

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

Senate Bill 190

(Senator Jacobs, *et al.*)

Budget and Taxation

---

**Education - School Construction - Applicability of Priority Funding Areas**

---

This emergency bill repeals statutory authority for the Board of Public Works (BPW) to adopt regulations that reference a statutory policy statement that State spending on public school construction projects should emphasize the rehabilitation of existing schools; it also repeals that policy statement. It further establishes that the Priority Funding Areas (PFA) Act does not apply to school construction and may not be construed to limit the provision of school construction funds to areas outside PFAs. The bill expressly applies to the development of the fiscal 2013 public school construction capital improvement program.

---

**Fiscal Summary**

**State Effect:** The bill does not directly affect State finances or total State funding available for local school construction projects. The invalidation of regulations that prohibit the allocation of Public School Construction Program (PSCP) funds to new and replacement schools outside of PFAs, subject to a waiver process, may affect the distribution of PSCP funds among projects in and out of PFAs.

**Local Effect:** No effect on the total amount of State school construction aid for local projects. However, new and replacement school construction projects located outside of PFAs may be more likely to receive PSCP support than under current regulations. Local school systems may experience administrative and operational efficiencies because they will no longer have to apply for waivers to receive PSCP funding for those schools.

**Small Business Effect:** None.

---

## Analysis

### **Current Law:**

*Priority Funding Areas:* The purpose of the Priority Funding Areas Act (Chapter 759 of 1997) is to strengthen the State's efforts to control sprawl, enhance land use, and control pollution. The Act capitalized on the influence of State expenditures on economic growth and development by directing State spending to PFAs. The broad purpose of PFAs is to focus State spending to make the most efficient and effective use of existing infrastructure; preserve existing neighborhoods; and preserve Maryland's fields, farms, and open spaces. The Act established certain areas as PFAs and allowed counties to designate additional areas if they meet minimum criteria. Subject to specified exemptions, the State is prohibited from providing funding for growth-related projects outside of PFAs.

With respect to State school construction funds, the Act may not be construed to prohibit State funding for projects located outside of a PFA. However, statute includes a statement that it is the policy of the State that funding for public school construction projects should emphasize the rehabilitation of existing schools to ensure that facilities in established neighborhoods are of equal quality to new schools. State law authorizes BPW to adopt regulations that reference that policy statement as part of its process for approving State funding for public school construction projects. That authority is repealed by the bill.

*Public School Construction Program:* The State pays at least 50% of eligible costs of school construction and renovation projects, based on a funding formula that takes into account numerous factors including each local school system's wealth and ability to pay.

Subject to the final approval of BPW, the Interagency Committee on School Construction (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. The master plan must be approved by the local school board. 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. In addition to approval from the local school board, the capital improvement plan must be approved by the county's governing body. Typically, the submission letter to IAC contains signatures of both the school board president and either the county council president or chair of the board of county commissioners.

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 preliminary school construction allocation projected to be available. Local school districts may then appeal the IAC recommendations directly to BPW. By March 1 of each year, IAC recommends to BPW and the General Assembly projects comprising 90% of the allocation for school construction submitted in the Governor's capital budget. Following the legislative session, IAC recommends projects comprising the remaining school construction funds included in the enacted capital budget for BPW approval.

**Background:** Under the authority given to it by § 5-301 of the Education Article and, at the recommendation of IAC, BPW adopted regulations during summer 2011 that prohibit State funding for new and replacement public schools that expand capacity and are located outside of PFAs, unless the project receives a waiver. The regulations reflect recommendations by the Task Force on the Future of Growth of Development. To ensure that older schools receive the appropriate upgrades, the regulations do not apply to renovations of existing schools that do not add capacity or to systemic renovations.

Prior to the adoption of the new regulations, new and replacement school construction projects located outside of PFAs received added scrutiny from IAC and sometimes had additional conditions placed on them to minimize their environmental impact. However, to date, no school construction projects outside of PFAs have been denied funding. The new regulations require that IAC and BPW consider at least 10 different factors in deciding whether to grant a waiver, including the specific placement of the project outside of a PFA, the location of the student body to be served by the school, and the availability of alternative sites.

Since adoption of the new regulations, IAC has received requests for planning or funding approval for three replacement schools located outside of PFAs; waiver applications were included with two of the three requests, and the third waiver request is pending. IAC has not yet ruled on the waiver requests.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 7, 2012  
mlm/rhh

---

Analysis by: Michael C. Rubenstein

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510