

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 989 (Delegate Walker, *et al.*)
 Ways and Means

Public School Students - Daily Physical Activity (Student Health and Fitness Act)

This bill requires a program of physical education to be provided to prekindergarten students. The bill also establishes a goal that each public elementary school student be provided a daily program of developmentally appropriate moderate to vigorous physical activity of at least 150 minutes per week, including recess and at least 90 minutes per week of physical education. The Interagency Commission on School Construction (IAC) must complete by January 1, 2023, a statewide assessment on the need for school infrastructure that supports physical activity in public elementary schools, including gymnasium space, outdoor playing fields, playground space, sports facilities, and the accessibility of school recreation spaces for students with disabilities. The Maryland State Department of Education (MSDE) must collect data from each public elementary school on the daily program of physical activity provided to students. MSDE must annually publish this data, and whether a public elementary school has met the goal discussed above, on its website. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$3.0 million in FY 2023 only for IAC to conduct the facility assessment, as discussed below. MSDE and IAC can otherwise implement the bill with existing resources. Revenues are not affected.

| (in dollars) | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|----------------|---------------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 3,000,000 | 0 | 0 | 0 | 0 |
| Net Effect | (\$3,000,000) | \$0 | \$0 | \$0 | \$0 |

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

Local Effect: Local school finances are not substantially affected, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: A child may not be removed from recess as part of the routine school discipline, except for in-school suspension or other similar disciplinary intervention. A student's program of physical activity must be consistent with the student's individualized education program. Each public elementary and middle school must develop a plan for inclement weather or other similar circumstances. MSDE must develop and disseminate professional development resources for integration of physical activity.

MSDE must conduct a survey of each public elementary school in the State on the availability of before- and after-school programming providing students with opportunities for physical activity. MSDE must report on the results of the survey by January 1, 2023.

Membership on the Advisory Council on Health and Physical Education is altered.

Current Law: Every public school must have a program of physical education that is given in a planned and sequential manner to all students in order to develop their good health and physical fitness and improve their motor coordination and physical skills. The specific curriculum and course of study is set by each local board of education. Maryland regulations require a physical education comprehensive program to provide a developmentally appropriate instructional program that advances student knowledge, confidence, skills, and motivation to enjoy a lifetime of healthful physical activity.

Under new regulations that took effect in July 2021, local school systems may not:

- allow a student to substitute other activities for standards-based physical education instruction for graduation credits;
- waive the standards-based physical education requirement for graduation;
- excuse students from standards-based physical education to participate in other content area classes or complete classwork assignments in other content areas; or
- withhold a student from standards-based physical education as a punishment, unless the student is suspended.

By July 1, 2018, and in consultation with local school systems, IAC was required to adopt educational facilities sufficiency standards and a facility condition index for Maryland public schools. The standards are defined as a uniform set of criteria and measures for evaluating the physical attributes and educational suitability of public elementary and secondary school facilities in the State. The standards include specified categories, and they must be reviewed and updated periodically. The index is defined as a calculation to determine the relative physical condition of public school facilities by dividing the total repair cost of a facility by its total replacement cost.

Chapter 14 of 2018 required IAC to complete an initial statewide facilities assessment using the sufficiency standards by July 1, 2019. In completing the assessment, IAC was required to incorporate the index, contract with an independent third-party vendor to conduct the data collection and assessment, use existing data sources to the extent possible, and coordinate with local school systems to identify data elements to be used. Due to procurement delays, the statewide facility assessment did not begin until summer 2020 and was completed in July 2021.

State Expenditures: As noted above, the statewide facility assessment required by Chapter 14 was completed in July 2021, at a total cost of \$5.8 million. IAC advises that the sufficiency standards address the minimum facility requirements to comply with the State's current physical education requirements and, thus, do not address broader infrastructure needs for athletics and recess. As a result, the facility assessment does not assess each school's infrastructure needs with regards to playing fields, playground space, and sports facilities, as required by the bill. Moreover, IAC advises that it is not familiar with any existing standards or guidelines that address those infrastructure components, and that it does not have the expertise to develop them itself.

Therefore, IAC must contract with a facility assessment firm to (1) develop standards for athletic facilities, playing fields, sports facilities, and other related components not addressed by the sufficiency standards and (2) conduct a new statewide assessment of those components in every public elementary school in the State. Given the scope of the contract, and the fact that it can no longer be incorporated into an existing facility assessment, its estimated cost is \$3.0 million. IAC can manage the new assessment with existing resources, but advises that, based on its experience with the recently completed assessment, it cannot complete a new assessment until January 2024, a full year after the deadline in the bill.

MSDE can meet the reporting and other requirements of the bill using existing resources.

Local Expenditures: Exhibit 1 shows that physical education programs in the 24 local school systems vary widely. For example, some elementary schools provide only 30 or 45 minutes of physical education per week, while some public elementary schools in Maryland may provide up to 180 minutes per week.

It is assumed that the establishment of the *goal* related to minimum time devoted to a program of physical activity for public elementary school students does not constitute a mandate on local schools systems to meet the goal. To the extent that local school systems elect to achieve the goal, local school expenditures may increase, potentially significantly, to hire more physical education teachers. Any such cost is not reflected in this analysis. Further, it is assumed that local public elementary schools can incorporate physical education for prekindergarten students, accommodate the IAC facility assessment, and

respond to MSDE survey questions using existing resources. Thus, it is assumed that local school system costs are not substantially affected.

Exhibit 1
Minimum and Maximum Minutes per Week in
Physical Education in Public Elementary Schools
January 2022

| <u>School System</u> | <u>Minimum</u> | <u>Maximum</u> |
|----------------------|-----------------|------------------|
| Allegany | 45 | 90 |
| Anne Arundel | 60 | 60 |
| Baltimore City | 45 | 100 |
| Baltimore | 50 | 100 |
| Calvert | 90 | 90 |
| Caroline | 30 | 60 |
| Carroll | 90 | 90 |
| Cecil | 90 | 90 |
| Charles | 45 | 90 |
| Dorchester | 55 | 180 |
| Frederick | 80 | 90 |
| Garrett | 50 | 100 |
| Harford | 45 | 90 |
| Howard | 90 | 90 |
| Kent | 45 | 90 |
| Montgomery | 45 | 60 |
| Prince George's | 40 | 90 |
| Queen Anne's | 60 | 60 |
| St. Mary's | 45 | 90 |
| Somerset | 50 | 60 |
| Talbot | 45 | 180 |
| Washington | 50 | 100 |
| Wicomico | 90 ¹ | 135 ¹ |
| Worcester | 60 | 90 |

¹per six days

Source: Maryland State Department of Education; Department of Legislative Services

Additional Information

Prior Introductions: HB 1296 of 2021 and HB 516 of 2020 each received a hearing in the House Ways and Means Committee, but no further action was taken on either bill. SB 542 of 2021 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Public School Construction Program; Maryland Department of Health; Baltimore City Public Schools; Prince George's County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

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