

Chapter 397

(House Bill 968)

AN ACT concerning

Maryland School Overcrowding Reduction Act of 2018

FOR the purpose of ~~authorizing certain exceptions to the requirement that certain public school property must be held in trust by a county board of education; authorizing a county board of education to contract with a county in a public-private partnership agreement; establishing a design-construct-operate-maintain-finance arrangement as an alternative financing method available for use by a county or a county board; authorizing a county or a county board to solicit certain proposals and lease certain property; authorizing certain alternative financing methods to include certain reserves; repealing certain requirements relating to regulations for alternative financing methods; repealing the requirement for the use of certain standards and procedures for qualifying and approving certain alternative financing methods; providing that certain provisions of law and regulations that govern the Public School Construction Program do not apply to alternative financing methods; prohibiting a certain construction of certain provisions of this Act; requiring projects that use alternative financing methods to comply with certain requirements; establishing the Public School Facility Construction Innovation Incentive Pilot Program; specifying the purpose of the Incentive Program; declaring the intent of the General Assembly regarding the Incentive Program; requiring the Interagency Committee on School Construction to implement, administer, and promote the Incentive Program; requiring the Interagency Committee to establish an application process for the Incentive Program; requiring the Interagency Committee to calculate a certain rolling State average of public school construction costs for certain schools; requiring the Interagency Committee to approve a project for participation in the Incentive Program if the project meets a certain cost threshold; specifying a certain percentage increase in the State share of eligible costs for a certain project that is approved to participate in the Incentive Program on or before a certain date; specifying a certain smaller percentage increase in the State share of eligible costs for a certain project that is approved to participate in the Incentive Program on or after a certain date; specifying that, if actual public school construction costs for a certain project are not a certain percentage below ~~the~~ a certain rolling State average, the project is not eligible for a certain higher State share of eligible costs; exempting a certain project from certain requirements; requiring a certain project to comply with certain requirements; providing that certain provisions of law do not prohibit public school systems from utilizing a certain source of financing or system of bidding to fund a certain project; providing for the application of ~~certain provisions of this Act; altering certain definitions;~~ defining certain terms; providing for the termination of this Act; and generally relating to ~~alterations to the~~ a pilot program for public school construction process to address overcrowding in public schools in the State.~~

~~BY repealing and reenacting, with amendments,
 Article – Education
 Section 4-114 and 4-126
 Annotated Code of Maryland
 (2014 Replacement Volume and 2017 Supplement)~~

BY adding to
 Article – Education
 Section 5-314
 Annotated Code of Maryland
 (2014 Replacement Volume and 2017 Supplement)

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

Article – Education

~~4-114.~~

~~(a) All property granted, conveyed, devised, or bequeathed for the use of a particular public school or school system:~~

~~(1) Except as provided in [subsection] SUBSECTIONS (c) THROUGH (e) of this section, shall be held in trust for the benefit of the school or school system by the appropriate county board or, for real property in Baltimore City, by the Mayor and City Council of Baltimore; and~~

~~(2) Is exempt from all State and local taxes.~~

~~(b) Money invested in trust for the benefit of the public schools for any county or city is exempt from all State and local taxes.~~

~~(c) (1) A private entity OR A COUNTY may hold title to property used for a particular public school or local school system if the private entity OR COUNTY is contractually obligated to transfer title to the appropriate county board on a specified date.~~

~~(2) The conveyance of title of school property to a private entity OR A COUNTY for a specified term under this subsection may not be construed to prohibit the allocation of construction funds to an approved school construction project under the Public School Construction Program.~~

~~(3) A county or county board may convey or dispose of surplus land under the jurisdiction of the county or county board in exchange for public school construction or development services.~~

~~(D) (1) THIS SUBSECTION APPLIES ONLY TO A PROJECT THAT USES AN ALTERNATIVE FINANCING METHOD UNDER § 4 126 OF THIS SUBTITLE.~~

~~(2) A COUNTY BOARD MAY TRANSFER TITLE TO PROPERTY USED FOR A PARTICULAR PUBLIC SCHOOL OR LOCAL SCHOOL SYSTEM TO A COUNTY, COUNTY REVENUE AUTHORITY, OR PRIVATE ENTITY IF THE COUNTY, COUNTY REVENUE AUTHORITY, OR PRIVATE ENTITY IS CONTRACTUALLY OBLIGATED TO OPERATE AND MAINTAIN THE PROPERTY UNTIL:~~

~~(I) THE PROPERTY OUTLIVES ITS USEFUL LIFE;~~

~~(II) THE PROPERTY IS NO LONGER NEEDED FOR SCHOOL PURPOSES; OR~~

~~(III) AS OTHERWISE AGREED TO BY THE PARTIES.~~

~~(E) A COUNTY, COUNTY REVENUE AUTHORITY, OR PRIVATE ENTITY MAY HOLD TITLE TO PROPERTY LEASED BY A COUNTY BOARD TO BE USED FOR A PARTICULAR PUBLIC SCHOOL OR LOCAL SCHOOL SYSTEM UNDER TERMS AGREED TO BY THE PARTIES.~~

~~4 126.~~

~~(a) (1) In this section[, “alternative”] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) “ALTERNATIVE financing methods” includes ONE OR MORE OF THE FOLLOWING METHODS:~~

~~[(1)] (I) Sale leaseback arrangements, in which a county board agrees to transfer title to a property, including improvements, to a private entity that simultaneously agrees to lease the property back to the county board and, on a specified date, transfer title back to the county board;~~

~~[(2)] (II) Lease leaseback arrangements, in which a county board leases a property to a private entity that improves the property and leases the property, with the improvements, back to the county board;~~

~~[(3)] (III) Public private partnership agreements, in which a county board contracts with a COUNTY OR A private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school;~~

~~[(4)] (IV) Performance-based contracting, in which a county board enters into an energy performance contract to obtain funding for a project with guaranteed energy savings over a specified time period;~~

~~[(5)] (V) Preference-based arrangements, by which a local governing body gives preference first to business entities located in the county and then to business entities located in other counties in the State for any construction that is not subject to prevailing wage rates under Title 17, Subtitle 2 of the State Finance and Procurement Article; [and]~~

~~[(6)] (VI) Design-build arrangements, that permit a county board to contract with a design-build business entity for the combined design and construction of qualified education facilities, including financing mechanisms where the business entity assists the local governing body in obtaining project financing; AND~~

~~(VII) DESIGN-CONSTRUCT-OPERATE-MAINTAIN-FINANCE ARRANGEMENTS, THAT PERMIT A COUNTY BOARD TO CONTRACT WITH A COUNTY OR A PRIVATE ENTITY FOR THE DESIGN, CONSTRUCTION, OPERATION, AND MAINTENANCE OF A PUBLIC SCHOOL UNDER TERMS AGREED TO BY THE PARTIES.~~

~~(3) "COUNTY" INCLUDES, UNLESS THE CONTEXT REQUIRES OTHERWISE, A COUNTY REVENUE AUTHORITY.~~

~~(b) (1) Except when prohibited by local law, in order to finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction, a county OR COUNTY BOARD may:~~

~~[(1)] (I) Use alternative financing methods;~~

~~[(2)] (II) Engage in competitive negotiation, rather than competitive bidding, in limited circumstances, including construction management at risk arrangements and other alternative project delivery arrangements, as provided in regulations adopted by the Board of Public Works;~~

~~[(3)] (III) Accept unsolicited proposals for the development of public schools in limited circumstances, as provided in regulations adopted by the Board of Public Works; [and]~~

~~(IV) SOLICIT PROPOSALS FOR THE DEVELOPMENT OF PUBLIC SCHOOLS;~~

~~(V) LEASE PROPERTY FROM A COUNTY OR A PRIVATE ENTITY FOR USE AS A PUBLIC SCHOOL FACILITY; AND~~

~~[(4)] (VI) Use quality based selection, in which selection is based on a combination of qualifications and cost factors, to select developers and builders, as provided in regulations adopted by the Board of Public Works.~~

~~(2) THE ALTERNATIVE FINANCING METHODS DESCRIBED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION MAY INCLUDE RESERVES SUFFICIENT TO COVER OPERATION, FACILITY RENEWAL, MAINTENANCE, AND ENERGY COSTS AS PART OF A CONTRACT.~~

~~[(e) The Board of Public Works shall adopt regulations requiring a project that qualifies for alternative financing methods under this section to meet requirements regarding the advantages of the project to the public that include provisions addressing:~~

~~(1) The probable scope, complexity, or urgency of the project;~~

~~(2) Any risk sharing, added value, education enhancements, increase in funding, or economic benefit from the project that would not otherwise be available;~~

~~(3) The public need for the project; and~~

~~(4) The estimated cost or timeliness of executing the project.~~

~~(d) Projects that qualify for alternative financing methods under this subsection:~~

~~(1) Shall meet the educational standards, design standards, and procedural requirements under this article and under regulations adopted by the Board of Public Works; and~~

~~(2) Consistent with the requirements of this article, shall be approved by:~~

~~(i) The county governing body;~~

~~(ii) The State Superintendent of Schools; or~~

~~(iii) The Interagency Committee on School Construction and the Board of Public Works.]~~

~~[(e)] (C) Use of alternative financing methods under this section may not be construed to prohibit the allocation of State funds for public school construction to a project under the Public School Construction Program.~~

~~[(f)] (D) A county board may not use alternative financing methods under this section without the approval of the county governing body.~~

~~[(g) The Board of Public Works shall adopt regulations recommended by the Interagency Committee on School Construction to implement the provisions of this section, including:~~

~~(1) Guidelines for the content of proposals, for the acceptance and evaluation of unsolicited proposals, and for accepting competing unsolicited proposals;~~

~~(2) Requirements for the content and execution of a comprehensive agreement governing an arrangement authorized under this section;~~

~~(3) Guidelines for content and issuance of solicitations;~~

~~(4) Requirements for the prequalification of bidders or offerors;~~

~~(5) Requirements for public notice of solicited and unsolicited proposals and proposed execution of a comprehensive agreement;~~

~~(6) Regulations that require compliance with requirements applicable to qualified projects that would otherwise be in effect under the State procurement law if the procurement were competitively bid; and~~

~~(7) (i) Regulations that require that contracts and subcontracts adhere to the requirements of Title 17, Subtitle 2 and Title 14 of the State Finance and Procurement Article if the requirements would otherwise be applicable; and~~

~~(ii) Regulations that specify elements to be included in any preference based arrangement adopted by a local governing body that gives preference first to business entities located in the county and then to business entities located in other counties in the State for any construction that is not subject to prevailing wage rates under Title 17, Subtitle 2 of the State Finance and Procurement Article.]~~

~~(E) (1) (i) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, § 5-301 OF THIS ARTICLE AND THE REGULATIONS THAT GOVERN THE PUBLIC SCHOOL CONSTRUCTION PROGRAM DO NOT APPLY TO PROJECTS THAT USE ALTERNATIVE FINANCING METHODS UNDER THIS SECTION.~~

~~(H) NOTHING IN THIS SECTION MAY BE CONSTRUED TO AUTHORIZE OR REQUIRE STATE APPROVAL BEFORE AN ALTERNATIVE FINANCING METHOD MAY BE USED BY A LOCAL SCHOOL SYSTEM.~~

~~(2) PROJECTS THAT USE ALTERNATIVE FINANCING METHODS UNDER THIS SECTION SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:~~

~~(i) THE STATE AND LOCAL COST SHARE ESTABLISHED FOR EACH COUNTY IN REGULATIONS;~~

~~(II) THE MAXIMUM STATE CONSTRUCTION ALLOCATION FOR EACH PROJECT APPROVED FOR STATE FUNDING;~~

~~(III) THE RECOMMENDATION OF THE INTERAGENCY COMMITTEE ON SCHOOL CONSTRUCTION TO THE BOARD OF PUBLIC WORKS REGARDING PROJECT FUNDING;~~

~~(IV) THE APPROVAL OF PROJECT FUNDING BY THE BOARD OF PUBLIC WORKS;~~

~~(V) SMART GROWTH REQUIREMENTS;~~

~~(VI) MINORITY BUSINESS ENTERPRISE REQUIREMENTS;~~

~~(VII) PREVAILING WAGE REQUIREMENTS;~~

~~(VIII) ENVIRONMENTAL REQUIREMENTS; AND~~

~~(IX) A REQUIREMENT FOR A PROCUREMENT PROCESS THAT INCLUDES PUBLIC NOTICE AND RESULTS IN THE MOST ADVANTAGEOUS PROPOSAL.~~

5-314.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CONSTRUCTION" MEANS NEW CONSTRUCTION OR MAJOR RENOVATION OR REPLACEMENT OF A PUBLIC SCHOOL FACILITY.

(II) "CONSTRUCTION" DOES NOT INCLUDE SYSTEM RENOVATION PROJECTS AS DEFINED IN COMAR 23.03.02.15.

(3) "INCENTIVE PROGRAM" MEANS THE PUBLIC SCHOOL FACILITY CONSTRUCTION INNOVATION INCENTIVE PILOT PROGRAM.

(4) "PUBLIC SCHOOL FACILITY" MEANS A PROPERTY PRIMARILY USED FOR EDUCATIONAL INSTRUCTION.

(5) "ROLLING STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION COSTS" MEANS THE AVERAGE STATE COST PER STUDENT FOR PUBLIC SCHOOL CONSTRUCTION PROJECTS AND CAPITAL IMPROVEMENTS OVER THE PREVIOUS 3 FISCAL YEARS.

(B) THIS SECTION APPLIES ONLY IN:

- (1) HARFORD COUNTY;**
- (2) PRINCE GEORGE'S COUNTY; AND**
- (3) WASHINGTON COUNTY.**

~~(B)~~ **(C) (1) THERE IS A PUBLIC SCHOOL FACILITY CONSTRUCTION INNOVATION INCENTIVE PILOT PROGRAM IN THE STATE.**

(2) THE PURPOSE OF THE INCENTIVE PROGRAM IS TO PROVIDE INCENTIVES TO ENCOURAGE PUBLIC SCHOOL SYSTEMS TO PURSUE INNOVATIVE PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECTS BY:

(i) PROVIDING ADDITIONAL STATE FUNDING FOR THE PROJECTS; AND

(ii) EXEMPTING THE PROJECTS FROM THE STATUTORY AND REGULATORY REQUIREMENTS SPECIFIED IN SUBSECTION ~~(H)~~ (J) OF THIS SECTION.

(3) THROUGH THE ESTABLISHMENT OF THE INCENTIVE PROGRAM, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO:

(i) ENCOURAGE PUBLIC SCHOOL SYSTEMS TO USE THE INCENTIVE PROGRAM; AND

(ii) ACCELERATE PUBLIC SCHOOL CONSTRUCTION AND RENOVATION BY PROVIDING INCENTIVES TO REDUCE THE COSTS OF CONSTRUCTION AND RENOVATION.

~~(C)~~ **(D) (1) THE INTERAGENCY COMMITTEE SHALL IMPLEMENT AND ADMINISTER THE INCENTIVE PROGRAM AS PROVIDED IN THIS SECTION.**

(2) THE INTERAGENCY COMMITTEE SHALL PROMOTE THE INCENTIVE PROGRAM.

~~(D)~~ **(E) THE INTERAGENCY COMMITTEE SHALL ESTABLISH AN APPLICATION PROCESS FOR THE INCENTIVE PROGRAM.**

~~(E)~~ **(F) FOR EACH FISCAL YEAR, THE INTERAGENCY COMMITTEE SHALL CALCULATE THE ROLLING STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION COSTS FOR ELEMENTARY SCHOOLS, PREKINDERGARTEN THROUGH EIGHTH GRADE SCHOOLS, MIDDLE SCHOOLS, AND HIGH SCHOOLS IN THE STATE.**

~~(F)~~ **(G)** IF A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT HAS AN ESTIMATED PUBLIC SCHOOL CONSTRUCTION COST THAT IS 30% OR MORE BELOW THE ROLLING STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION COSTS FOR THE APPROPRIATE TYPE OF SCHOOL, THE INTERAGENCY COMMITTEE SHALL APPROVE THAT PROJECT FOR PARTICIPATION IN THE INCENTIVE PROGRAM.

~~(G)~~ **(H)** (1) FOR A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT THAT IS APPROVED TO PARTICIPATE IN THE INCENTIVE PROGRAM ON OR BEFORE DECEMBER 31, 2019, THE STATE SHARE OF ELIGIBLE COSTS FOR THAT PROJECT SHALL INCREASE BY 20% FOR THAT PROJECT.

(2) FOR A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT THAT IS APPROVED TO PARTICIPATE IN THE INCENTIVE PROGRAM ON OR AFTER JANUARY 1, 2020, THE STATE SHARE OF ELIGIBLE COSTS FOR THAT PROJECT SHALL INCREASE BY 10% FOR THAT PROJECT.

~~(H)~~ **(I)** IF THE ACTUAL PUBLIC SCHOOL CONSTRUCTION COSTS FOR A PROJECT ARE NOT 30% OR MORE BELOW THE ROLLING STATE AVERAGE OF PUBLIC SCHOOL CONSTRUCTION COSTS FOR THE APPROPRIATE TYPE OF SCHOOL, THE PROJECT IS NOT ELIGIBLE FOR THE HIGHER STATE SHARE PROVIDED IN SUBSECTION ~~(G)~~ **(H)** OF THIS SECTION FOR THE STATE SHARE OF ELIGIBLE COSTS THAT EXCEED THE REQUIREMENT IN SUBSECTION ~~(F)~~ **(G)** OF THIS SECTION.

~~(I)~~ **(J)** EXCEPT AS PROVIDED IN SUBSECTION ~~(J)~~ **(K)** OF THIS SECTION, § 2-303(F) OF THIS ARTICLE, § 5-301 OF THIS SUBTITLE, AND THE REGULATIONS THAT GOVERN THE PUBLIC SCHOOL CONSTRUCTION PROGRAM DO NOT APPLY TO A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT THAT IS APPROVED TO PARTICIPATE IN THE INCENTIVE PROGRAM.

~~(J)~~ **(K)** A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT THAT IS APPROVED TO PARTICIPATE IN THE INCENTIVE PROGRAM SHALL COMPLY WITH:

(1) EXCEPT AS PROVIDED IN SUBSECTION ~~(H)~~ **(I)** OF THIS SECTION, THE STATE AND LOCAL COST-SHARE ESTABLISHED FOR EACH COUNTY IN REGULATIONS;

(2) THE MAXIMUM STATE CONSTRUCTION ALLOCATION FOR EACH PROJECT APPROVED FOR STATE FUNDING;

(3) THE RECOMMENDATIONS OF THE INTERAGENCY COMMITTEE TO THE BOARD OF PUBLIC WORKS REGARDING PROJECT FUNDING;

- WORKS;**
- (4) THE APPROVAL OF PROJECT FUNDING BY THE BOARD OF PUBLIC**
 - (5) SMART GROWTH REQUIREMENTS;**
 - (6) MINORITY BUSINESS ENTERPRISE REQUIREMENTS;**
 - (7) PREVAILING WAGE REQUIREMENTS;**
 - (8) ENVIRONMENTAL REQUIREMENTS; AND**
 - (9) A REQUIREMENT FOR A PROCUREMENT PROCESS THAT INCLUDES PUBLIC NOTICE AND RESULTS IN THE MOST ADVANTAGEOUS PROPOSAL.**

~~(K)~~ **(L) IF A PUBLIC SCHOOL SYSTEM PARTICIPATES IN THE INCENTIVE PROGRAM, NOTHING IN THIS SECTION PROHIBITS THE PUBLIC SCHOOL SYSTEM FROM UTILIZING ANY OTHER SOURCE OF FINANCING OR SYSTEM OF BIDDING UNDER CURRENT LAW TO FUND A PUBLIC SCHOOL FACILITY CONSTRUCTION PROJECT.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018. It shall remain effective for a period of 5 years and, at the end of June 30, 2023, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 8, 2018.