

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

Senate Bill 736 (Senator Hogan, *et al.*)
 Budget and Taxation

Education - Maryland Public Education Facilities Act

This bill establishes the Maryland Public Education Facilities Act to: (1) encourage the use of alternative financing mechanisms, private capital, and other funding sources for the construction and improvement of public school facilities; (2) accelerate and improve the financing for qualified education facilities; and (3) provide public and private entities with the greatest possible flexibility in contracting with each other.

Fiscal Summary

State Effect: General fund expenditures would increase by \$69,300 in FY 2005 and by \$26,800 in FY 2006. Revenues would not be affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	69,300	26,800	0	0	0
Net Effect	(\$69,300)	(\$26,800)	\$0	\$0	\$0

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

Local Effect: Local funding for school construction projects would be significantly affected by the bill's provisions. Local school construction projects that are currently being delayed due to lack of funding could be moved forward through the use of alternative financing methods.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Major provisions of the Maryland Public Education Facilities Act include:

Issuance of Tax-exempt Municipal Bonds

The local governing body may issue debt for a qualifying project through the issuance of tax-exempt municipal bonds in cases where no State funds are provided for the project. In cases where State funds are provided for the project, the local governing body may issue tax-exempt municipal bonds for a qualifying project upon receiving approval from the Board of Public Works (BPW) and meeting other specified conditions. Debt issued through tax-exempt municipal bonds can be combined with the public infrastructure project bond issuance of the Department of Housing and Community Development.

Procurement Methods

The procurement by a local board of education or local governing body for a qualified education facility may be by competitive sealed proposals, solicited proposals, or unsolicited proposals. Alternative procurement methods can also be used including: (1) sale-lease-back arrangements; (2) lease-lease-back arrangements; (3) partnership agreements; (4) performance-based contracting; (5) design-build arrangements; and (6) construction management and at-risk arrangements.

Use of Surplus Land

A local governing body or local board of education may use any surplus land in exchange for construction or development services.

Approval of Proposals

A private entity requesting approval from, or submitting a proposal for, qualified education facilities must give notice to each affected local jurisdiction by providing a copy of its request or proposal to the local governing body. A proposal from a private entity for a qualified education facility cannot be accepted unless the project is within the local board's approved six-year capital improvement plan prior to the date of receipt of the proposal by the local governing body or local board of education.

Prior to the formal approval of a proposal submitted by a private entity, a local board of education or local governing body must enter into a comprehensive agreement with the private entity.

Protections

In the event of material default, the local board of education or local governing body may: (1) assume the responsibilities and duties of the private entity for the project; (2) exercise power of condemnation to acquire the facility; and (3) with cause, terminate the comprehensive agreement. Qualified education facilities must conform to all of the requirements of the Education Article and the State Finance and Procurement Article.

Model Procedures and Regulations

BPW and the Interagency Committee on School Construction (IAC) must consult with local boards of education, the Maryland General Assembly, and private entities that are experienced and successful in completing alternatively financed public school construction projects for the purpose of adopting model procedures and regulations. The procedures and regulations must: (1) include guidelines for the acceptance and evaluation of solicited and unsolicited proposals; (2) require the execution of a comprehensive agreement for the completion of qualified education facilities; (3) provide for the prequalification of bidders or offerors; (4) require compliance with requirements applicable to qualified projects that otherwise would be in effect under the State procurement law if the procurement were competitively bid; (5) require adherence to any applicable wage rates or requirements for minority business enterprise participation established under the State procurement law; and (6) meet other requirements as BPW determines. On adoption, the model procedures and regulations are mandatory for any public entity that elects to use an alternative procurement method.

Current Law: BPW defines by regulation what constitutes an approved public school construction or capital improvement cost. Alternative financing methods are not authorized for public school construction projects.

Background: In 2002, the Bridge to Excellence in Public Schools Act (Chapter 288) established a Task Force to Study Public School Facilities. The task force was directed to look at whether the State's public school facilities are adequate to sustain programs provided for under the Act and supported by proposed funding levels. In completing its charge, the task force undertook an assessment of the current conditions of the State's existing public schools. The survey indicated that \$3.9 billion is needed to bring existing public schools up to standards, of which \$1.5 billion is needed for additional student capacity for the 2007-2008 school year. **Appendix 1** shows the amount of needed funds in each county.

This legislation is similar to provisions in the Virginia Public-Private Education Facilities and Infrastructure Act of 2002. According to the Public School Construction Program

(PSCP), several jurisdictions in Virginia, including Chesterfield, Stafford, and Fairfax counties, are applying public-private agreements in funding public school facilities.

State Fiscal Effect: To develop the required regulations and procedures, PSCP would need to hire outside consultants with alternative financing experience related to the procurement, legal, and technical issues involved in such arrangements. As shown in **Exhibit 1**, these costs will total \$69,300 in fiscal 2005 and \$26,800 in fiscal 2006. Existing PSCP staff will monitor the work of the consultants and provide technical assistance to local school systems.

Exhibit 1
PSCP Administrative Costs

	<u>Fiscal 2005</u>	<u>Fiscal 2006</u>
Consultants	\$60,000	\$24,000
Workshops/Travel	4,800	2,500
Other Expenses	<u>4,500</u>	<u>300</u>
Total	\$69,300	\$26,800

Local Fiscal Effect: This legislation authorizes local school systems and local governing bodies to use alternative financing methods to build public school facilities. In alternative financing, a government entity does not issue its own debt; instead, a private party serves as an intermediary and secures financing. Typically, the government entity repays the cost of financing through its operating budget. The principal types of alternative financing are lease-lease-back, sale-lease-back, performance-based contracting, and public-private partnerships.

The task force found that traditional municipal bond financing is the least expensive and most efficient financing method available for public school construction. Alternative methods may be desirable when the financial benefits of completing a project quickly outweigh the additional cost over time or when a limited project scope warrants a performance-based contracting approach.

Small Business Effect: Assuming this legislation facilitates the construction of new public school facilities, architectural, engineering, construction, and service firms throughout Maryland would realize additional business. As of calendar 2002, there were 17,000 construction firms in Maryland employing 165,725 individuals. Construction workers earned a total of \$6.8 billion in wages, averaging approximately \$800 per week

per worker. The construction industry accounts for approximately 7% of total employment in Maryland. In addition, there are 5,750 licensed architects and 13,500 professional engineers in Maryland.

Additional Information

Prior Introductions: None.

Cross File: HB 1212 (Delegate Hixson, *et al.*) – Appropriations.

Information Source(s): Maryland State Department of Education, Public School Construction Program, Department of Legislative Services

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Appendix 1
Cost Estimates to Bring Facilities Up to Current
Standards for New Construction

<u>Local School System</u>	<u>Estimated Cost</u>
Allegany	\$71,426,000
Anne Arundel	336,458,000
Baltimore City	570,599,000
Baltimore	408,845,000
Calvert	102,911,000
Caroline	5,435,000
Carroll	135,297,000
Cecil	46,873,000
Charles	178,419,000
Dorchester	33,816,000
Frederick	203,625,000
Garrett	20,142,000
Harford	204,666,000
Howard	168,727,000
Kent	1,180,000
Montgomery	279,307,000
Prince George's	778,225,000
Queen Anne's	9,666,000
St. Mary's	52,530,000
Somerset	9,030,000
Talbot	18,989,000
Washington	93,827,000
Wicomico	69,993,000
Worcester	54,122,000
Total Cost	\$3,854,108,000

Note: Costs reported by local school systems in July 2004 dollars and includes both State and local costs.
Source: Public School Construction Program