

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 365  
Appropriations

(Delegate Korman)

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Public School Construction - Fossil Fuel-Based Energy System Costs -  
Prohibition (Green School Construction Act of 2022)

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This bill makes a fossil fuel-based energy system ineligible for State funding when it is part of a new or renovation school construction project. It also clarifies that an evaluation of the life-cycle costs of public school buildings required by current law must compare the costs of alternative energy systems with the costs of traditional *fossil fuel-based* systems. A “fossil fuel-based energy system” is one that uses natural gas, petroleum, coal, or other fuel derived from these sources to create useful heat. **The bill takes effect July 1, 2022.**

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Fiscal Summary

**State Effect:** No effect on total State funding allocated for school construction, which is determined annually through the capital budget process. To the extent that local school systems continue to install fossil fuel-based systems, State funds that otherwise would reimburse installation costs are applied to other project costs or are available for other school construction projects. The provision related to the evaluation of life-cycle costs is clarifying in nature and has no effect on State finances. No effect on revenues.

**Local Effect:** The local share of school construction costs increases for individual projects, either because local school systems bear the full cost of installing fossil fuel-based systems or because the installation costs for alternative systems is greater. However, total local capital expenditures for school construction likely are not affected. To the extent that individual project costs are higher, fewer projects may receive funding in a given year. In the out-years, operating expenditures for energy likely decrease for school systems that elect to install alternative energy systems.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** For an overview of State support for public school construction, including information on eligible and ineligible costs, please see the **Appendix – State Funding for Public School Construction**.

By October 1, 2023, the Interagency Commission on School Construction (IAC) or, if required, the Maryland Stadium Authority (MSA), must evaluate the life-cycle costs of public school buildings over a 50-year period. The evaluation must compare the cost and efficiency of using specified alternative energy systems compared to a traditional energy system. It must also conduct an energy consumption and systems replacement analysis, based on a 50-year period, of each major piece of equipment in specified building systems (including heating and cooling systems). Finally, it must evaluate the impact of innovative building designs and materials, including white and green roofs, on energy consumption. IAC or MSA may contract with a third party to conduct the evaluation.

**Small Business Effect:** Installers of commercial alternative fuel systems that are small businesses likely benefit from an increase in demand for their services.

**Additional Comments:** The bill is not clear with respect to the availability of State funds for fossil fuel-based systems for which IAC approves fiscal 2023 funding prior to the bill's effective date. Although approval of funding for these projects will occur prior to the bill's effective date (generally by May 2022), actual reimbursement of expenses by IAC related to the installation of fossil fuel-based systems by local school systems will occur after the bill's effective date. If the bill is interpreted to apply to projects that include fossil fuel-based systems and receive funding allocated for fiscal 2023, local school systems may have to redesign and rebid those projects, and obtain IAC approval again, before proceeding.

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Public School Construction Program; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2022  
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## **Appendix – State Funding for Public School Construction**

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### *School Construction Review and Approval Process*

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 through the Public School Construction Program (PSCP). 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.

### *Built to Learn Act*

The Built to Learn Act was enacted as Chapter 20 of 2020, but it was contingent on the enactment of House Bill 1300 of 2020 (Blueprint for Maryland's Future – Implementation). As House Bill 1300 was vetoed by the Governor, the Built to Learn Act took effect in January 2021 when the General Assembly voted to override the Governor's veto of House Bill 1300.

The Built to Learn Act authorizes the Maryland Stadium Authority (MSA) to issue up to \$2.2 billion in revenue bonds, backed by annual payments from the Education Trust Fund beginning in fiscal 2022, for public school construction projects in the State, including to

support a public-private partnership agreement to build six new schools in Prince George’s County. Proceeds from the revenue bonds are in addition to funding available from PSCP and are allocated among local school systems as shown in **Exhibit 1** (based on anticipated revenues of \$2.0 billion). Funds must be used to build or renovate schools within 10 years.

**Exhibit 1**  
**Allocation of Built to Learn Bond Sale Proceeds**  
**(\$ in Millions)**

	<u>Percent of Total</u>	<u>Proceeds</u>
Anne Arundel	12.5%	\$250.0
Baltimore City	21.0%	420.0
Baltimore	21.0%	420.0
Frederick	5.1%	102.0
Howard	6.6%	132.0
Montgomery	21.0%	420.0
Prince George’s	*	*
All Other Counties	11.5%	230.0
Unallocated/Maryland Stadium Authority	1.3%	26.0
<b>Total</b>	<b>100.0%</b>	<b>\$2,000.0</b>

\*Under Chapter 20 of 2020, Prince George’s County receives \$25.0 million annually for up to 30 years to supplement local funds for an availability payment if it enters into a public-private partnership agreement, subject to other provisions in the Act.

Source: Department of Legislative Services

The Built to Learn Act also (1) extends mandated funding for the Healthy School Facility Fund (HSFF) by three years, through fiscal 2024, with at least \$30.0 million in fiscal 2022 and at least \$40.0 million in each of fiscal 2023 and 2024; (2) raises the mandated annual funding level for the Enrollment Growth or Relocatable Classrooms (EGRC) program from \$40.0 million to \$80.0 million beginning in fiscal 2027; and (3) creates the Public School Facilities Priority Fund to provide State funds to address the facility needs of the highest priority schools identified by the statewide facilities assessment completed by IAC. In fiscal 2025 and 2026, the Governor must appropriate at least \$40.0 million to the fund. Beginning in fiscal 2027, the mandated annual appropriation increases to at least \$80.0 million. Although mandated funding levels for fiscal 2022 were not required due to the delay in Chapter 20 taking effect, the fiscal 2022 capital budget, as enacted, included the required funding (with EGRC receiving a total of \$60.0 million and HSFF receiving a total of \$70.0 million, including \$40.0 million in federal funds from the American Rescue Plan).

Prior to distributing funds under the program, MSA must enter into a program memorandum of understanding (MOU) with IAC (which is in place), and each county, local school board, and MSA must enter into a project MOU for each project seeking funding from the program. All projects receiving Built to Learn funds must be approved by IAC using the same process it uses for PSCP. As of January 2022, IAC has approved 22 projects and committed more than \$600.0 million in funding to those projects.

### *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 updated the space allocations in 2019 and renamed them gross area baselines. IAC also establishes, on an annual basis, a *cost per square foot* that is applicable to major school construction projects. For fiscal 2023, the cost per square foot is \$358 for new construction *without* site development (up from \$341 in fiscal 2022) and \$426 for new construction *with* site development (up from \$405 in fiscal 2022). In general, multiplying the cost per square foot by the applicable gross area baseline for each proposed project (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. Thus, any portion of a project that exceeds the gross area baseline is not eligible for State funding and must be paid for by the local school system.

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. Chapter 20 expands the costs eligible for State funding. In general, the following costs are now included among *eligible* expenses:

- planning and design costs (including architectural and engineering fees);
- 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;
- replacement of building systems, including roofs, windows, and heating, ventilation and air conditioning (*i.e.*, “systemic renovations”);
- modular construction that meets specified standards;
- State-owned relocatable facilities and temporary facilities that are required to be on site during construction; and
- furniture, fixtures, and equipment with a median useful life of at least 15 years.

Among the major items explicitly *not eligible* for State funding under current law (besides site acquisition) are (1) master plans and feasibility studies; (2) projects or systemic renovations for buildings and systems that have been replaced, upgraded, or renovated within the last 15 years; and (3) 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). **Exhibit 2** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2023 and 2024, as approved by IAC. Counties whose calculated State share would have been lower in fiscal 2023 than in fiscal 2022 were held harmless by Chapter 698 of 2021; Garrett County's State share was adjusted in accordance with provisions of Chapter 698.

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**Exhibit 2**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2023 and 2024**

<u>County</u>	<u>FY 2023 and 2024</u>
Allegany	90%
Anne Arundel	50%
Baltimore City	96%
Baltimore	61%
Calvert	56%
Caroline	88%
Carroll	59%
Cecil	66%
Charles	65%
Dorchester	93%
Frederick	65%
Garrett	90%
Harford	63%
Howard	56%
Kent	50%
Montgomery	50%
Prince George's	73%
Queen Anne's	51%
St. Mary's	58%
Somerset	100%
Talbot	50%
Washington	79%
Wicomico	100%
Worcester	50%
Maryland School for the Blind	93%

Source: Interagency Commission on School Construction

### *State Funding Levels*

Chapter 14 of 2018, the 21st Century School Facilities Act, established the State's intent to provide at least \$400.0 million annually, within current debt affordability guidelines. The State surpassed the \$400.0 million threshold in fiscal 2019, 2021, and 2022; the State would have surpassed \$400.0 million in fiscal 2020, but the \$10.0 million allocation for the School Safety Grant Program (SSGP) was canceled by the Board of Public Works for cost containment reasons. **Exhibit 3** shows annual State public school construction funding from fiscal 2018 through 2022, by county.

The Governor's proposed fiscal 2023 operating and capital budgets include a total of \$1.01 billion in funding for public school construction projects in the State, divided among general obligation (GO) bond funding, revenue bonds, general funds, and federal funds. The total includes:

- \$480.0 million in MSA revenue bonds for Built to Learn;
- \$285.0 million for PSCP, consisting of \$217.8 million in pay-as-you-go and \$67.2 million in GO funds;
- \$95.4 million in GO funds for EGRC;
- \$90.0 million for HSFF, including \$50.0 million in GO funds and \$40.0 million in federal funds;
- \$40.0 million in general funds for the School Construction Revolving Loan Fund;
- \$13.5 million in general funds for SSGP; and
- \$6.1 million in GO funds for the Aging Schools Program.



**Exhibit 3**  
**State Public School Construction Funding**  
**Fiscal 2018-2022**  
**(\$ in Thousands)**

<b>County</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Allegany	\$12,873	\$4,378	\$2,846	\$2,080	\$2,515
Anne Arundel	36,829	30,484	36,422	38,053	148,762
Baltimore City	37,303	71,522	51,304	69,479	81,905
Baltimore	45,699	44,709	58,936	53,015	257,425
Calvert	14,575	10,138	2,227	4,141	13,416
Caroline	1,646	685	11,603	13,713	4,741
Carroll	3,853	7,389	7,604	10,312	38,693
Cecil	6,730	5,528	4,046	3,856	5,412
Charles	10,523	15,389	13,938	12,455	32,131
Dorchester	10,797	11,286	4,068	5,955	6,578
Frederick	19,564	20,032	16,636	22,832	55,009
Garrett	1,567	247	443	1,795	12,147
Harford	13,592	13,072	12,975	12,964	47,235
Howard	21,066	11,490	6,494	32,508	63,374
Kent	0	227	1,389	3,193	119
Montgomery	59,194	62,947	59,107	55,710	190,879
Prince George's	49,173	51,282	52,276	47,065	42,153
Queen Anne's	2,455	1,096	667	1,248	2,318
St. Mary's	815	6,757	4,762	5,530	5,723
Somerset	14,720	17,766	3,161	3,100	776
Talbot	0	8,641	9,000	3,173	1,342
Washington	2,592	12,493	11,687	8,311	8,669
Wicomico	11,847	10,333	11,340	10,399	26,062
Worcester	0	4,620	4,336	1,475	4,975
Maryland School for the Blind	9,376	14,216	7,401	6,779	2,021
Statewide	500	0	0	5,794	6,500
<b>Total</b>	<b>\$387,289</b>	<b>\$436,727</b>	<b>\$394,668</b>	<b>\$434,933</b>	<b>\$1,060,882</b>

Notes: Includes general obligation bonds, Built to Learn revenue 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. Allocated funds include the Enrollment Growth or Relocatable Classroom program, School Safety grants, and Healthy School Facility grants. Aging Schools funding is not included. Statewide funds include contractual costs for external reviews and funds reserved for unforeseen contingencies. Columns may not sum to total due to rounding.

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