

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1137
Appropriations

(Delegate Carter)

Baltimore City - Juvenile Detention Facilities - Moratorium

This bill prohibits the Department of Public Safety and Correctional Services (DPSCS) from planning or constructing the proposed 180-bed New Youth Detention Facility (NYDF) in Baltimore City. The bill establishes that a detention facility for juveniles may not be planned or constructed in Baltimore City until a task force has conducted a study on implementing the recommendations of a specified report.

The bill expresses the intent of the General Assembly that at least \$104.0 million of State funding dedicated to the construction and operation of the proposed NYDF in Baltimore City be redirected to capital projects for school construction.

Fiscal Summary

State Effect: The bill has no effect on the State's total capital budget, which is established annually through the capital budget process, nor on total State debt. Placing a moratorium on the planning or construction of detention facilities will not have a fiscal impact. To the extent that the bill's expression of intent is implemented, approximately \$24.6 million in total capital funding that would be available for other State-funded projects in FY 2014 through 2016 are redirected to school construction projects. No effect on revenues.

Local Effect: Local revenues increase by \$104.0 million for school construction over FY 2014 through 2016, which will necessitate a local match.

Small Business Effect: None.

Analysis

Current Law: 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 Public School Facilities Act (Chapters 306 and 307 of 2004) requires that the cost-share formulas be recalculated every three years. The first recalculation occurred in 2007, and the second recalculation occurred in 2010.

Subject to the final approval of the Board of Public Works (BPW), the Interagency Committee 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 approval, projects for which it seeks funding approval, and projects that the local system has forward funded. In addition to approval from the local school board, the capital improvement plan 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 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 recommend to BPW for State funding. By December 31 of each year, IAC recommends to BPW projects comprising 75% of the preliminary school construction allocation projected to be available. Local school districts may then appeal the IAC recommendations directly to BPW. By March 1 of each year, IAC recommends to BPW and the General Assembly projects comprising 90% of the allocation for school construction submitted in the Governor's capital budget. Following the legislative session, IAC recommends projects comprising the remaining school construction funds included in the enacted capital budget for BPW approval.

Background: The Baltimore City Detention Center (BCDC), originally constructed in 1859 with renovations in 1959, 1967, and 1988, is unable to meet requirements set forth by agreements with the U.S. Department of Justice or the American Civil Liberties Union, and the standards set by the Maryland Commission on Correctional Standards or the American Correctional Association. As such, the Department of Public Safety and Correctional Services (DPSCS) has determined that it needs to construct a new detention facility for youthful offenders charged as adults.

The current environment in BCDC fails to meet constitutional minimums for youths held in an adult detention center. The existing infrastructure makes it impossible to comply with standards mandating sight and sound separation from the adult population. The youth held in BCDC, who are between the ages of 14 and 18 and are charged as adults for serious felonies, are housed adjacent to adult housing areas and must still share common areas (halls, stairways, medical areas, etc.) with the adult population. Programming for youth within BCDC is also a challenge because physical space is severely limited. Multiple programs are required to share space simultaneously in the gyms, library, or day rooms. There is no space available for youth individual, group, or family counseling sessions, or providing privacy for attorney phone calls, etc. In addition, youth are currently housed in dormitory-style housing, as opposed to the standard singular cell housing typical for juveniles. The rooms do not meet standards for youth in terms of square footage, lighting, or furniture.

The proposed NYDF will be a stand-alone facility that will provide sight and sound separation for the youth-charged-as-adult population in Baltimore City. It will consolidate housing, educational, and recreational functions in one facility designed to provide the unique programs and services to address this specific population, and it will also help to relieve overcrowding in other areas of BCDC.

DPSCS has completed the design phase of the NYDF project, based on the existing program plan size and capacity of 180 beds. The department had anticipated awarding a construction contract in late fall 2010 but delayed the award in anticipation of results from a new population analysis conducted by the National Council on Crime and Delinquency (NCCD). When the program plan for the project was submitted, DPSCS had used a variety of data from 2000 through 2007 to generate projections for the youth-charged-as-adult population. At the time (November 2007), the average population of youth in BCDC was 120 youth per day, with a peak near 150. The average population for the last 12 months has been significantly lower, providing a justification for the reevaluation.

The NCCD findings were released in May 2011, forecasting the need for 117 beds over the next 30 years, as opposed to 180 beds. In response, DPSCS has proposed resizing the facility to provide 120 single-occupancy beds, with the potential to increase bed space to 180.

According to the Governor's *Fiscal 2013-2017 Five-year Capital Improvement Program*, the estimated total cost of the NYDF project is approximately \$106.6 million; however, this could be significantly reduced if the facility is redesigned to a lower capacity. To date, a total of \$32.7 million has been appropriated for the project, and the department has spent or encumbered approximately \$10.3 million of funds that have already been appropriated for design and construction management. Due to the reduced size of the

proposed project, \$16.9 million in previously authorized funding is deauthorized and repurposed in the Maryland Consolidated Capital Bond Loan (MCCBL) of 2012.

State Fiscal Effect: The bill first prohibits DPSCS from proceeding with the planning or construction of the proposed 180-bed detention facility. As previously referenced, DPSCS has already proposed resizing the facility to provide 120-single occupancy beds, with the potential to increase bed space to 180. There is no fiscal impact by prohibiting DPSCS from proceeding with the planning or construction of the proposed 180-bed facility.

The bill's next provision prohibits any detention facility from being planned or constructed in Baltimore City until a task force has conducted a study on implementing the recommendations of the NCCD report. Accordingly, even though DPSCS has already indicated an intent to implement one of the recommendations of the NCCD report by constructing a smaller facility, it will be prohibited from proceeding with the redesign of a smaller facility until the task force has completed its study. Furthermore, the bill does not specify membership of the task force or a date by which findings of the task force must be provided. Additional funding for the detention center currently included in the State's five-year *Capital Improvement Program* (CIP) is \$25.9 million in fiscal 2014, \$46.7 million in fiscal 2015, and \$1.3 million in fiscal 2016. Because a smaller facility will impact construction costs, the CIP will already need to be adjusted to reflect an updated facility design. Any adjustments may be further delayed due to the prohibition against planning or constructing any detention facility until the task force has conducted a study.

For the purpose of this analysis, Legislative Services assumes that the bill's intent is that the redirected funds supplement, not supplant, any funds that are or will be allocated to the Public School Construction Program (PSCP).

The bill does not affect State debt or the total size of the State's capital budget, which is established annually through the capital budget process. However, to the extent that the bill's expression of intent is implemented, it does increase the funding level for PSCP by \$104.0 million for fiscal 2014 through 2016. It may also reduce funding available for other projects by \$24.6 million over the next several fiscal years.

As noted above, \$16.9 million is proposed for deauthorization in the 2012 MCCBL due to the diminished size of the proposed project, and the remaining funding is deferred from fiscal 2013 and 2014. Assuming the deauthorization is approved, the total project cost is reduced to \$89.7 million, with \$10.3 million already spent or encumbered. That leaves \$79.4 million in unspent funding for the project. However, the bill expresses legislative intent that at least \$104.0 million be redirected to school construction projects, a difference of \$24.6 million. As remaining funding for NYDF is now planned for

fiscal 2014 through 2016, available funds for other capital projects may decrease by \$24.6 million over that period, to the extent that the bill's intent is implemented.

Local Fiscal Effect: To the extent that the bill's expression of intent is implemented, State funding for public school construction projects increases by \$104.0 million, spread across fiscal 2014 through 2016. To be applied to school construction projects, those funds will require a match by the local school system.

Additional Comments: To the extent that failure to build NYDF subjects the State to additional civil liabilities for failure to provide adequate facilities for youth offenders, there may be additional expenditures associated with legal costs and civil penalties. If NYDF must still be built to meet the State's constitutional obligations under existing agreements, capital funds would have to be redirected from other planned projects, including potentially PSCP, in future years.

Even if the bill's expression of intent is implemented, there will still be a need for a detention facility for juveniles. The Department of Juvenile Services (DJS), has already advised that if statutory provisions were to be modified to transfer the youth charged as adult population to the juvenile justice system instead of the adult correctional system (as presented in the NCCD report), a detention facility would still be required, regardless of which department has jurisdiction over the population. Youth facing adult charges have significantly longer lengths of stay than other youth detained in the juvenile justice system, which requires unique programs and services. DJS does not currently provide the necessary services to youth who are in detention. In addition, DJS does not have capacity in its detention facilities to accommodate the youth-charged-as-adult population, particularly in Baltimore City.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Department of Budget and Management, Department of General Services, Department of Juvenile Services, Department of Public Safety and Correctional Services, Public School Construction Program, Department of Legislative Services

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