

SENATE BILL 551

F5, P2

0lr2868
CF 0lr2011

By: **Senator Edwards**

Introduced and read first time: February 4, 2010

Assigned to: Budget and Taxation and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Public School Construction – Procurement – Preference for**
3 **Local Business Entities**

4 FOR the purpose of authorizing a local governing body to adopt a preference-based
5 arrangement that gives preference to local business entities for certain
6 procurement for public school construction; requiring the Board of Public Works
7 to adopt regulations that specify elements to be included in any
8 preference-based arrangement adopted by a local governing body that gives
9 preference to local business entities for certain procurement for public school
10 construction; and generally relating to procurement for public school
11 construction and a preference for local business entities.

12 BY repealing and reenacting, with amendments,
13 Article – Education
14 Section 4–126
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2009 Supplement)

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

19 **Article – Education**

20 4–126.

21 (a) In this section, “alternative financing methods” includes:

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) Lease–leaseback arrangements, in which a county board leases a
2 property to a private entity that improves the property and leases the property, with
3 the improvements, back to the county board;

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

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

12 **(5) PREFERENCE–BASED ARRANGEMENTS, BY WHICH A LOCAL**
13 **GOVERNING BODY GIVES PREFERENCE TO LOCAL BUSINESS ENTITIES FOR ANY**
14 **CONSTRUCTION THAT IS NOT SUBJECT TO PREVAILING WAGE RATES UNDER**
15 **TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;**
16 **AND**

17 **[(5)] (6)** Design–build arrangements, that permit a county board to
18 contract with a design–build business entity for the combined design and construction
19 of qualified education facilities, including financing mechanisms where the business
20 entity assists the local governing body in obtaining project financing.

21 (b) Except when prohibited by local law, in order to finance or to speed
22 delivery of, transfer risks of, or otherwise enhance the delivery of public school
23 construction, a county may:

24 (1) Use alternative financing methods;

25 (2) Engage in competitive negotiation, rather than competitive
26 bidding, in limited circumstances, including construction management at–risk
27 arrangements and other alternative project delivery arrangements, as provided in
28 regulations adopted by the Board of Public Works;

29 (3) Accept unsolicited proposals for the development of public schools
30 in limited circumstances, as provided in regulations adopted by the Board of Public
31 Works; and

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

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

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

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

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

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

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

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

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

17 (i) The county governing body;

18 (ii) The State Superintendent of Schools; or

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

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

24 (f) A county board may not use alternative financing methods under this
25 section without the approval of the county governing body.

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

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

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

- 1 (3) Guidelines for content and issuance of solicitations;
- 2 (4) Requirements for the prequalification of bidders or offerors;
- 3 (5) Requirements for public notice of solicited and unsolicited
4 proposals and proposed execution of a comprehensive agreement;
- 5 (6) Regulations that require compliance with requirements applicable
6 to qualified projects that would otherwise be in effect under the State procurement law
7 if the procurement were competitively bid; and
- 8 (7) **(I)** Regulations that require that contracts and subcontracts
9 adhere to the requirements of Title 17, Subtitle 2 and Title 14 of the State Finance and
10 Procurement Article if the requirements would otherwise be applicable; **AND**
- 11 **(II) REGULATIONS THAT SPECIFY ELEMENTS TO BE**
12 **INCLUDED IN ANY PREFERENCE-BASED ARRANGEMENT ADOPTED BY A LOCAL**
13 **GOVERNING BODY THAT GIVES PREFERENCE TO LOCAL BUSINESS ENTITIES FOR**
14 **ANY CONSTRUCTION THAT IS NOT SUBJECT TO PREVAILING WAGE RATES UNDER**
15 **TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2010.