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By: **Delegates Impallaria, McDonough, Boteler, Cluster, Donoghue, Dwyer,  
Frank, Kach, Krebs, and Miller**

Introduced and read first time: February 11, 2005

Assigned to: Appropriations

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A BILL ENTITLED

1 AN ACT concerning

2 **Education - Public School Construction - Plans and Specifications**

3 FOR the purpose of providing that certain plans and specifications for a school  
4 construction project or capital improvement are the exclusive property of the  
5 county board of education that commissioned the plans and specifications;  
6 authorizing a county board of education to use, sell, or otherwise convey, subject  
7 to a fee limitation, certain school construction or capital improvement plans and  
8 specifications; providing that the authority to use, sell, or otherwise convey  
9 certain plans and specifications for a school construction project or capital  
10 improvement is exclusive to the county board that commissioned the original  
11 plans and specifications; providing that the authority granted to the county  
12 board under this Act supersedes any claim or right to the contrary asserted by  
13 any other person or entity; requiring a county board that needs to modify certain  
14 school construction or capital improvement plans or specifications that the  
15 county board is using, bought, or obtained from another county board to offer a  
16 certain contract to the originating architects before opening a certain contract to  
17 competitive bidding; providing for the application of this Act; and generally  
18 relating to the use, sale, or other conveyance by a county board of education of  
19 the plans and specifications for a school construction project or capital  
20 improvement.

21 BY repealing and reenacting, with amendments,  
22 Article - Education  
23 Section 5-301  
24 Annotated Code of Maryland  
25 (2004 Replacement Volume and 2004 Supplement)  
26 (As enacted by Chapters 306 and 307 of the Acts of the General Assembly of  
27 2004)

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

**Article - Education**

1  
2 5-301.

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

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

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

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

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

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

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

22 1. Define modular construction; and

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

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

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

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

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

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

- 1                   (2)     The regulations adopted by the Board of Public Works may contain  
2 requirements for:
- 3                   (i)     The development and submission of long range plans;
- 4                   (ii)    The submission of annual plans and plans for specific projects;
- 5                   (iii)   The submission of other data or information that is relevant to  
6 school construction or capital improvement;
- 7                   (iv)    The approval of sites, plans, and specifications for the  
8 construction of new school buildings or the improvement of existing buildings;
- 9                   (v)     Site improvements;
- 10                  (vi)    Competitive bidding;
- 11                  (vii)   The hiring of personnel in connection with school construction  
12 or capital improvements;
- 13                  (viii)   The actual construction of school buildings or their  
14 improvements;
- 15                  (ix)     The relative roles of different State and local governmental  
16 agencies in the planning and construction of school buildings or school capital  
17 improvements;
- 18                  (x)     School construction and capital improvements necessary or  
19 appropriate for the proper implementation of this section;
- 20                  (xi)     At the recommendation of the Interagency Committee, the  
21 establishment of priority public school construction programs;
- 22                  (xii)    Development of cooperative arrangements that permit the  
23 sharing of facilities among two or more school systems;
- 24                  (xiii)   The selection of architects and engineers by school systems;
- 25                  (xiv)    The award of contracts by school systems; and
- 26                  (xv)    Method of payments made by the State under the Public School  
27 Construction Program.

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

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

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

- 1 (iii) Providing a method for establishing a maximum State  
2 construction allocation for each project approved for State funding;
- 3 (iv) Referencing the policies stated in § 5-7B-07 of the State  
4 Finance and Procurement Article;
- 5 (v) Requiring local school systems to adopt procedures consistent  
6 with the minority business enterprise policies of the State as required under the Code  
7 of Maryland Regulations;
- 8 (vi) Establishing a process for the appeal of decisions by the  
9 Interagency Committee to the Board of Public Works;
- 10 (vii) Requiring local education agencies to adopt, implement, and  
11 periodically update comprehensive maintenance plans; and
- 12 (viii) Authorizing the Board of Public Works to withhold State public  
13 school construction funds from a local education agency that fails to comply with the  
14 requirements of item (vii) of this paragraph.
- 15 (4) In adopting any of these requirements, the State Board and the  
16 Board of Public Works shall provide for the maximum exercise of initiative by school  
17 personnel in each county to insure that the school buildings and improvements meet  
18 both the needs of the local communities and the rules and regulations necessary to  
19 insure the proper operation of this section and the prudent expenditure of State  
20 funds.
- 21 (e) The Board of Public Works shall develop the rules, regulations, and  
22 procedures authorized by this section in consultation with representatives of the  
23 county boards and the county governing bodies.
- 24 (f) The regulations and procedures of the Board of Public Works adopted  
25 under this section and their promulgation are exempt from § 8-127(b) of the State  
26 Finance and Procurement Article of the Code.
- 27 (g) (1) With respect to public school construction or public school capital  
28 improvements, including sites for school buildings, the authority, responsibilities,  
29 powers, and duties of the following are subject to the regulations adopted by the  
30 Board of Public Works under this section:
- 31 (i) The State Board;
- 32 (ii) The State Superintendent;
- 33 (iii) The county governments;
- 34 (iv) The county boards; and
- 35 (v) All other State or local governmental agencies under this  
36 article.

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

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

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

13          (2)     Consistent with § 4-115 of this article and regulations adopted by the  
14 Board of Public Works to implement § 4-126 of this article, the Board of Public Works  
15 may require by regulation that the portion of the proceeds received by a county from  
16 the sale, lease, or disposal of any public school building that represent State funds  
17 provided within 15 years prior to the date of the transaction shall be used solely as  
18 part of the State funding of the construction of future public school buildings in the  
19 county in which the sale, lease, or disposal occurred, if the public school building was  
20 constructed under a contract executed on or after February 1, 1971.

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

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

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

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

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

39          (4)     On or before June 1 and December 1 of each year, the Interagency  
40 Committee shall report to the General Assembly, in accordance with § 2-1246 of the

1 State Government Article, on the balance in the fund as the result of transfers or  
2 reversions required under this subsection.

3 (K) (1) THE ORIGINAL PLANS AND SPECIFICATIONS FOR A SCHOOL  
4 CONSTRUCTION PROJECT OR A PUBLIC SCHOOL CAPITAL IMPROVEMENT ARE THE  
5 PROPERTY OF THE COUNTY BOARD THAT COMMISSIONED THE PLANS AND  
6 SPECIFICATIONS.

7 (2) (I) ON COMPLETION OF A SCHOOL CONSTRUCTION PROJECT OR A  
8 PUBLIC SCHOOL CAPITAL IMPROVEMENT, THE COUNTY BOARD MAY USE, SELL, OR  
9 OTHERWISE CONVEY ITS ORIGINAL PLANS AND SPECIFICATIONS FOR THE SCHOOL  
10 CONSTRUCTION PROJECT OR THE PUBLIC SCHOOL CAPITAL IMPROVEMENT TO  
11 ANOTHER COUNTY BOARD.

12 (II) A COUNTY BOARD MAY NOT CHARGE ANOTHER COUNTY BOARD  
13 A FEE FOR THE USE, SALE, OR OTHER CONVEYANCE OF ITS ORIGINAL PLANS AND  
14 SPECIFICATIONS AS AUTHORIZED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH  
15 THAT IS GREATER THAN 50% OF THE COST TO THE COUNTY BOARD FOR THE  
16 ORIGINAL PLANS AND SPECIFICATIONS.

17 (3) THE AUTHORITY GRANTED TO A COUNTY BOARD UNDER THIS  
18 SUBSECTION TO USE, SELL, OR OTHERWISE CONVEY ITS ORIGINAL PLANS AND  
19 SPECIFICATIONS FOR A SCHOOL CONSTRUCTION PROJECT OR A PUBLIC SCHOOL  
20 CAPITAL IMPROVEMENT TO ANOTHER COUNTY BOARD:

21 (I) IS THE EXCLUSIVE AUTHORITY OF THE COUNTY BOARD THAT  
22 COMMISSIONED THE ORIGINAL PLANS AND SPECIFICATIONS; AND

23 (II) SUPERSEDES ANY CONTRACT OR RIGHT TO THE CONTRARY  
24 ASSERTED BY ANY OTHER PERSON OR ENTITY.

25 (4) A COUNTY BOARD REQUIRED TO MODIFY THE ORIGINAL PLANS AND  
26 SPECIFICATIONS FOR A SCHOOL CONSTRUCTION PROJECT OR A PUBLIC SCHOOL  
27 CAPITAL IMPROVEMENT THAT THE COUNTY BOARD IS USING, BOUGHT, OR  
28 OBTAINED FROM ANOTHER COUNTY BOARD SHALL OFFER THE CONTRACT TO  
29 MODIFY THE PLANS OR SPECIFICATIONS TO THE ORIGINATING ARCHITECTS BEFORE  
30 OPENING THE MODIFICATION CONTRACT TO COMPETITIVE BIDDING.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act:

32 (1) shall apply only to the preparation and development of original plans  
33 and specifications for a school construction project or a public school capital  
34 improvement for which a county board executes a contract on or after the effective  
35 date of this Act; and

36 (2) may not be applied to any original plans and specifications for a  
37 school construction project or a public school capital improvement for which a county  
38 board executed a contract prior to the effective date of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2005.