

HB 1131

Department of Legislative Services Maryland General Assembly 2019 Session

FISCAL AND POLICY NOTE First Reader

House Bill 1131

(Delegate P. Young, *et al.*)

Appropriations

Baltimore County - Maryland Stadium Authority - Public School Construction

This bill authorizes the Maryland Stadium Authority (MSA) to issue up to \$750.0 million in revenue bonds, backed by annual payments of \$79.85 million in revenues from the State Lottery and, potentially, unspecified payments from Baltimore County, with the proceeds used for public school construction projects in Baltimore County. MSA's sale of bonds under the bill is subject to the approval of the Board of Public Works (BPW). **The bill takes effect July 1, 2019, and authorization for payments from the State Lottery takes effect July 1, 2020, contingent on the enactment of Chapters 184 and 185 of 2018.**

Fiscal Summary

State Effect: General fund revenues decrease by \$79.85 million annually beginning in FY 2021, which reflects the required distribution of State Lottery funds in the bill. (The bill's contingency has already been met.) General fund expenditures increase by \$74,700 beginning in FY 2020 to implement the program. Nonbudgeted revenues and expenditures for MSA are not reflected in the table, but are discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	\$0	(\$79,850,000)	(\$79,850,000)	(\$79,850,000)	(\$79,850,000)
GF Expenditure	\$74,700	\$93,000	\$96,100	\$99,400	\$102,800
Net Effect	(\$74,700)	(\$79,943,000)	(\$79,946,100)	(\$79,949,400)	(\$79,952,800)

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

Local Effect: Baltimore County revenues for public school construction increase by approximately \$750.0 million over several years. Baltimore County expenditures increase to cover the local share of school construction projects approved under the bill. As revenues from the State Lottery are more than sufficient to pay all debt service costs, it is not

anticipated that Baltimore County will have to make additional expenditures for debt service.

Small Business Effect: Minimal.

Analysis

Facilities and Financing Funds

The bill establishes two nonbudgeted funds, administered by MSA, to finance improvements to public school facilities in Baltimore County: the Baltimore County Public School Construction Facilities Fund and the Baltimore County Public School Construction Financing Fund. Both funds are continuing, nonlapsing funds. The Treasurer must invest assets of both funds in the same manner as other State funds; all investment earnings accrue to each respective fund. No part of either fund may revert or be credited to the State's general fund or any special fund. As needed to pay debt service and for other specified purposes, monies may be transferred between the funds. Money in both funds must be used to supplement, but not supplant, money appropriated to Baltimore County under the Public School Construction Program.

The financing fund includes (1) proceeds from the sale of bonds for public school facilities that are not under a trust agreement, (2) revenues collected or received from any other source, (3) the annual payment of \$20 million from State lottery revenues and any payments required by Baltimore County under the terms of a memorandum of understanding (MOU) as discussed below, (4) any additional money from any public source. Monies in the financing fund are pledged to and used to pay (1) debt service on bonds issued by MSA to construct and improve public school facilities, (2) debt service reserves under a trust agreement, (3) all reasonable charges and expenses related to the issuance of bonds, and (4) all reasonable expenses related to MSA's management of the fund and its project oversight responsibilities. MSA may not use any current sources of funds, whether appropriated or nonbudgeted, to pay for any costs related to financing public school facilities under the bill, except for specified start-up costs before bond revenues are available. Any expenditure for start-up costs must be reimbursed from the financing fund.

The facilities fund includes (1) revenue transferred from the financing fund and (2) any additional funding from public sources. MSA may use the facilities fund as a revolving fund to pay (1) debt service on bonds; (2) design and construction costs relating to public school facilities in Baltimore County; (3) to the extent authorized by federal law, any start-up costs, administration, overhead, and operations related to management of

improvements to public school facilities; and (4) all reasonable charges and expenses related to MSA's oversight and project management responsibilities.

Memorandum of Understanding, Project Management, and Project Funding

Before any bonds are issued under the bill, MSA, Baltimore County, the Baltimore County Board of Education, and the Interagency Commission on School Construction (IAC) must enter into an MOU that includes specified items, including (1) a process for determining which school facility projects will proceed and (2) a pledge by Baltimore County, subject to annual appropriation, to annually deposit a specified amount of funding in the financing fund. In the case of a dispute among the parties about the provisions of the MOU, the State Superintendent must facilitate a resolution. The bill includes procedures for ensuring that Baltimore County makes the full payments required by the MOU, including requiring the Comptroller, under specified circumstances, to withhold and redirect income tax revenue for the county.

In financing school construction projects in Baltimore County, MSA must comply with specified provisions of current law except as agreed in the MOU, including provisions that require Baltimore County to pay the local share of school construction projects. However, the bill authorizes MSA to pay for planning and design costs, which are not currently eligible costs for State reimbursement under current law.

Specific parameters regarding the roles, rights, and responsibilities of each party to the agreement must be specified with respect to program development, scheduling, budgeting, procurement, design, construction administration, capital equipping, and maintenance of improvements to a Baltimore County school facility. Except as agreed to in the MOU, any power granted to MSA may not interfere with the powers of the Baltimore County Board of Education in current law. Conversely, the powers of the school board may not limit MSA's authority to carry out its obligations under the bill.

Baltimore County must deliver buildable sites that meet specified conditions and that are free from any specified conditions that may affect the funding or construction schedule.

By January 15, 2021 and each year thereafter, the parties to the MOU must report to the Governor, BPW, and the fiscal committees of the General Assembly on the progress of construction and renovations of public school facilities in Baltimore County, including specified items.

Sale of Revenue Bonds

The issuance of a bond under the bill is not directly, indirectly, or contingently a moral or other obligation of the State, MSA, or any other governmental unit to levy or pledge any

tax or to make an appropriation to pay the bond. A bond issued by MSA to finance improvements, construction, or renovations to a Baltimore County public school facility:

- is a limited obligation of MSA and is payable only with money pledged by MSA that is made available to MSA for that purpose;
- is not a debt, liability, or pledge of the faith and credit or taxing power of the State, MSA, or any other governmental unit; and
- may not give rise to any pecuniary liability of the State, MSA, or any other governmental unit.

At least 45 days before seeking approval from BPW for the sale of revenue bonds, MSA must provide specified written notice to the fiscal committees of the General Assembly.

Chapters 184 and 185 of 2018

Chapters 184 and 185 of 2018 repeal specified distributions from the State Lottery Fund to the Racing Special Fund. The law took effect July 1, 2018, although Section 2 of the law containing the repeal of the State Lottery distributions takes effect July 1, 2019.

Current Law/Background: For a description of State support for public school construction projects, please see the **Appendix – State Funding for Public School Construction.**

Baltimore City 21st Century Schools Program

Chapter 647 of 2013 dedicated State and local funding sources to support a \$1.1 billion public school construction and revitalization initiative for Baltimore City to build or substantially renovate 23 to 28 school facilities. Specifically, it phased in requirements that the State, Baltimore City, and Baltimore City Public Schools each contribute \$20.0 million annually for approximately 30 years to pay debt service on bonds issued by MSA to finance the program. State general funds for the initiative are provided from proceeds of the State Lottery. Included in Chapter 647 was a requirement that Baltimore City, IAC, the Baltimore City Board of School Commissioners, and MSA enter into a four-party MOU to establish a framework for completion of the initiative. The MOU was completed and signed in September 2013, and the Board of Public Works approved the MOU in October 2013.

As of September 2018, nine projects in Baltimore City had been completed, five were under construction, six were in various stages of design, and eight were in early planning stages.

Lottery Ticket Sales and the State Lottery Fund

After payments to lottery winners and agents and to the State Lottery and Gaming Control Agency for operating expenses, the Comptroller must make the following payments annually from the State Lottery Fund:

- up to \$20.0 million for the Maryland Stadium Facilities Fund, from revenues generated by sports lotteries conducted on behalf of MSA;
- 10% of the proceeds of instant lottery ticket machines by veterans' organizations to the Maryland Veterans Trust Fund; and
- \$20.0 million to the Baltimore City Public School Construction Financing Fund.

Any funds remaining in the State Lottery Fund after the above payments are made are paid to the general fund. In fiscal 2018, the payment to the general fund was \$534.6 million.

IAC Funding Requests

For fiscal 2020, Baltimore County submitted 40 requests for State funding totaling \$165.5 million. As of December 31, 2018, IAC had approved \$23.2 million in funding for four projects.

State Expenditures:

General Fund Revenues

General fund revenues decrease by \$79.85 million annually beginning in fiscal 2021 due to the new distribution of State Lottery funds to the Baltimore County Public School Construction Financing Fund. Nonbudgeted revenues for MSA increase commensurately. This distribution continues each year bonds are outstanding and unpaid.

IAC and MSA Staffing

The number of funding requests submitted to IAC is limited by Baltimore County's capacity to pay the local match for public school construction projects. Given that limiting factor as well as the fact that the county's current requests for State funding already exceed available funds, the Department of Legislative Services (DLS) does not anticipate a significant increase in the number of Baltimore County funding requests submitted to IAC for review and approval. However, there will be a substantial increase in the number of projects approved. In addition, IAC must negotiate an MOU with the county, which may include additional oversight responsibilities for IAC.

DLS anticipates that most projects under the program are approved during the first four years. As the increased workload for IAC extends for more than three years, this analysis assumes a regular position rather than contractual employees, consistent with increased staffing from the Baltimore City initiative. Therefore, general fund expenditures increase by \$74,722 in fiscal 2020, which accounts for a 90-day start-up delay from the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring a program manager to manage the MOU negotiations and any additional review and oversight responsibilities required by the MOU. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salaries and Fringe Benefits	\$69,363
Operating Expenses	<u>5,359</u>
Total FY 2020 State Expenditures	\$74,722

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

MSA anticipates a significant increase in staffing to manage the dozens of projects that it will be overseeing under the program, potentially as many as 63 positions and \$4.5 million in annual expenditures. Those expenses are paid from either the financing fund or the facilities fund and are not otherwise included in this analysis.

Nonbudgeted Revenues and Expenditures

This analysis assumes that bonds issued by MSA under the bill have a duration of *15 years*, and that they are issued over four years until they hit either the \$750.0 million cap in the bill or a lesser amount that reflects MSA's capacity to pay debt service with available funds. Nonbudgeted revenues increase by up to \$750 million to reflect the additional resources for public school construction but are not reflected in this analysis. Assuming a 5.25% interest rate and the receipt of bond premiums from the sale of the bonds, the annual distributions from the State Lottery of \$79.85 million are sufficient to cover the full cost of debt service payments on the bonds. If the bonds have a duration of 30 years, like most MSA bonds, the distribution from the Lottery exceeds the total amount needed for annual debt service payments by about \$24 million. As those debt service payments are paid from the financing and/or facilities funds, they are not otherwise reflected in this analysis.

Additional Information

Prior Introductions: None.

Cross File: SB 758 (Senator Klausmeier) - Budget and Taxation.

Information Source(s): Baltimore County; Comptroller's Office; Public School Construction Program; Board of Public Works; Maryland Stadium Authority; Baltimore County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2019
mag/rhh

Analysis by: Michael C. Rubenstein

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

Appendix – State Funding for Public School Construction

School Construction Review and Approval Process

As enacted by Chapter 14 of 2018 (the 21st Century School Facilities Act), the Interagency Commission 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 and/or funding approval for the upcoming fiscal year, which may include projects that the local system has forward funded. In addition to approval from the local school board, the request for the upcoming fiscal year 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 executive and 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 fund. By December 31 of each year, IAC must approve projects comprising 75% of the preliminary school construction allocation projected to be available by the Governor for the upcoming fiscal year. Local school systems may appeal these preliminary decisions by IAC. By March 1 of each year, IAC must recommend to the General Assembly projects comprising 90% of the allocation for school construction submitted in the Governor's capital budget. Following the legislative session, IAC approves projects comprising the remaining school construction funds included in the enacted capital budget, no earlier than May 1. The final allocations are not subject to appeal.

Eligible School Construction Costs

IAC establishes a range of appropriate per student, square foot allocations for elementary, middle, and high schools as well as for special education students, career and technology students, and specialized programs. IAC also establishes, on an annual basis, a *cost per square foot* that is applicable to major school construction projects. For fiscal 2020, the cost per square foot is \$318 for new construction *without* site development (up from \$302 in fiscal 2019) and \$378 for new construction *with* site development (up from \$360 in fiscal 2019). In general, multiplying the cost per square foot allocation by the allowable square feet (based primarily on the State-rated capacity of a building) yields the maximum allowable cost that is subject to the State/local cost-share formula.

The cost of acquiring land may not be considered an eligible construction cost and may not be paid by the State. Otherwise, regulations specify public school construction-related costs that are eligible and ineligible for State funding. In general, the following costs are included among *eligible* expenses:

- construction of a new facility, a renovation of a new facility, an addition to an existing facility, or a replacement of an existing building or building portion (*i.e.*, “bricks and mortar”);
- building and site development;
- modular construction that meets specified standards;
- State-owned relocatable facilities and temporary facilities that are required to be on site during construction; and
- built-in equipment and furnishings.

Among the major items that explicitly are *not eligible* for State funding (besides site acquisition) are (1) architectural, engineering, and other consulting fees; (2) master plans and feasibility studies; (3) projects or systemic renovations for buildings and systems that have been replaced, upgraded, or renovated within the last 15 years; (4) movable equipment and furnishings; and (5) items that do not have a useful life of at least 15 years.

State Share of Eligible Costs

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. The 21st Century School Facilities Act requires that the cost-share formula be recalculated every two years (previously, statute required recalculation every three years). The most recent recalculation was approved by IAC in January 2019. **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2020, as approved by IAC.

Chapter 14 also established the State’s intent to provide at least \$345 million for school construction in fiscal 2019 and at least \$400 million annually as soon as practicable and within current debt affordability guidelines. The State far surpassed the fiscal 2019 goal with a total of \$435.4 million approved for public school construction funding. **Exhibit 2** shows annual State public school construction funding from fiscal 2015 through 2019, by county.

The Governor’s proposed fiscal 2020 capital budget includes \$280.0 million in general obligation (GO) bonds for public school construction and an additional \$40.0 million in GO bonds for a supplemental grant program for school systems that have high enrollment growth or a large number of relocatable classrooms, as established by statute. It also includes \$45 million from the Education Trust Fund (ETF) for additional public school

construction projects, \$30.0 million in pay-as-you-go (PAYGO) general funds for the Healthy School Facility Fund established by Chapter 561 of 2018, and \$20.0 million from ETF for a revolving loan fund created by Chapter 14 to assist local governments in forward funding school construction projects. The fiscal 2020 *Capital Improvement Program* includes \$280.0 million annually for public school construction in fiscal 2021 through 2024 and \$40.0 million annually for the supplemental grant program. Additional funding totaling \$1.8 billion beginning in fiscal 2021 from revenue bonds supported by \$125 million from ETF is also projected for public school construction projects, as proposed by the Governor.

Exhibit 1
State Share of Eligible School Construction Costs
Fiscal 2020

County	FY 2020
Allegany	85%
Anne Arundel	50%
Baltimore City	91%
Baltimore	56%
Calvert	53%
Caroline	81%
Carroll	55%
Cecil	66%
Charles	61%
Dorchester	75%
Frederick	60%
Garrett	50%
Harford	60%
Howard	54%
Kent	50%
Montgomery	50%
Prince George's	70%
Queen Anne's	51%
St. Mary's	57%
Somerset	96%
Talbot	50%
Washington	71%
Wicomico	95%
Worcester	50%
MD School for the Blind	93%

Source: Interagency Commission on School Construction

Exhibit 2
State Public School Construction Funding
Fiscal 2015-2019
(\$ in Thousands)

County	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Allegany	\$6,597	\$10,837	\$24,242	\$12,873	\$3,950
Anne Arundel	36,200	39,419	42,598	36,829	28,832
Baltimore City	35,329	36,788	37,500	37,303	68,735
Baltimore	34,561	42,177	45,775	45,186	41,865
Calvert	2,653	1,500	9,964	14,575	9,763
Caroline	0	2,902	36	1,646	423
Carroll	3,915	6,415	3,418	3,853	6,853
Cecil	8,194	4,723	6,650	6,730	5,152
Charles	8,200	12,817	8,951	10,516	14,856
Dorchester	768	179	5,009	10,975	11,026
Frederick	15,901	21,000	21,295	19,564	19,178
Garrett	0	0	0	1,567	0
Harford	12,791	9,309	8,732	13,592	12,278
Howard	20,772	27,820	31,206	21,066	10,374
Kent	817	615	0	0	0
Montgomery	39,950	45,708	50,128	59,194	59,714
Prince George's	38,539	41,729	44,675	49,625	49,031
Queen Anne's	5,112	0	249	2,455	806
St. Mary's	11,876	7,015	1,273	815	6,347
Somerset	2,752	2,222	1,771	14,720	17,500
Talbot	0	308	0	0	8,390
Washington	7,467	8,404	4,847	2,592	12,042
Wicomico	10,991	7,440	10,373	11,847	9,971
Worcester	0	72	0	0	4,336
MD School for the Blind	14,733	8,616	6,000	9,376	14,000
Statewide	660	175	300	500	20,000
Total	\$318,778	\$338,190	\$364,992	\$387,399	\$435,422

Note: Includes new general obligation bonds, pay-as-you-go funds, and reallocated funds that were previously authorized. Counties receiving \$0 did not request any eligible projects to be funded in that year. Fiscal 2016-2019 include funds allocated for the Enrollment Growth and Relocatable Classroom program totaling \$20 million in fiscal 2016, \$40 million in fiscal 2017, \$62.5 million in fiscal 2018, and \$68.2 million in fiscal 2019. Fiscal 2017 total for Baltimore County includes \$5 million withheld by the Board of Public Works and later reauthorized by the General Assembly in fiscal 2018. Does not include funding for projects supported by Maryland Stadium Authority revenue bonds.

Source: Interagency Commission on School Construction; Department of Legislative Services