
By: **Senators Hogan, Brinkley, Colburn, DeGrange, Della, Garagiola, Green, Hafer, Klausmeier, McFadden, Middleton, Stone, and Teitelbaum**

Introduced and read first time: February 6, 2004

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Education - Maryland Public Education Facilities Act**

3 FOR the purpose of establishing the Maryland Public Education Facilities Act (the
4 Act) to facilitate the acquisition, design, construction, improvement, renovation,
5 expansion, equipping, maintenance, or financing of education facilities in the
6 State; defining certain terms; expressing the intent and purpose of the Act;
7 providing that certain qualified education facilities are not subject to certain
8 provisions of law; authorizing certain entities to use certain alternative
9 procurement methods; specifying an approval process for certain education
10 facilities; requiring certain notice to certain affected local jurisdictions;
11 authorizing a public entity to dedicate certain public property for qualified
12 education facilities; specifying certain powers and duties of certain responsible
13 public entities; requiring a private entity to enter into a certain comprehensive
14 agreement; authorizing a responsible public entity to take certain action in the
15 event of material default by a private entity and specifying certain remedies
16 that are available to the responsible public entity; providing for a certain
17 condemnation power; specifying certain penalties; providing for the construction
18 of the Act relative to the sovereign immunity of the State and local governments
19 or certain other entities; authorizing a responsible public entity to enter into
20 certain agreements in accordance with certain provisions of the State
21 procurement law; requiring the adoption of certain model procedures and
22 regulations; and generally relating to the Maryland Public Education Facilities
23 Act.

24 BY adding to
25 Article - Education
26 Section 5-601 through 5-616 to be under the new subtitle "Subtitle 6.
27 Maryland Public Education Facilities Act"
28 Annotated Code of Maryland
29 (2001 Replacement Volume and 2003 Supplement)

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

1 **Article - Education**

2 SUBTITLE 6. MARYLAND PUBLIC EDUCATION FACILITIES ACT.

3 5-601.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) "ALTERNATIVE PROCUREMENT METHODS" INCLUDES THE FOLLOWING
7 PROCUREMENT METHODS OUTLINED IN § 5-606 OF THIS SUBTITLE:

- 8 (1) SALE-LEASE-BACK ARRANGEMENTS;
- 9 (2) LEASE-LEASE-BACK ARRANGEMENTS;
- 10 (3) COMPREHENSIVE PARTNERSHIP AGREEMENTS;
- 11 (4) PERFORMANCE-BASED CONTRACTING; AND
- 12 (5) DESIGN-BUILD CONTRACTING.

13 (C) "COMPETITIVE SEALED PROPOSAL" MEANS A PROPOSAL THAT:

14 (1) IS OFFERED BY A PRIVATE ENTITY IN RESPONSE TO A REQUEST FOR
15 PROPOSALS ISSUED BY A RESPONSIBLE PUBLIC ENTITY; AND

16 (2) INCLUDES:

17 (I) A DESCRIPTION OF THE SCOPE OF WORK AND OF THE PRIVATE
18 ENTITY AND ITS PROPOSED TEAM;

19 (II) AN ESTIMATE OF THE COST OF THE WORK;

20 (III) IF APPLICABLE, A PROPOSED FINANCING STRUCTURE; AND

21 (IV) OTHER ELEMENTS OF PROJECT DELIVERY AND FINANCING AS
22 MAY BE REQUIRED BY THE RESPONSIBLE PUBLIC ENTITY.

23 (D) "QUALIFIED EDUCATION FACILITIES" INCLUDES:

24 (1) A SCHOOL BUILDING;

25 (2) A FUNCTIONALLY RELATED AND SUBORDINATE FACILITY AND LAND
26 TO A SCHOOL BUILDING; OR27 (3) DEPRECIABLE PROPERTY PROVIDED FOR USE IN AN EDUCATION
28 FACILITY THAT IS MANAGED AS PART OF A LOCAL SCHOOL SYSTEM.

29 (E) "RESPONSIBLE PUBLIC ENTITY" INCLUDES:

- 1 (1) A COUNTY BOARD; OR
2 (2) THE LOCAL GOVERNING BOARD OF A COUNTY.

3 5-602.

4 THE GENERAL ASSEMBLY FINDS THAT:

5 (1) THERE IS A PUBLIC NEED FOR THE TIMELY ACQUISITION, DESIGN,
6 CONSTRUCTION, IMPROVEMENT, RENOVATION, EXPANSION, EQUIPPING, OR
7 FINANCING OF EDUCATION FACILITIES WITHIN THE STATE THAT SERVE A PUBLIC
8 NEED AND PURPOSE;

9 (2) THE STATE DOES NOT HAVE ADEQUATE RESOURCES TO PROVIDE
10 EDUCATION FACILITIES FOR THE BENEFIT OF ITS CITIZENS AND THERE IS
11 DEMONSTRATED EVIDENCE THAT ALTERNATIVE DELIVERY AND FINANCING
12 METHODS CAN MEET FACILITY NEEDS BY IMPROVING THE SCHEDULE FOR
13 DELIVERY, LOWERING THE COST, MONETIZING OTHER LOCAL ASSETS, AND
14 PROVIDING OTHER BENEFITS TO THE PUBLIC; AND

15 (3) AUTHORIZING PRIVATE ENTITIES TO ACQUIRE, DESIGN, CONSTRUCT,
16 IMPROVE, RENOVATE, EXPAND, EQUIP, OR FINANCE ONE OR MORE EDUCATION
17 FACILITIES MAY RESULT IN THE FACILITIES BEING MADE AVAILABLE TO THE
18 PUBLIC IN A MORE TIMELY OR LESS COSTLY FASHION, OR IN A MANNER THAT
19 ENHANCES EDUCATIONAL FUNCTIONS, AND THEREBY SERVING THE PUBLIC SAFETY,
20 BENEFIT, AND WELFARE.

21 5-603.

22 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS SUBTITLE
23 FACILITATE THE REQUIREMENTS OF CHAPTER 288 OF THE ACTS OF THE GENERAL
24 ASSEMBLY OF 2002, COMMONLY REFERRED TO AS THE BRIDGE TO EXCELLENCE IN
25 PUBLIC SCHOOLS ACT, AND THE RECOMMENDATIONS OF THE TASK FORCE TO STUDY
26 PUBLIC SCHOOL FACILITIES AND ITS ALTERNATIVE FINANCING WORK GROUP, BY
27 ENCOURAGING THE USE OF ALTERNATIVE FINANCING MECHANISMS, PRIVATE
28 CAPITAL, AND OTHER FUNDING SOURCES THAT SUPPORT THE ACQUISITION, DESIGN,
29 CONSTRUCTION, IMPROVEMENT, RENOVATION, EXPANSION, EQUIPPING, OR
30 FINANCING OF QUALIFIED EDUCATION FACILITIES.

31 (B) IT IS THE FURTHER INTENT OF THE GENERAL ASSEMBLY THAT:

32 (1) THIS SUBTITLE SERVE TO ACCELERATE AND IMPROVE THE
33 FINANCING FOR QUALIFIED EDUCATION FACILITIES AND IMPROVE AND ADD TO THE
34 CONVENIENCE OF THE PUBLIC; AND

35 (2) PUBLIC AND PRIVATE ENTITIES HAVE THE GREATEST POSSIBLE
36 FLEXIBILITY IN CONTRACTING WITH EACH OTHER FOR THE PROVISION OF
37 QUALIFIED EDUCATION FACILITIES IN ACCORDANCE WITH THIS SUBTITLE.

1 5-604.

2 (A) IF NO STATE FUNDS ARE TO BE INCLUDED IN A QUALIFIED EDUCATION
3 FACILITY, THE LOCAL GOVERNING BODY OF THE RESPONSIBLE PUBLIC ENTITY MAY
4 ISSUE DEBT FOR A QUALIFYING PROJECT THROUGH ISSUANCE OF TAX-EXEMPT
5 MUNICIPAL BONDS, SUBJECT TO THE APPROVAL OF THE APPROPRIATE GOVERNING
6 BODY.

7 (B) IF STATE FUNDS ARE TO BE USED FOR THE QUALIFYING PROJECT, THE
8 LOCAL GOVERNING BODY OF THE JURISDICTION IN WHICH THE QUALIFIED
9 EDUCATION FACILITIES ARE TO BE BUILT MAY ISSUE DEBT FOR THE QUALIFIED
10 EDUCATION FACILITIES THROUGH THE ISSUANCE OF TAX-EXEMPT MUNICIPAL
11 BONDS, IF THE PROJECT:

12 (1) IS APPROVED BY THE BOARD OF PUBLIC WORKS; AND

13 (2) IS IN ACCORDANCE WITH §§ 8-301 AND 8-302 OF THE STATE FINANCE
14 AND PROCUREMENT ARTICLE AND § 5-301 OF THIS ARTICLE.

15 (C) IF A RESPONSIBLE PUBLIC ENTITY FINANCES QUALIFIED EDUCATION
16 FACILITIES, IT MAY COMBINE THE DEBT ISSUED THROUGH TAX-EXEMPT MUNICIPAL
17 BONDS WITH THE PUBLIC INFRASTRUCTURE PROJECT BOND ISSUANCE OF THE
18 MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, SUBJECT
19 TO THE REGULATIONS OF THE BOARD OF PUBLIC WORKS.

20 5-605.

21 (A) EXCEPT AS PROVIDED IN § 5-505 OF THIS SUBTITLE, A PROCUREMENT BY A
22 RESPONSIBLE PUBLIC ENTITY FOR QUALIFIED EDUCATION FACILITIES UNDER THIS
23 SUBTITLE MAY BE BY:

24 (1) COMPETITIVE SEALED PROPOSALS;

25 (2) SOLICITED PROPOSALS; OR

26 (3) UNSOLICITED PROPOSALS.

27 (B) PRIOR TO ENTERING INTO A PROCUREMENT CONTRACT WITH A PRIVATE
28 ENTITY FOR THE ACQUISITION, DESIGN, CONSTRUCTION, IMPROVEMENT,
29 RENOVATION, EXPANSION, EQUIPPING, OR FINANCING OF QUALIFIED EDUCATION
30 FACILITIES, A RESPONSIBLE PUBLIC ENTITY SHALL ENTER INTO A COMPREHENSIVE
31 AGREEMENT WITH THE PRIVATE ENTITY IN ACCORDANCE WITH § 5-611 OF THIS
32 SUBTITLE.

33 (C) IN AWARDING A CONTRACT, A RESPONSIBLE PUBLIC ENTITY MAY USE
34 COMPETITIVE SEALED PROPOSALS TO EVALUATE THE QUALITY, COST, AND
35 TIMELINESS OF THE PROPOSED QUALIFIED EDUCATIONAL FACILITIES IN
36 ACCORDANCE WITH THE MODEL PROCEDURES ADOPTED UNDER §§ 5-609 AND 5-610
37 OF THIS SUBTITLE.

1 (D) QUALIFIED EDUCATION FACILITIES APPROVED BY A RESPONSIBLE
2 PUBLIC ENTITY IN ACCORDANCE WITH THIS SUBTITLE ARE NOT SUBJECT TO THE
3 BIDDING REQUIREMENTS UNDER § 5-112 OF THIS ARTICLE IF THE RESPONSIBLE
4 PUBLIC ENTITY PROVIDES EVIDENCE, IN ACCORDANCE WITH THE REGULATIONS OF
5 THE BOARD OF PUBLIC WORKS, THAT PROCEEDING WITH THE EXEMPTION IS LIKELY
6 TO BE ADVANTAGEOUS TO THE RESPONSIBLE PUBLIC ENTITY AND THE PUBLIC,
7 BASED ON:

8 (1) THE PROBABLE SCOPE, COMPLEXITY, OR URGENCY OF THE PROJECT;

9 (2) RISK SHARING, ADDED VALUE, EDUCATIONAL ENHANCEMENTS, AN
10 INCREASE IN FUNDING OR ECONOMIC BENEFIT FROM THE PROJECT THAT WOULD
11 NOT OTHERWISE BE AVAILABLE;

12 (3) THE PUBLIC NEED FOR THE QUALIFYING PROJECT; AND

13 (4) THE ESTIMATED COST OR TIMELINESS OF EXECUTING THE
14 QUALIFYING PROJECT.

15 5-606.

16 (A) A RESPONSIBLE PUBLIC ENTITY MAY UTILIZE ONE OR MORE OF THE
17 ALTERNATIVE PROCUREMENT METHODS SPECIFIED IN SUBSECTION (B) OF THIS
18 SECTION FOR THE TIMELY ACQUISITION, DESIGN, CONSTRUCTION, IMPROVEMENT,
19 RENOVATION, EXPANSION, EQUIPPING, OR FINANCING OF QUALIFIED EDUCATION
20 FACILITIES WITHIN ITS JURISDICTION.

21 (B) ALTERNATIVE PROCUREMENT METHODS FOR QUALIFIED EDUCATION
22 FACILITIES SHALL INCLUDE:

23 (1) SALE-LEASE-BACK ARRANGEMENTS, BY WHICH A RESPONSIBLE
24 PUBLIC ENTITY AGREES TO CONVEY PROPERTY, INCLUDING ANY IMPROVEMENTS ON
25 THE PROPERTY, TO A PRIVATE ENTITY FOR THE PURPOSE OF FACILITATING THE
26 ACQUISITION, DESIGN, CONSTRUCTION, IMPROVEMENT, RENOVATION, EXPANSION,
27 EQUIPPING, OR FINANCING OF QUALIFIED EDUCATION FACILITIES, PROVIDED THE
28 AGREEMENT BETWEEN THE PARTIES MAKES PROVISION FOR THE SIMULTANEOUS
29 LEASE-BACK OF THE QUALIFIED EDUCATION FACILITIES BY THE RESPONSIBLE
30 PUBLIC ENTITY AND FOR THE EVENTUAL RETURN OF OWNERSHIP OF THE PROPERTY
31 AND IMPROVEMENTS TO THE RESPONSIBLE PUBLIC ENTITY ON A CERTAIN DATE;

32 (2) LEASE-LEASE-BACK ARRANGEMENTS, BY WHICH A RESPONSIBLE
33 PUBLIC ENTITY RETAINS OWNERSHIP BUT LEASES ITS OWNED PROPERTY TO A
34 PRIVATE ENTITY TO FACILITATE ACQUISITION, DESIGN, CONSTRUCTION,
35 IMPROVEMENT, RENOVATION, EXPANSION, EQUIPPING, OR FINANCING OF
36 QUALIFIED EDUCATION FACILITIES;

37 (3) PARTNERSHIP AGREEMENTS, BY WHICH A RESPONSIBLE PUBLIC
38 ENTITY ENTERS INTO AN AGREEMENT WITH A PRIVATE ENTITY UNDER THE TERMS
39 OF THIS SUBTITLE FOR THE ACQUISITION, DESIGN, CONSTRUCTION, IMPROVEMENT,

1 RENOVATION, EXPANSION, EQUIPPING, OR FINANCING OF QUALIFIED EDUCATION
2 FACILITIES, INCLUDING PROVISION FOR:

3 (I) COOPERATIVE USE OF THE QUALIFIED EDUCATION FACILITIES
4 OR THE SITE;

5 (II) THE GENERATION OF REVENUES TO OFFSET THE COST OF THE
6 CONSTRUCTION OR USE OF THE QUALIFIED EDUCATION FACILITIES; OR

7 (III) OTHER COOPERATIVE ARRANGEMENTS AS AUTHORIZED
8 UNDER THIS SUBTITLE;

9 (4) PERFORMANCE-BASED CONTRACTING, BY WHICH A RESPONSIBLE
10 PUBLIC ENTITY ENTERS INTO AN ENERGY PERFORMANCE CONTRACT FOR THE
11 PURPOSE OF OBTAINING FUNDING FOR A PRIVATE ENTITY TO CARRY OUT A CAPITAL
12 IMPROVEMENT PROJECT THAT HAS A GUARANTEED SAVING PROVISION AND
13 PROVIDES THAT THE COST OF THE WORK IS REPAID THROUGH THE ENERGY SAVINGS
14 OVER A SPECIFIED PERIOD OF TIME;

15 (5) DESIGN-BUILD ARRANGEMENTS, BY WHICH A RESPONSIBLE PUBLIC
16 ENTITY ENTERS INTO A SINGLE CONTRACT WITH A DESIGN-BUILD ENTITY FOR THE
17 COMBINED DESIGN AND CONSTRUCTION OF QUALIFIED EDUCATION FACILITIES,
18 INCLUDING FINANCING STRUCTURES IN WHICH THE PRIVATE ENTITY ASSISTS THE
19 LOCAL GOVERNING BODY OF THE RESPONSIBLE PUBLIC ENTITY WITH OBTAINING
20 PROJECT FINANCING; AND

21 (6) CONSTRUCTION MANAGEMENT AND AT-RISK ARRANGEMENTS, BY
22 WHICH A RESPONSIBLE PUBLIC ENTITY ENTERS INTO A PRECONSTRUCTION
23 AGREEMENT WITH A CONSTRUCTION MANAGEMENT FIRM, AND THEN NEGOTIATES A
24 GUARANTEED MAXIMUM PRICE WITH THE CONSTRUCTION MANAGEMENT FIRM AT A
25 SPECIFIED POINT IN THE COMPLETION OF THE DESIGN BY THE RESPONSIBLE
26 PUBLIC ENTITY'S ARCHITECTURAL ENGINEERING CONSULTANT.

27 5-607.

28 (A) AS PART OF A TRANSACTION FOR THE ACQUISITION, DESIGN,
29 CONSTRUCTION, IMPROVEMENT, RENOVATION, EXPANSION, EQUIPPING, OR
30 FINANCING OF QUALIFIED EDUCATION FACILITIES, A RESPONSIBLE PUBLIC ENTITY
31 MAY USE ANY SURPLUS LAND THAT IS SUBJECT TO ITS JURISDICTION IN EXCHANGE
32 FOR CONSTRUCTION OR DEVELOPMENT SERVICES.

33 (B) BEFORE IT RELINQUISHES CONTROL OF THE LAND TO THE PRIVATE
34 ENTITY, THE RESPONSIBLE PUBLIC ENTITY SHALL CAUSE AN APPRAISAL OF THE
35 LAND TO BE MADE TO DETERMINE ITS FAIR MARKET VALUE.

36 (C) THE CONVEYANCE OF TITLE TO LAND BY A RESPONSIBLE PUBLIC ENTITY
37 TO A PRIVATE ENTITY FOR THE PURPOSE OF ACQUIRING, DESIGNING,
38 CONSTRUCTING, IMPROVING, RENOVATING, EXPANDING, EQUIPPING, OR FINANCING
39 QUALIFIED EDUCATION FACILITIES MAY NOT PRECLUDE THE ALLOCATION OF
40 CONSTRUCTION FUNDS TO THE PROJECT UNDER THE PUBLIC SCHOOL

1 CONSTRUCTION PROGRAM, IF THE LEASE SPECIFIES A FUTURE DATE CERTAIN
2 WHEN TITLE TO THE QUALIFIED EDUCATION FACILITIES WILL REVERT FROM THE
3 PRIVATE ENTITY TO THE RESPONSIBLE PUBLIC ENTITY.

4 5-608.

5 A RESPONSIBLE PUBLIC ENTITY MAY NOT ACCEPT A PROPOSAL FROM A
6 PRIVATE ENTITY FOR A QUALIFIED EDUCATION FACILITY UNDER THIS SUBTITLE
7 UNLESS THE QUALIFIED EDUCATION FACILITY IS A PROJECT WITHIN THE COUNTY
8 BOARD'S APPROVED 6-YEAR CAPITAL IMPROVEMENT PLAN PRIOR TO THE DATE OF
9 RECEIPT OF THE PROPOSAL BY THE RESPONSIBLE PUBLIC ENTITY.

10 5-609.

11 (A) THE BOARD OF PUBLIC WORKS AND THE STATE INTERAGENCY
12 COMMITTEE ON SCHOOL CONSTRUCTION SHALL CONSULT WITH COUNTY BOARDS,
13 THE GENERAL ASSEMBLY, AND OTHER PRIVATE ENTITIES THAT ARE EXPERIENCED
14 AND SUCCESSFUL IN COMPLETING PROJECTS OF THE TYPE AUTHORIZED UNDER
15 THIS SUBTITLE TO ADOPT MODEL PROCEDURES AND REGULATIONS TO IMPLEMENT
16 THIS SUBTITLE.

17 (B) THE PROCEDURES AND REGULATIONS FOR ALTERNATIVE PROCUREMENT
18 METHODS SHALL:

19 (1) INCLUDE GUIDELINES FOR THE ACCEPTANCE AND EVALUATION OF
20 SOLICITED AND UNSOLICITED PROPOSALS;

21 (2) REQUIRE THE EXECUTION OF A COMPREHENSIVE AGREEMENT IN
22 ACCORDANCE WITH § 5-611 OF THIS SUBTITLE FOR THE COMPLETION OF QUALIFIED
23 EDUCATION FACILITIES;

24 (3) PROVIDE FOR THE PREQUALIFICATION OF BIDDERS OR OFFERORS;

25 (4) REQUIRE COMPLIANCE WITH REQUIREMENTS APPLICABLE TO
26 QUALIFIED PROJECTS THAT OTHERWISE WOULD BE IN EFFECT UNDER THE STATE
27 PROCUREMENT LAW IF THE PROCUREMENT WERE COMPETITIVELY BID;

28 (5) REQUIRE ADHERENCE TO ANY APPLICABLE WAGE RATES OR
29 REQUIREMENTS FOR MINORITY BUSINESS ENTERPRISE PARTICIPATION
30 ESTABLISHED UNDER THE STATE PROCUREMENT LAW; AND

31 (6) OTHER REQUIREMENTS AS THE BOARD OF PUBLIC WORKS
32 DETERMINES.

33 (C) ON ADOPTION, THE MODEL PROCEDURES AND REGULATIONS REQUIRED
34 UNDER THIS SECTION ARE MANDATORY FOR ANY RESPONSIBLE PUBLIC ENTITY
35 THAT ELECTS TO USE AN ALTERNATIVE PROCUREMENT METHOD UNDER THIS
36 SUBTITLE.

1 5-610.

2 IN ADDITION TO THE REQUIREMENTS GOVERNING THE MODEL PROCEDURES
3 ADOPTED UNDER § 5-609 OF THIS SUBTITLE, THE MODEL PROCEDURES ALSO SHALL
4 PROVIDE FOR:

5 (1) THE EVALUATION OF PROPOSALS BASED ON THE PRIVATE ENTITY'S:

6 (I) EXPERIENCE AND TECHNICAL COMPETENCE;

7 (II) ABILITY TO PERFORM THE WORK;

8 (III) PAST PERFORMANCE;

9 (IV) PROPOSED JOINT VENTURE PARTNERS, CONSULTANTS, AND
10 SUBCONTRACTORS;

11 (V) SCHEDULE FOR INITIATING AND COMPLETING THE PROJECT;

12 (VI) ABILITY AND COMMITMENT TO COMPLY WITH REQUIREMENTS
13 OF STATE AND LOCAL GOVERNMENT;

14 (VII) COMPLIANCE WITH BUSINESS ENTERPRISE REQUIREMENTS;
15 AND

16 (VIII) COSTS;

17 (2) ACCEPTANCE OF SOLICITED OR UNSOLICITED BIDS FOR QUALIFIED
18 PROJECTS AND PROVISIONS FOR ADVERTISING UNSOLICITED PROPOSALS AND
19 ACCEPTING COMPETING UNSOLICITED PROPOSALS;

20 (3) THE EVALUATION OF PROJECTS ACCORDING TO THE STATE'S
21 COMPETITIVE SEALED PROPOSAL METHOD OF PROCUREMENT UNDER § 13-104 OF
22 THE STATE FINANCE AND PROCUREMENT ARTICLE;

23 (4) CRITERIA FOR THE RESPONSIBLE PUBLIC ENTITY'S ACCEPTANCE OF
24 THE QUALIFIED EDUCATION FACILITIES ON COMPLETION; AND

25 (5) PROVISIONS TO PROTECT CONFIDENTIAL AND PROPRIETARY
26 INFORMATION PROVIDED BY THE PRIVATE ENTITY THAT ARE CONSISTENT WITH
27 STATE LAW GOVERNING ACCESS TO RECORDS.

28 5-611.

29 (A) PRIOR TO FORMAL APPROVAL OF A PROPOSAL SUBMITTED BY A PRIVATE
30 ENTITY, A RESPONSIBLE PUBLIC ENTITY SHALL ENTER INTO A COMPREHENSIVE
31 AGREEMENT WITH THE PRIVATE ENTITY AS PROVIDED IN THIS SECTION.

32 (B) THE BASIC PROVISIONS OF THE COMPREHENSIVE AGREEMENT SHALL BE
33 SPECIFIED IN THE STATE'S MODEL PROCEDURES AND SHALL INCLUDE THE
34 FOLLOWING:

1 (1) DELIVERY OF MAINTENANCE, PERFORMANCE, AND PAYMENT
2 BONDS, OR LETTERS OF CREDIT FOR THE PROPOSED QUALIFIED EDUCATION
3 FACILITIES IN THE FORM AND AMOUNT SATISFACTORY TO THE RESPONSIBLE
4 PUBLIC ENTITY;

5 (2) REVIEW OF PLANS AND SPECIFICATIONS FOR THE QUALIFIED
6 EDUCATION FACILITIES TO ENSURE THAT THE PLANS AND SPECIFICATIONS
7 CONFORM TO THE STANDARDS OF THE RESPONSIBLE PUBLIC ENTITY;

8 (3) INSPECTION AND MONITORING OF THE QUALIFIED EDUCATION
9 FACILITIES BY THE RESPONSIBLE PUBLIC ENTITY TO ENSURE THAT THE ACTIVITIES
10 OF THE PRIVATE ENTITY ARE ACCEPTABLE TO THE RESPONSIBLE PUBLIC ENTITY
11 AND IN ACCORDANCE WITH THE COMPREHENSIVE AGREEMENT;

12 (4) POLICIES AND PROCEDURES GOVERNING THE RIGHTS AND
13 RESPONSIBILITIES OF THE RESPONSIBLE PUBLIC ENTITY AND THE PRIVATE ENTITY
14 IN THE EVENT OF TERMINATION OR MATERIAL DEFAULT BY THE PRIVATE ENTITY;

15 (5) FEES, LEASE PAYMENTS, OR SERVICE PAYMENTS AS MAY BE
16 ESTABLISHED BY AGREEMENT OF THE PARTIES; AND

17 (6) THE PROJECT SCHEDULE.

18 5-612.

19 IN THE EVENT OF MATERIAL DEFAULT, THE PUBLIC ENTITY MAY:

20 (1) ASSUME THE RESPONSIBILITIES AND DUTIES OF THE PRIVATE
21 ENTITY FOR THE QUALIFYING EDUCATION FACILITIES;

22 (2) EXERCISE POWER OF CONDEMNATION TO ACQUIRE THE
23 QUALIFYING EDUCATION FACILITIES; AND

24 (3) WITH CAUSE, TERMINATE THE COMPREHENSIVE AGREEMENT.

25 5-613.

26 (A) NOTWITHSTANDING THIS SUBTITLE, QUALIFIED EDUCATION FACILITIES
27 SHALL CONFORM TO ALL OF THE REQUIREMENTS OF THIS ARTICLE AND OF THE
28 STATE FINANCE AND PROCUREMENT ARTICLE.

29 (B) ALL QUALIFIED EDUCATION FACILITIES SHALL BE APPROVED, AS
30 PROVIDED BY LAW, BY:

31 (1) (I) THE LOCAL GOVERNING BODY OF THE COUNTY; AND

32 (II) THE STATE SUPERINTENDENT OF SCHOOLS; OR

33 (2) (I) THE STATE INTERAGENCY COMMITTEE ON PUBLIC SCHOOL
34 CONSTRUCTION; AND

1 (II) THE BOARD OF PUBLIC WORKS.

2 5-614.

3 A PRIVATE ENTITY REQUESTING APPROVAL FROM, OR SUBMITTING A
4 PROPOSAL TO, A RESPONSIBLE PUBLIC ENTITY FOR QUALIFIED EDUCATION
5 FACILITIES SHALL GIVE NOTICE TO EACH AFFECTED LOCAL JURISDICTION BY
6 FURNISHING A COPY OF ITS REQUEST OR PROPOSAL TO THE LOCAL GOVERNING
7 BODY OF THE JURISDICTION.

8 5-615.

9 THIS SUBTITLE MAY NOT BE CONSTRUED OR DEEMED TO WAIVE THE
10 SOVEREIGN IMMUNITY OF THE STATE, A COUNTY, OR ANY RESPONSIBLE PUBLIC
11 ENTITY WITH RESPECT TO ITS PARTICIPATION IN, OR APPROVAL OF, ALL OR PART OF
12 ANY QUALIFIED EDUCATION FACILITIES.

13 5-616.

14 THIS SUBTITLE IS THE MARYLAND PUBLIC EDUCATION FACILITIES ACT.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2004.