

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 1  
 Appropriations

(The Speaker, *et al.*)

Budget and Taxation

Built to Learn Act of 2020

This bill authorizes the Maryland Stadium Authority (MSA) to issue up to \$2.2 billion in revenue bonds, backed by annual payments from the Education Trust Fund (ETF) beginning in fiscal 2022, for public school construction projects in the State including to support a possible public-private partnership (P3) agreement for Prince George’s County. Construction materials purchased for public school facility projects managed by MSA are exempt from the State sales and use tax. The bill also expands school construction costs eligible for State funding and increases or establishes new mandated State funding for other public school construction programs. **The bill takes effect June 1, 2020, contingent on the enactment of Senate Bill 1000 or House Bill 1300 (Blueprint for Maryland’s Future); some provisions of the bill have delayed effective dates.**

Fiscal Summary

**State Effect:** General fund expenditures increase beginning in FY 2021 for program administration. Pay-as-you-go (PAYGO) general fund expenditures increase by \$30 million in FY 2022 and by \$40 million annually beginning in FY 2023, with special fund revenues and expenditures increasing commensurately. General fund revenues decrease beginning in FY 2022 due to the sales tax exemption. Dedicated ETF revenue, phasing up to \$125 million annually, and related expenditures are not shown in the table. **The bill increases or establishes mandated appropriations beginning in FY 2022.**

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	\$0	(\$2,400,000)	(\$4,800,000)	(\$5,880,000)	(\$5,880,000)
SF Revenue	\$0	\$30,000,000	\$40,000,000	\$40,000,000	\$40,000,000
GF Expenditure	\$290,400	\$231,300	\$237,100	\$245,200	\$253,600
SF Expenditure	\$0	\$30,000,000	\$40,000,000	\$40,000,000	\$40,000,000
PAYGO GF exp	\$0	\$30,000,000	\$40,000,000	\$40,000,000	\$40,000,000
Net Effect	(\$290,400)	(\$32,631,300)	(\$45,037,100)	(\$46,125,200)	(\$46,133,600)

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 \$2.0 billion over several years beginning in FY 2022, in addition to the State P3 availability payment. Local expenditures increase for the local share of school construction projects, including Prince George’s County expenditures for its share of the P3 availability payment. An additional \$20 million is authorized for school construction projects in Baltimore City under an existing program. Local expenditures may also increase to conduct required capacity studies. **The bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful for the construction industry.

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## Analysis

### Bill Summary

#### *Education Trust Fund*

The bill codifies the provisions of the constitutional amendment approved by the voters at the 2018 general election, known as the ETF lockbox. The purposes for which ETF can be used are altered to specify that it may be used only (1) to provide funding for public elementary and secondary education through the continuation of existing education funding formulas and (2) to provide supplemental funding for education and public schools. It defines supplemental funding as funding that:

- ensures access to public education that allows students to compete in the global economy of the future;
- provides high-quality early childhood education programs;
- provides opportunities for public school students to participate in career and technical education programs that lead to an identified job skill or certificate;
- allows students to obtain college credit and degrees while in high school at no cost to the students;
- supports the advancement and professionalization of public educators; and
- maintains, renovates, or constructs public schools.

It requires the Governor’s annual budget submission to include at least the following amounts as *supplemental* funding for public education from ETF:

- \$125.0 million in fiscal 2020;
- \$250.0 million in fiscal 2021;

- \$375.0 million in fiscal 2022; and
- 100% of the funds in ETF beginning in fiscal 2023.

#### *Built to Learn 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.

The bill authorizes MSA to issue bonds to finance public school construction beginning January 1, 2021. Before each issuance of bonds to finance school construction projects, MSA must obtain the approval of the Board of Public Works (BPW) of the aggregate amount of the proposed bond issue. 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.

Total debt service for all bond issuances may not exceed \$30 million in fiscal 2022, \$60 million in fiscal 2023, and \$125.0 million annually thereafter; it may not exceed \$100.0 million annually if Prince George's County enters into a P3 agreement.

Beginning 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 public school construction and renovation projects funded by the revenue bonds. By July 1, 2030, MSA must complete a 10-year evaluation of the effectiveness of the issuance of bonds to finance construction and renovations of public school facilities.

#### *Allocation of Bond Proceeds*

All projects funded under the bill must be approved by the Interagency Commission on School Construction (IAC) using the same process used for the Public School Construction Program (PSCP). Construction contracts funded by the bond proceeds are not subject to approval by BPW.

Proceeds of MSA’s sale of revenue bonds (including bond premiums) must be allocated to local school systems as shown in **Exhibit 1**, based on the sale of \$2.0 billion in bonds (as explained below) for public school construction projects approved by IAC. The allocation for Baltimore City must include a specified amount for a specified project, subject to a specified local matching requirement. Any allocation must be used within 10 years or be subject to reallocation. The bond proceeds provided to each school system represent the State share of eligible public school construction costs, as discussed further below.

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**Exhibit 1**  
**Allocation of Bond Sale Proceeds under the Bill**  
**(\$ in Millions)**

	<u>Percent of Total</u>	<u>Proceeds</u>
Anne Arundel	12.5%	\$250.0
Baltimore City	21.0%	420.0
Baltimore	21.0%	420.0
Frederick	5.1%	102.0
Howard	6.6%	132.0
Montgomery	21.0%	420.0
Prince George’s	*	*
All Other Counties	11.5%	230.0
Unallocated/MSA	1.3%	26.0
<b>Total</b>	<b>100.0%</b>	<b>\$2,000.0</b>

MSA: Maryland Stadium Authority

\*Under the bill, Prince George’s County receives \$25.0 million annually for up to 30 years to supplement local funds for an availability payment if it enters into a public-private partnership agreement, subject to other provisions in the bill.

Source: Department of Legislative Services

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*Project Management*

In general, MSA is responsible for the construction and improvements to local school facilities financed with the proceeds from the revenue bonds. However, except for Baltimore City, MSA may authorize a local school board to contract for, manage, and oversee public school facility projects under its jurisdiction. Before authorizing a local school board to manage its projects, MSA must consider the board’s (1) track record of managing public school facility projects and (2) expertise and capacity to manage the

proposed projects. Projects managed by MSA and local school systems are subject to the same requirements and procedures that govern PSCP.

Subject to the approval of MSA, IAC must approve State reimbursement of eligible costs for projects that begin construction on or after the bill's effective date. Before projects are approved for funding under the bill, MSA and IAC must enter into a memorandum of understanding (MOU) with specified provisions. Also, each county, county board, and MSA must enter into a "project MOU" with specified provisions. One of the required provisions in the project MOU is that priority must be given to schools that (1) are the oldest buildings in a school system; (2) have high concentrations of low-income students; (3) have a large number of relocatable classrooms; (4) have high utilization based on the school's State rated capacity; or (5) need space for full-day prekindergarten or career and technical education (CTE) programs. Project MOUs must include a comprehensive plan for local hiring and a plan to maximize utilization of State-certified locally based minority and women-owned businesses for approved projects. The first projects funded must be projects that IAC has deemed eligible for funding but for which State funding has been deferred due to fiscal constraints. IAC may not approve reimbursement to a county from the proceeds of MSA bonds for a school construction project that has already been completed.

Any power granted to MSA under the bill may not in any way interfere with the enumerated powers of a local school board. However, the powers of a local school board may not limit the ability of the authority to carry out its obligations under the bill. Unless otherwise specified in a project MOU, local school systems must deliver buildable sites that meet specified conditions and that are free from any specified conditions that may affect the funding or construction schedule.

#### *Prince George's County P3 Agreement*

A P3 agreement is defined as one in which a county government and county board of education contract with a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school. It may include provisions for the operation and maintenance of a school, for cooperative use of a school or an adjacent property, and for the generation of revenue to offset the cost of construction or use of the school.

Before Prince George's County enters into a P3 agreement that is financed in part with State funds for an availability payment, it must be reviewed by MSA and approved by IAC. If Prince George's County enters into a specified P3 agreement by July 1, 2022, MSA must deposit \$25.0 million annually, beginning in fiscal 2024 and not after 2053, into the Prince George's County P3 Fund. However, in order for Prince George's County to receive these annual payments, the P3 agreement must include:

- a minimum of six schools that will be improved, constructed, or renovated and operated and maintained under the P3 agreement; and
- a commitment by the Prince George's County Government and the Prince George's County School Board to provide the local share of the availability payment.

The bill includes specified reporting requirements related to the Prince George's County P3 agreement and related payments. It also requires IAC to complete an evaluation of the P3 agreement by July 1, 2027, and to report on the results of the evaluation to the Governor and fiscal committees of the General Assembly by December 31, 2027.

### *Facilities and Financing Funds*

The bill establishes two nonbudgeted funds, administered by MSA, to finance improvements to public school facilities in the State: the Supplemental Public School Construction Facilities Fund and the Supplemental Public School Construction 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 PSCP. However, State funds from other sources, grants, or programs may be combined with money from both funds to pay for projects.

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) interest earnings of the fund; 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; (2) debt service reserves under a trust agreement; (3) the annual payment of \$25.0 million to the Prince George's County P3 fund, if required; (4) all reasonable charges and expenses related to the issuance of bonds; and (5) 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. In fiscal 2021, \$500,000 must be provided from ETF to MSA for start-up costs.

The facilities fund includes (1) revenue transferred from the financing fund; (2) interest earnings of the fund; and (3) any additional money made available from any 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; (4) all reasonable charges and expenses related to MSA's oversight and project management responsibilities; and (5) all reasonable expenses related to its review of the Prince George's County P3 agreement, if needed.

### *Baltimore City 21st Century Schools Program*

MSA may use the following funds to supplement funding for additional Baltimore City projects under the 21st Century Schools Program: (1) \$10.0 million in available funds in the Baltimore City Public School Construction Facilities Fund; and (2) \$10 million held in reserve for Baltimore City in the Baltimore City Public School Construction Financing Fund.

Also, MSA may use up to \$1.0 million of available revenues in fiscal 2021 from the Baltimore City Public School Construction Facilities Fund for start-up costs related to the Built to Learn Program, which must be reimbursed from the Supplemental Public School Construction Facilities Fund.

### *Supplemental Capital Grant Program*

The bill makes several changes to the existing Capital Grant Program for Local School Systems with Significant Enrollment Growth or Relocatable Classrooms (EGRC). First, it raises the mandated annual funding level from \$40.0 million to \$80.0 million beginning in fiscal 2027. Second, it specifies that funding provided for EGRC above \$40.0 million be allocated to eligible school systems based on their proportionate share of the percentage of enrollment growth above the State average. Third, it changes the definition of "significant number of relocatable classrooms" to mean an average of more than 250 (instead of 300) relocatable classrooms over the past five years, beginning June 1, 2020. Finally, it requires the Governor to include funding for the program in *either* the operating budget or the capital improvement program of PSCP.

### *Healthy School Facility Fund*

The bill extends mandated funding for the Healthy School Facility Fund by three years, through fiscal 2024, with at least \$30.0 million mandated in fiscal 2022 and at least \$40.0 million mandated in each of fiscal 2023 and 2024. For fiscal 2021 through 2024, 50% of money appropriated to the fund must be awarded to public schools in Baltimore City. The bill also specifies that funding priority must be given to resolve any severe issue that results in a school being closed, in addition to specified issues in current law. Finally, it clarifies how applications for plumbing-related projects should be prioritized.

### *Eligible Costs and State/Local Cost-share*

The bill allows MSA bond proceeds to be used for specified expenditures in Baltimore City that are otherwise not eligible costs for State funding, including furniture, fixtures, equipment, and project staffing. Also, for a county that receives the minimum State share (50%) of eligible school construction costs and that has advanced construction funding for projects in PSCP, the State share of eligible costs for projects funded with MSA bond proceeds must include 150% of the applicable gross area baseline per student for each project.

For *all* PSCP projects (not only those funded from the proceeds of MSA bonds), IAC must adopt regulations that include architectural, engineering, consulting, and other planning costs as eligible costs for a project that has received local planning approval from IAC. Regulations must also define eligibility criteria for State funding of expenditures on all furniture, fixtures, and equipment with a median useful life of at least 15 years. After calculating the cost-share formula for each county under current law, IAC must identify in its regulations the actual State and local cost-share percentages produced by the formula for each county. However, a county with median household income that is in the bottom quartile of the State is eligible for a specified reduction in the local share of school construction costs equal to the local share of an adjacent county that is less than 50% but closest to 50%.

IAC is authorized to include in its regulations governing PSCP a requirement that local school systems use a standard statewide computerized maintenance management system to track and report on maintenance work orders.

### *Public School Facilities Priority Fund and Aging Schools and School Safety Grant Programs*

The bill creates the Public School Facilities Priority Fund to provide State funds to address the facility needs of the highest priority schools identified by the statewide facilities assessment completed by IAC under current law, with highest priority given to schools with a severe facility issue that required the school to be closed. The bill further specifies how the funds are to be used if the statewide facility assessment is not completed. IAC administers the fund. In fiscal 2025 and 2026, the Governor must appropriate at least \$40.0 million to the fund in either the annual State operating or capital budget bill. Beginning in fiscal 2027, the mandated annual appropriation increases to at least \$80.0 million. Money expended from the fund is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for public schools in the State.



The bill expresses intent that funding for the Aging Schools Program (ASP) and the School Safety Grant Program (SSGP) be consolidated into the priority fund beginning in fiscal 2027, and repeals ASP and SSGP effective July 1, 2026.

#### *Workgroup on the Assessment and Funding of School Facilities*

The bill requires the President of the Senate and the Speaker of the House (instead of the State Superintendent of Schools) to jointly appoint the chair of the workgroup. It also extends the deadline for the workgroup to report its findings and recommendations by two years, to December 1, 2021, and makes conforming changes to when IAC can begin using the results of a statewide facility assessment for school construction funding decisions. The bill also extends the date when assessment data may be used for funding allocations by two years to May 1, 2022, for fiscal 2023 funding.

In assessing the relative condition of school facilities using the statewide facility assessment, IAC and the workgroup must evaluate each school facility using the replacement value of a modern system and give priority to building systems that are furthest beyond the useful life of the system.

#### *Other Provisions*

By July 1, 2022, each local school board must conduct a capacity study identifying the current capacity of each school and the demographics of students in the school compared to the overall student demographics for the school system. A capacity study completed within three years of the due date satisfies the requirement. The capacity study must be submitted to IAC and the General Assembly by December 1, 2022.

In Baltimore County, the bill repeals a provision that prohibits the Baltimore County Revenue Authority from being involved with public schools in the county.

MSA is exempt from specified provisions in State procurement law related to the processing and payment of change orders.

#### *Apprenticeship Pathway*

The Maryland State Department of Education (MSDE), IAC, and MSA must collaborate with local school systems and community colleges to develop a career and technical education apprenticeship pathway in school building maintenance that leads to an industry recognized certificate or credential.

### *Life Cycle Assessments*

IAC or MSA must evaluate the life cycle costs of public school buildings over 50 years, including the cost and efficiency of using specified alternative energy systems by October 1, 2023. They may contract with a third-party to conduct the evaluations. By October 1, 2020, and annually for 2 years thereafter, IAC and MSA must provide updates to the General Assembly on the progress of the evaluation.

**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 January 2020, 10 of 11 Year 1 projects in Baltimore City had been completed, with the final Year 1 school expected to be completed in summer 2021. The first of 17 Year 2 schools was completed in September 2019, and 3 additional Year 2 schools were completed in January 2020. The remaining 13 Year 2 schools are in various stages of planning, design, and construction.

### *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, growing to 100% of all gaming revenues dedicated to ETF 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.

*Supplemental Grant for Enrollment Growth or Relocatable Classrooms*

The supplemental capital grant program provides grants to local school systems that have enrollment growth that exceeds 150% of the statewide average or with more than 300 relocatable classrooms over a five-year period. These EGRC grants are allocated proportionally based on full-time equivalent student enrollment. The grants are for the construction and renovation of public school facilities and are supplemental to the funding for PSCP. Projects funded are subject to the State and local cost-share formula for each school system. The EGRC program was provided \$20 million in fiscal 2016, its initial year. Program funding was doubled to \$40 million for fiscal 2017, and each year thereafter, by Chapters 665 and 666 of 2016. Since fiscal 2018, the General Assembly has increased the EGRC allocation in the capital budget bill each year. Allocations by local school system since fiscal 2017 are provided in **Exhibit 2**. The fiscal 2021 capital budget as passed by the General Assembly provides a total of \$75 million in general obligation (GO) bond funds for EGRC including funds for Baltimore County, which retains its eligibility for funding under the bill.

**Exhibit 2**  
**Enrollment Growth or Relocatable Classroom**  
**Supplemental Grant Authorizations**  
**Fiscal 2017-2021**  
**(\$ in Thousands)**

<u>Local Education Agency</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021*</u>
Anne Arundel	\$6,038	\$9,480	\$7,916	\$7,935	\$9,177
Baltimore County	8,275	12,342	10,853	10,812	9,469
Caroline	0	0	0	0	1,696
Dorchester	357	0	0	0	0
Frederick	0	0	0	0	4,788
Howard	4,100	6,670	5,447	5,462	14,138
Montgomery	11,728	21,835	25,912	25,903	22,296
Prince George's	9,502	12,173	18,073	18,088	13,437
<b>Total</b>	<b>\$40,000</b>	<b>\$62,500</b>	<b>\$68,200</b>	<b>\$68,200</b>	<b>\$75,000</b>

\*Fiscal 2021 allocation is based on the fiscal 2021 capital budget, as passed by the General Assembly, and eligibility criteria in this bill. A portion of the fiscal 2021 grants do not require a local match.

Source: Department of Legislative Services

### *State Sales and Use Tax*

The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which are taxed at a rate of 9%.

### *Eligible School Construction Costs*

The Code of Maryland Regulations (COMAR) specifies school construction costs that are eligible for partial reimbursement under the State-local cost sharing arrangement established in statute. In general, eligible costs are direct construction costs (“bricks and mortar”), including new construction, additions to an existing facility, building and site development, modular construction, systemic renovations, and relocatable facilities. Under Chapter 14 of 2018 (the 21st Century School Facilities Act), an item must have a median useful life of at least 15 years in order to be an eligible cost.

COMAR also lists items that are specifically ineligible for State reimbursement, including, among other things, site acquisition, architectural and engineering services, consultant fees, feasibility studies, and movable equipment.

### *Forward (Advance) Funding*

To accelerate the completion of school construction projects, some local school systems with debt capacity elect to forward, or advance, fund school construction projects that have received planning approval from IAC under PSCP. This means that the county government pays the full cost of construction for approved projects that have not yet received funding from the State due to fiscal constraints. Those projects are then eligible for State reimbursement of the State share as funding becomes available under PSCP.

### *Public School Facility Assessment*

Chapter 14 of 2018 required IAC to have completed an initial statewide assessment of public school facilities by July 1, 2019. In completing the assessment, IAC must use sufficiency standards it developed, 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. Chapter 14 also established a Workgroup on the Assessment and Funding of School Facilities, and charged the workgroup with making recommendations regarding the use of the assessment in annual school construction funding decisions. The State Superintendent of Schools designates the chair of the workgroup. The assessment has not been completed due to delays in the procurement process for the third-party vendor. Accordingly, the bill extends the date when assessment data may be used for funding allocations by two years to May 1, 2022, for fiscal 2023 funding.

### *Aging Schools Program*

Eligible Aging Schools Program expenditures include asbestos and lead paint abatement; upgrade of fire protection systems and equipment; painting; plumbing; roofing; upgrade of heating, ventilation, and air-conditioning systems; site redevelopment; wiring schools for technology; and renovation projects related to education programs and services. Projects must cost at least \$10,000 to be funded through the program. The MSDE and IAC review aging schools project requests submitted by local school systems, approve eligible projects, and determine if additional review of any construction documents will be required.

The fiscal 2021 capital budget as passed by the General Assembly includes \$6.1 million in GO bond funds for the program, which is allocated in statute to each local school system based on each county's proportion of pre-1970 square footage in public school facilities.

### *School Safety Grant Program*

Chapter 14 of 2018 created SSGP to provide grants to local school systems for security improvements, including:

- secure and lockable doors for every classroom;
- an area of safe refuge in every classroom; and
- surveillance and other security technology for school monitoring purposes.

IAC administers the program in consultation with the Maryland Center for School Safety. The Governor is required to include \$10.0 million in the annual operating or capital budget that may be used only to make grant awards. Program funding is supplemental to and not instead of funding that would otherwise be appropriated for public school construction projects. The fiscal 2021 budget, as enacted, includes \$10.0 million in PAYGO general funds for the program (not reflected in this fiscal and policy note).

### *Healthy School Facility Fund*

Chapter 561 of 2018 established the Healthy School Facility Fund within IAC to provide grants to public schools to improve the health of school facilities. The Governor must appropriate \$30.0 million for the fund in fiscal 2020 and 2021 (the bill adds mandated funding in fiscal 2022 through 2024), which must be in addition to funds that would otherwise be appropriated for public schools. The fiscal 2021 budget, as enacted, includes \$30 million in PAYGO general funds for the fund (not reflected in this fiscal and policy note).

IAC must give priority in awarding grants to schools based on the severity of issues in the school, including (1) air-conditioning; (2) heating; (3) indoor air quality; (4) mold remediation; (5) temperature regulation; (6) plumbing, including the presence of lead in drinking water outlets; and (7) windows. IAC must establish application procedures for school systems to request grants and additional procedures to make awards from the fund not more than 45 days after receiving an application. No jurisdiction may receive more than \$15.0 million in a given fiscal year, and the total amount of a grant is not required to cover the full cost of a project.

### *Prince George's County Public-Private Partnership Fund*

Chapter 387 of 2019 established the Prince George's County P3 Fund to pay a public or private entity for an availability payment due under a P3 agreement to construct or renovate public school facilities. In order to receive State funding for availability payments, Prince George's County, the Prince George's County Public Schools, and IAC must enter into a MOU that, among other provisions, identifies a dedicated source of State funding and specifies any amounts to be contributed to the fund by the county and the school board for availability payments. To date, no State funds have been allocated to the fund.

### *IAC Funding Requests*

For its fiscal 2021 *Capital Improvement Program*, IAC received 168 requests from local school systems for \$751.1 million in State funding, including 58 projects totaling \$563.1 million involving major construction (the remainder were largely for systemic renovations).

### *Blueprint for Maryland's Future*

Chapter 771 of 2019 established The Blueprint for Maryland's Future as the State's education policy for early childhood to postsecondary education and began to implement the recommendations of the Commission on Innovation and Excellence in Education. House Bill 1300, *Blueprint for Maryland's Future – Implementation*, was passed by the General Assembly in the 2020 session to fully implement the commission's recommendations and substantially alter State aid and policy for public schools.

**State Fiscal Effect:** This analysis assumes that HB 1300 (Ch \_ of 2020) is enacted and this bill and its provisions take effect. If HB 1300 is not enacted, the entire bill is null and void.

### *Nonbudgeted Revenues and Expenditures*

This analysis assumes that bonds issued by MSA under the bill have a duration of 30 years, and that they are issued over four or five years in increasing quantities until they hit either the \$2.2 billion cap in the bill or a lesser amount that reflects MSA's capacity to pay debt service with available funds, given the debt service caps in the bill. Based on this timeline, current market conditions (prior to the Coronavirus Disease 2019 (COVID-19) crisis), expected bond premiums, and that debt service payments are capped at \$100 million annually (assuming Prince George's County enters into a valid P3 agreement), MSA advises that the available payments from ETF can support a maximum of \$2.0 billion in total bond proceeds.

Thus, nonbudgeted revenues for the facilities and/or financing funds established by the bill increase by approximately \$2.0 billion over several years. This reflects the additional resources for public school construction generated by the sale of MSA revenue bonds. Based on projected interest rates, annual debt service payments are projected to increase annually until they reach \$100.0 million annually. They remain constant at that level until the bonds are fully paid off, which is projected to occur in fiscal 2055. As those debt service payments are paid from the financing and/or facilities funds, they are not reflected in this analysis.

### *ETF Payments*

A portion of ETF revenue (\$30 million in fiscal 2022, \$60 million in 2023, and \$125 million each year thereafter) that the Constitution requires the Governor to allocate for supplemental State funding for education is dedicated to the Supplemental Public School Construction Financing Fund; nonbudgeted revenues for MSA increase commensurately. As the bill only allocates funds that are already mandated to be spent by the Maryland Constitution, this analysis does not reflect these expenditures or revenues. Although the bill provides \$500,000 from ETF in fiscal 2021 for MSA start-up costs, the fiscal 2021 budget enacted by the General Assembly does not include any ETF funds for MSA; therefore, this expenditure is not reflected in this analysis.

### *P3 Availability Payments*

This analysis assumes that Prince George's County enters into a P3 agreement that meets the terms established in the bill. It further assumes that the State's \$25 million share of the availability payment is taken directly from the \$125 million annual payments from ETF, leaving \$100.0 million for debt service and related costs. This assumption is based on the bill's stipulation that debt service be limited to \$100 million annually (instead of \$125 million) if Prince George's County enters into a P3 agreement. As the State's

availability payment to Prince George's County is made from the financing fund, it is not otherwise reflected in this analysis.

### *Mandated Appropriations*

The bill mandates appropriations for EGRC, the Healthy School Facility Fund, and the Public School Facilities Priority Fund in either the operating or capital budget. Although GO bonds have been used to fund EGRC to date, the General Assembly can only mandate spending in the operating budget. Therefore, this analysis assumes that PAYGO general funds are used to satisfy the three mandates. To the extent that the Governor uses GO bonds in the capital budget to satisfy any of the mandates, general fund expenditures are replaced by GO bond expenditures.

Based on the assumptions above, PAYGO general fund expenditures increase by \$30 million in fiscal 2022 and by \$40 million in fiscal 2023 and 2024 to extend funding for the Healthy School Facility Fund for three years. PAYGO general fund expenditures increase by \$40 million in fiscal 2025 and 2026 for the priority fund; special fund revenues and expenditures increase correspondingly. Beginning in fiscal 2027, PAYGO general fund expenditures increase by \$80 million annually, with \$40 million going to EGRC and \$40 million going to the priority fund. Special fund revenues and expenditures for the priority fund increase correspondingly. Beginning in fiscal 2027, PAYGO general fund expenditures are reallocated to the priority fund due to the consolidation of ASP and SSGP; ASP and SSGP are repealed effective July 1, 2026.

Lowering the relocatable classroom threshold from 300 to 250 makes Baltimore County eligible for EGRC funding effective June 1, 2020, (with a five-year average of 270 relocatable classrooms). Baltimore County has qualified for the program each year since inception based on its enrollment growth, but its growth has slowed and, therefore, it would not have qualified under current criteria in fiscal 2021. Under the bill's revised eligibility criteria, Charles County may also qualify for the program in the near future, with a current average of 247 relocatable classrooms.

### *Sales Tax Revenues*

Exempting construction materials used for Built to Learn projects managed by MSA from the State sales tax reduces annual revenues from the sales tax. This impact is assumed to begin in fiscal 2022 when construction activity under the bill is expected to start. It is anticipated that fiscal 2021 will be devoted entirely to the development of MOUs, planning and design of school buildings, and procurement of contractors. Moreover, the availability of bond proceeds is limited in fiscal 2021 and 2022 due to the graduated increase in ETF funds provided for debt service, so it is anticipated that construction activity will begin slowly in fiscal 2022 and then ramp up.



Under the bill, bond proceeds must be spent within 10 years or be reallocated; thus, this analysis assumes that the full \$2.0 billion is spent by fiscal 2031. For the reasons described above, it further assumes that construction spending is limited in fiscal 2022 and then increases in the out-years. MSA advises that materials generally make up about 40% of total construction costs (which also include labor and design). Therefore, this analysis assumes construction costs of \$100 million in fiscal 2022, \$200 million in fiscal 2023, and \$245 million each year thereafter until all funds are expended by the end of fiscal 2030. Assuming 40% of those costs are for materials and a sales tax rate of 6%, general fund revenues from the sales tax decrease by \$2.4 million in fiscal 2022, \$4.8 million in fiscal 2023, and \$5.9 million annually thereafter, through fiscal 2030.

### *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, the Department of Legislative Services (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 separate MOUs to be negotiated for each local school system (potentially 24 separate MOUs).

DLS anticipates that most projects under the program are approved during the first four or five years. As the increased workload for IAC extends for more than three years, this analysis assumes regular positions rather than contractual employees. After four years (beginning in fiscal 2025), it is assumed that staff resources are reallocated to administer the priority fund and the expansion of EGRC. Therefore, general fund expenditures increase by \$290,356 in fiscal 2021, which accounts for a 120-day start-up delay from the bill's June 1, 2020 effective date. This estimate reflects the cost of hiring a program manager and an assistant Attorney General to manage the MOU negotiations 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, including a one-time expense of \$100,000 for a database to manage the required life-cycle assessments. As IAC advises that it has had difficulty filling positions due to compensation levels, this estimate reflects hiring new staff at higher than traditional starting salaries for their grades.

Positions	2
Salaries and Fringe Benefits	\$178,723
Database Development	\$100,000
Operating Expenses	<u>11,633</u>
<b>Total FY 2021 Expenditures</b>	<b>\$290,356</b>

Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses, and the termination of one-time expenses.

MSA anticipates a significant increase in staffing to manage the projects that it will be overseeing under the program, but a reliable estimate is not feasible as it is not known how many projects will be managed by local school systems instead of MSA. Any expenses for MSA to hire new staff are anticipated to be paid from the unallocated portion of the revenue bonds (See Exhibit 1) from either the financing fund or the facilities fund and are not otherwise included in this analysis.

*Eligible School Construction Costs for PSCP Projects*

Including planning, furniture, fixtures, and equipment as eligible costs for local school systems does not affect the total amount of funding for school construction in the annual capital budget, as that amount is determined annually by the Governor and General Assembly through the capital budget process. However, to the extent that available capital funds are used for planning, furniture, fixtures, and equipment cost for all projects, fewer projects will be able to be funded by the State. Similarly, providing a higher State share (due to a lower local share) for counties that meet the criteria related to median household income will result in greater State funding for projects in eligible counties, and less State funding available for projects in other counties. Currently, Garrett County meets the criteria specified in the bill, resulting in a State share of 89%, which is Allegany County’s State share, and reducing Garrett County’s local share to 11% (from 50%).

*Eligible School Construction Costs for MSA Bond Proceeds*

Likewise, altering the eligible costs for MSA bond-funded projects, including additional costs for Baltimore City and providing funding based on 150% of the applicable gross area baseline (square feet) per student for eligible counties as specified in the bill, does not affect the total amount of funding available for school construction projects from MSA bond proceeds, but does reduce the number of projects within the counties’ allocations that may receive funding. Two counties – Anne Arundel and Montgomery – meet the bill’s criteria to receive a higher State share of gross area baseline costs than they receive for PSCP projects.

**Small Business Effect:** The bill likely results in a dramatic increase in school construction activity. Contractors and tradespeople involved in school construction will likely experience a significant increase in available work.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 1 (Senator Peters, *et al.*) - Budget and Taxation.

**Information Source(s):** Anne Arundel, Caroline, Charles, Frederick, Montgomery, Prince George's, Somerset, and Wicomico counties; Maryland Association of Counties; Maryland State Department of Education; Public School Construction Program; Department of Budget and Management; Department of General Services; Board of Public Works; Maryland Stadium Authority; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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

## Appendix – State Funding for Public School Construction

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### *School Construction Review and Approval Process*

As enacted by Chapter 14 of 2018 (the 21<sup>st</sup> 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 updated the space allocations in 2019. IAC also establishes, on an annual basis, a *cost per square foot* that is applicable to major school construction projects. For fiscal 2021, the cost per square foot is \$329 for new construction *without* site development (up from \$318 in fiscal 2020) and \$391 for new construction *with* site development (up from \$378 in fiscal 2020). 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 21<sup>st</sup> Century School Facilities Act requires that the cost-share formula be recalculated every two years (previously, statute required recalculation every three years). **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2021 and 2022, as approved by IAC. Counties whose calculated State share would have been lower in fiscal 2021/2022 than in fiscal 2020 were held harmless 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 surpassed the fiscal 2019 goal with a total of \$435.4 million approved for public school construction funding and again surpassed the \$400 million threshold in fiscal 2020. **Exhibit 2** shows annual State public school construction funding from fiscal 2016 through 2020, by county.

The Governor’s proposed fiscal 2021 capital budget includes \$280.0 million in general obligation (GO) bonds for IAC’s Capital Improvement Program (CIP) 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 required by statute. It also includes \$400 million in funding from the sale of revenue bonds for additional public school construction projects. This includes \$340.0 million for capital construction projects (which supplements the \$280.0 million in CIP funding), \$30.0 million mandated for the Healthy School Facility Fund as established by Chapter 561 of 2018, \$20.0 million for a revolving loan fund created by Chapter 14 to assist local governments in forward funding school construction projects, and \$10.0 million mandated for the School Safety Grant Program in Chapter 14.

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**Exhibit 1**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2021 and 2022**

<b>County</b>	<b>FY 2021 and 2022</b>
Allegany	89%
Anne Arundel	50%
Baltimore City	96%
Baltimore	57%
Calvert	53%
Caroline	87%
Carroll	59%
Cecil	66%
Charles	65%
Dorchester	82%
Frederick	64%
Garrett	50%
Harford	63%
Howard	55%
Kent	50%
Montgomery	50%
Prince George's	70%
Queen Anne's	51%
St. Mary's	58%
Somerset	100%
Talbot	50%
Washington	79%
Wicomico	100%
Worcester	50%
MD School for the Blind	93%

Source: Interagency Commission on School Construction

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**Exhibit 2**  
**State Public School Construction Funding**  
**Fiscal 2016-2020**  
**(\$ in Thousands)**

<b>County</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Allegany	\$10,837	\$24,242	\$12,873	\$3,950	2,840
Anne Arundel	39,419	42,598	36,829	28,832	36,940
Baltimore City	36,788	37,500	37,303	68,735	41,062
Baltimore	42,177	45,775	45,186	41,865	45,442
Calvert	1,500	9,964	14,575	9,763	2,165
Caroline	2,902	36	1,646	423	11,603
Carroll	6,415	3,418	3,853	6,853	7,604
Cecil	4,723	6,650	6,730	5,152	3,871
Charles	12,817	8,951	10,516	14,856	13,938
Dorchester	179	5,009	10,975	11,026	4,068
Frederick	21,000	21,295	19,564	19,178	16,636
Garrett	0	0	1,567	0	443
Harford	9,309	8,732	13,592	12,278	12,964
Howard	27,820	31,206	21,066	10,374	8,062
Kent	615	0	0	0	1,433
Montgomery	45,708	50,128	59,194	59,714	58,768
Prince George's	41,729	44,675	49,625	49,031	50,247
Queen Anne's	0	249	2,455	806	657
St. Mary's	7,015	1,273	815	6,347	4,780
Somerset	2,222	1,771	14,720	17,500	3,161
Talbot	308	0	0	8,390	9,000
Washington	8,404	4,847	2,592	12,042	11,671
Wicomico	7,440	10,373	11,847	9,971	11,070
Worcester	72	0	0	4,336	4,336
MD School for the Blind	8,616	6,000	9,376	14,000	7,401
Statewide	175	300	500	20,000	40,000
<b>Total</b>	<b>\$338,190</b>	<b>\$364,992</b>	<b>\$387,399</b>	<b>\$435,422</b>	<b>\$410,162</b>

Note: Includes 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. Allocated funds include 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 and 2020. Statewide funds include outside review contractual costs in fiscal 2016-2018; School Safety grants in fiscal 2019 (\$20 million) and 2020 (\$10 million); and Healthy School Facility grants in fiscal 2020 (\$30 million). Funding for projects supported by Maryland Stadium Authority revenue bonds is not included.

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