

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 1011

(Senator Peters)

Budget and Taxation

Appropriations

**Prince George’s County – Public School Construction – Prince George’s County
Public–Private Partnership Fund**

This bill establishes the Prince George’s County Public-Private Partnership Fund (fund) to pay a public or private entity for an availability payment due under a public-private partnership (P3) agreement authorized by the bill. In order to receive State funding for availability payments, Prince George’s County, the Prince George’s County Public Schools (PGCPS), and the Interagency Commission on School Construction (IAC) must enter into a memorandum of understanding (MOU) that, among other provisions, identifies a dedicated source of State funding and specifies any amounts to be contributed to the fund by the county and the school board for availability payments. It is the intent of the General Assembly that the Governor provide sufficient funding and experts for IAC to help local school systems negotiate and execute P3 agreements for school construction. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures may increase significantly, likely by millions of dollars, to the extent that a dedicated source of State money for the fund is identified in an MOU. General fund expenditures may increase additionally to provide funding and staff for IAC to provide assistance on P3 agreements to local school systems, contingent on the Governor providing funds for that purpose. Special fund revenues, and presumably expenditures for availability payments, increase to the extent that money is deposited in the fund.

Local Effect: Expenditures for Prince George’s County and PGCPS may increase by an indeterminate but likely significant amount to the extent they agree to make payments to the fund under a three-party MOU. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Prince George's County Public-Private Partnership Fund

The fund is a special fund that is held by the State Treasurer, accounted for by the Comptroller, and administered by IAC in accordance with the MOU. The fund consists of (1) money deposited by Prince George's County and PGCPs under the terms of the MOU; (2) any money deposited by the State; (3) investment earnings; and (4) any other money from any other source. The fund may be used only to provide funding for availability payments to a public or private entity for the benefit of Prince George's County. Any appropriation to the fund must supplement, not supplant, other funds provided to Prince George's County for public school construction projects.

Memorandum of Understanding

School construction projects in Prince George's County that use alternative financing methods and that receive State funds for an annual availability payment must comply with a three-party MOU. If an MOU is agreed to, it must:

- specify the roles, rights, terms, and responsibilities in each party with respect to public school construction projects undertaken with a private or public entity;
- identify the amounts that each party must contribute to the fund and a dedicated source of State funding for an availability payment;
- indicate that specified provisions of current law related to public school construction projects do not apply to county projects financed under the MOU;
- require PGCPs to submit projects to IAC for review;
- specify the timeframes in which IAC must complete its review; and
- require PGCPs to submit annual reports to Prince George's County and IAC.

Exemptions from Current Law

Projects that use alternative financing methods in Prince George's County and receive State funding for an annual availability payment are not subject to (1) the State and local cost-share provisions; (2) maximum State allocations for public school construction projects; and (3) IAC approval of project funding.

Reporting Requirements

Beginning January 15, 2021, and annually thereafter, the three parties to the MOU must report to the Governor and the fiscal committees of the General Assembly on the progress of construction and renovations of public school facilities in Prince George's County that use alternative financing methods and receive State funds. PGCPs must provide specified information with the annual budget to the county executive and county council on availability payments made under a P3 agreement.

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

Alternative Financing

Local school boards, with the approval of the county governing body, may use any of seven alternative financing methods authorized by statute. They may accept unsolicited proposals for the development of public schools in limited circumstances. IAC must adopt regulations that require projects using alternative financing to meet specified requirements regarding scope, risk sharing, public need, and other factors. The projects must also meet educational and design standards, and they must be approved by the county governing body, the State Superintendent, and IAC. They must also meet State requirements related to State and local cost shares, maximum State funding levels, the payment of prevailing wages, the use of MBEs, and other requirements.

As of April 6, 2019, Prince George's County has not entered into a P3 agreement to construct or renovate public school facilities in the county.

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 the Maryland Stadium Authority (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.

State/Local Fiscal Effect: The bill does not identify or require State funds to be paid to the fund. Any such payment is instead contingent on (1) Prince George’s County entering into a P3 agreement to renovate or construct public schools in the county and (2) a source and amount of State funds identified by a three-party MOU. To the extent that these contingencies are satisfied, State expenditures increase significantly for the State’s share of an annual availability payment from the fund. Any such payment would be to the benefit of Prince George’s County, but is not considered revenue for the county.

IAC does not have the staff, resources, or expertise to assist local school systems with the development and execution of P3 agreements for the construction or renovation of public school facilities. As it is unknown how many local school systems have interest in pursuing P3 agreements for that purpose, a reliable estimate of the resources needed by IAC cannot be developed. However, given the legal and financial complexity of most P3 agreements, IAC may require additional staff with expertise in those areas, depending on the number of potential agreements pursued by local governments.

Prince George’s County and PGCPs are not required to contribute to the fund unless they first enter into (1) a P3 agreement and (2) an MOU that requires the State to contribute to the fund. Only if those contingencies are met *and* the county and school system agree will they be required to also contribute to the fund.

Additional Information

Prior Introductions: None.

Cross File: HB 1402 (Delegate Jackson) - Appropriations.

Information Source(s): Department of Legislative Services

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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	FY2015	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