

Report on the Interim Activity of the Commission on School Construction and Modernization 2022

Members

Legislative Members:

Senator Jennifer L. McClellan, Chair
Senator Jeremy S. McPike
Senator William M. Stanley Jr.
Delegate Jeffrey M. Bourne
Delegate Ronnie R. Campbell
Delegate David A. LaRock
Delegate Shelly A. Simonds

Ex Officio Members:

Jillian Balow, Superintendent of Public Instruction
Shawn Crumlish, Executive Director, Virginia Resources Authority
Joe Damico, Director, Department of General Services
Daniel A. Gecker, President, Board of Education
Michael D. Maul, Director, Department of Planning and Budget
David Richardson, State Treasurer

Citizen Members:

Dr. Stewart D. Roberson
Dr. William Sroufe

Staff

Ryan Brimmer, Senior Attorney, Division of Legislative Services
Stephen Kindermann, Attorney, Division of Legislative Services
Michael "MJ" Jackson, Senate Committee Operations

Website

<http://dls.virginia.gov/commissions/scm.htm>

BACKGROUND

The Commission on School Construction and Modernization (the Commission) was established in 2020 in Chapter 61 (§ 30-384 et seq.) of Title 30 of the Code of Virginia for the purpose of developing and providing guidance and resources to local school divisions related to school construction and modernization and making funding recommendations to the Governor and the General Assembly. The Commission has the following powers and duties:

1. Assessing the Commonwealth's school facilities and determining school construction and modernization funding needs.
2. Identifying funding mechanisms and making recommendations to the Governor and the General Assembly.
3. Establishing best practices in school modernization and construction for school divisions.
4. Creating standardized construction designs and procurement practices to recommend and make available to local school divisions.
5. Identifying potential cost-saving measures for implementation by local school divisions to minimize construction and modernization costs where possible.
6. Submitting to the General Assembly and the Governor an annual report.

OVERVIEW

The Commission met once during the 2022 interim on December 1, 2022, and adopted the recommendations that follow.

December 1, 2022, Meeting

The Commission met in Richmond with Senator Jennifer L. McClellan, chair, presiding.¹ The meeting began with introductions and opening remarks followed by a report on the status of 2021 interim legislative recommendations; a report on the implementation of guidelines for the School Construction Assistance Program; and a discussion of legislative priorities and recommendations for the 2023 Session of the General Assembly. Materials presented at the meeting are accessible through the Commission's meetings webpage.

- **Report on Status of Commission's 2021 Interim Legislative Recommendations**

Tyler Williams, Legislative Fiscal Analyst, Senate Committee on Finance and Appropriations

Mr. Williams provided an overview of Commission recommendations from the 2021 interim.

He first discussed the nearly \$1.3 billion in grants and loans provided for school construction including (i) formula grants of \$400 million under the School Construction Grant Program allocated to each school division with flexible uses, including debt service, and how such funds could be carried forward by school divisions; (ii) competitive grants of \$450 million under the School Construction Assistance Program that prioritizes grants for divisions with poor building

¹ **Members Present:** Senator Jennifer L. McClellan (chair), Senator Jeremy S. McPike, Senator William M. Stanley, Jr., Delegate Jeffrey M. Bourne, Delegate Ronnie R. Campbell, Delegate Dave A. LaRock, Jillian Balow, Shawn Crumlish, Joseph Damico, Daniel A. Gecker, Michael D. Maul, David Richardson, Dr. Stewart D. Roberson, and Dr. William Sroufe,

Members Absent: Delegate Shelly A. Simonds

conditions and higher fiscal need and allows for up-front grants to lower overall project costs; and (iii) \$400 million in Literary Fund loans for low interest rate loans based on local composite index and where the funding revolves back to the Literary Fund.

Under the School Construction Grant Program,² all 134 school divisions receive a \$1 million floor payment with the remaining \$266 million (of \$400 million in formula grants) distributed based on local composite index weighted average daily student membership. Eligible expenditures must be nonrecurring and are limited to construction, additions, infrastructure, site acquisition, renovations, technology, modernizing classroom equipment, school safety equipment and renovations, and debt service payment for projects completed or initiated during the last 10 years. School divisions are authorized to carry over funds to future fiscal years for eligible uses.

The School Construction Fund and Program,³ was established to award grants to fund the construction, renovation, or expansion of public school buildings and directs 98 percent of the state's casino gaming revenues to the Fund. The bills also require the Department of Education (the Department) to develop and maintain a data collection tool to assist school boards to determine the relative age of each school building and amount of reserve funds needed to restore each building to modern use.

The School Construction Assistance Program,⁴ provided \$450 million (\$400 million from the general fund and \$50 million from the Literary Fund) to establish a new competitive construction assistance program and requires the Board of Education (the Board) to establish grant selection criteria addressing local funding commitment, local fiscal needs, and poor school building conditions. Grant awards are based on a percentage of project cost and are determined based on local composite index and fiscal stress classification. Eligible project costs are capped at \$100 million, exclusive of financing costs, outdoor athletic facilities, loose equipment, and furniture from eligible costs.

The Literary Fund loan modifications⁵ authorized \$200 million in both fiscal years 2023 and 2024 for school construction loans from the Literary Fund after the General Assembly allocated additional general funds to support teacher retirement costs thereby freeing up construction loans from the Literary Fund. Additionally, (i) the maximum loan amount was increased from \$7.5 million to \$25 million with a \$5 million loan add-on for projects resulting in school consolidation, (ii) interest rates were required to be annually benchmarked to a market index (with a maximum interest rate of 2.0 percent for school divisions with a local composite index of 0.2999 or lower), and (iii) an annual open application process for loans was established while authorizing the Board to remove those projects that have been inactive for five years from the loan waiting list.

² Chapter 2, 2022 Special Session I, Item 137.C.41.

³ HB 563 (O'Quinn)/SB 473 (McClellan), Chapters 8 and 9, 2022 Special Session I.

⁴ Chapter 2, 2022 Special Session I, Item 137.C.41.

⁵ Chapters 1 and 2, 2022 Special Session I, Item 137.C.41, and SB 471 (McClellan), Chapter 20, 2022 Special Session I.

- **Report on the Development of Guidelines for Implementing the School Construction Assistance Program**

Kent Dickey, Superintendent of the Division of Budget, Finance, and Operations, Virginia Department of Education

Mr. Dickey presented an overview of the Board's development of guidelines for implementing the School Construction Assistance Program over the 2022-2024 biennium.

He reviewed the aforementioned budget provisions that (i) created the School Construction Assistance Program with \$400 million from the general fund and \$50 million from the Literary Fund appropriated in fiscal year 2023 for transfer into the nonreverting School Construction Fund for the Board to award competitive grants for school construction, expansion, or modernization projects demonstrating poor building conditions, commitment, and need, noting that unobligated funding must be re-appropriated for the same use in fiscal year 2024 and (ii) required the Board to develop program guidelines and provide grants for projects conforming to the Department's school facilities guidelines, project costs that include planning, design, site acquisition, core building construction, and site work, 10 percent, 20 percent, or 30 percent of approved project costs (with a maximum project cost of \$100 million) depending on a division's local composite index and fiscal stress category, projects meeting a minimum qualifying total score on competitive criteria in the categories of commitment, need, and poor building conditions, with awards prioritized based on ranked project scores and with only one grant awarded per project.

The Board reviewed draft guidelines at its October and November meetings and adopted a final version at its November 17 meeting with direction to Department staff to incorporate language allowing projects beginning construction on or after July 1 to apply for funding. The adopted guidelines meet requirements from the appropriation act, establish application requirements and procedures, and establish the competitive scoring criteria used to prioritize projects for funding.

The guidelines include specific application requirements and procedures. School divisions apply online for grant funding during an open enrollment period. In order to be considered for funding, a project must be in a local planning phase, planned, or documented in a local Capital Improvement Plan, lack sufficient funding to cover full costs, and have not yet begun construction (or a project beginning construction July 1 pending review by the Office of the Attorney General). A division must indicate the estimated cost of allowable portions of the project and its intent to obligate grant funds for construction within six months of the grant award, to provide information on planned preventive maintenance for the completed project, and to submit their current Capital Improvement Plan. A project can be disqualified or have awarded funds withheld if a school division is not in compliance with other state laws, regulations, policies, or guidelines. Following staff review of the applications, projects recommended for funding are brought to the Board for action.

Grant award amounts are based on a percentage of qualifying project costs, up to \$100 million, and depend upon a school division's local composite index and fiscal stress category as follows:

- School divisions with a local composite index value below 0.3000, or contained in a locality designated with High fiscal stress - 30 percent of approved project costs, subject to availability of funding.
- School divisions with a local composite index value at or above 0.3000 and below 0.4000, or contained in a locality designated with Above Average fiscal stress - 20 percent of approved project costs, subject to availability of funding.

- All other school divisions - 10 percent of approved project costs, subject to availability of funding.

Applications are evaluated and scored on 11 competitive criteria reflecting commitment, need, and poor building conditions. The minimum qualifying score on the criteria is 65 total points (on a 100-point scale) for a project to be further considered for a grant award. The competitive scoring criteria include:

- Criteria 1: Type of school project
 - 10 points for new school construction or for a building-wide renovation
 - 5 points for a building addition project
- Criteria 2: Americans with Disabilities Act access
 - 5 points if the building being renovated or a building being replaced by new construction has not had any access modernization
- Criteria 3: Level of building deficiency
 - 15 points if a building being renovated or a building being replaced by new construction needs major renovation
 - 10 points if a building being renovated or a building being replaced by new construction needs medium renovation
 - 0 points if a building being renovated or a building being replaced by new construction needs light renovation
- Criteria 4: Free or reduced price meal eligibility
 - 10 points if 74 percent or more of students are eligible for free or reduced price meals
 - 7 points if 55 percent or more but less than 74 percent of students are eligible for free or reduced price meals
 - 3 points if 40 percent or more but less than 55 percent of students are eligible for free or reduced price meals
 - 0 points if less than 40 percent of students are eligible for free or reduced price meals
- Criteria 5: Composite index value
 - 10 points for a division composite index of 0.0000 to 0.2999
 - 7 points for a division composite index of 0.3000 to 0.5999
 - 3 points for a division composite index of 0.6000 to 0.8000
- Criteria 6: Project in Capital Improvement Plan
 - 5 points if the project is included in the division's or locality's currently approved Capital Improvement Plan
- Criteria 7: Local commitment
 - 5 points (i) if there is agreement by the local governing body to maintain or increase the percentage of local revenues dedicated to public education throughout the duration of the financing proposed for the project and (ii) if project design and site acquisition for the project have been fully or substantially completed prior to applying for grant funds
 - 0 points if criteria (i) and (ii) are not met
- Criteria 8: Locality fiscal stress
 - 10 points for a locality with a High fiscal stress designation
 - 7 points for a locality with an Above Average fiscal stress designation
 - 3 points for a locality with a Below Average fiscal stress designation

- 0 points for a locality with a Low fiscal stress designation
- Criteria 9: Locality poverty level
 - 10 points for localities with more than 14.2 percent of residents at or below the federal poverty guidelines
 - 5 points for localities with between 9 percent and 14.2 percent of residents at or below the federal poverty guidelines
 - 0 points for localities with fewer than 9 percent of residents at or below the federal poverty guidelines
- Criteria 10: Condition of other buildings
 - 10 points if more than half of the other buildings in the school division are in poor condition
 - 5 points if more than half of the other buildings in the school division are in fair condition
 - 0 points if more than half of the other buildings in the school division are in good condition
- Criteria 11: Locality debt capacity
 - 10 points for a debt capacity percentage greater than 6 percent
 - 5 points for a debt capacity percentage between 3 percent and 6 percent
 - 0 points for a debt capacity percentage below 3 percent

The appropriation act also required the Board to report on the status of the School Construction Assistance Program and provide recommendations for improvement to the General Assembly by December 1 each year. The report provided this year included three recommendations:

1. Using multiple years of composite index and fiscal stress data in determining the 10 percent, 20 percent, or 30 percent grant award amounts to recognize changing local economic conditions or fluctuating data values from a single year or using the most favorable of the latest or multiyear data. Currently, only the latest composite index and fiscal stress data are used in determining the grant amounts to divisions.
2. Including in appropriation act language that school projects where construction began July 1, 2022, or after are eligible for application, consistent with the Board's intent for its final guidelines.
3. Including in appropriation act language that the principal portion of future debt service payments not yet begun on school projects where construction is pending or just begun is an allowable cost with grant funding.

Mr. Dickey also outlined the next steps for the Board, which include completing final language revisions to guidelines based on guidance from the Office of the Attorney General, completing the online application form that divisions will use to apply for grant funding, and announcing the open application period to school divisions through a Superintendent's Memorandum.

● **Public Comment**

The Superintendent for Roanoke County noted heavy interest in the competitive grant funding, but because needs exceed available funding, expressed concern some divisions could be left out of the funding opportunities if their schools generally were not in a poor enough condition.

The Virginia Association of Counties expressed support for the proposed recommendations of the Commission and noted their priority, along with that of the Virginia Municipal League, for

legislation that would authorize up to a one percent new local sales tax for all counties and cities with revenues solely used for school construction and renovation projects.

The Virginia School Boards Association expressed support for the proposed recommendations of the Commission.

- **Legislative Recommendations for the 2023 Session of the General Assembly**

The Commission members discussed the information presented, legislative proposals for bolstering school construction and modernization, and budgetary funding recommendations for the Commission's annual report to the General Assembly and Governor. The Commission voted to adopt the following recommendations.

RECOMMENDATIONS ADOPTED BY THE COMMISSION:

Recommendation 1 (consistent with Board of Education (BOE) appropriation act language recommendation for the School Construction Assistance Program): Either (i) use multiple years of composite index and fiscal stress data for determining the 10 percent, 20 percent, or 30 percent grant award amounts to recognize changing local economic conditions or fluctuating data values from a single year or (ii) use the most favorable of the latest or multiyear data. Currently, only the latest composite index and fiscal stress data are used in determining the grant amounts to divisions.

Recommendation 2 (consistent with BOE appropriation act language recommendation for the School Construction Assistance Program): Make school projects where construction began July 1, 2022, or after eligible for application, consistent with Board of Education intent for its final guidelines.

Recommendation 3 (consistent with BOE appropriation act language recommendation for the School Construction Assistance Program): Make the principal portion of future debt service payments not yet begun on school projects where construction is pending or just begun an allowable cost with grant funding.

Recommendation 4: Authorize up to a one percent new local sales tax for all counties and cities with revenues solely used for school construction and renovation projects. Note: Recommendation #3 from the 2021 Commission Interim Report [SB 472 (McClellan, 2022); HB 1099 (LaRock, 2022)].

Recommendation 5: Include additional funding of \$2.5 billion in the appropriation act for the School Construction Grant and Assistance Program (\$500 million for entitlement/ direct in the School Construction Grant Program; \$2 billion for competitive grants in School Construction Assistance Program).

Recommendation 6 (adopted in concept): Require a minimum local effort for capital maintenance programs and require school boards to include in any capital improvement plans a minimum 1.5 percent capital asset replacement value commitment target to avoid major replacement costs in the future.

Recommendation 7: A Section 1 bill to direct the Board of Education to make recommendations to the General Assembly for revisions to the Standards of Quality to establish standards for operations, maintenance, and new construction of public school buildings. Note: Recommendation #4 from the 2021 Commission Interim Report [SB 603 (Stanley, 2022); HB 1100 (LaRock, 2022)].