

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 86
Appropriations

(Delegate Forbes)

Capital Projects - High Performance and Green Buildings - Alterations (Green Building Restoration Act)

This bill expands the application of the State’s high-performance building requirement to any capital project (including major public school renovations) for which more than 25% of the funding for the acquisition, construction, or renovation of the project is State funds, subject to existing exemptions and waiver processes; newly constructed public schools and community college capital projects that receive *any* State funds are still required to be built as high-performance buildings. However, the bill allows public schools and public safety buildings in sparsely populated areas to meet a lower high-performance building standard than other public buildings. The bill also reinstates a requirement that new public school buildings obtain independent certification of their “green” status. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: No effect on total capital expenditures by the State, but more projects may receive funding to the extent that project costs for public safety buildings in sparsely developed areas decrease minimally; project costs for other State capital projects are not affected. No effect on revenues.

Local Effect: No effect on total local resources available for local capital projects. To the extent that local capital projects and public school renovations are built with at least 25% State funds, total construction costs for individual projects may increase minimally to comply with the high-performance building requirement, as discussed below. The construction cost of public school and public safety buildings in sparsely populated areas may decrease minimally. Revenues are not materially affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary/Current Law:

Expansion of High-performance Building Requirement

Chapter 124 of 2008 requires new or renovated buildings constructed *entirely* with State funds and new school buildings (but not major renovations) that receive *any* State funds to be constructed as high-performance buildings under specified circumstances and subject to specified waiver processes. Chapters 527 and 528 of 2010 extended the requirement to community college capital projects that receive *any* State funds to be constructed as high-performance buildings. Current law defines a “major renovation” to mean (1) the building shell is to be reused; (2) the building’s major systems are to be replaced; and (3) the scope of the renovation is at least 7,500 square feet.

The bill does not alter the criteria for newly constructed public school buildings or community college capital projects to comply with the high-performance building requirements. However, the bill applies the high-performance building requirement to two new categories of capital projects if more than 25% of their funding comes from the State: (1) any nonschool local capital project and (2) major public school *renovation* projects.

Lower Standard for Selected Buildings in Sparsely Populated Areas

Statute defines a “high-performance building” as one that:

- meets or exceeds the criteria for a silver rating under the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) program; achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate standard approved by the Department of Budget and Management (DBM) and the Department of General Services (DGS); or
- complies with a nationally recognized and accepted green building code, guideline, or standard reviewed and recommended by the Maryland Green Building Council (MGBC) and approved by DBM and DGS.

Based on actions approved by MGBC, DGS, and DBM, a “high-performance building” is one that (1) achieves a LEED silver rating or better; (2) earns a two Green Globes rating or better under the Green Building Initiative’s Green Globes rating system; or (3) complies with MGBC’s supplement to the International Green Construction Code enacted in November 2014.

The bill allows public school buildings and public safety buildings located in areas that are sparsely developed and not served by quality public transportation to achieve a lower “certified,” instead of silver, rating under LEED and still qualify as a high-performance building. “Sparsely developed” and “quality public transportation” are not defined by the bill.

Independent LEED Certification

Chapter 14 of 2018 required MGBC to develop guidelines that enable new public school buildings to meet the equivalent of a LEED silver standard *without* requiring an independent certification that the buildings have achieved the required standard. The council finalized the guidelines in November 2019. However, the bill repeals that requirement and specifies that any guidelines developed by MBGC before July 1, 2021, may not be used for new public school buildings. Instead, the bill requires that MGBC ensure that applicable buildings meet the high-performance building requirement. Thus, under the bill, the new standards do not apply and school buildings must receive (and pay for) independent certification of their LEED status.

State Share of Local School Construction and Renovation 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.

Local Expenditures: Although the State pays at least 50% of eligible school construction costs, the inclusion of *ineligible* costs by local school systems in their school construction projects means that the State spends, on average, 26% of total school construction costs. Accordingly, it is unclear how many or which public school major renovation projects will meet the 25% threshold and, thus, be required to meet the high-performance building standard.

When first enacted in fiscal 2008 for State buildings and public schools, the high-performance building standard was expected to add between 2% and 5% to total project costs in order to comply with the requirement. Since then, building codes and construction practices have increasingly reflected high-performance building standards, so the cost differential between “green” buildings and other buildings has lessened considerably. Many jurisdictions elect to meet the LEED silver standard even when not required to do so. Thus, any meaningful increase in local expenditures for specific major renovations of public schools that meet the 25% threshold is unlikely. For schools and public safety facilities in isolated areas that have to meet only the LEED certified standard, the likelihood of a cost differential is even less.

Similarly, the cost of having to once again obtain third-party certification of LEED status for public school buildings has an operational effect on projects, but it is only a small fraction of total project costs and, thus, likely has little or no noticeable effect on local capital expenditures.

Additional Information

Prior Introductions: SB 655 of 2020, a bill with similar provisions as amended, passed the Senate and was referred to the House Appropriations Committee, but no further action was taken. Its cross file, HB 1636, was referred to the House Rules and Executive Nominations Committee, where no further action was taken.

Designated Cross File: SB 228 (Senator Hettleman) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Higher Education Commission; Public School Construction Program; Department of Budget and Management; Department of General Services; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; 21st Century School Fund; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510