

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Board of Public Works  
(DLS Control No. 16-001)**

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## **Overview and Legal and Fiscal Impact**

This regulation provides that the cost of window air conditioning units in certain schools may be eligible for State funding.

The regulation presents no legal issues of concern.

There is no fiscal impact on State agencies. Local school boards may request State school construction funds to purchase and install window air conditioning units in schools that are not “temperature-controlled,” subject to the State/local cost-share formula. The Public School Construction Program (PSCP) can implement the regulation with existing resources. Although the regulation applies to classrooms that are not “temperature-controlled,” the Department of Legislative Services advises that temporary heating devices may be considered a fire hazard by the Fire Marshal; thus, the fiscal analysis only addresses the impact of installing air conditioning units.

## **Regulation of COMAR Affected**

### **Board of Public Works:**

Public School Construction: Administration of the Public School Construction Program:  
COMAR 23.03.02.11

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## **Legal Analysis**

### **Background**

In September 2015, Baltimore City and Baltimore County schools had to close early due to the combination of high heat and humidity and the lack of air conditioning in many schools. On January 27, 2016, the Board of Public Works voted to use State funding to finance window air conditioners in certain schools, overriding the Interagency Committee on School Construction’s (IAC) policy against using these funds in this manner. The IAC manages State review and approval of local school construction projects, subject to the final approval of the board.

### **Summary of Regulation**

The regulation specifies that schools where more than half of the classrooms are not temperature-controlled are eligible for State funding for window air conditioning units, including

the costs associated with electrical upgrades, installation, and security. The regulation prohibits the IAC from making a recommendation to decrease funding from the maximum State construction allocation for future renovation projects based on the funding of window air-conditioning units and their associated costs. Additionally, a Local Educational Authority that receives funding for window air-conditioning units must annually certify that the units are being maintained and are operable.

The regulation also repeals a provision that only applies for fiscal years 2010 through 2014.

## **Legal Issues**

The regulation presents no legal issues of concern. However, additional comments have been included in the *Technical Corrections and Special Notes* section below for the consideration of the Joint Committee on Administrative, Executive, and Legislative Review.

## **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 statutory authority for the regulation. Section 4-126 of the Education Article authorizes a county to use alternative financing methods in public school construction under certain circumstances and requires the board to adopt regulations (1) that require a project qualifying for alternative financing to meet certain requirements regarding the advantages of the project to the public and (2) recommended by the IAC implementing the provisions regarding alternative financing for public school construction. Section 5-112 sets forth procedures for the award of contracts for school building, improvement, supplies, or equipment over \$25,000. Section 5-301 requires the board to adopt regulations defining what constitutes an eligible and ineligible public school construction cost. The board must also adopt regulations regarding the administration of State funding for public school construction projects and other capital improvements, including (1) the development and submission of certain plans and other information; (2) the approval of sites, plans, and specifications for new schools and improvements to existing schools; (3) the school construction and capital improvements necessary or appropriate for the proper implementation of the section; and (4) establishing certain State and local funding formulas and the allocation of certain State funds.

Section 5-7B-07 of the State Finance and Procurement Article sets forth that the policy of the State in funding public school construction projects is to target the rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools. The IAC is also required to continue to review and make recommendations on school funding projects to the board.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

## **Technical Corrections and Special Notes**

The Department of Legislative Services made inquiries with the board as to the intent of the wording in the regulation that requires that eligible schools are ones in which “more than half of classrooms are not temperature-controlled” since it is unclear whether “temperature-controlled” referred to classrooms that lack air conditioning only, classrooms that lack heating only, or to classrooms that lack both air conditioning and heating. The Department was informed that the board discussed the use of “temperature-controlled,” and that the wording was chosen deliberately.

## **Fiscal Analysis**

There is no fiscal impact on State agencies. Local school boards may request State school construction funds to purchase and install window air conditioning units in schools that are not “temperature-controlled,” subject to the State/local cost-share formula. PSCP can implement the regulation with existing resources. Although the regulation applies to classrooms that are not “temperature-controlled,” the Department of Legislative Services advises that temporary heating devices may be considered a fire hazard by the Fire Marshal; thus, the fiscal analysis only addresses the impact of installing air conditioning units.

## **Agency Estimate of Projected Fiscal Impact**

The regulation makes window air conditioning units and associated installation, electrical upgrades, and security an eligible expense under PSCP. This enables local school systems to apply for State funding to purchase and install window air conditioning units, which are currently an ineligible cost, in schools that do not have central or window air conditioning in more than one-half of the classrooms. The regulation also prohibits future PSCP funding for a school that receives funding for window air conditioners from being reduced by the amount of funding received for window air conditioners, which is standard procedure in PSCP regulations for PSCP funding received for the same school over a 15-year period. The Board of Public Works (BPW) advises that the regulation has no effect on State finances, and the Department of Legislative Services generally concurs. Altering the uses of PSCP funds does not increase the funds allocated to PSCP in the annual capital budget. To the extent that PSCP funds are used for window units, fewer funds are available for other capital school construction needs. Likewise, prohibiting the reduction of future PSCP funding for a school that receives window air conditioners results in fewer funds being available for other school construction projects. Prohibiting the reduction of future PSCP funding by the amount spent on temporary window air conditioning units allows “double dipping” by local school boards for heating, ventilation, and air conditioning systems, but since the average cost per window unit is \$9,700 installed, the cost is minimal.

## **Impact on Budget**

There is no impact on the State operating or capital budget except that, to the extent that PSCP funds are used to purchase and install window air conditioning units, fewer funds are available for other school construction projects.

## **Agency Estimate of Projected Small Business Impact**

BPW advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Additional Comments**

A recent survey by the Maryland State Department of Education found that only four school systems have more than one school building without air conditioning: Baltimore City (67 buildings); Baltimore County (47 buildings); Garrett County (9 buildings); and Wicomico County (3 buildings). In all school systems except Baltimore City, the number of schools without air conditioning encompasses schools that have neither central nor window air conditioning. The 67 schools in Baltimore City are those that do not have central air conditioning; some schools do use window units already, so the comparable number for Baltimore City is somewhat smaller, but a reliable estimate is not available. Also, schools in all school systems that are currently installing either central air conditioning or window units are counted as not having air conditioning until the work is completed. Finally, it is not known how many of the schools reported in the survey have no air conditioning in more than one-half of their classrooms.

### **Contact Information**

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