

Meeting Minutes – February 11, 2021

Call to Order:

Dr. Karen Salmon called the video-conference meeting of the Interagency Commission on School Construction to order at 9:00 a.m.

Chair Salmon noted that public access to the January 2021 IAC Meeting was inadvertently terminated several minutes early, before the Members were able to cast their unanimous vote to move into the Executive Session. This mistake was rectified immediately by submitting the necessary documentation in accordance with the Open Meetings Act. The vote count and any remaining missing information relevant was published on the IAC's website, and in the January 2021 IAC Meeting Minutes.

Members in Attendance:

Dr. Karen Salmon, State Superintendent of Schools, Chair
Denise Avara, Appointee of the Governor
Secretary Ellington Churchill, Department of General Services
Linda Eberhart, Appointee of the Speaker of the House
Brian Gibbons, Appointee of the Speaker of the House
Edward Kasemeyer, Appointee of the President of the Senate
Gloria Lawlah, Appointee of the President of the Senate
Dick Lombardo, Appointee of the Governor
Secretary Robert S. McCord, Maryland Department of Planning

Members Not in Attendance:

None

Public Comment:

None

IAC Correspondence:

Wicomico County submitted written testimony to the Chair and Members of the IAC regarding their Capital Improvement Program.

1. Consent Agenda – [Motion Carried]

Upon a motion from Ms. Lawlah and a second by Ms. Avara, the IAC voted unanimously to approve the consent agenda.

A. Approval of the January 14, 2021 Minutes

To approve the minutes of the January 14, 2021 Interagency Commission on School Construction Meeting.

B. Summary of Contract Awards

To approve contract procurement as presented.

C. Approval of Revisions to Previously Approved Contracts

To approve the revisions to previously approved contract awards to accurately reflect the adjusted reversion amounts as presented.

D. Project Closeouts

To approve the final State project costs as presented and to remove the projects from the active project detailed financial report.

2. Design Funding Eligibility – [Informational Only]

Alex Donahue, Deputy Director for Field Operations, presented a proposal for IAC staff to pursue modification to regulation and procedures to make design funding an eligible cost, as requested by the IAC members at a former meeting. Mr. Donahue noted that how efficiently and effectively a school facility functions depends on many small decisions, such as the spaces it contains, the layout of the building, the materials used in construction, and more. Mr. Donahue emphasized that even though the design of a school facility only accounts for approximately 3% of the total cost of ownership over 30-years, this can still account for upwards of \$2 million of funding. This often places undue hardship, particularly among lower wealth LEAs, in providing sufficient design funding to support their portfolios.

IAC Staff believe that making design costs eligible for funding will increase equity, and will facilitate more successful and more timely projects. As a result, staff propose to take steps listed in the IAC Agenda to draft potential changes to the IAC's regulations, to support funding design costs, and to obtain feedback from LEAs on these proposed changes.

Chairperson Salmon followed up, and asked when IAC staff are planning to obtain feedback from the LEAs on these proposed changes. Deputy Director Donahue expressed that IAC staff will work to obtain this feedback "very quickly," so that we could incorporate this into the fiscal year 2023 CIP cycle.

3. Proposed COMAR Amendments – [Motion Carried]

Cassandra Viscarra, Program Support Manager, presented a number of proposed COMAR amendments to be published in the Maryland Register and open for Public Comment. Ms. Viscarra emphasized that voting on these proposed changes is not a final action, but a preliminary one, and that these revisions would later be returned to the IAC for final approval. All proposed revisions have been tracked in a different color within the Agenda.

Program Support Manager Viscarra also noted that the tracked changes on page 36, changing enrollment projections from 7 years to 5 years, had been discussed for over a year with different LEAs and stakeholders in Maryland. However, due to feedback received from some of the LEAs following publication of the Agenda, IAC Staff recommended that the 5 year enrollment projection amendment be excluded from the final motion. Secretary McCord expressed support for the recommendation and noted that there may be multiple Maryland Counties that have adequate public facility ordinances set at a 7-year timeframe. Other members

also expressed support and Ms. Viscarra was instructed to modify the proposed motion language accordingly.

Ms. Viscarra presented a number of other proposed COMAR changes, including a proposal to allow forward funding of systemic projects that meet some specific requirements. This change was proposed because there was an LEA that mistakenly proceeded with a systemic project that was deemed eligible in last year's CIP, but was deferred due to fiscal constraints. The IAC approved a waiver for this specific LEA, but IAC staff considered that if a project was reviewed and determined eligible in a prior-year CIP and was submitted to DGS for design review, then the regulations could be modified to allow the project to proceed as a forward funded project.

Other proposed revisions included an update to the definition of a "Limited Renovation" project, making architectural enhancements optional and a change to the number of days LEAs have to respond to maintenance assessments, changing from 30 days to 45 days to align the regulations with the new Maintenance Effectiveness Assessment requirements. Proposed revisions also included a change that modifies the requirement for Educational Specifications to clarify that they the Educational Specifications are required for new, renovation, and renovation addition projects, but not for limited renovation projects to bring COMAR into alignment with current and reasonable practices for projects of limited scope that don't require a full Educational Specifications evaluation.

The final proposed regulatory changes would strike regulations for a Fast Track method of project delivery and make technical corrections, including striking the Board of Public Works from section 14.39.02.28 in accordance with the 21st Century School Facilities Act, and correcting a regulation cross reference in COMAR 14.39.02.10.

Secretary Churchill reminded staff to be cognizant of the impact on other additional IAC processes when modifying regulations. Regarding the proposed change to allow forward funding of certain systemic projects, Secretary Churchill asked if the LEAs had expressed a desire for this change. Director Gorrell responded that no LEA had specifically made a request other than the LEA that had received the IAC waiver earlier in the year, but that the change would increase flexibility for all LEAs.

Upon a motion from Secretary McCord and a second from Ms. Avara, the members voted unanimously to approve a corrected motion to approve amendments to COMAR 14.39.01, ~~14.39.02.10~~, .13, .14, .17, .28, ~~14.39.03.03~~,* and 14.39.04.03 and to approve the repeal of 14.39.04.09 as presented in this item and to authorize staff to make additional technical edits as necessary. The proposed COMAR revisions will be published in the Maryland Register and will be open for public comment for a period of at least 30 days before returning to the IAC for final approval.

***Indicates changes to the motion from Staff recommended language included in the agenda publication.**

4. Howard County Capital Improvement Program (CIP) Project Cancellations – [Motion Carried]

Arabia Davis, Funding Program Manager for the IAC, presented a request from Howard County to cancel the FY 2019 CIP Long Reach High - Building Envelope Phase I project due to an insufficient estimated budget that does not incorporate the additional scope of work that is required. The request also included cancellation of the FY 2019 CIP Fulton Elementary Roof and FY 2020 CIP Fulton Elementary HVAC projects that were submitted out of sequence. Howard County has requested that the funding from the 3 projects, totaling \$9.19 million, be transferred to the LEA's reserved appropriations amount. The IAC Staff supports this request.

Upon a motion from Ms. Eberhart and a second from Mr. Gibbons, the IAC Members voted on a request from Howard County Public Schools to approve the:

1. Cancellation of the three (3) previously approved CIP projects shown in the table below; and,
2. Transfer of \$9,187,807 to the LEA's Reserved Appropriations Account.

5. FY 2022 Capital Improvement Program (CIP) 90% Recommendations – [Motion Carried]

Arabia Davis, Funding Program Manager for the IAC, presented the 90% allocations for the Capital Improvement Program, based on the Governor's preliminary appropriation for the Capital Improvement Program.

Funding Program Manager Davis began by noting that the Governor's preliminary appropriation for the Capital Improvement Program is \$250 million, which is \$30 million less than the amount the IAC staff used to develop recommendations for funding approvals and projections at the December IAC meeting. Given the \$30 million reduction, funding adjustments to the 90% recommendations and 100% recommendations are being suggested to account for the decreased budget amount.

The IAC received a total of 210 total funding requests, totaling \$694,350,529, with the IAC recommending 74 projects for a total of \$225,000,000. The recommendations are based on an assessment of each LEA's eligible project requests, backlog of previously approved projects, and capacity to carry out approved projects. Each LEA's 10-year average allocation amount has been used as a target for their overall allocation, with variances as needed due to lower requests or project cash flow needs. Funding Program Manager Davis emphasized that the CIP team has made every effort to fully fund capital maintenance projects, but in some cases they were not successful. In those instances, CIP team members reached out to Allegany County, Baltimore City, and Charles County, to see how they would like to proceed, and are continuing to collaborate.

Secretary Churchill emphasized the improvement of the process over the years, and commended Funding Program Manager Davis and the CIP team as the process continues to move smoothly, even though COVID-19 Pandemic operations. Chairperson Salmon echoed these sentiments.

Upon a motion from Secretary Churchill and a second from Mr. Gibbons, the IAC voted unanimously to adopt the Fiscal Year 2022 90% Capital Improvement Program IAC staff recommendations for each school system and the Maryland School for the Blind totaling \$225 million as shown in the Summary of Project Requests and Recommendations and to provide the recommendations to the presiding officers and the budget committees of the General Assembly and the Department of Legislative Services.

6. Approval of Property Disposition – Carroll County – New Windsor Middle School – [Motion Carried]

Deputy Director of Administration Kim Spivey presented an item on the disposition by sale of the New Windsor Middle School in Carroll County.

Deputy Director Spivey mentioned that the Board of Education and the Carroll County Government have provided the required notifications for the disposition of the New Windsor Middle School facility, and have received previous approvals from the Board of Public Works and the IAC. The County has satisfied the repayment of the outstanding bond debt, and the IAC Staff have calculated the states proportional share of the proceeds at 28.1%, based on the States proportional share of the original construction cost in 1995. This

item requires the county to pay the State its proportional share, in the amount of \$1,397,905, in alignment with the scheduled receipt of the sale proceeds.

Following a motion from Ms. Eberhart and a second from Mr. Lombardo, the IAC voted unanimously to approve the disposition by sale of the New Windsor Middle School located at 1000 Green Valley Road, New Windsor, Maryland 21776 by the County Commissioners of Carroll County to the New Windsor Holding, LLC, with the agreement that the county government pay the State its proportionate share, in accordance with COMAR 14.39.02.25.C, of the net sale proceeds of \$1,397,905 as follows:

- At settlement: \$38,677
- 1 year after settlement: \$110,506
- 2 years after settlement: \$1,248,722

7. Property Status Change Items

Michael Bayer, Manager of Infrastructure and Development for the Maryland Department of Planning, presented facility status change items to the IAC.

A. Property Reacquisition – Montgomery County Public Schools – Former Parkside Elementary School Site – [Motion Carried]

Mr. Bayer presented a request from The Montgomery County Board of Education (MCBOE) for approval from the IAC to reacquire from the Montgomery County Government the 6.19-acre site occupied by the former Parkside Elementary School in Silver Spring for use as a holding school for elementary students as the Silver Spring International Middle School and Sligo Creek Elementary School addition project is completed.

Upon a motion from Ms. Lawlah and a second from Secretary McCord, the members voted unanimously to approve the reacquisition by the Montgomery County Board of Education (MCBOE) of 6.19 acres of land at 9500 Brunett Avenue, Silver Spring, Maryland, 20901, occupied by the former Parkside Elementary School, from the Montgomery County Government, for use as holding school for elementary students in the Downcounty Consortium in the fall of 2021; adhering to the actions identified in the state clearinghouse review, state identifier MD 20201007-0871.

B. Informational Property Change Items – [Informational Only]

Mr. Bayer presented 5 informational property easements to the members, all dealing with less than one acre. This included an access and maintenance easement in Charles County, a utility easement in Charles County, an access and maintenance easement in Harford County, a forest conservation easement in Montgomery County, and a utility easement in Montgomery County.

8. Baltimore City E15M HVAC Project Status Report – [Informational Only]

Jamie Bridges, Regional Facilities Manager, presented a status report on the Baltimore City E15M HVAC allocation. Project Manager Bridges noted that we have one project in design, two in procurement, five in construction, and 11 operational. With the approval of the contracts in item 1B of the Agenda, two projects in procurement will soon be in construction. He also noted that of the projects that are delayed, scope changes have caused most of the project delays. The scope changes were anticipated because construction funds were allocated before project design had even been started.

Secretary McCord remarked on consistent reports on the progress and Chair Salmon expressed appreciation regarding the Excel matrix and visualization of data.

9. 2021 Legislative Update – [Informational Only]

Cassandra Viscarra, Program Support Manager, presented a listing of all of the session bills that the IAC is currently following. In particular, Ms. Viscarra noted SB0551, the School Constructive Incentive Act of 2021, which introduces a concept conceived by the Workgroup on Educational Development Specifications, and later endorsed by the Workgroup on the Assessment and Funding of School Facilities. Several of the IAC members were directly involved with workgroups and IAC has been kept apprised of their recommendations. The incentive presented in SB0551 is something that has been discussed at length by the members of the IAC.

Ms. Viscarra also noted that the veto of the Built to Learn Act of the 2020 session, a major school construction bill that allows the Maryland Stadium Authority to issue special revenue bonds of up to \$2.2 billion in school construction projects had been overridden by the Maryland House of Delegates. If the Senate also overrides the Governor's Veto of the Kirwan Bill, the Built to Learn Act of the 2020 session will immediately go into effect, at which point IAC staff will come back to the members with more information about this legislation. Ms. Viscarra mentioned one provision of note with this legislation, in that if passed, the Built to Learn Act would immediately make design funding an eligible cost. Upon a question from Ms. Eberhart, Ms. Viscarra clarified that if enacted, the legislation would make design an eligible cost for all IAC funding, not only funding through the Built to Learn Act.

Adjournment:

Upon a motion from Mr. Lombardo and a second from Secretary McCord, the meeting of the Interagency Commission on School Construction adjourned at 9:49 a.m.