

SENATE BILL 301

F1, P2

71r1840

By: **Senators Brochin, Frosh, Klausmeier, Lenett, Peters, Pugh, and Rosapepe**
Introduced and read first time: January 31, 2007
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Education – New School Construction – Price Preference for High**
3 **Performance Buildings**

4 FOR the purpose of providing a price preference as an incentive for the construction of
5 new school buildings as high performance buildings; requiring the Board of
6 Public Works to adopt certain regulations; prohibiting the State or a county
7 board of education from authorizing an appropriation for the preliminary
8 planning of a proposed capital project for new school construction for a high
9 performance building until a certain program is submitted to the Department of
10 Budget and Management; defining a term; and generally relating to a price
11 preference as an incentive for the construction of new school buildings as high
12 performance buildings.

13 BY repealing and reenacting, with amendments,
14 Article – Education
15 Section 5–112 and 5–301
16 Annotated Code of Maryland
17 (2006 Replacement Volume)

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 3–602(d)
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Education**

4 5–112.

5 (a) This section does not apply to:

6 (1) Contracts for the purchase of books and other materials of
7 instruction as defined in the State Department of Education Financial Reporting
8 Manual;

9 (2) Emergency repairs; and

10 (3) A county board's participation in contracts for goods or
11 commodities that are awarded by other public agencies or by intergovernmental
12 purchasing organizations if the lead agency for the contract follows public bidding
13 procedures.

14 (b) (1) Except as provided in paragraph (2) of this subsection, if the cost of
15 any school building, improvement, supplies, or equipment is more than \$25,000, the
16 county board, at least 2 weeks before bids are to be filed, shall advertise for bids in a
17 medium accessible to the general public, which includes:

18 (i) A newspaper of general circulation in the region;

19 (ii) The Maryland Contract Weekly or comparable State
20 publication; or

21 (iii) An electronic posting on a bid board and physical posting on
22 the local school system bid board.

23 (2) If the amount specified in paragraph (1) of this subsection differs
24 from the amount in § 13–109(a) of the State Finance and Procurement Article, the
25 amount in § 13–109(a) of the State Finance and Procurement Article shall apply under
26 paragraph (1) of this subsection.

27 (3) (i) The county board shall draft specifications that provide a
28 clear and accurate description of the functional characteristics or the nature of an item
29 to be procured, without modifying the county board's requirements.

30 (ii) The specifications may:

1 1. Include a statement of any of the county board's
2 requirements; and

3 2. Provide for the submission of samples, inspection, or
4 testing of the item before procurement.

5 (4) (i) Except as provided in subparagraph (ii) of this paragraph,
6 specifications that use one or more manufacturer's product to describe the standard of
7 quality, performance, or other characteristics needed to meet the county board's
8 requirements, must allow for the submission of equivalent products.

9 (ii) Subparagraph (i) of this paragraph does not apply if the
10 county board determines in the written specification that:

11 1. A particular manufacturer's product is required to
12 maintain compatibility of service or equipment;

13 2. A particular manufacturer's product is required to
14 meet the health needs of students;

15 3. Replacement parts or maintenance are a paramount
16 consideration; or

17 4. A product is purchased for resale.

18 (c) (1) **[A] SUBJECT TO SUBSECTION (F) OF THIS SECTION, A** contract
19 for the school building, improvements, supplies, or other equipment shall be awarded
20 to the lowest responsible bidder who conforms to specifications with consideration
21 given to:

22 (i) The quantities involved;

23 (ii) The time required for delivery;

24 (iii) The purpose for which required;

25 (iv) The competency and responsibility of the bidder;

26 (v) The ability of the bidder to perform satisfactory service; and

27 (vi) The plan for utilization of minority contractors.

1 (2) The county board may reject any and all bids and readvertise for
2 other bids.

3 (d) (1) In this subsection, the term “minority business enterprise” has the
4 meaning stated in § 14–301 of the State Finance and Procurement Article.

5 (2) In Montgomery County, by resolution and by implementing
6 regulations, the Montgomery County Board of Education shall establish a minority
7 business utilization program to facilitate the participation of responsible certified
8 minority business enterprises in contracts awarded by the Montgomery County Board
9 of Education in accordance with competitive bidding procedures.

10 (e) Nonpublic schools may participate under any contracts for goods or
11 commodities that are awarded by county boards, other public agencies, or
12 intergovernmental purchasing organizations, if the lead agency for the contract award
13 follows public bidding procedures.

14 **(F) (1) IN THIS SUBSECTION, “HIGH PERFORMANCE BUILDING” HAS**
15 **THE MEANING STATED IN § 3–602(D)(1)(I) OF THE STATE FINANCE AND**
16 **PROCUREMENT ARTICLE.**

17 **(2) (I) THE BOARD OF PUBLIC WORKS SHALL ADOPT**
18 **REGULATIONS THAT REQUIRE THE INTERAGENCY COMMITTEE ON SCHOOL**
19 **CONSTRUCTION TO ESTABLISH A PRICE PREFERENCE, NOT TO EXCEED 10%,**
20 **FOR THE CONSTRUCTION OF A NEW SCHOOL BUILDING AS A HIGH**
21 **PERFORMANCE BUILDING.**

22 **(II) BEFORE THE STATE OR A COUNTY BOARD MAY**
23 **AUTHORIZE AN APPROPRIATION FOR PRELIMINARY PLANNING OF A PROPOSED**
24 **CAPITAL PROJECT FOR THE CONSTRUCTION OF A NEW SCHOOL BUILDING**
25 **UNDER THIS SUBSECTION, THE UNIT OF THE STATE GOVERNMENT OR THE**
26 **COUNTY BOARD REQUESTING THE APPROPRIATION SHALL SUBMIT TO THE**
27 **DEPARTMENT OF BUDGET AND MANAGEMENT A DETAILED PROGRAM**
28 **DESCRIBING THE SCOPE AND PURPOSE OF THE PROJECT.**

29 [(f)] (G) A contract entered into or purchase made in violation of this
30 section is void.

31 5–301.

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

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

6 (2) (i) The purchase of relocatable classrooms shall be an eligible
7 public school construction or capital cost.

8 (ii) The Board of Public Works shall adopt regulations that
9 define relocatable classrooms and establish the minimum specifications for relocatable
10 classrooms which may be purchased using State funds.

11 (iii) In the budgets for fiscal years 2006 through 2008, the
12 Governor shall include \$1,000,000 for public school construction, in excess of the
13 estimates of funding for public school construction contained in the fiscal year 2005
14 through fiscal year 2009 Capital Improvement Plan, to be used to fund the State share
15 of the cost of purchasing relocatable classrooms.

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

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

20 1. Define modular construction; and

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

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

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

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

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

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

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

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

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

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

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

14 (v) Site improvements;

15 (vi) Competitive bidding;

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

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

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

23 (x) School construction and capital improvements necessary or
24 appropriate for the proper implementation of this section, **INCLUDING HIGH**
25 **PERFORMANCE BUILDING REQUIREMENTS FOR THE CONSTRUCTION OF NEW**
26 **SCHOOL BUILDINGS IN ACCORDANCE WITH § 5-112(F) OF THIS TITLE;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) In adopting any of these requirements, the State Board and the
28 Board of Public Works shall provide for the maximum exercise of initiative by school
29 personnel in each county to insure that the school buildings and improvements meet

1 both the needs of the local communities and the rules and regulations necessary to
2 insure the proper operation of this section and the prudent expenditure of State funds.

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

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

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

13 (i) The State Board;

14 (ii) The State Superintendent;

15 (iii) The county governments;

16 (iv) The county boards; and

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

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

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

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

30 (2) Consistent with § 4–115 of this article and regulations adopted by
31 the Board of Public Works to implement § 4–126 of this article, the Board of Public

1 Works may require by regulation that the portion of the proceeds received by a county
2 from the sale, lease, or disposal of any public school building that represent State
3 funds provided within 15 years prior to the date of the transaction shall be used solely
4 as part of the State funding of the construction of future public school buildings in the
5 county in which the sale, lease, or disposal occurred, if the public school building was
6 constructed under a contract executed on or after February 1, 1971.

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

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

15 (2) (i) Except as provided in subparagraph (ii) of this paragraph,
16 notwithstanding any other contrary provision of the Annotated Code, any funds
17 approved for a project that has not been contracted for within 2 years of the approval
18 of the project shall revert to the fund established under paragraph (1) of this
19 subsection.

20 (ii) The Interagency Committee, with the approval of the Board
21 of Public Works, may extend the time period under subparagraph (i) of this paragraph
22 if the Interagency Committee determines that unusual circumstances exist.

23 (3) Any unexpended allocations of funds for previously approved
24 projects shall be transferred to the fund established under paragraph (1) of this
25 subsection.

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

31 **Article – State Finance and Procurement**

32 3-602.

33 (d) (1) (i) In this paragraph, “high performance building” means a
34 building that:

1 1. achieves at least a silver rating according to the U.S.
2 Green Building Council's LEED (Leadership in Energy and Environmental Design)
3 Green Building Rating System as adopted in 2001 or subsequently by the Maryland
4 Green Building Council;

5 2. achieves at least a two globe rating according to the
6 Green Globes Program as adopted by the Green Building Initiative;

7 3. achieves at least a comparable numeric rating
8 according to a nationally recognized, accepted, and appropriate numeric sustainable
9 development rating system, guideline, or standard; or

10 4. meets nationally recognized, consensus-based, and
11 accepted green building guidelines, standards, or systems approved by the State.

12 (ii) 1. A unit of State government requesting an
13 appropriation for preliminary planning of a proposed capital project may include in its
14 request a justification for proposing that a building in the project is appropriate for
15 design as a high performance building.

16 2. If justification is submitted under subsubparagraph 1
17 of this subparagraph concerning a building in a proposed capital project, the
18 Department shall review whether it is practicable and fiscally prudent to incorporate
19 in the capital project the use of a comprehensive process of design and construction
20 that would result in the building being a high performance building.

21 (2) Before an appropriation may be authorized for preliminary
22 planning of a proposed capital project:

23 (i) the unit of the State government requesting the
24 appropriation shall submit to the Department a program describing, in detail, the
25 scope and purpose of the project; and

26 (ii) the Secretary of Budget and Management must approve the
27 program.

28 (3) Before an appropriation may be authorized for construction of a
29 proposed capital project:

30 (i) the unit of State government requesting the appropriation
31 shall submit to the Departments of Budget and Management and General Services a

1 detailed design program, which shall include all information required by the
2 Departments; and

3 (ii) both the Secretary of Budget and Management and the
4 Secretary of General Services must approve the detailed design program.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2007.