

SENATE BILL 1011

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9lr3248
CF HB 1402

By: **Senator Peters**

Introduced and read first time: February 27, 2019

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 30, 2019

CHAPTER _____

1 AN ACT concerning

2 **Prince George's County – Public School Construction – Prince George's County**
3 **~~Alternative Financing~~ Public-Private Partnership Fund**

4 FOR the purpose of exempting certain public school construction projects that use
5 alternative financing methods and that receive State funding from certain
6 requirements; requiring public school construction projects in Prince George's
7 County that use alternative financing methods and that receive State funding to
8 comply with certain requirements and a certain memorandum of understanding;
9 establishing the Prince George's County ~~Alternative Financing~~ Public-Private
10 Partnership Fund as a special fund; specifying the purpose of the Fund; requiring
11 the ~~Prince George's County public school system~~ Interagency Commission on School
12 Construction to administer the Fund; specifying the contents of the Fund; specifying
13 the purpose for which the Fund may be used; ~~altering the distribution of certain~~
14 ~~State lottery revenues and requiring the Comptroller to distribute certain State~~
15 ~~lottery revenues in the Prince George's County Alternative Financing Fund~~
16 requiring the Prince George's County Board of Education and the Prince George's
17 County Executive and County Council to provide certain information with the
18 annual budget submission; requiring interest earnings of the Fund to be credited to
19 the Fund; exempting the Fund from a certain provision of law requiring interest
20 earnings on State money to accrue to the General Fund of the State; defining a
21 certain term; stating the intent of the General Assembly; and generally relating to
22 alternative financing for school construction in Prince George's County.

23 BY repealing and reenacting, with amendments,
24 Article – Education

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 4–126
 2 Annotated Code of Maryland
 3 (2018 Replacement Volume and 2018 Supplement)

4 BY adding to
 5 Article – Education
 6 Section 4–126.1 and 5–101(f)(1)
 7 Annotated Code of Maryland
 8 (2018 Replacement Volume and 2018 Supplement)

9 ~~BY repealing and reenacting, with amendments,~~
 10 ~~Article – State Government~~
 11 ~~Section 9–120~~
 12 ~~Annotated Code of Maryland~~
 13 ~~(2014 Replacement Volume and 2018 Supplement)~~

14 BY repealing and reenacting, without amendments,
 15 Article – State Finance and Procurement
 16 Section 6–226(a)(2)(i)
 17 Annotated Code of Maryland
 18 (2015 Replacement Volume and 2018 Supplement)

19 BY repealing and reenacting, with amendments,
 20 Article – State Finance and Procurement
 21 Section 6–226(a)(2)(ii)112. and 113.
 22 Annotated Code of Maryland
 23 (2015 Replacement Volume and 2018 Supplement)

24 BY adding to
 25 Article – State Finance and Procurement
 26 Section 6–226(a)(2)(ii)114.
 27 Annotated Code of Maryland
 28 (2015 Replacement Volume and 2018 Supplement)

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

31 **Article – Education**

32 4–126.

33 (a) (1) In this section the following words have the meanings indicated.

34 (2) “Alternative financing methods” includes one or more of the following
 35 methods:

1 (i) Sale–leaseback arrangements, in which a county board agrees to
2 transfer title to a property, including improvements, to a private entity that simultaneously
3 agrees to lease the property back to the county board and, on a specified date, transfer title
4 back to the county board;

5 (ii) Lease–leaseback arrangements, in which a county board leases
6 a property to a private entity that improves the property and leases the property, with the
7 improvements, back to the county board;

8 (iii) Public–private partnership agreements, in which a county board
9 contracts with a county revenue authority or a private entity for the acquisition, design,
10 construction, improvement, renovation, expansion, equipping, or financing of a public
11 school, and may include provisions for cooperative use of the school or an adjacent property
12 and generation of revenue to offset the cost of construction or use of the school;

13 (iv) Performance–based contracting, in which a county board enters
14 into an energy performance contract to obtain funding for a project with guaranteed energy
15 savings over a specified time period;

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

20 (vi) Design–build arrangements, that permit a county board to
21 contract with a design–build business entity for the combined design and construction of
22 qualified education facilities, including financing mechanisms where the business entity
23 assists the local governing body in obtaining project financing; and

24 (vii) Design–construct–operate–maintain–finance arrangements that
25 permit a county board to contract with a county revenue authority or a private entity for
26 the design, construction, operation, and maintenance of a public school under terms agreed
27 to by the parties.

28 (b) (1) Except when prohibited by local law, in order to finance or to speed
29 delivery of, transfer risks of, or otherwise enhance the delivery of public school construction,
30 a county board, with the approval of the county governing body in accordance with
31 subsection (d) of this section, may:

32 (i) Use alternative financing methods;

33 (ii) Engage in competitive negotiation, rather than competitive
34 bidding, in limited circumstances, including construction management at–risk
35 arrangements and other alternative project delivery arrangements, as provided in
36 regulations adopted by the Interagency Commission on School Construction;

1 (iii) Accept unsolicited proposals for the development of public
2 schools in limited circumstances, as provided in regulations adopted by the Interagency
3 Commission on School Construction;

4 (iv) Solicit proposals for the development of public schools;

5 (v) Lease property from a county revenue authority or a private
6 entity for use as a public school facility; and

7 (vi) Use quality-based selection, in which selection is based on a
8 combination of qualifications and cost factors, to select developers and builders, as provided
9 in regulations adopted by the Interagency Commission on School Construction.

10 (2) The alternative financing methods described under paragraph (1)(i) of
11 this subsection may include reserves sufficient to cover operation, facility renewal,
12 maintenance, and energy costs as part of a contract.

13 (c) Use of alternative financing methods under this section may not be construed
14 to prohibit the allocation of State funds for public school construction to a project under the
15 Public School Construction Program.

16 (d) A county board may not use alternative financing methods under this section
17 without the approval of the county governing body.

18 (e) (1) (i) Except as provided in paragraphs (2) and (3) of this subsection, §
19 2-303(f) and Title 5, Subtitle 3 of this article and the regulations that govern the Public
20 School Construction Program do not apply to projects that use alternative financing
21 methods under this section.

22 (ii) Nothing in this section may be construed to authorize or require
23 State approval before an alternative financing method may be used by a local school system.

24 (2) If a project that receives State funding uses alternative financing
25 methods under this section, the project shall be submitted to the Interagency Commission
26 on School Construction for review.

27 (3) (I) Projects that use alternative financing methods under this
28 section and receive State funding shall comply with the following requirements:

29 [(i)] 1. [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)**
30 **OF THIS PARAGRAPH, THE** State and local cost-share established for each county in
31 regulations;

32 [(ii)] 2. [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)**
33 **OF THIS PARAGRAPH, THE** maximum State construction allocation for each project
34 approved for State funding;

1 [(iii)] 3. [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)**
 2 **OF THIS PARAGRAPH, THE** approval of project funding by the Interagency Commission;

3 [(iv)] 4. Smart growth requirements;

4 [(v)] 5. Minority business enterprise requirements;

5 [(vi)] 6. Prevailing wage requirements;

6 [(vii)] 7. Environmental requirements; and

7 [(viii)] 8. A requirement for a procurement process that includes
 8 public notice and results in the most advantageous proposal.

9 **(II) IN PRINCE GEORGE’S COUNTY, PROJECTS THAT USE**
 10 **ALTERNATIVE FINANCING METHODS UNDER THIS SECTION AND RECEIVE STATE**
 11 **FUNDING FOR A YEARLY AVAILABILITY PAYMENT:**

12 1. **DO NOT HAVE TO COMPLY WITH THE REQUIREMENTS**
 13 **UNDER SUBPARAGRAPH (I)1 THROUGH 3 OF THIS PARAGRAPH;**

14 2. **SHALL COMPLY WITH THE REQUIREMENTS UNDER**
 15 **SUBPARAGRAPH (I)4 THROUGH 8 OF THIS PARAGRAPH; AND**

16 3. **SHALL COMPLY WITH A THREE-PARTY MEMORANDUM**
 17 **OF UNDERSTANDING ENTERED INTO AND SIGNED BY THE PRINCE GEORGE’S**
 18 **COUNTY BOARD, PRINCE GEORGE’S COUNTY, AND THE INTERAGENCY**
 19 **COMMISSION ON SCHOOL CONSTRUCTION THAT:**

20 A. **SPECIFIES THE ROLES, RIGHTS, TERMS, AND**
 21 **RESPONSIBILITIES OF EACH PARTY WITH RESPECT TO SCHOOL PROJECTS**
 22 **UNDERTAKEN WITH A PRIVATE ENTITY USING ALTERNATIVE FINANCING METHODS,**
 23 **INCLUDING ANY AMOUNTS THE PARTIES ARE REQUIRED TO DEPOSIT INTO THE**
 24 **PRINCE GEORGE’S COUNTY ~~ALTERNATIVE FINANCING~~ PUBLIC-PRIVATE**
 25 **PARTNERSHIP FUND ESTABLISHED UNDER § ~~4-404~~ 4-126.1 OF THIS ~~TITLE~~**
 26 **SUBTITLE;**

27 B. **SPECIFIES THAT § 2-203(F) AND TITLE 5, SUBTITLE 3**
 28 **OF THIS ARTICLE AND REGULATIONS GOVERNING THE PUBLIC SCHOOL**
 29 **CONSTRUCTION PROGRAM ARE NOT APPLICABLE TO PROJECTS USING**
 30 **ALTERNATIVE FINANCING METHODS;**

1 C. REQUIRES THE PRINCE GEORGE'S COUNTY BOARD
 2 TO SUBMIT PROJECTS TO THE INTERAGENCY COMMISSION ON SCHOOL
 3 CONSTRUCTION FOR REVIEW BEFORE COMMENCEMENT OF THE PROJECT;

4 D. SPECIFIES THE TIME FRAMES IN WHICH THE
 5 INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION SHALL COMPLETE ITS
 6 REVIEW OF PROJECTS; ~~AND~~

7 E. REQUIRES THE PRINCE GEORGE'S COUNTY BOARD
 8 TO SUBMIT ANNUAL REPORTS TO PRINCE GEORGE'S COUNTY AND THE
 9 INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION DURING THE TERM OF
 10 THE ALTERNATIVE FINANCING METHOD CONTRACT WITH THE PUBLIC OR PRIVATE
 11 ENTITY; AND

12 F. IDENTIFIES A DEDICATED SOURCE OF STATE
 13 FUNDING FOR AN AVAILABILITY PAYMENT.

14 4-126.1.

15 (A) IN THIS SECTION, "FUND" MEANS THE PRINCE GEORGE'S COUNTY
 16 ~~ALTERNATIVE FINANCING~~ PUBLIC-PRIVATE PARTNERSHIP FUND.

17 (B) THERE IS A PRINCE GEORGE'S COUNTY ~~ALTERNATIVE FINANCING~~
 18 PUBLIC-PRIVATE PARTNERSHIP FUND.

19 (C) THE PURPOSE OF THE FUND IS TO PROVIDE ~~SUPPLEMENTAL STATE~~
 20 ~~FUNDS TO FINANCE ALTERNATIVE FINANCING METHODS UNDER~~ FUNDS TO PAY A
 21 PUBLIC OR PRIVATE ENTITY FOR THE AVAILABILITY PAYMENT DUE UNDER THE
 22 PRINCE GEORGE'S COUNTY PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ENTERED
 23 INTO IN ACCORDANCE WITH § 4-126 OF THIS SUBTITLE ~~IN PRINCE GEORGE'S~~
 24 COUNTY.

25 (D) THE ~~PRINCE GEORGE'S COUNTY PUBLIC SCHOOL SYSTEM~~
 26 INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION SHALL:

27 ~~(1) ADMINISTER~~ ADMINISTER THE FUND; AS DESCRIBED IN THE
 28 THREE-PARTY MEMORANDUM OF UNDERSTANDING ENTERED INTO UNDER §
 29 4-126(E)(3)(II) OF THIS SUBTITLE.

30 ~~(2) HOLD THE FUND SEPARATELY;~~

31 ~~(3) ACCOUNT FOR THE FUND; AND~~

1 ~~(4) INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS ANY~~
2 ~~OTHER PRINCE GEORGE'S COUNTY MONEY MAY BE INVESTED.~~

3 (E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
4 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

5 (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,
6 AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

7 (F) THE FUND CONSISTS OF:

8 (1) MONEY DEPOSITED INTO THE FUND BY PRINCE GEORGE'S
9 COUNTY AND THE PRINCE GEORGE'S COUNTY BOARD;

10 (2) ~~FUNDS TO BE DEPOSITED IN ACCORDANCE WITH § 9-120(B)(VI)~~
11 ~~OF THE STATE GOVERNMENT ARTICLE~~ MONEY DEPOSITED INTO THE FUND BY THE
12 STATE;

13 (3) ANY INVESTMENT EARNINGS OF THE FUND; AND

14 ~~(3)~~ (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED
15 FOR THE BENEFIT OF THE FUND.

16 ~~(F)~~ (G) THE FUND MAY BE USED ONLY TO PROVIDE FUNDING FOR
17 ALTERNATIVE FINANCING METHODS UNDER § 4-126 OF THIS SUBTITLE IN PRINCE
18 GEORGE'S COUNTY.

19 ~~(G)~~ (H) THE MONEY IN ANY APPROPRIATION TO THE FUND SHALL BE
20 USED TO SUPPLEMENT, BUT NOT SUPPLANT, MONEY APPROPRIATED TO PRINCE
21 GEORGE'S COUNTY FOR PUBLIC SCHOOL CONSTRUCTION UNDER THE PUBLIC
22 SCHOOL CONSTRUCTION PROGRAM ESTABLISHED IN TITLE 5, SUBTITLE 3 OF THIS
23 ARTICLE.

24 ~~(H)~~ (I) ON OR BEFORE JANUARY 1, 2020, AND EACH JANUARY 1
25 THEREAFTER, IF THE PRINCE GEORGE'S COUNTY BOARD, PRINCE GEORGE'S
26 COUNTY, AND THE INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION
27 REMAIN IN AN ALTERNATIVE FINANCING METHODS MEMORANDUM OF
28 UNDERSTANDING UNDER § 4-126 OF THIS SUBTITLE AND THE PROJECT SUBJECT TO
29 THE MEMORANDUM OF UNDERSTANDING CONTINUES TO RECEIVE STATE FUNDS, IF
30 A MEMORANDUM OF UNDERSTANDING IS ENTERED INTO UNDER § 4-126 OF THIS
31 SUBTITLE AND STATE FUNDING IS PROVIDED FOR AN AVAILABILITY PAYMENT, THE
32 PRINCE GEORGE'S COUNTY BOARD AND PRINCE GEORGE'S COUNTY SHALL
33 DEPOSIT INTO THE FUND THE AMOUNTS REQUIRED UNDER THE MEMORANDUM OF
34 UNDERSTANDING.

~~(H)~~ **(J)** ON JANUARY 15, 2021, AND EACH JANUARY 15 THEREAFTER, THE PRINCE GEORGE'S COUNTY BOARD, PRINCE GEORGE'S COUNTY, AND THE INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION JOINTLY SHALL REPORT TO THE GOVERNOR, THE BOARD OF PUBLIC WORKS, AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE FISCAL COMMITTEES OF THE GENERAL ASSEMBLY, ON THE PROGRESS OF CONSTRUCTION AND RENOVATIONS OF PUBLIC SCHOOL FACILITIES USING AN ALTERNATIVE FINANCING METHOD AND THAT RECEIVE STATE FUNDS, INCLUDING ACTIONS:

(1) TAKEN DURING THE PREVIOUS FISCAL YEAR; AND

(2) PLANNED FOR THE CURRENT FISCAL YEAR.

~~Article — State Government~~

~~9-120.~~

~~(a) The Comptroller shall distribute, or cause to be distributed, the State Lottery Fund to pay:~~

~~(1) on a pro rata basis for the daily and nondaily State lottery games, the expenses of administering and operating the State lottery, as authorized under this subtitle and the State budget; and~~

~~(2) then, except as provided in § 10-113.1 of the Family Law Article, § 11-618 of the Criminal Procedure Article, and § 3-307 of the State Finance and Procurement Article, the holder of each winning ticket or share.~~

~~(b) (1) By the end of the month following collection, the Comptroller shall deposit or cause to be deposited:~~

~~(i) into the Maryland Stadium Facilities Fund established under § 7-312 of the State Finance and Procurement Article from the money that remains in the State Lottery Fund, after the distribution under subsection (a) of this section, an amount not to exceed \$20,000,000 in any fiscal year;~~

~~(ii) after June 30, 2014, into the Maryland Veterans Trust Fund 10% of the money that remains in the State Lottery Fund from the proceeds of sales of tickets from instant ticket lottery machines by veterans' organizations under § 9-112(d) of this subtitle, after the distribution under subsection (a) of this section;~~

~~(iii) after June 30, 2014, into the Baltimore City Public School Construction Financing Fund established under § 10-656 of the Economic Development Article the money that remains in the State Lottery Fund from the proceeds of all lotteries after the distributions under subsection (a) of this section and items (i) and (ii) of this paragraph, an amount equal to \$20,000,000 in each fiscal year that bonds are outstanding~~

1 ~~and unpaid, to be paid in two installments with at least \$10,000,000 paid no later than~~
2 ~~December 1 of each fiscal year;~~

3 ~~(iv) after June 30, 2016, into the Racing Special Fund established~~
4 ~~under § 11-401 of the Business Regulation Article from money that remains in the State~~
5 ~~Lottery Fund after the distributions under subsection (a) of this section and items (i), (ii),~~
6 ~~and (iii) of this paragraph, an amount equal to \$500,000;~~

7 ~~(v) after June 30, 2017, into the Racing Special Fund established~~
8 ~~under § 11-401 of the Business Regulation Article from money that remains in the State~~
9 ~~Lottery Fund after the distributions under subsection (a) of this section and items (i), (ii),~~
10 ~~(iii), and (iv) of this paragraph, an amount equal to \$1,000,000 in each fiscal year; [and]~~

11 ~~(VI) AFTER JUNE 30, 2020, INTO THE PRINCE GEORGE'S~~
12 ~~COUNTY ALTERNATIVE FINANCING FUND ESTABLISHED UNDER § 4-126.1 OF THE~~
13 ~~EDUCATION ARTICLE THE MONEY THAT REMAINS IN THE STATE LOTTERY FUND~~
14 ~~FROM THE PROCEEDS OF ALL LOTTERIES AFTER THE DISTRIBUTIONS UNDER~~
15 ~~SUBSECTION (A) OF THIS SECTION AND ITEMS (I) THROUGH (V) OF THIS PARAGRAPH,~~
16 ~~AN AMOUNT EQUAL TO \$30,000,000 IN EACH FISCAL YEAR THAT THE PRINCE~~
17 ~~GEORGE'S COUNTY BOARD, PRINCE GEORGE'S COUNTY, AND THE INTERAGENCY~~
18 ~~COMMISSION ON SCHOOL CONSTRUCTION REMAIN IN AN ALTERNATIVE FINANCING~~
19 ~~METHODS MEMORANDUM OF UNDERSTANDING UNDER § 4-126 OF THE EDUCATION~~
20 ~~ARTICLE AND THE PROJECT RECEIVES STATE FUNDS, TO BE PAID IN TWO~~
21 ~~INSTALLMENTS WITH AT LEAST \$15,000,000 PAID NOT LATER THAN DECEMBER 1~~
22 ~~EACH FISCAL YEAR; AND~~

23 ~~[(vi)] (VII) into the General Fund of the State the money that remains~~
24 ~~in the State Lottery Fund from the proceeds of all lotteries after the distributions under~~
25 ~~subsection (a) of this section and items (i), (ii), (iii), (iv), [and] (v), AND (VI) of this~~
26 ~~paragraph.~~

27 ~~(2) The money paid into the General Fund under this subsection is~~
28 ~~available in the fiscal year in which the money accumulates in the State Lottery Fund.~~

29 ~~(e) The regulations of the Agency shall apportion the money in the State Lottery~~
30 ~~Fund in accordance with subsection (b) of this section.~~

31 5-101.

32 (f) (1) In addition to all other information required by this section, the Prince
33 George's County Board of Education shall provide to the County Executive and County
34 Council with the annual budget, information relating to each of the following categories:

35 (i) Instructional supplies and materials;

36 (ii) Additional equipment; [and]

1 (iii) Replacement equipment; AND

2 (IV) AVAILABILITY PAYMENTS RELATED TO ANY
 3 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ENTERED INTO UNDER §§ 4-126 AND
 4 4-126.1 OF THIS ARTICLE.

5 **Article – State Finance and Procurement**

6 6-226.

7 (a) (2) (i) Notwithstanding any other provision of law, and unless
 8 inconsistent with a federal law, grant agreement, or other federal requirement or with the
 9 terms of a gift or settlement agreement, net interest on all State money allocated by the
 10 State Treasurer under this section to special funds or accounts, and otherwise entitled to
 11 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General
 12 Fund of the State.

13 (ii) The provisions of subparagraph (i) of this paragraph do not apply
 14 to the following funds:

15 112. the Pretrial Services Program Grant Fund; [and]

16 113. the Veteran Employment and Transition Success Fund;

17 **AND**

18 **114. THE PRINCE GEORGE'S COUNTY PUBLIC-PRIVATE**
 19 **PARTNERSHIP FUND.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
 21 Assembly that the Governor provide funding for the Interagency Commission on School
 22 Construction to have the expert staff, consultants, and legal services to help local school
 23 systems and counties negotiate and successfully execute public-private partnership
 24 contracts for school construction.

25 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
 26 July 1, 2019.