

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**Enrolled - Revised**

Senate Bill 551

(Senator Rosapepe)

Budget and Taxation

Appropriations

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**21st Century School Facilities Act and Built to Learn Act - Revisions**

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This emergency bill generally makes changes to provisions in the Built to Learn Act of 2020 (Chapter 20) and the 21st Century School Facilities Act of 2018 (Chapter 14). These changes include extending the date by which Prince George’s County Public Schools must enter into a public-private partnership (P3) in order to receive Built to Learn funding and expanding the purposes of the Workgroup on the Assessment and Funding of School Facilities (Funding Workgroup) established by Chapter 14 to include other issues related to State funding of school construction projects. The bill also makes changes to the process for awarding grants from the Healthy School Facility Fund. Finally, it makes other temporary or one-time changes to funding for school construction projects, including prohibiting the State cost share for any county (including Baltimore City) from decreasing in fiscal 2023 or 2024 compared to fiscal 2022.

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**Fiscal Summary**

**State Effect:** No effect on total State capital budget expenditures, which are determined annually by the Governor and General Assembly through the capital budget process. To the extent that State expenditures increase for individual projects in some counties, fewer funds are available for other projects, as discussed below. Maryland Stadium Authority (MSA) may advance up to \$1 million from available MSA special funds in fiscal 2022 to implement the Built to Learn Act; and \$10.0 million in available MSA special fund balance is redirected to Baltimore City Public Schools to supplement funding for school construction projects. No effect on revenues.

**Local Effect:** Revenues for Baltimore City Public Schools increase by \$10.0 million for school construction projects. State aid for school construction projects in FY 2023 and 2024 increases in Baltimore City and Carroll, Cecil, Harford, and Queen Anne’s counties, as discussed below. No net effect on local capital expenditures, as it is assumed that any

reductions in local capital expenditures for schools are reallocated to other local capital projects.

**Small Business Effect:** None.

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## Analysis

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

The Built to Learn Act, enacted into law as Chapter 20 of 2020, was contingent on the enactment of House Bill 1300 of 2020. With the Governor’s veto of House Bill 1300 and the subsequent veto override by the General Assembly in February 2021, Chapter 20 took effect immediately after the veto override. The most significant provisions of Chapter 20 authorize 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 State public school construction projects, including support for a P3 agreement for Prince George’s County. However, the delay in the Act taking effect (from June 2020 to February 2021) rendered funding mandates for fiscal 2022 ineffective.

### *Prince George’s County P3 Agreement*

*Current Law:* Under Chapter 20, if Prince George’s County enters into a specified P3 agreement by July 1, 2022, MSA must deposit \$25.0 million annually, beginning in fiscal 2024 and not after 2053, into the existing Prince George’s County P3 Fund. However, in order for Prince George’s County to receive these annual payments, the P3 agreement must include:

- a minimum of six schools that will be improved, constructed, or renovated and operated and maintained under the P3 agreement; and
- a commitment by the Prince George’s County Government and the Prince George’s County School Board to provide the local share of the availability payment.

*The Bill:* The deadline for Prince George’s County to enter into a P3 agreement that can receive State funding for availability payments under Chapter 20 is extended by two years, from July 1, 2022, to July 1, 2024; commensurate changes are made to related payment, reporting, and evaluation schedules. The bill adds MSA as a signatory to the memorandum of understanding that must be completed to implement the P3 agreement. It also specifies that the Interagency Commission on School Construction (IAC) may not unreasonably withhold or delay its approval of the P3 agreement, which is required by Chapter 20.

## *Funding Workgroup*

*Current Law:* The Funding Workgroup, first established by Chapter 14 of 2018 to consider how to use the results of the statewide public school facility assessment required by Chapter 14 to prioritize State funding for school construction projects, was modified by Chapter 20 to extend its final reporting deadline to December 1, 2021. Chapter 14 also required IAC to recalculate the State and local cost-share percentages for school construction projects every two years, and Chapter 20 requires that IAC publish the results of the biennial recalculation in regulations. In March 2021, IAC proposed State cost share percentages for fiscal 2023 and 2024 based on the most recent recalculation. The formula for calculating the cost-share percentages was last modified in 2004.

*The Bill:* In addition to the issues it must consider under Chapter 14, the bill extends the Funding Workgroup's deadline to December 31, 2021, and requires the Funding Workgroup to consider and make recommendations in the following areas:

- factors used to develop the State and local cost-share formula for school construction projects, including incorporating related changes to the formulas used to calculate State education aid under the Blueprint for Maryland's Future;
- methods used to establish gross area baselines and the maximum State construction allocation for public school construction projects;
- the purpose and implementation of the Local Share of School Construction Costs Revolving Loan Fund, which was established by Chapter 14 but never funded; and
- the long-term effects of school construction decisions on the cost per student and total cost of ownership of public school facilities.

## *Healthy School Facility Fund*

*Current Law:* Chapter 561 of 2018 established the Healthy School Facility Fund within IAC to provide grants to public schools to improve the health of school facilities. Chapter 561 mandated appropriations of \$30 million to the fund for each of fiscal 2020 and 2021; Chapter 20 added mandated funding for fiscal 2022 through 2024. IAC must give priority in awarding grants to schools based on the severity of issues in the school, including (1) air-conditioning; (2) heating; (3) indoor air quality; (4) mold remediation; (5) temperature regulation; (6) plumbing, including the presence of lead in drinking water outlets; and (7) windows. Fifty percent of the annual funding in fiscal 2021 through 2024 must be awarded to Baltimore City Public Schools, however, no jurisdiction may receive more than \$15.0 million in a given fiscal year. Although mandated funding was not initially included in the fiscal 2022 budget due to Chapter 20's delayed implementation, the fund receives a total of \$70 million in the adopted fiscal 2022 operating budget.

*The Bill:* Pipe insulation (for plumbing) and roofs are added to the list of factors that IAC must consider in awarding grants from the fund. It repeals the cap of \$15 million that may be awarded to any single school system. Baltimore City Public Schools must establish a procedure for prioritizing projects for awards from the fund in fiscal 2023 and 2024, and IAC must award grants to schools with eligible projects in accordance with the school system's priorities.

### *Temporary or One-time Changes*

The bill includes several temporary and one-time provisions related to the calculation of State funding for school construction projects:

- For fiscal 2023 and 2024, the bill prevents the State share of public school construction projects from decreasing from fiscal 2022 levels; and
- In calculating the gross area baseline and maximum State allocation for specified public school construction projects, IAC must use the local school system's enrollment projection instead of its own projection.

The bill also makes one-time changes to the use of available funds in the Baltimore City Public School Construction Facilities Fund, which was created as part of the Baltimore City School Construction and Revitalization Act of 2013 (Chapter 647):

- MSA must transfer \$10.0 million from the fund to Baltimore City Public Schools to supplement funding for school construction projects; and
- MSA may use up to \$1 million in the fund in fiscal 2022 for start-up and administration costs related to implementation of Chapter 20; the funds will be reimbursed from the Supplemental Public School Construction Facilities Fund established by Chapter 20.

Finally, the bill makes technical changes to Chapter 20.

**State/Local Fiscal Effect:** The fiscal 2023 and 2024 State cost share percentages calculated by IAC in March 2021 included reduced State shares for five local school systems: Baltimore City and Carroll, Cecil, Harford, and Queen Anne's counties. The bill's hold harmless provision means that State participation in school construction projects in those five school systems is not affected in fiscal 2023 and 2024. Since the State pays a greater share of school construction costs in those five jurisdictions than it would absent the bill, fewer funds are available for other projects, and fewer local school construction projects overall may receive State funding. Conversely, local capital expenditures for school construction are less than they otherwise would be absent the bill; however, it is assumed that extra local capital resources are either spent on more school construction

projects or are reallocated to other capital projects, resulting in no net effect on local capital expenditures.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland State Department of Education; Interagency Commission on School Construction; Montgomery County Public Schools; Frederick County Public Schools; Department of Legislative Services

**Fiscal Note History:** First Reader - February 9, 2021  
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## Appendix – State Funding for Public School Construction

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### *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 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 2022, the cost per square foot is \$341 for new construction *without* site development (up from \$329 in fiscal 2021) and \$405 for new construction *with* site development (up from \$391 in fiscal 2021). 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. 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;
- 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
- built-in equipment and furnishings.

Among the major items that explicitly are *not eligible* for State funding under current law (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. The Built to Learn Act of 2020, discussed further below, modifies these provisions.

### *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 1** shows the State share of eligible school construction costs for all Maryland jurisdictions for fiscal 2021 and 2022, as approved by IAC. Counties whose calculated State share would have been lower in fiscal 2021 and 2022 than in fiscal 2020 were held harmless by IAC.

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**Exhibit 1**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2021 and 2022**

<b>County</b>	<b>FY 2021 and 2022</b>
Allegany	89%
Anne Arundel	50%
Baltimore City	96%
Baltimore	57%
Calvert	53%
Caroline	87%
Carroll	59%
Cecil	66%
Charles	65%
Dorchester	82%
Frederick	64%
Garrett	50%
Harford	63%
Howard	55%
Kent	50%
Montgomery	50%
Prince George's	70%
Queen Anne's	51%
St. Mary's	58%
Somerset	100%
Talbot	50%
Washington	79%
Wicomico	100%
Worcester	50%
MD School for the Blind	93%

Source: Interagency Commission on School Construction

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*State Funding Levels*

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 surpassed the fiscal 2019 goal with a total of \$435.4 million approved for public school construction funding and again surpassed the \$400 million threshold in fiscal 2021; the State would have surpassed

\$400 million in fiscal 2020, but the \$10 million allocation for the School Safety Grant Program was canceled by the Board of Public Works for cost containment reasons. **Exhibit 2** shows annual State public school construction funding from fiscal 2017 through 2021, by county.

**Exhibit 2**  
**State Public School Construction Funding**  
**Fiscal 2017-2021**  
**(\$ in Thousands)**

<b>County</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
Allegany	\$24,242	\$12,873	\$4,260	\$2,840	\$1,180
Anne Arundel	42,598	36,829	30,484	36,940	37,271
Baltimore City	37,500	37,303	70,689	49,864	58,941
Baltimore	45,775	45,186	44,089	59,662	40,173
Calvert	9,964	14,575	10,138	2,227	3,852
Caroline	36	1,646	685	11,603	13,513
Carroll	3,418	3,853	7,388	7,604	9,483
Cecil	6,650	6,730	5,518	4,046	3,656
Charles	8,951	10,516	15,389	13,938	9,753
Dorchester	5,009	10,975	11,286	4,068	3,912
Frederick	21,295	19,564	20,032	16,636	22,147
Garrett	0	1,567	247	443	1,335
Harford	8,732	13,592	13,072	12,975	12,437
Howard	31,206	21,066	11,490	8,124	33,698
Kent	0	0	227	1,389	2,993
Montgomery	50,128	59,194	62,947	59,107	54,133
Prince George's	44,675	49,625	51,282	55,222	46,362
Queen Anne's	249	2,455	1,096	657	1,003
St. Mary's	1,273	815	6,729	4,760	5,330
Somerset	1,771	14,720	17,738	3,161	2,900
Talbot	0	0	8,641	9,000	2,973
Washington	4,847	2,592	12,493	11,687	7,510
Wicomico	10,373	11,847	10,333	11,325	9,173
Worcester	0	0	4,617	4,336	1,275
MD School for the Blind	6,000	9,376	14,216	7,401	6,579
Statewide	300	500			40,500
<b>Total</b>	<b>\$364,992</b>	<b>\$387,399</b>	<b>\$435,087</b>	<b>\$399,015</b>	<b>\$432,079</b>

Notes: Includes 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. Allocated funds include the

Enrollment Growth and Relocatable Classroom program totaling \$40 million in fiscal 2017, \$62.5 million in fiscal 2018, \$68.2 million in fiscal 2019 and 2020, and \$75 million in fiscal 2021. Statewide funds include outside review contractual costs in fiscal 2017-2018 and 2021; School Safety grants in fiscal 2021 (\$10 million); and Healthy School Facility grants in fiscal 2021 (\$30 million). Funding for projects supported by Maryland Stadium Authority revenue bonds is not included. Aging Schools funding is not included. Columns may not sum to total due to rounding.

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

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The Governor's proposed fiscal 2022 capital budget includes a total of \$306.1 million in general obligation (GO) bond funding for public school construction projects in the State, including (1) \$250.0 million for IAC's Public School Construction Program (PSCP); (2) \$40.0 million for a supplemental grant program for local school systems with significant enrollment growth or relocatable classrooms (EGRC); (3) \$10.0 million for the School Safety Grant Program; and (4) \$6.1 million for the Aging School Program. With the exception of the PSCP allocation, all other amounts are required by law. The capital budget also includes \$520 million in funding from the sale of revenue bonds by the Maryland Stadium Authority (MSA) for additional public school construction projects (discussed below).

### *Built to Learn Act of 2020*

The Built to Learn Act was enacted as Chapter 20 of 2020, but it takes effect only if HB 1300 of 2020 (Blueprint for Maryland's Future – Implementation) is enacted into law. As HB 1300 was vetoed by the Governor, the Built to Learn Act has not yet taken effect. However, the General Assembly is scheduled to consider the Governor's veto of HB 1300. If the veto is overridden, the Built to Learn Act will take effect immediately thereafter.

The Built to Learn Act authorizes 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 allocated among local school systems and generally must be used to build or renovate schools within 10 years. As noted above, the proposed fiscal 2022 capital budget includes the first installment of \$520 million from the sale of MSA revenue bonds; however, the fiscal 2022 proposed operating budget does not include the first debt service payment.

The Built to Learn Act also (1) extends mandated funding for the Healthy School Facility Fund by three years, through fiscal 2024, with at least \$30.0 million in fiscal 2022 (due to the bill not yet taking effect, the fiscal 2022 funding is not mandated and is not included in the Governor's proposed budget) and at least \$40.0 million mandated in each of fiscal 2023 and 2024; (2) raises the mandated annual funding level for EGRC 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.

For school construction projects, IAC must adopt regulations that include architectural, engineering, consulting, and other planning costs as eligible costs for a project that has received local planning approval from IAC. Regulations must also define eligibility criteria for State funding of expenditures on all furniture, fixtures, and equipment with a median useful life of at least 15 years. The Built to Learn Act also alters the calculation of the State share of eligible costs for counties that meet specified criteria. For MSA projects only, it also alters the calculation of gross area baseline for counties that meet specified criteria.