other obligation of the State, MSA, or any other governmental unit to levy or pledge any tax or to make an appropriation to pay the bond. A bond issued by MSA to finance improvements, construction, or renovations to a public school facility:

- is a limited obligation of MSA and is payable only with money pledged by MSA that is made available to MSA for that purpose;
- is not a debt, liability, or pledge of the faith and credit or taxing power of the State, MSA, or any other governmental unit; and
- may not give rise to any pecuniary liability of the State, MSA, or any other governmental unit.

At least 45 days before seeking approval from BPW for the sale of revenue bonds, MSA must provide specified written notice to the fiscal committees of the General Assembly.

Memoranda of Understanding and Project Management

IAC must provide recommendations for public school facility projects to be funded under the bill using its existing processes. MSA is responsible for contracting, managing, and overseeing public school facility projects funded under the bill. Prior to approving a project, MSA must enter into a memorandum of understanding (MOU) with (1) IAC and (2) the local school board or county government (or both) for the management and oversight of the project. The MOU must (1) specify that the State and local cost-shares in regulations apply to the project and (2) authorize MSA to contract for the design and improvement of a school. IAC may grant a waiver from MSA’s oversight of a project if IAC determines that a local school system employs staff and possesses resources necessary to oversee the project.

Local school systems seeking funding under the bill must deliver buildable sites that meet specified conditions and that are free from any specified conditions that may affect the funding or construction schedule.

By January 15, 2021, and each year thereafter, MSA must report to the Governor, BPW, and the fiscal committees of the General Assembly on the progress of construction and renovations of public school facilities, including specified items.

Current Law/Background: For a description of State support for public school construction funding, please see the **Appendix – State Funding for Public School Construction**.

Baltimore City 21st Century Schools Program

Chapter 647 of 2013 dedicated State and local funding sources to support a $1.1 billion public school construction and revitalization initiative for Baltimore City to build or substantially renovate 23 to 28 school facilities. Specifically, it phased in requirements that the State, Baltimore City, and Baltimore City Public Schools each contribute $20.0 million annually for approximately 30 years to pay debt service on bonds issued by MSA to finance the program. State general funds for the initiative are provided from proceeds of the State Lottery. Included in Chapter 647 was a requirement that Baltimore City, IAC, the Baltimore City Board of School Commissioners, and MSA enter into a four-party MOU to establish a framework for completion of the initiative. The MOU was completed and signed in September 2013, and BPW approved the MOU in October 2013.

As of September 2018, nine projects in Baltimore City had been completed, five were under construction, six were in various stages of design, and eight were in early planning stages.

Education Trust Fund

ETF is a nonlapsing, special fund supported by gaming revenues that has been used to provide funding for formulas and programs under the Bridge to Excellence in Public Schools Act after it was established during the 2007 special session. Chapter 357 of 2018, a proposed constitutional amendment approved by the voters at the 2018 general election, requires the Governor to provide supplemental State funding for public education through the use of commercial gaming revenues that are dedicated to public education in the State budget beginning in fiscal 2020. Supplemental funding must total at least $125 million in fiscal 2020, while growing to 100% of all gaming revenues by fiscal 2023. This funding must be dedicated to public education as supplemental education or school construction funding, which is to be in addition to the State funding provided through the Bridge to Excellence in Public Schools Act.

The fiscal 2020 budget distributes ETF funds among various programs and initiatives, including (1) $45 million for pay-as-you-go public school construction funding, (2) $20 million dedicated to a revolving loan fund for public school construction as established under the 21st Century School Facilities Act (discussed below), (3) $24 million for initiatives approved under Chapter 361 of 2018 – the Commission on Innovation and Excellence in Education Act of 2018 (Kirwan Commission), and (4) $36 million in funding to implement the Kirwan Commission’s 2019 recommendations.

IAC Funding Requests

For fiscal 2020, IAC received 182 requests from local school systems for $695.4 million in State funding, including 70 projects involving major construction (the remainder were largely for systemic renovations).

Revolving Loan Fund

Chapter 14 of 2018 (the 21st Century School Facilities Act) established the Local Share of School Construction Costs Revolving Loan Fund to provide low-cost loans to local governments to forward fund the local share of school construction projects. The fund is intended for local school systems that rely on the local share to be fully funded in order to complete a project. The Governor's proposed fiscal 2020 budget includes $20.0 million in ETF revenues for the fund.

State Fiscal Effect:

ETF Expenditures

A portion of ETF revenue ($125 million) that the constitution requires the Governor to allocate for supplemental State funding for education is dedicated to debt service on revenue bonds beginning in fiscal 2021; nonbudgeted revenues for MSA increase commensurately. This payment continues each year that bonds are outstanding and unpaid.

IAC and MSA Staffing

The number of funding requests submitted to IAC is limited by local capacity to pay the local match for public school construction projects. Given that limiting factor as well as the fact that current requests for State funding already exceed available funds by more than $200 million, DLS does not anticipate a significant increase in the number of funding requests submitted to IAC for review and approval. However, there will be a substantial increase in the number of projects approved for funding that require (1) an MOU to be negotiated and (2) in many cases, processing of a waiver from MSA oversight.

DLS anticipates that most projects under the program are approved during the first four years. As the increased workload for IAC extends for more than three years, this analysis assumes regular positions rather than contractual employees. Therefore, general fund expenditures increase by $153,601 in fiscal 2020, which accounts for a 90-day start-up delay from the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring a program manager and an assistant Attorney General to manage the MOU negotiations, waiver process, and any additional review and oversight responsibilities required under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$142,883
Operating Expenses	10,718
Total FY 2020 State Expenditures	**$153,601**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

MSA anticipates a significant increase in staffing to manage the dozens of projects that it will be overseeing under the program, potentially as many as 63 positions and $4.5 million in annual expenditures. Those expenses are paid from either the financing fund or the facilities fund and are not otherwise included in this analysis.

Nonbudgeted Revenues and Expenditures

This analysis assumes that bonds issued by MSA under the bill have a duration of 20 years, and that they are issued over four years in increasing quantities until they hit either the $1.8 billion cap in the bill or a lesser amount that reflects MSA's capacity to pay debt service with available funds. Nonbudgeted revenues increase by up to $1.8 billion over several years to reflect the additional resources for public school construction but are not reflected in this analysis. Assuming a 5.25% interest rate and the receipt of bond premiums from the sale of the bonds, annual debt service payments are projected to increase annually until they reach $157 million in fiscal 2027. They remain constant at that level until the bonds are fully paid off, which is projected to occur in fiscal 2044. As those debt service payments are paid from the financing and/or facilities funds, they are not otherwise reflected in this analysis.

Although the mandated appropriation of $125 million is less than the maximum projected debt service payments, they are sufficient to cover the program's cost under the envisioned financing plan. As debt issuances are phased in over several years, debt service payments in the early years are minimal, allowing the fund balance to accrue. Also, interest earned on the fund balance and the bond premiums expected to be earned from the sale of the bonds supplement the funds available to pay debt service, making the program financially viable. To the extent that external factors (*e.g.*, rising interest rates, smaller-than-anticipated bond premiums) affect the financing plan, it is assumed that fewer bonds are issued in the later years to maintain the viability of the program.

Additional Information

Prior Introductions: None.

Cross File: SB 159 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

Information Source(s): Maryland State Treasurer's Office; Interagency Commission on School Construction; Board of Public Works; Baltimore City; Maryland Stadium Authority; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2019
md/rhh

Analysis by: Michael C. Rubenstein

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

Appendix – State Funding for Public School Construction

School Construction Review and Approval Process

As enacted by Chapter 14 of 2018 (the 21st Century School Facilities Act), the Interagency Commission 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 determines which projects to fund. By December 31 of each year, IAC must approve projects comprising 75% of the preliminary school construction allocation projected to be available by the Governor for the upcoming fiscal year. Local school systems may appeal these preliminary decisions by IAC. By March 1 of each year, IAC must recommend to the General Assembly projects comprising 90% of the allocation for school construction submitted in the Governor's capital budget. Following the legislative session, IAC approves projects comprising the remaining school construction funds included in the enacted capital budget, no earlier than May 1. The final allocations are not subject to appeal.

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 2020, the cost per square foot is $318 for new construction *without* site development (up from $302 in fiscal 2019) and $378 for new construction *with* site development (up from $360 in fiscal 2019). 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, 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.

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; (4) movable equipment and furnishings; and (5) items that do not have a useful life of at least 15 years.

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 21st Century School Facilities Act requires that the cost-share formula be recalculated every two years (previously, statute required recalculation every three years). The most recent recalculation was approved by IAC in January 2019. **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2020, as approved by IAC.

Chapter 14 also established the State's intent to provide at least $345 million for school construction in fiscal 2019 and at least $400 million annually as soon as practicable and within current debt affordability guidelines. The State far surpassed the fiscal 2019 goal with a total of $435.4 million approved for public school construction funding. **Exhibit 2** shows annual State public school construction funding from fiscal 2015 through 2019, by county.

The Governor's proposed fiscal 2020 capital budget includes $280.0 million in general obligation (GO) bonds for public school construction 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. It also includes $45 million from the Education Trust Fund (ETF) for additional public school construction projects, $30.0 million in pay-as-you-go (PAYGO) general funds for the Healthy School Facility Fund established by Chapter 561 of 2018, and $20.0 million from ETF for a revolving loan fund created by Chapter 14 to assist local governments in forward funding school construction projects. The fiscal 2020 *Capital Improvement Program* includes $280.0 million annually for public school construction in fiscal 2021 through 2024 and $40.0 million annually for the supplemental grant program. Additional funding totaling $1.8 billion beginning in fiscal 2021 from revenue bonds supported by $125 million from ETF is also projected for public school construction projects, as proposed by the Governor.

Exhibit 1
State Share of Eligible School Construction Costs
Fiscal 2020

County	FY 2020
Allegany	85%
Anne Arundel	50%
Baltimore City	91%
Baltimore	56%
Calvert	53%
Caroline	81%
Carroll	55%
Cecil	66%
Charles	61%
Dorchester	75%
Frederick	60%
Garrett	50%
Harford	60%
Howard	54%
Kent	50%
Montgomery	50%
Prince George’s	70%
Queen Anne’s	51%
St. Mary’s	57%
Somerset	96%
Talbot	50%
Washington	71%
Wicomico	95%
Worcester	50%
MD School for the Blind	93%

Source: Interagency Commission on School Construction

Exhibit 2
State Public School Construction Funding
Fiscal 2015-2019
($ in Thousands)

County	FY2015	FY 2016	FY 2017	FY 2018	FY 2019
Allegany	$6,597	$10,837	$24,242	$12,873	$3,950
Anne Arundel	36,200	39,419	42,598	36,829	28,832
Baltimore City	35,329	36,788	37,500	37,303	68,735
Baltimore	34,561	42,177	45,775	45,186	41,865
Calvert	2,653	1,500	9,964	14,575	9,763
Caroline	0	2,902	36	1,646	423
Carroll	3,915	6,415	3,418	3,853	6,853
Cecil	8,194	4,723	6,650	6,730	5,152
Charles	8,200	12,817	8,951	10,516	14,856
Dorchester	768	179	5,009	10,975	11,026
Frederick	15,901	21,000	21,295	19,564	19,178
Garrett	0	0	0	1,567	0
Harford	12,791	9,309	8,732	13,592	12,278
Howard	20,772	27,820	31,206	21,066	10,374
Kent	817	615	0	0	0
Montgomery	39,950	45,708	50,128	59,194	59,714
Prince George’s	38,539	41,729	44,675	49,625	49,031
Queen Anne’s	5,112	0	249	2,455	806
St. Mary’s	11,876	7,015	1,273	815	6,347
Somerset	2,752	2,222	1,771	14,720	17,500
Talbot	0	308	0	0	8,390
Washington	7,467	8,404	4,847	2,592	12,042
Wicomico	10,991	7,440	10,373	11,847	9,971
Worcester	0	72	0	0	4,336
MD School for the Blind	14,733	8,616	6,000	9,376	14,000
Statewide	660	175	300	500	20,000
Total	**$318,778**	**$338,190**	**$364,992**	**$387,399**	**$435,422**

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 2016-2019 include funds allocated for the Enrollment Growth and Relocatable Classroom program totaling $20 million in fiscal 2016, $40 million in fiscal 2017, $62.5 million in fiscal 2018, and $68.2 million in fiscal 2019. 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. Does not include funding for projects supported by Maryland Stadium Authority revenue bonds.

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Building Opportunity Act of 2019**

BILL NUMBER: SB 159/HB 153

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS