

**Department of Legislative Services**  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

House Bill 901 (Delegate Bronrott, *et al.*)  
Health and Government Operations and Appropriations

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**Education - New School Construction - Price Preference for High Performance Buildings**

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This bill requires the Board of Public Works (BPW) to develop regulations that require the Interagency Committee on School Construction (IAC) to establish a price preference not exceeding 5% for new school buildings constructed as high performance buildings. Local school systems must submit a detailed description of a proposed new school building to the Department of Budget and Management (DBM) before funding for the project is authorized.

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**Fiscal Summary**

**State Effect:** Total State expenditures for public school construction would not be affected, but the increased costs associated with high performance buildings could reduce the number of projects funded in any year.

**Local Effect:** Local expenditures could increase for design and construction of high performance buildings. Over time, however, high performance buildings could generate sufficient cost savings or avoidance to recover the cost premium.

**Small Business Effect:** Potentially meaningful, to the extent that school construction contractors and subcontractors are small businesses and submit bids to build high performance school buildings subject to the price preference.

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## Analysis

**Current Law:** The State pays at least 50% of eligible costs of school construction and renovation projects, based on a funding formula that takes into account each local school system's ability to pay. **Exhibit 1** shows the current State share of eligible school construction costs for all Maryland jurisdictions. However, local school systems have sole responsibility for procuring school construction contracts once the State has approved funding for a school construction project. Since local school systems are not considered units of the State, State procurement law and regulations do not apply to them. However, IAC regulations require adherence to most State procurement requirements for a project receiving State funding.

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### Exhibit 1 State Share of Eligible School Construction Costs Fiscal 2006-2008

50%	Anne Arundel, Baltimore, Kent, Montgomery, Talbot, Worcester
58%	Howard
65%	Carroll, Harford, Washington
69%	Calvert
70%	Cecil, Charles, Garrett, Queen Anne's
72%	Frederick, St. Mary's
75%	Prince George's*
77%	Dorchester
81%	Wicomico
89%	Caroline
90%	Allegany
97%	Baltimore City, Somerset

\*For fiscal 2006-2008, the State match for Prince George's County is 75% for funding allocated up to \$35 million, and 69% for funding allocated in excess of \$35 million.

Source: Public School Construction Program

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Subject to the final approval of BPW, 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. Subsequently, each local school system submits a capital improvement plan to IAC that includes projects for which it seeks planning approval, projects for which it seeks funding approval, and projects that the local system has forward funded. 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 recommend to BPW for State funding. By December 31 of each year, IAC recommends to BPW projects comprising 75% of the total projected school construction allocation projected to be available. Local school districts may then appeal IAC recommendations directly to BPW. In May following the legislative session, IAC recommends projects comprising the remaining 25% of the projected allocation and any additional funds that may have been included in the capital budget bill for school construction.

Chapter 459 of 2005 defines a high performance building as one that:

- achieves at least a silver rating according to the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) rating system as adopted in 2001 or subsequently by the Maryland Green Building Council;
- achieves at least a two globe rating according to the Green Globes Program as adopted by the Green Building Initiative (GBI);
- achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard; or
- meets nationally recognized, consensus-based, and accepted green building guidelines, standards, or systems approved by the State.

State procurement law currently authorizes three percentage price preferences:

- a 5% price preference for products made from recycled paper;
- a 5% price preference for products that are mercury-free; and
- a 5% price preference for locally-grown foods.

**Background:** A percentage price preference allows a procurement officer to award a contract to a bidder other than the bidder with the lowest responsible bid if the bidder with the higher bid meets the terms of the price preference. In the case of locally-grown foods, for instance, a bidder on a State food service contract who offers locally-grown food may be awarded the contract if his or her bid exceeds the lowest responsible bid without locally-grown food by 5% or less.

The fiscal 2008 *Capital Improvement Program* includes \$385.8 million in general obligation bonds for public school construction in fiscal 2008 and \$250 million annually in fiscal 2009 through 2012. Additional special funds of \$2.4 million are provided in fiscal 2008 through 2010. In total, approximately \$1.4 billion in State funding for school construction is planned over the next five years.

The USGBC is a national coalition of building industry leaders formed to promote construction that is environmentally responsible, profitable, and that creates healthy places to live and work. It claims more than 7,500 members and 75 regional chapters. USGBC developed LEED as a self-assessment tool that measures the extent to which a building meets green building criteria on six dimensions: sustainable sites, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process. Version 2.2 of the LEED system was released in October 2005. The rating scale has a maximum score of 69 points and four ratings:

- platinum (52-69 points);
- gold (39-51 points);
- silver (33-38 points); and
- certified (26-32 points).

GBI is a coalition representing industry, construction companies, architectural firms, and academic institutions to promote green building. Through a strategic partnership with the National Association of Home Builders, GBI developed the online Green Globes assessment tool that builders can use to measure the extent to which a building meets green building criteria on seven dimensions: project management, site, energy, water, resources and materials, emissions and effluents, indoor environment. The rating scale has a maximum score of 1,000 points and four ratings:

- 4 globes (85-100%);
- 3 globes (70-84%);
- 2 globes (55-69%); and
- 1 globe (35-54%).

To date, three State-funded buildings have been built as high performance buildings, although none of them are scheduled to be completed until summer 2007. According to the Department of General Services (DGS), the Hammerman Beach Services building at Gunpowder Falls State Park cost about 5.5% more than a nonhigh performance building would have cost. Two larger projects on the campus of St. Mary's College of Maryland

are estimated to carry a 3.5% cost premium. The Maryland Aviation Administration provided data on two LEED certified airport terminals, one in Salt Lake City and one in Boston. It estimated the initial cost premium of these two projects to be between 5% and 10%. DGS estimates a 10% cost premium for all high performance building plans, while DBM assumes a 5% cost premium.

Due to rising construction costs for nonhigh performance buildings, the construction cost gap between high performance and nonhigh performance buildings has been narrowing. Most estimates indicate that construction costs for high performance buildings are 3% to 5% higher than construction costs for nonhigh performance buildings, consistent with Maryland's limited experience.

**State Fiscal Effect:** The bill would not increase the total amount of State funding for school construction. However, providing a price preference of up to 5% for high performance buildings could result in fewer, more expensive projects being funded in any year. Currently IAC sets a maximum State construction allocation based on the approved cost per square foot for a project and applicable State share of eligible costs for the jurisdiction. This figure becomes the maximum State funding the project is eligible to receive. IAC staff advises that in order to implement the bill, it is likely IAC would increase the approved cost per square foot for high performance buildings by up to 5%.

The State's share of the increased cost for a project would increase based on the State cost share in that jurisdiction (at least half) as shown in Exhibit 1 and the local jurisdiction would bear the remaining cost (no more than half). The impact of the price preference on the total number of school construction projects funded annually would depend on the price preference adopted by IAC and the number of projects that qualify for the price preference.

Over time, however, high performance buildings could generate significant operational savings or cost avoidance, but the State would not reap those savings. For example, the two high performance airport terminals in Salt Lake City and Boston are estimated to reduce water usage by 20% and increase energy efficiency by as much as 30%. At these rates, those buildings could recover the additional cost of construction within 10 years. However, local school systems pay all school building operating costs, so they, not the State, would reap the cost savings or cost avoidance generated by high performance school buildings.

DBM estimates that it would need five new positions to review local proposals for new school buildings. However, the bill only requires local school systems to submit their proposals to DBM in advance of funding approval by IAC and BPW. It does not require

DBM to either review or approve the proposals, which is the purview of IAC. Therefore, the Department of Legislative Services does not believe the five new positions are justified.

**Local Fiscal Effect:** Local expenditures for school construction could increase for a high performance building. Depending on the amount of local funds budgeted annually for school construction projects, the number of projects funded in a year could decrease or a jurisdiction could incur additional expenditures. Local jurisdictions would bear their respective local share of increased construction costs for a high performance building (no more than 50%). In addition, local jurisdictions are solely responsible for the design costs associated with all school construction projects. Depending on how IAC incorporated the price preference into the regulations, local jurisdictions pursuing high performance building projects could also bear the additional design costs, which are generally estimated to be 2% higher for a high performance building. Finally, to the extent the number of projects funded by the State decreases as a result of this bill, local jurisdictions could choose to forward fund deferred or delayed projects.

As indicated above, however, local school systems could also reap cost savings or cost avoidance in the operational costs of high performance buildings. Over time, those savings could pay for the higher design and upfront design and construction costs.

**Additional Comments:** It is unclear whether a percentage price preference can be applied to construction procurements, which include precise design and building specifications that every bidder is expected to meet. Bidders that submit bids for a high performance building when the solicitation does not include high performance building specifications could be rated as unresponsive to the solicitation. Similarly, if a solicitation includes high performance building specifications, the price preference would not apply because all bidders would be expected to meet those requirements.

The price preference mechanism is problematic for another reason. The price preference affects contract award, but IAC advises that high performance status under both LEED and Green Globes is not certified until project completion. Therefore, a price preference could be awarded to a bidder who fails to earn the appropriate certification when the project is completed.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 301 (Senator Brochin, *et al* – Budget and Taxation) is identified as a cross file, although it is different.

**Information Source(s):** Board of Public Works, Maryland State Department of Education, Public School Construction Program, Department of Budget and Management, Maryland Department of Transportation, Department of General Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2007  
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