HB 1381

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1381 (Delegate Reilly)
Appropriations

Education - Publicly Funded Prekindergarten - Payments to Private Providers and Building Use

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This bill alters the definition of prekindergarten enrollment for private prekindergarten providers within the full-day prekindergarten program. The Maryland State Department of Education (MSDE) must forward fund the State and local share under the program to eligible private prekindergarten providers or provide a pay guarantee of not greater than 30 days. An eligible private prekindergarten provider, in addition to a local board of education, may use specified spaces for prekindergarten. The Interagency Commission on School Construction (IAC) and MSDE may not establish prekindergarten space requirements, as specified. A local board of education may apply for funding for prekindergarten spaces, as specified. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: State expenditures under the full-day prekindergarten program decrease by approximately $4.4 million in FY 2025 and by approximately $22.9 million by FY 2029. As discussed below, the bill alters State expenditures under two other State aid programs, but the effect cannot be estimated at this time and is not reflected below. Revenues are not affected. **This bill decreases a mandated appropriation.**

($ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	0	0	(16.0)	(22.9)
SF Expenditure	(4.4)	(7.6)	(11.2)	0	0
Net Effect	$4.4	$7.6	$11.2	$16.0	$22.9

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

Local Effect: As discussed below, in some counties, county government appropriations benefiting private prekindergarten providers decrease. Revenues for prekindergarten through IAC are not materially affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Prekindergarten enrollment" means, for private prekindergarten providers:

- for fiscal 2025, the average number of Tier I children enrolled with an eligible private prekindergarten provider in the three prior school years plus the number of Tier II children enrolled with an eligible private prekindergarten provider;
- for fiscal 2026, the average number of Tier I children enrolled with an eligible private prekindergarten provider in the three prior school years plus the average number of Tier II children enrolled with an eligible private prekindergarten provider in the two prior school years; and
- for fiscal 2027 and each fiscal year thereafter, the average number of Tier I and Tier II children enrolled with an eligible private prekindergarten provider in the three prior school years.

A local board *and an eligible private prekindergarten provider* may partner with the State or the county government to address physical space constraints for eligible prekindergarten providers by utilizing existing available space at a location that is not an eligible prekindergarten provider including senior care facilities, community centers, *county government facilities, or hospitals.* IAC and MSDE may not establish space requirements for prekindergarten space in public buildings that are not schools.

A local board may apply for funding from the *Capital Improvement Program* (CIP) to lease public facilities for prekindergarten space. The management of the leased public facility is the responsibility of the building owner and not the county board.

Current Law:

Publicly Funded Full-day Prekindergarten Program

Chapter 36 of 2021 established a new funding formula providing for voluntary full-day prekindergarten for four-year-olds and three-year-olds from low-income families (Tier I). Chapter 119 of 2023 added homeless youths to Tier I. "Low-income" is defined as at or below 300% of the federal poverty level (FPL). MSDE must develop a sliding scale to calculate the family share for families with income above 300% of FPL. Beginning in the 2024-2025 school year (fiscal 2025), four-year-olds from families whose income is between 300% and 600% of FPL (Tier II) may be offered full-day prekindergarten if space is available to encourage socioeconomic diversity in prekindergarten classrooms. Priority in expanding full-day prekindergarten slots is given to three- and four-year-olds who are (1) Tier I children; (2) children with disabilities, regardless of income; or (3) children from homes where English is not the primary spoken language. For four-year-olds from families with income above 600% (Tier III), the family share covers the full cost of full-day prekindergarten. However, a local board may provide up to 100% of the family share on behalf of the family. A Head Start provider that receives federal funds is not prohibited from receiving full-day prekindergarten funding. “Prekindergarten enrollment” means (1) beginning in fiscal 2023, the number of Tier I children enrolled with an eligible prekindergarten provider and (2) beginning in fiscal 2025, the number of Tier I and Tier II children enrolled with an eligible prekindergarten provider.

Proportion of Slots Provided by Private Providers

Beginning in the 2022-2023 school year, prekindergarten slots provided by eligible private providers must account for at least 30% of the total prekindergarten slots provided by eligible prekindergarten providers in each county. The proportion of eligible private provider prekindergarten slots in each county increases by 5 percentage points every school year, until, in the 2026-2027 school year, and each subsequent school year, eligible private provider prekindergarten slots account for at least 50% of eligible prekindergarten provider prekindergarten slots in each county.

MSDE *must* issue a waiver from the above-described minimum requirements if (1) all families in the county who desire to enroll their eligible children with eligible prekindergarten providers are able to do so or (2) after reasonable cross-jurisdictional or regional efforts, there are too few eligible private providers. MSDE *may* exclude from the minimum requirement, by annual waiver, Tier I children who are (1) three years old in a county, until the 2029-2030 school year and (2) four years old in a county until the 2026-2027 school year.

Blueprint for Maryland’s Future and Education Funding Formulas

Blueprint legislation (including Chapter 771 of 2019, Chapters 36 and 55 of 2021, and Chapter 33 of 2022) established new programs and updated education funding formulas, to, among other provisions, provide additional support for schools serving high concentrations of students living in poverty, including community schools and wraparound services, and increased support for students learning English and students with disabilities. The great majority of direct State aid to public schools (excluding teachers’ retirement) is determined by enrollment-based funding formulas generally found in Title 5, Subtitle 2 of the Education Article. Collectively, the formulas account for a uniform base cost per pupil that is necessary to provide general education services to students in every school system and address the additional costs associated with educating three student populations:

special education students; students eligible for free and reduced-price meals; and students who are English-language learners. Chapter 36 established additional major education aid programs.

Most State education aid formulas also include wealth equalization across counties, compensating for differences in local wealth by providing less aid per pupil to the more wealthy counties and more aid per pupil to the less wealthy counties. Although on the whole most State aid formulas are designed to have the State pay roughly one-half of program costs, the State's share for the less wealthy counties is higher than 50%, and the State's share for more wealthy counties is lower than 50%.

Maintenance of Effort and Local Share

Each year, the county government (including Baltimore City) is required to appropriate funds to the local board of education equivalent to the greater of the Maintenance of Effort (MOE) requirement or the local share amount of all wealth-equalized formulas. The per-pupil MOE amount is based upon the greater of (1) the prior year full-time equivalent (FTE) enrollment and (2) the three-year moving average of FTE enrollment. (There is a certain adjustment for fiscal 2024 MOE for specified counties.) The local share amount equals the local share of the foundation formula, compensatory education, English language learner, special education, comparable wage index (CWI), full-day prekindergarten, college and career ready, transitional supplemental instruction (through fiscal 2026), and career ladder grant programs. Also, counties that benefit from the compensatory education State funding floor are required to fund the local share of the concentration of poverty grant programs. However, for some counties, the combined local share across these several programs is subject to adjustments described below.

Education Effort Adjustment to Local Share Requirement

Local governments are required to fund the local share of the foundation program and the required local shares for several existing and new funding formula programs. The law also includes a mechanism for establishing a maximum local share that a county must fund each year. This involves "local education effort," which is determined for each county by dividing the county's local share of major education aid by the county's wealth. An "education effort index," which is the local education effort divided by the "State average education effort," is then determined. A "maximum local share" is calculated for each county, which is the county's local wealth multiplied by the State average education effort.

Each county with an education effort above 1.0 for two consecutive years receives relief based upon its "education effort adjustment," which is the amount by which the calculated local share exceeds the maximum local share. This relief (which results in increases to State aid) is provided to counties within one of three tiers, based on whether the education effort is (1) greater than 1.0 but less than 1.15; (2) at least 1.15 but less than 1.27; or (3) at least 1.27. State relief for the first tier is phased up from 15% of the education effort adjustment in fiscal 2023 to 50% by fiscal 2030. State relief for the second tier is phased up from 20% of the education effort adjustment in fiscal 2023 to 100% by fiscal 2030. State relief for the third tier is 100% beginning in fiscal 2023. However, the education effort adjustment for a county is only allowed to the degree that per-pupil MOE is met each year.

Additional Reductions to Local Share

A county may be eligible for a reduction in the required local share of major aid formulas in three additional ways: (1) if a county receives State funds from the Guaranteed Tax Base (GTB) program, the local share may be reduced by the amount of GTB funds, except that for Baltimore City only the amount above $10.0 million may be reduced from the local share; (2) if a county receives State funds to support the minimum funding floors of 15% for the foundation and 40% for the targeted programs; and (3) if a county has a CWI of at least 0.13, the local share of CWI may be reduced by 50%. However, in all of these cases, the local share may not be reduced below the required per-pupil MOE amount.

Guaranteed Tax Base

The GTB program is intended to encourage less wealthy jurisdictions to maintain or increase local education tax effort (*i.e.*, local education appropriation as a percent of local tax base). The program provides additional State education aid to counties that have less than 80% of the statewide average wealth per pupil and provide local education funding above the minimum local share required by the foundation program. The program uses local education tax effort and wealth to determine State aid amounts for each eligible school system.

School Construction Review and Approval Process

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 through the Public School Construction Program (PSCP). 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.

Public School Construction Program Funding Related to Leased Facilities

Leasing is among the expenditures that are generally *ineligible* for State funding under PSCP. IAC policy does, however, enable the allocation of State bond proceeds to capital-improvement projects in leased facilities that are not owned by a local education agency (LEA). The policy makes capital-improvement projects in nonLEA-owned leased facilities eligible for IAC allocation of State bond proceeds if specified criteria are satisfied. These criteria include a minimum 25-year lease duration.

LEAs may apply for funding from CIP or a Pass-through Grant, established in Chapter 344 of 2022, for capital improvements to facilities leased by the LEA or a nonLEA entity for a public school purpose. While these funds may be used solely for eligible school capital improvement expenses authorized under the program from which funding is being requested, eligible capital improvement expenses do not include operating expenses, including but not limited to, lease or rent payments, utilities, taxes, fees, maintenance, moveable furniture and equipment with a median useful life of less than 15 years, insurance, salaries, or wages.

School Space Provisions Related to Prekindergarten

IAC must prioritize public school construction funding requests for high quality prekindergarten classrooms and must consider the availability of private eligible prekindergarten providers when determining such prioritization. A local board may partner with the State or the county government to address physical space constraints for eligible prekindergarten providers by utilizing existing available space at a location that is not an eligible prekindergarten provider, including senior care facilities or community centers.

State Superintendent Oversight of School Building Projects and Specifications

Subject to the bylaws, rules, and regulations of the State Board of Education, and with exceptions, the State Superintendent, or the State Superintendent's designee, must approve or disapprove each:

- proposal for the purchase or sale of any ground, school site, or building;
- plan or specification for the remodeling of a school building if the remodeling costs more than $1.0 million;
- plan or specification for the construction of a new school building; and
- change order that costs more than $50,000 for the remodeling, restoration, or construction of a school building.

If the State Superintendent or designee disapproves any plan, specification, proposal, or change order, the State Superintendent or designee, must state in writing the reasons for the disapproval. If the construction is to be done by a county board, the board may not begin until the plans and specifications are approved in writing by the State Superintendent, or the State Superintendent's designee.

State Expenditures: State expenditures under the full-day prekindergarten program decrease by approximately $4.4 million in fiscal 2025 and by approximately $22.9 million by fiscal 2029. The Blueprint for Maryland's Future Fund (BMFF) is projected to have sufficient funds to cover mandated annual increases in expenditures for the Blueprint through fiscal 2027. However, current projections indicate that, under current law, revenues in BMFF, including prior-year fund balances, will not be sufficient to cover increases to annual expenditures under the Blueprint beginning in fiscal 2028. Thus, the bill is expected to relieve BMFF in fiscal 2025 through 2027, and to relieve the general fund beginning in fiscal 2028. These decreases likely also alter, to a lesser degree, State funding under the Education Effort Adjustment and GTB program. Because the estimates provided by MSDE for this analysis do not include county-by-county detail, the magnitude of these secondary changes cannot be estimated at this time.

The bill maintains the annual per-pupil funding amounts under the full-day prekindergarten program for children served by both public and private providers. However, the bill alters, for purposes of calculating aid formula funding, the count of children served by private providers. Because, under current law, student counts under the full-day prekindergarten program are anticipated to increase annually through fiscal 2029 (the period covered by this fiscal and policy note) and beyond, and because the proportion of those counts served by private providers is required to reach 50% by fiscal 2027, the averaging of private provider student counts is expected to suppress the count used within the relevant funding formula. Based upon statewide private provider prekindergarten student count estimates provided by MSDE, **Exhibit 1** shows the estimated change in student counts under the bill and the related decreases in State special fund expenditures, in fiscal 2025 through 2029.

Exhibit 1
Change in Student Counts and State Expenditures under the Bill
Full-day Prekindergarten Program
Fiscal 2025-2029
($ in Millions)

Fiscal Year	Student Counts	State Expenditures
2025	(669)	($4.4)
2026	(1,065)	($7.6)
2027	(1,471)	($11.2)
2028	(1,960)	($16.0)
2029	(2,605)	($22.9)

Source: Maryland State Department of Education; Department of Legislative Services

Facility Space for Prekindergarten

While IAC sets size specifications with respect to what the State will fund, it does not limit the overall size of projects, and it does not set space requirements. Thus, the bill's prohibition on IAC establishing space requirements for prekindergarten space in public buildings that are not schools is assumed to be consistent with current practice and to have no impact on State expenditures. The same prohibition with respect to MSDE is anticipated to have no material impact on MSDE expenditures, given that approval of school specifications is assumed to predominantly involve schooling space not covered by the bill.

Though the bill authorizes a local board to apply for CIP funding to lease public facilities for prekindergarten space, it is assumed that generally such applications are summarily rejected given that IAC does not generally provide funding for leases under PSCP. It is assumed that this provision of the bill also does not affect IAC expenditures. While the increased flexibility under the bill may increase capacity to serve students through the full-day prekindergarten program, the impact on student counts cannot be estimated at this time.

Local Fiscal Effect: Statewide, local share under the full-day prekindergarten program is equal to State aid under the program. Thus, statewide local share under the program decreases by the same annual amounts as shown in Exhibit 1. Because the minimum local effort is the greater of combined local share (after application of relief provisions) or MOE, the annual impact on local expenditures statewide will be considerably less than the impacts shown in Exhibit 1 and will be nonexistent for some local governments. Because estimates provided by MSDE lack county-by-county detail, precise impacts on local expenditures cannot be estimated at this time.

As explained above, it is assumed that the bill has minimal impact on CIP funding for local boards of education, as it is assumed that most requests are rejected due to current policies regarding funding for leasing properties using CIP funds.

Small Business Effect: Private prekindergarten providers, many of which are small businesses, receive less funding under the bill, in the form of diminished State and local funding, as discussed above.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City Public Schools; Anne Arundel County Public Schools; Baltimore County Public Schools; Interagency Commission on School Construction; Maryland State Department of Education; Department of Legislative Services

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Analysis by: Scott P. Gates

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