

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1165
Appropriations

(Delegate Forbes)

Capital Projects - High Performance and Green Buildings

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, and to more building renovation projects; 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 alters the definition of a “major renovation” for the purpose of complying with the bill, reinstates a requirement that new public school buildings obtain independent certification of their “green” status, and requires the Maryland Green Building Council (MGBC) to ensure compliance with the bill’s requirements. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: No effect on total general obligation or Transportation Trust Fund (TTF) capital expenditures, but fewer projects in the capital budget and *Consolidated Transportation Program* may receive funding to the extent that project costs for systemic renovation projects increase significantly. Project costs for other State capital projects are not affected. General fund expenditures likely increase in FY 2023 for staffing, but a reliable estimate is not feasible, as discussed below. 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 systemic renovation projects may increase substantially to comply with the high-performance building requirement, as discussed below. The construction costs 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) several of 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. The bill also alters the definition of “major renovation” to mean (1) the renovation exceeds 50% of the building area; (2) the value of the renovation exceeds 50% of the assessed value of the building; (3) there is a change in occupancy load or occupancy classification; *or* (4) *any* of the building’s major systems are to be replaced.

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 at least 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 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 that achieve five or fewer points in the combined credits (under LEED) for access to quality transit and surrounding density and diverse uses to achieve a “certified,” instead of silver, rating under LEED and still qualify as a high-performance building. The bill’s criteria generally apply to buildings in rural or other sparsely developed areas.

Independent Leadership in Energy and Environmental Design 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 MGBC before July 1, 2022, may not be used for new public school buildings. Instead, the bill requires that MGBC ensure that applicable buildings meet the high-performance building requirements. Thus, under the bill, the new standards do not apply and school buildings must receive (and pay for) independent certification of their LEED status.

By June 30, 2023, and annually thereafter, MGBC must report on the status of buildings meeting the high-performance building standards to specified committees of the General Assembly.

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.

State Expenditures:

Renovations of State Buildings

Under the bill, virtually any capital renovation project, even a minor systemic renovation, likely qualifies as a major renovation and results in the entire building having to be rebuilt to meet high-performance building standards. Under current law, a renovation project must meet *all three* specified criteria (reuse of the building shell, replacement of *multiple*

building systems, and a threshold of 7,500 square feet) to qualify as a major renovation. Under the bill, a project must meet *only one* of the four specified criteria, including replacement of a *single* building system, to qualify as a major renovation. Under current law (and the bill), any building undergoing a major renovation involving at least 7,500 square feet must meet high-performance building standards. Thus, even a small renovation project (*e.g.*, a roof replacement covering more than 7,500 square feet) likely results in a more substantial renovation of the affected building to comply with the standards, thereby increasing the costs of individual capital renovation projects of State buildings.

Even so, total State funding for capital projects, including TTF, is not affected, as the Maryland Department of Transportation's capital program is fully subscribed and general obligation bond funding levels are established annually by the Governor and General Assembly through the capital budget process. However, to the extent that costs of individual capital improvement projects escalate significantly, fewer projects receive funding in a given year, causing some projects to be delayed.

Enforcement of High-performance Building Standards

DGS, which staffs MGBC, advises that it needs seven new positions to implement the bill's requirement that MGBC ensure that State buildings, public schools, and community colleges comply with high-performance building standards. The Department of Legislative Services (DLS) disagrees. Currently, a building other than a public school that is required to meet the LEED silver standard must secure third-party verification that it has met the applicable standard. Under current law and resulting regulations, public schools are exempt from requiring third-party verification. However, the bill repeals that exemption, meaning that all high-performance buildings must obtain third-party verification. In order to carry out its obligation to ensure that affected buildings meet the high-performance building standards, DLS believes that MGBC must only confirm that a project has received the third-party verification (rather than conduct the verification itself). DGS can likely carry out that responsibility, and the related reporting requirement, with existing staff.

Oversight of Capital Grant Projects

DGS oversees hundreds of public, private, and nonprofit grantees that receive capital grants through miscellaneous grants and legislative initiatives in the capital budget. By lowering the high-performance building threshold to projects that receive at least 25% of their funding from State funds, the bill may require that some grant recipients have to meet high-performance building standards. Neither DGS nor DLS can determine how many projects may be affected, as there is no information on total project costs, but the number is potentially large. As many grantees are small organizations with limited experience managing large capital projects, they likely require substantial assistance in understanding

and meeting the statutory requirements. Thus, DGS likely requires additional staff to oversee these projects. In the absence of a reliable estimate of the number of affected projects, a reliable estimate is not feasible, but may involve several positions.

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, 31% 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. Systemic renovation projects that meet the 25% threshold likely experience the same escalation in project costs described above for State buildings due to the new definition of major renovation projects. Local governments are responsible for any increased costs.

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: Legislation containing similar provisions has been considered in recent legislative sessions. SB 228 of 2021 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, and its cross file, HB 86, received a hearing in the House Appropriations Committee; no further action was taken on either bill. SB 655 of 2020 was amended in the Senate and referred to the House Appropriations Committee where 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 588 (Senator Hettleman) - Education, Health, and Environmental Affairs.

Information Source(s): 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; Maryland Department of Transportation; Baltimore City Community College; National Council on School Facilities; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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