

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Board of Public Works
(DLS Control No. 14-199)**

Overview and Legal and Fiscal Impact

The regulation requires that all school construction projects that include constructing, replacing, or upgrading the electrical system be designed and constructed to be fully-powered in the event of an emergency.

The regulation presents no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulation of COMAR Affected

Board of Public Works:

Public School Construction: Administration of the Public School Construction Program:
COMAR 23.03.02.29

Legal Analysis

Summary of Regulation

The regulation requires all school construction projects that include new construction, replacement, or upgrade of the electrical system to be designed and constructed to be fully powered in the event of an emergency so that the facility can be used as a public shelter. This requirement already applies to the replacement or upgrade of the electrical system and the regulation makes the requirement applicable to new construction projects as well. The regulation defines “fully power”, “public shelter”, and “replacement” and “upgrade” of the electrical system.

The regulation also clarifies that local officials must consult with the Maryland Emergency Management Agency to determine areas of the facility that are necessary for public safety when circumstances require use of the facility as a public shelter. A local education agency must then ensure that the areas determined by the Maryland Emergency Management Agency are designed and constructed to be fully powered in the event of an emergency through a permanent, onsite emergency power source or other means to accept a temporary emergency power source.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Board of Public Works cites §§ 4-126, 5-112, and 5-301 of the Education Article and § 5-7B-07 of the State Finance and Procurement Article as legal authority for the regulation. Section 5-301(d)(1) of the Education Article gives the Board of Public Works authority to adopt regulations for the administration of the public school construction program, including the approval of specifications for the construction of new school buildings or the improvement of existing buildings. This authority is correct and complete.

The other sections cited by the Board of Public Works are not relevant to the regulation: Section 4-126 of the Education Article allows alternative financing methods to be used in public school construction and section 5-112 requires advertisements for bids to be conducted if the cost of any school building, improvement, supplies, or equipment exceeds \$25,000. Section 5-7B-07 of the State Finance and Procurement Article states that the emphasis of funding for public school construction shall be to target the rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools.

The regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

When the Executive Director of the Interagency Committee on School Construction, Dr. David Lever, was made aware that the definitions in the regulation are not in alphabetical order, Dr. Lever agreed to contact the Division of State Documents to make this correction.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The board, through the Public School Construction Program, advises that the regulation has no material fiscal effect on State or local agencies because it generally aligns regulations with existing practice. The Department of Legislative Services generally concurs as it has been standard practice in recent years to require new and replacement schools to meet design requirements necessary to serve as shelters. Nevertheless, these design requirements will increase costs for individual projects, which may be proportionally shared by the State and county governments, but do not *necessarily* change the *total* expenditures for either the State or county governments in a particular year. Costs not covered by the State will be covered by the affected county government. Any impact is expected to be minimal and does not necessarily impact the budget, as discussed below.

Impact on Budget

There is no material impact on the State operating or capital budget. An increase in costs for an individual project does not necessarily result in an increase in total costs for the State (or a county government) as fewer projects may be undertaken to stay within a budgetary limit.

Agency Estimate of Projected Small Business Impact

The board advises that the regulation has a meaningful effect on small businesses in the State but that the effect cannot be reliably estimated since the number of schools affected and the type of technology employed in their construction cannot be anticipated. The Department of Legislative Services disagrees. The regulation generally conforms to existing practice, so any impact on small businesses that work on school construction projects is minimal.

Contact Information

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