

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 38
Appropriations

(Delegate Moon)

School Construction and Housing - School Zones and Adequate Public Facilities Ordinances

This bill requires each local board of education to submit a student residency and school zones report to the Maryland Department of Planning (MDP) and the Interagency Commission on School Construction (IAC), including information on the school zone boundaries and attendance area map, and the locations of each student’s residence (without including any personal identifying information). IAC must adopt regulations establishing formatting and submission requirements for the report. The bill also repeals language specifying that IAC may make an enrollment reduction for a proposed school construction project only if the sum of available seat count in all adjacent schools is 15% or more of the project school’s enrollment. Lastly, the bill forbids a county’s adequate public facilities ordinance (APFO) from restricting housing development for more than four years after enactment. **The bill takes effect June 1, 2025.**

Fiscal Summary

State Effect: IAC can adopt regulations for the residency and school zones report with existing resources. IAC and MDP can likely provide technical assistance to local school systems as needed using existing resources, as discussed below. The bill does not otherwise affect the overall level of State support for school construction, which is set in the annual capital and operating budgets. Revenues are not affected.

Local Effect: Jurisdictions and municipalities with APFOs may experience increased housing development, potentially impacting their ability to meet public service demands, which may result in an increase in public infrastructure costs. Local school systems can likely report the required data to IAC and MDP with existing resources. Any effect on the enrollment capacity of school construction projects has no direct effect on local finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: For an overview of State support for public school construction, please see the **Appendix – State Funding for Public School Construction**.

By July 1 of every year, each local school system must develop and submit to IAC an educational facilities master plan, which is a written plan that is approved by the local school board and that includes:

- educational goals, standards, and guidelines;
- community analysis so that the plan conforms to county and municipal comprehensive plans and growth management strategies;
- an inventory and evaluation of existing school buildings;
- current and projected enrollment data;
- analysis of future school facility needs;
- policies for co-location, shared use, and shared cost of existing and planned school facilities;
- policies to address school capacity needs in planned growth areas or to address APFO requirements; and
- policies addressing current and planned transportation for students, administrators, and teachers per school.

In submitting requests for planning and funding approval to IAC, a local school board must demonstrate that the requests are consistent with the most recent educational facilities master plan.

For school construction projects seeking State funding support, IAC makes determinations of eligible enrollment at each school based on the projected enrollment at the school and available capacity at adjacent schools. IAC is authorized to reduce the enrollment capacity of proposed projects if there is excess enrollment capacity in adjacent schools, but only if the sum of the available seat count in all adjacent schools is 15% or more of the project school's enrollment. Eligible school enrollment is, in turn, used as part of the calculation that determines State funding for local school construction projects under the Capital Improvement Program and Built to Learn programs.

Adequate Public Facility Ordinances

Local governments enact APFOs to ensure that infrastructure necessary to support proposed new housing or commercial development is built concurrently with, or prior to, that new development. APFOs are an effort to time the provision of public facilities (water, sewer, schools, roads, and emergency services) to be consistent with development demand

and locally adopted comprehensive plans. An APFO ties development approvals under zoning and subdivision ordinances to specifically defined public facility standards for infrastructure.

Local jurisdictions with APFOs are required to submit a report to MDP every two years to detail whether a local APFO has halted development or redevelopment in a priority funding area. According to MDP, APFOs have been enacted by 14 counties and 25 municipalities. However, according to MDP's [Local Government Annual Reporting](#), many jurisdictions are not in compliance with statutory reporting requirements.

For more information on APFOs, see the [Guide to County APFOs](#) and corresponding [maps](#) prepared by the Department of Legislative Services (DLS).

State Fiscal Effect: IAC advises that the agency can develop regulations on the submission requirements and formatting of school zone boundaries and attendance area reports using existing resources.

IAC further advises that, as smaller local school systems may face difficulties converting data into usable mapping files, the agency will likely need to provide technical support for those school systems. IAC advises that it can provide the required technical support using existing resources and staff. MDP similarly advises that past work with local school systems has shown that some lack the capacity to adequately report mapping data in a usable format. Therefore, MDP advises that the agency requires one part-time analyst position to assist local school systems with mapping data. However, DLS advises that, given the joint responsibility of MDP and IAC to receive data and given that IAC indicates there is capacity within existing staff to absorb technical support for local school systems, MDP and IAC can likely pool existing staff and resources to ensure local school systems are able to submit data as required by the bill.

DLS notes that the bill takes effect June 1, 2025, and the first annual reports are due 1 month later on July 1, 2025. However, the bill requires IAC to adopt regulations establishing formatting and submission requirements prior to their submission. As the regulatory process typically takes 6-12 months for the adoption of new regulations, it is unlikely that IAC can adopt regulations in 1 month, so the first annual reports likely cannot meet the statutory deadline.

Local Fiscal Effect:

Enrollment Reductions

The bill expands the IAC's authority to make enrollment reductions based on the available seat count at adjacent schools. Under the bill, additional school projects for which the

available seat count in all adjacent schools is less than 15% of the project school's enrollment may be subject to an enrollment capacity reduction by IAC. For those additional schools for which enrollment reductions are made, total State support decreases and the required local contribution to the project may also decrease. However, because the bill does not alter the overall level for State support, and because reduced State and local funding for individual projects can be redirected to other projects, the bill likely has no material effect on local revenues or expenditures for public school construction.

Data Reporting

Local jurisdictions can likely submit the required data to MDP and IAC with existing resources, although some jurisdictions may face operational difficulties formatting data properly, especially given the July 1, 2025 deadline for initial submission. DLS assumes that IAC and MDP can provide sufficient technical support to local jurisdictions to ensure reports can be made with existing resources.

Adequate Public Facilities Ordinances

The bill restricts the ability of local governments to limit development through an APFO for more than four years after *enactment*. APFOs are a longstanding tool used by both counties and municipalities to plan for future growth and development. Consequently, many APFOs in effect today were likely enacted more than four years ago and will cease to have any effect under the bill. The bill therefore removes the ability of most APFOs (except for recently enacted ordinances or ordinances that local governments plan to enact in the future) to limit housing development. In doing so, the bill increases the opportunities for housing development to occur in areas previously limited by APFOs. To the extent development occurs in these newly authorized areas, additional housing may apply greater stress to the level of public services provided by local governments. In some cases, this additional stress may exceed a local government's short-term capacity to provide services, a situation APFOs are intended to prevent. Consequently, this may result in an increase in public infrastructure costs.

Small Business Effect: The bill may provide additional opportunities for small businesses in the home construction industry.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City; Allegany, Harford, Montgomery, and Wicomico counties; Maryland Association of Counties; Interagency Commission on School Construction; Maryland Department of Planning; Baltimore City Public Schools; Baltimore County Public Schools; Prince George’s County Public Schools; Department of Legislative Services

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Appendix – State Funding for Public School Construction

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 (Chapter 20 of 2020) 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 (ETF) beginning in fiscal 2022, for public school construction projects in the State, including to support a public-private partnership (P3) agreement to build six new schools in Prince George's County (the P3 agreement in place is actually for eight schools). 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 MSA's most recent projection of anticipated revenues of \$1.7 billion given increases in interest rates since the program's enactment).

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

	<u>Percent of Total</u>	<u>Proceeds</u>
Anne Arundel	12.5%	\$212.5
Baltimore City	21.0%	357.0
Baltimore	21.0%	357.0
Frederick	5.1%	86.7
Howard	6.6%	112.2
Montgomery	21.0%	357.0
Prince George's	*	*
All Other Counties	11.5%	195.5
Unallocated/Maryland Stadium Authority	1.3%	22.1
Total	100.0%	\$1,700.0

* Under Chapter 20 of 2020, as amended by Chapter 679 of 2023, Prince George's County receives \$27.0 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 Chapter 32 of 2022 subsequently extending funding to at least \$90.0 million in fiscal 2024 through 2026; (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 ((PSFPF), later renamed by Chapter 32 to be the Nancy K. Kopp Public Schools 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. Under Chapter 354 of 2024 and only for fiscal 2027, the purpose of PSFPF is to provide State funds to address the severity of issues in a school, including (among other things) air conditioning, heating, and plumbing. In accordance with funding amounts updated by Chapter 354, beginning in fiscal 2027, the Governor must appropriate at least \$70.0 million to the fund annually.

Prior to distributing funds under the Built to Learn 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 December 2024, IAC has approved 52 projects and committed more than \$1.3 billion 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 2026, the cost per square foot is \$416 for new construction *without* site development (up from \$404 in fiscal 2025) and \$495 for new construction *with* site development (up from \$481 in fiscal 2025). 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, 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; fiscal 2025; and fiscal 2026, 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. When updating the cost-share calculations every two years, Chapter 32 requires IAC to limit the percentage decrease in the State share for any county to 5%.

Exhibit 2
State Share of Eligible School Construction Costs
Fiscal 2023-2026

<u>County</u>	<u>FY 2023 and 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>
Allegany	90%	89%	89%
Anne Arundel	50%	50%	50%
Baltimore City	96%	94%	91%
Baltimore	61%	59%	57%
Calvert	56%	56%	56%
Caroline	88%	94%	94%
Carroll	59%	57%	54%
Cecil	66%	64%	61%
Charles	65%	64%	64%
Dorchester	93%	98%	98%
Frederick	65%	67%	67%
Garrett	90%	89%	89%
Harford	63%	61%	58%
Howard	56%	54%	51%
Kent	50%	50%	50%
Montgomery	50%	50%	50%
Prince George’s	73%	71%	68%
Queen Anne’s	51%	50%	50%
St. Mary’s	58%	58%	58%
Somerset	100%	100%	100%
Talbot	50%	50%	50%
Washington	79%	78%	78%
Wicomico	100%	98%	95%
Worcester	50%	50%	50%
Maryland School for the Blind*	93%	100%	100%

* Chapter 192 of 2024 establishes the State share at 100% for Maryland School for the Blind for all eligible school construction projects.

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. Chapter 32 increased the legislature's intended annual funding level to \$450.0 million beginning in fiscal 2023. Chapter 354 clarifies that the intended threshold does not include funding provided through the Built to Learn program. The State surpassed the intended thresholds in fiscal 2019 and 2021 through 2025; 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. Chapter 679 of 2023 repeals the Aging Schools Program beginning in fiscal 2027 with the intent that funding be transferred to PSFPP, which takes effect that year. Although Chapter 679 also repealed SSGP beginning fiscal 2027, Chapter 354 subsequently retained the \$10.0 million funding mandate for the program indefinitely. **Exhibit 3** shows annual State public school construction funding from fiscal 2021 through 2025, by county.

The fiscal 2026 operating and capital budgets as introduced provide more than \$800.0 million in funding for public school construction projects in the State, divided among general obligation (GO) bond funding, revenue bonds, and special funds. Not including Built to Learn funding, the funding provided meets the \$450.0 million statutory goal, including:

- \$302.2 million in MSA revenue bonds for Built to Learn;
- \$290.9 million in GO bonds and \$9.1 million in special funds for PSCP;
- \$53.9 million in GO bonds for EGRC;
- \$90.0 million in GO bonds for HSFF;
- \$6.1 million in GO bonds for the Aging Schools Program; and
- \$69.0 million in special funds for the P3 to construct and maintain schools in Prince George's County (of which \$27.0 million are State funds from ETF and the remainder are local funds).

Exhibit 3
State Public School Construction Funding
Fiscal 2021-2025
(\$ in Thousands)

<u>County</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Allegany	\$2,177	\$2,613	\$4,116	\$5,742	\$12,308
Anne Arundel	38,559	170,456	76,974	58,141	87,297
Baltimore City	70,867	83,293	327,001	154,841	72,981
Baltimore	53,889	258,299	127,687	75,823	195,615
Calvert	4,179	13,454	8,678	18,737	8,250
Caroline	13,763	4,791	7,059	4,469	5,967
Carroll	10,449	38,831	20,955	16,609	15,293
Cecil	3,952	5,508	19,590	42,912	5,490
Charles	12,505	32,552	35,237	21,031	16,703
Dorchester	5,994	6,616	4,670	6,114	3,707
Frederick	23,015	108,705	48,808	43,608	19,136
Garrett	1,833	12,185	11,065	18,479	23,802
Harford	13,182	47,453	16,911	33,455	18,240
Howard	32,596	63,461	69,797	26,993	19,645
Kent	3,231	158	2,331	3,242	406
Montgomery	56,313	304,212	50,233	198,048	59,889
Prince George's	48,275	43,362	124,264	76,967	57,038
Queen Anne's	1,298	2,368	4,526	6,934	784
St. Mary's	5,580	5,773	7,878	15,951	7,073
Somerset	3,138	815	266	9,409	4,472
Talbot	3,211	1,380	1,129	6,202	6,438
Washington	8,446	8,804	10,413	14,903	27,890
Wicomico	10,506	26,169	33,416	22,072	7,861
Worcester	1,513	5,014	308	689	7,814
Maryland School for the Blind	6,779	2,021	9,100	13,605	4,662
Statewide	5,794	6,500	4,279	63	9,033
Total	\$441,042	\$1,254,793	\$1,026,691	\$895,038	\$697,791

Notes: Includes general obligation bonds, Built to Learn revenue bonds, pay-as-you-go funds, and reallocated funds that were previously authorized. Allocated funds include the Enrollment Growth or Relocatable Classroom program, School Safety grants, and Healthy School Facility grants. Statewide funds include unallocated discretionary funds, 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