

HOUSE BILL 1212

F1, B2, Q4

2lr2333

By: **Delegates Mizeur, Anderson, Luedtke, B. Robinson, and Washington**

Introduced and read first time: February 10, 2012

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Building Better Schools Through Innovation Act**

3 FOR the purpose of establishing a nonprofit partnership as an alternative financing
4 arrangement for certain public school construction projects; authorizing a
5 county board of education to enter into a contract with a certain nonprofit entity
6 or entities for certain school construction projects under certain circumstances;
7 authorizing a county board to receive certain funding for school construction as
8 a block grant; providing for the uses of a certain block grant; requiring that a
9 county board be in receipt of a certain letter of determination from the Internal
10 Revenue Service prior to entering into a certain contract with a certain
11 nonprofit entity or entities; and generally relating to public school construction.

12 BY repealing and reenacting, with amendments,
13 Article – Education
14 Section 4–126
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2011 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;

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

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

21 (7) (I) **NONPROFIT PARTNERSHIP ARRANGEMENTS, THAT,**
22 **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, PERMIT A COUNTY**
23 **BOARD TO:**

24 **1. ENTER INTO CONTRACTS WITH AN ENTITY OR**
25 **ENTITIES HAVING NONPROFIT STATUS, AS DETERMINED BY THE INTERNAL**
26 **REVENUE SERVICE, FOR THE ACQUISITION, CONSTRUCTION,**
27 **RECONSTRUCTION, EQUIPPING, MAINTENANCE, REPAIR, OR RENOVATION OF**
28 **PUBLIC SCHOOL FACILITIES; AND**

29 **2. RECEIVE THE COUNTY BOARD’S SHARE OF**
30 **SCHOOL CONSTRUCTION FUNDS DISTRIBUTED UNDER TITLE 5, SUBTITLE 3 OF**
31 **THIS ARTICLE AS A BLOCK GRANT THAT MAY BE USED TO MAKE PAYMENTS**
32 **UNDER LEASES, INSTALLMENT PURCHASE AGREEMENTS, OR OTHER SIMILAR**
33 **AGREEMENTS FOR THE FINANCING OF PUBLIC SCHOOL FACILITIES.**

34 (II) **A COUNTY BOARD MAY ENTER INTO CONTRACTS UNDER**
35 **SUBPARAGRAPH (I) OF THIS PARAGRAPH ONLY ON RECEIPT OF A**
36 **DETERMINATION LETTER FROM THE INTERNAL REVENUE SERVICE THAT**

1 CONFIRMS THAT THE ENTITY HAS NONPROFIT STATUS AND IS AUTHORIZED TO
2 ISSUE OBLIGATIONS EXEMPT FROM FEDERAL INCOME TAXATION.

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

6 (1) Use alternative financing methods;

7 (2) Engage in competitive negotiation, rather than competitive
8 bidding, in limited circumstances, including construction management at-risk
9 arrangements and other alternative project delivery arrangements, as provided in
10 regulations adopted by the Board of Public Works;

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

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

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

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

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

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

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

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

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

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

33 (i) The county governing body;

1 (ii) The State Superintendent of Schools; or

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

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

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

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

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

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

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

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

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

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

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

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 June 1, 2012.