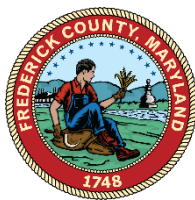
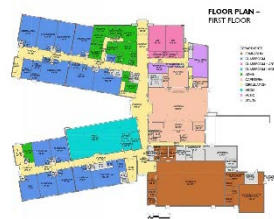


Frederick County School Construction Work Group

Interim Report Regarding Possible State Legislative Initiatives



Prepared by:
School Construction Work Group
September 2016

Introduction

Background

Recognizing that recent statewide increases in school construction costs may ultimately reduce the number of projects that can be funded in Frederick County, Maryland, County Executive Jan Gardner created two school construction cost work groups to evaluate ways to reduce these costs. The specific charge of this School Construction Work Group (SCWG) was as follows.¹

- Evaluate the cost of school construction in Frederick County with a goal of reducing costs by 8-10%, without sacrificing quality, performance, or the life of the projects.
- Review and discuss mechanisms for construction savings and offer suggestions.
- Review topics such as the bidding process, the construction management approach, and project design.
- Study options for specific bid packages and construction methods.
- Recommend additional areas which should be considered for value engineering, if feasible.
- Make recommendations for potential changes in legislation, policy, or procurement for local and state education/elected officials and to a state task force on school construction.
- Complete the work of the committee and create a summary for presentation to the County Executive within a six (6) months to one (1) year timeframe.

Members of the Work Group

Chairman

Michael Marschner, Special Projects Manager, Frederick County

Members

Ray Barnes, Frederick County Public Schools (FCPS);

Kyle Bostian, Parent Representative;

Joe Dattoli, FCPS Director of Construction (Retired)

Darrell Guyton, Morgan Keller

Jeremy Holder, Ausherman Properties

Tom King, King & Asbury Architects (now Noelker & Hull Architects)

Chuck Nipe, Frederick County Public Works

Richard Pryor, Pryor Mechanical

Dusty Rood, Rodgers Consulting

Jason Wiley, Elm Street Development.

¹ The County Executive also established a School Lease Option Task Force, which is being overseen by members of the County Council.

SCWG Areas of Focus

The SCWG decided to establish specific construction related areas that they would focus on. These areas include:

Construction Technology – Including reviewing various mechanical and electrical systems design, structural and non-structural wall types, roofing systems and materials, windows, flooring and other architectural elements.

Delivery Systems - Reviewing various contracting methods used within the State of Maryland and Nationally as well as alternative methods used by the private sector.

Local, State, and Federal Mandates - Identifying any State and Federal mandates that affect school design and cost and suggest changes in law or regulation to reduce the impacts these mandates have on the cost of school construction, however, these suggestions will not be factored into the 8-10% cost reduction goal, which the work group is charged with.

Recognizing the need to review and make recommendations regarding any State Legislative initiatives before the 2017 Legislation Session, the SCWG decided to prepare this Interim Report which summarizes potential State Legislative Initiatives that may help reduce school construction costs.

Legislative Initiatives

After reviewing the funding and procurement requirements contained in the Maryland State Finance and Procurement Article as well as the Maryland State Education Article §5-301, the SCWG concluded that minor changes to these statutes could have an important impact on slowing or even reducing the recent increases in school construction costs. These legislative changes focus on the following:

State Finance and Procurement Article (High Performance Building Act §3-602.1)

This legislation, which has been in place since 2008, established the U.S Green Building Council's LEED (Leadership in Energy and Environmental Design) Green Building Rating System "Silver" requirement as the standard for the statutes High Performance Building (HPB) definition. The statute does allow for equivalent(s) to this standard to also be used to validate the HPB standard, however approval of these equivalents has not yet occurred by the Secretaries of Budget and Management and General Services as required by the statute.²

² In November 2014, the Maryland Green Building Council adopted the International Green Construction Code (IgCC) as an alternative compliance path to the long standing LEED Silver standard. It is not clear as of the date of this report if the Departments of Budget and Management and General Services recognize the IgCC as an equal to the LEED Silver standard as required by §3-602.1(a)(iii) of the statute.

The statute states that it is the intent of the General Assembly that, to the extent practicable, the State shall employ green building technologies when constructing or renovating a State building not subject to this section; and high performance buildings shall meet the criteria and standards established under the “High Performance Green Building Program” adopted by the Maryland Green Building Council.

Although §§3-602.1(c)(1) of the statute indicates that this requirement only applies to (i) capital projects that are funded solely with State funds; and (ii) community college capital projects that receive State funds, §§3-602.1(c)(2) of the statute requires any capital project, which includes construction or major renovations that are 7,500 square feet or greater to be constructed or renovated to be a HPB.

Seek amendments to the High Performance Building Act that will allow LEA more flexibility to contain school construction costs, while at the same time meeting an equivalent HPB standard.

It is important to understand that there are costs associated with obtaining the LEED Silver certification, in addition to the increased design and construction costs to meet the standard. The state’s pursuit of HPB standards, which increases school construction cost, should not cause school construction projects to be delayed. Local Education Agencies (LEA) need greater flexibility in meeting the HPB standard to help bring down the cost of school construction. SCWG members would like to see relief from language that is in the law, in addition to just relief from the costs for the actual certification. The committee would like the state to come up with alternatives to accomplish the same goals without meeting LEED Silver certification.

One suggestion would be for an equivalent process that would still allow for a High Performance Building that parallels LEED Silver certification requirements, but does not require a LEA to pay the Green Building Council for the certification to tell them what they already know. In addition, the work group suggests a sunset provision of the requirement for LEED Silver be added to the HPB Act that would eliminate the requirement if building codes ultimately require the same standard, which LEED Silver requires today. This appears to be the direction building codes are taking.

The SCWG also believes that legislation is needed that would require, by a certain date, the Secretaries of Budget and Management and General Services adopt an equivalent HPB standard that does not require the payment of fees to obtain the certification.³ As an alternatively to a LEED certification, an equivalent HPB standard could be adopted by the Secretaries of Budget and Management and General Services, that would allow school

³ The cost for obtaining LEED Silver Certification for a typical Frederick County Elementary school is \$203,205. Certification of larger (Middle & Senior High) schools can be much higher. (Source: Ray Barnes, August 23, 2016 LEED Cost Analysis.)

construction to meet some form of an equivalent total carbon emissions basis, thereby allowing each LEA greater flexibility to meet the HPB standard at the lowest possible cost.

FCPS staff advised the SCWG that they would like to explore alternatives to expensive Geothermal heating and cooling systems. However, but since they are currently required to meet LEED Silver certification criteria, they are reluctant to try newer technologies e.g. Variable Refrigerant Flow (VRF) systems, that are not guaranteed to be an acceptable technology for meeting the LEED Silver certification. Geothermal systems can be very expensive. In the case of Frederick High School the Geothermal system wells alone represented \$2,255,000 of this school project's construction cost.

The definition of a HPB in the State Finance and Procurement Article §3-602.1 should be amended to recognize alternatives to using expensive (Green) construction technologies to meet the HPB standard. For example, LEA should be allowed to construct schools using conventional (non LEED Silver) construction if they ensure, through a long term Power Purchase Agreement (PPA), that 100% of the school's electrical energy will come from renewable energy sources. **See Exhibit A - Suggested Changes to §3-602.1(a)(2) of the State Finance and Procurement Article.**

The SCWG also believes that it may be prudent to seek multiple changes to §5-312 of the Education Article to provide the LEA the ability, at least for the next few years, to avoid the higher costs associated with designing and building schools that have to meet the current LEED Silver HPB standard. These changes would include modifying §5-312(b) of the Education Article to suspend the requirement that schools be built to HPB standards until 2025 or later. In concert with the changes to §5-312(b) and to incentivize LEA to continue to build to the HPB standard during the suspension of the requirement, §5-312(e) could be amended so that the State's 50% local share funding of the extra costs associated with meeting this standard are re-established and extend until the suspension period ends. Between the 2007 and 2014 the State would pay 50% of the local share of the extra costs incurred in design and constructing a new school to meet the HPB requirements. The SCWG suggests that the County seek legislation that would reinstate the State's cost share for meeting this standard until 2025 suspension date suggested above. **See Exhibit B - Suggested Changes of the Education Article §5-312 (b) & (e).**

State Finance and Procurement Article (Prevailing Wage Rate §17-201)

Prevailing wage laws in the U.S. have existed since the Great Depression. They are controversial. In addition to specifying wages, these laws include work rules that enforce or maintain labor standards for the benefit of employees. The federal Davis-Bacon Act serves as the model for the state of Maryland prevailing wage laws. Maryland enacted its prevailing wage law in 1969.

In 2000 legislation was enacted that removed a restrictive requirement for its applicability to school construction projects. Between the years 2000 and 2014 the State Finance and Procurement Article required school construction projects that had less than a 50% local funding share, to be bid and awarded based upon Prevailing Wage Rates. School districts could opt out of the requirement by contributing 51% or more of the project's construction costs.

After several attempts by the legislature to return to pre 2000 prevailing wage requirements, in 2013 the legislature established a Task Force to study the applicability of the Maryland Prevailing Wage law. The Task Force's primary purpose was to examine the prevailing wage law and how it applies to school construction projects. This was supposed to include analyzing school construction contracts bid as prevailing wage and non-prevailing wage to determine the effect the (prevailing wage) requirement has on school construction costs and whether project quality varied between prevailing and no prevailing wage construction projects.

The Task Force's principal Conclusion was: *"Without any definitive data on the effect of prevailing wage rates on public work projects, particularly relating to the State public school construction program, the task force was unable to make any specific findings; therefore, the task force made no recommendations."*

According to the report there was disagreement among members of the task force. Some task force members believed that the "side by side" comparisons, which suggested an approximate 10% cost increase, that were reviewed by the task force were a fair reflection of these price differences. Others believed that the DLLR review of empirical studies that suggested the increase was much lower better reflected the potential costs of a change to prevailing wage law.

Notwithstanding the task force's failure to make any recommendations, the threshold at which the State required prevailing wage rates was subsequently changed from 50% to 25% (State funding) beginning in 2015.

Seek amendments to the State Finance and Procurement Article to allow LEA the flexibility to bid and construct school absent the Prevailing Wage requirement if local funding is more than 50% of the project costs.

The SCWG believes that the change to 25% effectively eliminated the ability of LEA to reduce construction costs by bidding and award school construction based on contracts with and without prevailing wage requirements, as was allowed from 2000 to 2014, when the State cost share threshold was 50%. FCPS staff indicated that they used to bid their school construction projects with and without prevailing wage and when they did, they found significant enough savings to justify providing 51% local funding for the project to avoid the

prevailing wage requirement. According to FCPS staff the school system has data that shows the average increase across the state from prevailing wage ranges between 10-14%, with an average increased cost of 11.6% statewide.

The SCWG recommends that the County Executive consider proposing changes to the State Finance and Procurement Article 17-201(j)(2)(ii)2, returning the state funding threshold back to 50% from the current percentage of 25% value. **See Exhibit C - Suggested Changes of the Education Article §17-201(j)(2)(ii)2.**

If necessary this legislation could include a requirement that the LEA that chooses to bid school projects with and without the prevailing wage requirement provide detailed bid and final construction cost reports to the Board of Public Works showing any costs savings. This would help formally document any savings and provide other LEA and the IAC with empirical data on school construction costs savings when projects do not have a prevailing wage requirement.

***Education Article
(Incentives for LEA to Value Engineer School Design §5-301)***

Currently there is limited incentive or time to allow LEA or their engineering and architectural consultants to perform comprehensive value engineering of school designs before they are bid and go to construction. In other public works projects value engineering is usually an integral part of the design. Although school delivery schedules may be more rigid than many public works projects, value engineering can be an important element in keeping school construction costs minimized.

Seek amendments to the Education Article to Allow Local Governments to Retain 100% of any Savings Associated with Value Engineering Efforts Performed by the LEA.

The SCWG believe that the state should develop an incentive program for counties that reduce school construction costs through value engineering. LEA should be allowed the option to complete a value engineering analysis for each new school construction project after the state allocates funds for the project but prior to LEA bidding the project's construction. Any savings derived through the LEA Value Engineering of the project should be retained by the LEA or the County so it can be applied to a future school construction project. One possible way to do this would be for the state to identify (allocate) a cost per square foot for the school when the project is approved. If the LEA is able to reduce the cost per square foot from the originally approved value, the LEA or County would retain these savings.

The SCWG recommends that the County Executive consider proposing changes to the Education Article to allow LEA (Counties) to retain any construction savings from value engineering performed for the school construction project. Specifically amending the Education Article §5-301 authorizing the local school system value engineering option. **See Exhibit D - Suggested Changes of the Education Article §5-301(d)(3)(vii) and proposed (ix).**

Other Possible Legislative Initiatives (Which May Require New Legislation)

Mandatory Delay of Legislative Changes

Regulatory changes made during a legislative session are often approved without adequate local review due to time constraints. The cumulative impact of changes in regulations made over several years is often not captured in the review of a single bill during one legislative session. While individually each change in regulation may have a marginal cost impact, the cumulative cost impact adds up. The SCWG suggests that all LEA support (new) legislation that will require a delay before implementing changes in regulations that are adopted during the legislative session, so that there is no conflict with bids prepared locally and to give LEA time to adjust bid specifications.

The SCWG believes that any legislation, which impacts the design or construction of schools, should not be implemented for three years (following approval) to allow the LEA time to adjust to the new legislation without adversely impacting projects that are already in process. This could potentially eliminate the situation that occurred when Frederick High School was approved for the state funding share prior to state legislation mandates taking effect and increasing project costs. Alternatively the LEA's should support changes in legislation that will allow projects to retroactively take advantage of new, higher cost per square foot allocations if regulatory changes increase school construction costs.

Consider Legislation to Require State Maintain Adequate Reserve Funding

Consider pursuing legislation that will require the State to maintain adequate reserve funding to help LEA with increased (unanticipated) costs. There needs to be a closer connection between what the state has budgeted for school construction costs and what the actual costs are after bids are received.

It is unreasonable for the LEA (County) to pick up all the additional cost for a school project if bids come in higher than the State rates of compensation provide, which are often estimated many months before bids are received. In some cases it can be a year before bids for projects are received locally. There can be many issues beyond the LEA control that impact school construction costs during this time frame, including how many other school construction

projects are bidding, which can affect contractor capacity. The SCWG believes that a certain amount of State funds should be reserved each year to allow for adjustments in state compensation based on un-expectantly high bids for a major project or one that has special construction elements affecting its costs.

Consider proposing legislation to create a State Revolving Loan Fund (SRF) for public school construction.

The Maryland State Revolving Loan Fund for environmental projects been very successful and allowed many communities to afford critical infrastructure to serve their residents essential needs, such as water supply and wastewater disposal systems.

Could more funding be made available to LEA if the State of Maryland created a Revolving Loan Program? Under an SRF the state floats the bonds and the county pays back the state over 20-30 years. SRF loans would be for the LEA portion of project costs. Disadvantaged communities or jurisdictions with special urgent needs could be granted partial loan forgiveness further reducing the LEA share of the cost. This concept works very well for other types of major capital project. LEA and local governments may want to investigate this option and propose new legislation to establish a State SRF for school construction.

Consider legislation that would require State to recognize changes in the educational programs, state design guidelines, and community needs

A formula dictates how many square feet a school should be designed for based on enrollment. Any additional square footage over that formula is the local government's responsibility to fund. Since the formula was established there has been many changes in the educational programs and design guidelines e.g. all day kindergarten, pre-kindergarten, larger health suites, larger gymnasiums, intervention programs, special education services, etc. The state needs to recognize these changes and adjust their formulas accordingly, first for elementary schools and then for secondary schools.

The SCWG strongly believes that the state design guidelines, and required square footage to meet those guidelines, needs to be consistent. Legislation would require adjustments to the formulas used to determine how large a school should be and how the state's share of construction funding is calculated.

Consider legislation that would require State to offer financial incentives if LEA uses certain efficient design/construction alternatives.

Currently, there is little incentive for LEA to deviate from their classic standard or prototype tried and true conventional construction practices. Even if a LEA was able to use a newer technology, or innovative construction practices, and potentially save money, the result

would be less of a state share, plus the LEA assumes all of the “risk” of trying something new that may or may not work to build schools sooner or at a lower cost. The SCWG believes that the state could provide some sort of incentive program that would allow a LEA to explore the use of innovative and newer construction methods. The committee suggested that the state could potentially consider awarding a larger state share or exempting a LEA from mandated requirements, if the LEA volunteered to conduct (Construct) a “study school” for the benefit of the entire state. A LEA would submit a concept proposal to the IAC to qualify.

SCWG Recommendations

The SCWG understands that seeking changes to the state’s Education and Finance and Procurement Articles may be very difficult. Recognizing that such changes would affect all LEA, it may not be realistic to pursue all of the legislative initiatives discussed in this interim report. Therefore the SCWG decided to review several legislative ideas and in some cases overlapping legislative approaches, which the County Executive may want to consider exploring further or directly seeking changes to existing state law, which the SCWG believes may be increasing the cost of school construction in Frederick County and elsewhere in the state.

Acknowledgments

The SCWG would like to acknowledge the contributions and assistance of Roger Fritz, Director, Department of Construction Management, FCPS, Janice Spiegel, Education Liaison, Office of the County Executive, and Bret Fouche, Project Manager, Frederick County Division of Public Works; their assistance and support to the working group has been important for the completion of this Interim Report and will continue to be vital in the completion of the final report.

Exhibits

Draft Changes State Statutes

Exhibit A

Suggested Changes to §3-602.1(a)(2) of the State Finance and Procurement Article

Exhibit B

Suggested Changes of the Education Article §5-312 (b) & (e)

Exhibit C

Suggested Changes of the Education Article §17-201(j)(2)(ii)2

Exhibit D

Suggested Changes of the Education Article §5-301(d)(3)(vii) and proposed (ix)

Seek amendments to the High Performance Building Act
(Allow use of Tier 1 Renewable Electricity to satisfy LEED Silver Requirement)

Article - State Finance and Procurement

§3-602.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "High performance building" means a building that:

(i) meets or exceeds the current version of the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) Green Building Rating System Silver rating;

(ii) achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services; or

(iii) complies with a nationally recognized and accepted green building code, guideline, or standard reviewed and recommended by the Maryland Green Building Council and approved by the Secretaries of Budget and Management and General Services; or

(iv) obtains electrical energy to operate the entire building from a Tier 1 renewable electric sources located in the state.

(3) "Major renovation" means the renovation of a building where:

(i) the building shell is to be reused for the new construction;

(ii) the heating, ventilating, and air conditioning (HVAC), electrical, and plumbing systems are to be replaced; and

(iii) the scope of the renovation is 7,500 square feet or greater.

(b) It is the intent of the General Assembly that, to the extent practicable:

(1) the State shall employ green building technologies when constructing or renovating a State building not subject to this section; and

(2) high performance buildings shall meet the criteria and standards established under the "High Performance Green Building Program" adopted by the Maryland Green Building Council.

(c) (1) This subsection applies to:

(i) capital projects that are funded solely with State funds; and

(ii) community college capital projects that receive State funds.

(2) Except as provided in subsections (d) and (e) of this section, if a capital project includes the construction or major renovation of a building that is 7,500 square feet or greater, the building shall be constructed or renovated to be a high performance building.

(d) The following types of unoccupied buildings are not required to be constructed or renovated to be high performance buildings:

(1) warehouse and storage facilities;

(2) garages;

(3) maintenance facilities;

(4) transmitter buildings;

(5) pumping stations; and

(6) other similar types of buildings, as determined by the Department.

(e) (1) The Department of Budget and Management and the Department of General Services shall jointly establish a process to allow a unit of State government or a community college to obtain a waiver from complying with subsection (c) of this section.

(2) The waiver process shall:

(i) include a review by the Maryland Green Building Council established under § 4-809 of this article, to determine if the use of a high performance building in a proposed capital project is not practicable; and

(ii) require the approval of a waiver by the Secretaries of Budget and Management, General Services, and Transportation.

EXHIBIT A

Seek amendments to the High Performance Building Act
(Re-establish-Extend State 50% Share to 2020)

Article - Education

§5-312.

(a) In this section, "high performance building" has the meaning stated in § 3-602.1 of the State Finance and Procurement Article.

(b) This section applies to the construction of new schools that have not initiated a Request For Proposal for the selection of an architectural and engineering consultant on or before July 1, 202009.

(c) Except as provided in subsection (d) of this section, a new school that receives State public school construction funds greater than 50% of the of the school construction costs shall be constructed to be a high performance building.

(d) (1) The Board of Public Works shall establish a process to allow a school system to obtain a waiver from complying with subsection (c) of this section.

(2) The waiver process shall:

(i) Include a review by the Interagency Committee to determine if the construction of a high performance building is not practicable; and

(ii) Require the approval of a waiver by the Interagency Committee.

(e) For fiscal years 20107 through 202014 only, the State shall pay 50% of the local share of the extra costs, identified and approved by the Interagency Committee, that are incurred in constructing a new school to meet the high performance building requirements of this section.

(f) The Board of Public Works shall adopt regulations to implement the requirements of this section.

Seek amendments to modify Prevailing wage requirements
(Return State funding Participation Threshold to 50%)

Article - State Finance and Procurement

§17–201.

- (a) In this subtitle, unless the context indicates otherwise, the following words have the meanings indicated.
- (b) “Apprentice” means an individual who:
- (1) is at least 16 years old;
 - (2) has signed with an employer or employer’s agent, an association of employers, an organization of employees, or a joint committee from both, an agreement including a statement of:
 - (i) the trade, craft, or occupation that the individual is learning; and
 - (ii) the beginning and ending dates of the apprenticeship; and
 - (3) is registered in a program of the Council or the Bureau of Apprenticeship and Training of the United States Department of Labor.
- (c) “Commissioner” means:
- (1) the Commissioner of Labor and Industry;
 - (2) the Deputy Commissioner of Labor and Industry; or
 - (3) an authorized representative of the Commissioner.
- (d) “Construction” includes all:
- (1) building;
 - (2) reconstructing;
 - (3) improving;
 - (4) enlarging;
 - (5) painting and decorating;
 - (6) altering;
 - (7) maintaining; and
 - (8) repairing.
- (e) “Council” means the Apprenticeship and Training Council.
- (f) (1) “Employee” means an apprentice or worker employed by a contractor or subcontractor under a public work contract.
- (2) “Employee” does not include an individual employed by a public body.
- (g) (1) “Locality” means the county in which the work is to be performed.
- (2) If the public work is located within 2 or more counties, the locality includes all counties in which the public work is located.
- (h) “Prevailing wage rate” means the hourly rate of wages paid in the locality as determined by the Commissioner under § 17–208 of this subtitle.
- (i) (1) “Public body” means:
- (i) the State;
 - (ii) except as provided in paragraph (2)(i) of this subsection, a unit of the State government or instrumentality of the State;
 - (iii) any political subdivision, agency, person, or entity:
 1. with respect to the construction of an elementary or a secondary school for which 25% or more of the money used for construction is State money; or
 2. with respect to the construction of any other public work for which 50% or more of the money used for construction is State money;
 - (iv) notwithstanding paragraph (2)(ii) of this subsection, a political subdivision if its governing body:
 1. provides by ordinance or resolution that the political subdivision is covered by this subtitle; and
 2. gives written notice of that ordinance or resolution to the Commissioner; and
 - (v) the Washington Suburban Sanitary Commission.

EXHIBIT C

(2) "Public body" does not include:

(i) except as provided in paragraph (1)(v) of this subsection, a unit of the State government or instrumentality of the State funded wholly from a source other than the State; or

(ii) any political subdivision, agency, person, or entity:

1. with respect to the construction of an elementary or a secondary school for which less than 25% of the money used for construction is State money; or

2. with respect to the construction of any other public work for which less than 50% of the money used for construction is State money.

(j) (1) Subject to paragraph (2) of this subsection, "public work" means a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that:

(i) is constructed for public use or benefit; or

(ii) is paid for wholly or partly by public money.

(2) "Public work" does not include:

(i) unless let to contract, a structure or work whose construction is performed by a public service company under order of the Public Service Commission or other public authority regardless of:

1. public supervision or direction; or

2. payment wholly or partly from public money; or

(ii) an elementary or a secondary school if:

1. the school is not in a political subdivision covered under subsection (i)(1)(iv) of this section;

and

2. the State provides less than ~~50~~25% of the money for construction.

(k) "Public work contract" means a contract for construction of a public work.

(l) "Worker" means a laborer or mechanic.

Consider legislation that would create incentives for LEAs who use value-engineering.
(100% of Savings Reducing County's Share of School Cost)

Article - Education

§5-301.

(a) In this subtitle, "Interagency Committee" means the Interagency Committee on School Construction established under § 5-302 of this subtitle.

(b) (1) For the purposes of this section other than subsection (c), the Board of Public Works shall define by regulation what constitutes an eligible and ineligible public school construction or capital improvement cost.

(2) (i) The Board of Public Works shall include modular construction as an approved public school construction or capital cost.

(ii) The Board of Public Works, at the recommendation of the Interagency Committee on School Construction, shall adopt regulations that:

1. Define modular construction; and

2. Establish the minimum specifications required for approval of modular construction as a public school construction or capital improvement cost.

(3) The cost of acquiring land may not be considered a construction or capital improvement cost and may not be paid by the State.

(b-1) The Board of Public Works, in consultation with the Department of General Services and the Department of Housing and Community Development, shall adopt regulations establishing criteria designed to enhance indoor air quality for the occupants of relocatable classrooms constructed after July 1, 2014, that are purchased or leased using State or local funds, including specifications that:

(1) Require each unit to include appropriate air barriers to limit infiltration;

(2) Require that each unit be constructed in a manner that provides protection against water damage through the use of proper roofing materials, exterior sheathing, water drainage systems, and flashing;

(3) Require that each unit provide continuous forced ventilation when the unit is occupied;

(4) Require each unit to include a programmable thermostat;

(5) Require each unit to be outfitted with energy efficient lighting and heating and air-conditioning systems; and

(6) Mandate that each unit be constructed with building materials that contain low amounts of volatile organic compounds (VOC) in accordance with industry standards.

(c) The State shall pay the costs in excess of available federal funds of the State share of public school construction projects and public school capital improvements in each county if:

(1) The projects or improvements have been approved by the Board of Public Works; and

(2) Contracts have been executed on or after July 1, 1971 for the projects or improvements.

(d) (1) The Board of Public Works may adopt regulations for the administration of the programs provided for in this section.

(2) The regulations adopted by the Board of Public Works may contain requirements for:

(i) The development and submission of long range plans;

(ii) The submission of annual plans and plans for specific projects;

(iii) The submission of other data or information that is relevant to school construction or capital improvement;

(iv) The approval of sites, plans, and specifications for the construction of new school buildings or the improvement of existing buildings;

(v) Site improvements;

(vi) Competitive bidding;

(vii) The hiring of personnel in connection with school construction or capital improvements;

(viii) The actual construction of school buildings or their improvements;

EXHIBIT D

(ix) The relative roles of different State and local governmental agencies in the planning and construction of school buildings or school capital improvements;

(x) School construction and capital improvements necessary or appropriate for the proper implementation of this section;

(xi) At the recommendation of the Interagency Committee, the establishment of priority public school construction programs;

(xii) Development of cooperative arrangements that permit the sharing of facilities among two or more school systems;

(xiii) The selection of architects and engineers by school systems;

(xiv) The award of contracts by school systems; and

(xv) Method of payments made by the State under the Public School Construction Program.

(3) The regulations adopted by the Board of Public Works shall contain provisions:

(i) Establishing a State and local cost-share formula for each county that identifies the factors used in establishing the formulas;

(ii) Requiring local education agencies to adopt educational facilities master plans and annual capital improvement programs;

(iii) Providing a method for establishing a maximum State construction allocation for each project approved for State funding;

(iv) Referencing the policies stated in § 5-7B-07 of the State Finance and Procurement Article;

(v) Requiring local school systems to adopt procedures consistent with the minority business enterprise policies of the State as required under the Code of Maryland Regulations;

(vi) Establishing a process for the appeal of decisions by the Interagency Committee to the Board of Public Works;

(vii) Requiring local education agencies to adopt, implement, and periodically update comprehensive maintenance plans; **and**

(viii) Authorizing the Board of Public Works to withhold State public school construction funds from a local education agency that fails to comply with the requirements of item (vii) of this paragraph. **and**

(ix) Authorizing the local education agency, beginning in FY 2018, the option to complete a value engineering analysis for each new school construction project approved by the IAC, prior to bidding the project's construction, bidding the project with and without the value engineering recommendations (options), and providing that any construction savings derived from the award of the value engineering option(s) will be retained by the LEA. Savings shall be calculated by comparing IAC approved square foot cost to the actual square foot cost with the value engineering options in place.

(4) In adopting any of these requirements, the State Board and the Board of Public Works shall provide for the maximum exercise of initiative by school personnel in each county to ensure that the school buildings and improvements meet both the needs of the local communities and the rules and regulations necessary to ensure the proper operation of this section and the prudent expenditure of State funds.

(e) The Board of Public Works shall develop the rules, regulations, and procedures authorized by this section in consultation with representatives of the county boards and the county governing bodies.

(f) The regulations and procedures of the Board of Public Works adopted under this section and their promulgation are exempt from § 8-127(b) of the State Finance and Procurement Article.

(g) (1) With respect to public school construction or public school capital improvements, including sites for school buildings, the authority, responsibilities, powers, and duties of the following are subject to the regulations adopted by the Board of Public Works under this section:

(i) The State Board;

(ii) The State Superintendent;

(iii) The county governments;

(iv) The county boards; and

(v) All other State or local governmental agencies under this article.

(2) If, as to public school construction or public school capital improvements, there is any conflict between the regulations and procedures of the Board of Public Works and the authority, responsibilities, powers, and duties of the individuals and agencies specified in paragraph (1) of this subsection, the regulations and procedures of the Board of Public Works shall prevail.

(h) The obligation of the State to pay the costs of public school construction and public school capital improvements extends only to those projects or parts of projects that comply with the regulations and procedures of the Board of Public Works.

EXHIBIT D

(i) (1) This subsection does not apply to the proceeds from the sale, lease, or disposition of public school buildings constructed under contracts executed before February 1, 1971.

(2) Consistent with § 4–115 of this article and regulations adopted by the Board of Public Works to implement § 4–126 of this article, the Board of Public Works may require by regulation that the portion of the proceeds received by a county from the sale, lease, or disposal of any public school building that represent State funds provided within 15 years prior to the date of the transaction shall be used solely as part of the State funding of the construction of future public school buildings in the county in which the sale, lease, or disposal occurred, if the public school building was constructed under a contract executed on or after February 1, 1971.

(3) The part of the proceeds from the sale, lease, or disposal of a public school building that fairly represents the appraised value of land and that part of the cost of the public school building that was funded by the county shall remain as the funds of the county.

(4) A transfer of interest in a public school building in connection with a financing of the cost of construction and improvements to such buildings is not a sale, lease, or disposal of the public school facility.

(j) (1) Whether by budget bill or supplementary appropriation bill, all money appropriated to carry out the purposes of this section is a separate fund that shall be administered by the State Comptroller in accordance with the regulations adopted by the Board of Public Works.

(2) Subject to paragraph (3) of this subsection, any unexpended allocations of funds for previously approved projects shall be transferred to the fund established under paragraph (1) of this subsection.

(3) (i) Any funds approved for a county for a project that has not been contracted for within 2 years of the approval of the project, shall be:

1. Available for another eligible project in the county in the current fiscal year; or
2. Reserved for eligible projects in the county in the next fiscal year, in addition to the new funds allocated for eligible projects in the county in the next fiscal year.

(ii) Any funds reserved under subparagraph (i)2 of this paragraph that have not been used to contract for a project within 2 years of the date the funds were reserved shall be available for allocation to an eligible project in any county.

(4) On or before March 30, June 30, September 30, and December 31 of each year, the Interagency Committee shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, and the Department of Legislative Services on the balance in the fund as of the reporting date as the result of transfers or reversions required under this subsection and any expenditures.

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