

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Board of Public Works
(DLS Control No. 15-058)**

Overview and Legal and Fiscal Impact

These regulations update the State share percentages of public school construction funding and adopt standards regarding the indoor air quality of relocatable classrooms in public schools.

The regulations present no legal issues of concern, but additional comments have been included in the special notes section below for the Administrative, Executive, and Legislative Review Committee's consideration.

There is no fiscal impact on State agencies, but there may be an impact on local agencies.

Regulations of COMAR Affected

Board of Public Works:

Public School Construction: Administration of the Public School Construction Program:
COMAR 23.03.02.05, and .06
Alternative Financing: COMAR 23.03.05.02
Relocatable Classroom Indoor Environmental Quality Standards:
COMAR 23.03.06.01, .02, .03, and .04

Legal Analysis

Background

Chapter 284 of 2014 requires the Board of Public Works, in consultation with the Department of General Services and the Department of Housing and Community Development to adopt regulations that establish criteria to enhance the indoor air quality for relocatable classrooms built after July 1, 2014, that are purchased or leased with State or local funds.

Summary of Regulations

State Share Percentages of Public School Construction Costs

The regulations set the maximum State Share of public school construction funding for eligible costs of approved projects beginning in fiscal year 2019 at 98%. The regulation also sets the State share percentages of public school construction funding for eligible costs of approved projects for each county for fiscal years 2016, 2017, and 2018, and set the State share percentage for the Maryland School for the Blind for approved projects at 93%.

Administration of Public School Construction Program and Alternative Financing

The regulations correct an internal cross-reference and make a stylistic change.

Relocatable Classroom Indoor Environmental Quality Standards

A new chapter is added to set standards for the indoor environmental quality of relocatable classrooms. The regulations require that relocatable classrooms used for student instruction at public schools must conform to Indoor Environmental Quality Standards that meet the Maryland Green Building Council International Green Construction Code Supplement and either the Model Performance Code for pre-manufactured units or the local building codes for locally constructed relocatable classrooms. The regulations only apply to relocatable classrooms constructed on and after July 1, 2015.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The board 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 these regulations. More specifically, § 5-301 of the Education Article requires the Board to adopt regulations (1) on eligible and ineligible public school construction or capital improvement costs; (2) establishing criteria to enhance indoor air quality of relocatable classrooms; and (3) 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 and the establishment of the State and local cost-share formula for each county.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Special Notes

Chapter 284 requires that the board establish criteria to enhance the indoor air quality for relocatable classrooms built after July 1, 2014, but the regulations only apply to relocatable classrooms constructed on and after July 1, 2015. When asked about this discrepancy, the State Department of Education indicated that, on recommendation of the Maryland Green Building Council, submission of the regulations to the board was delayed until the Maryland Green Building Council International Green Construction Code was approved in December 2014. Additionally, because Chapter 284 applies prospectively, the regulations will also apply prospectively to conform to the legislative intent of Chapter 284.

Fiscal Analysis

There is no fiscal impact on State agencies, but there may be an impact on local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations alter the State share of eligible public school construction costs for fiscal 2016 through 2018. The State and local cost share formula is updated every three years as required by Chapters 306 and 307 of 2004. Altering the State share of costs does not impact total State funding provided for public school construction each year, but it may alter the allocation of State funds among individual projects and counties. The amount of required local funds for eligible school construction projects will increase for 8 counties and decrease for 10 counties in fiscal 2016-2018; this may impact the total local funds provided by each county for public school construction, or more (or fewer) projects may be funded by counties. The regulations also limit the State share of costs for any project to 98% beginning in fiscal 2019. Thus, the State share for Somerset County will decrease from 100% in fiscal 2016-2018 to at most 98% in fiscal 2019.

The regulations also implement provisions of Chapters 284 and 285 of 2014, which required the Board of Public Works, in consultation with specified agencies, to adopt regulations that establish criteria to enhance the indoor air quality for relocatable classrooms built after July 1, 2014, that are purchased or leased with State or local funds. The board advises that the regulations may increase the cost of purchasing relocatable classrooms for local school boards because new relocatables must meet higher standards for indoor air quality than those purchased before July 1, 2015. The Department of Legislative Services disagrees as any such increase was already anticipated in the fiscal and policy notes developed for Chapters 284 and 285. There is no anticipated increase in expenditures for the State because the State no longer purchases relocatable classrooms.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The board advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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