

# HOUSE BILL 836

F1, P2

0lr2011  
CF SB 551

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By: **Allegany County Delegation**

Introduced and read first time: February 9, 2010

Assigned to: Appropriations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 8, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

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

13 BY repealing and reenacting, with amendments,  
14 Article – Education  
15 Section 4–126  
16 Annotated Code of Maryland  
17 (2008 Replacement Volume and 2009 Supplement)

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

20 **Article – Education**

21 4–126.

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

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

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

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

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

17 **(5) PREFERENCE–BASED ARRANGEMENTS, BY WHICH A LOCAL**  
18 **GOVERNING BODY GIVES PREFERENCE FIRST TO LOCAL BUSINESS ENTITIES**  
19 **LOCATED IN THE COUNTY AND THEN TO BUSINESS ENTITIES LOCATED IN OTHER**  
20 **COUNTIES IN THE STATE FOR ANY CONSTRUCTION THAT IS NOT SUBJECT TO**  
21 **PREVAILING WAGE RATES UNDER TITLE 17, SUBTITLE 2 OF THE STATE**  
22 **FINANCE AND PROCUREMENT ARTICLE; AND**

23 **[5] (6)** Design–build arrangements, that permit a county board to  
24 contract with a design–build business entity for the combined design and construction  
25 of qualified education facilities, including financing mechanisms where the business  
26 entity assists the local governing body in obtaining project financing.

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

30 (1) Use alternative financing methods;

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

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

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

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

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

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

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

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

16           (d)    Projects that qualify for alternative financing methods under this  
17 subsection:

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

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

23           (i)    The county governing body;

24           (ii)   The State Superintendent of Schools; or

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

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

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

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

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

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

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

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

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

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

15 (7) (I) Regulations that require that contracts and subcontracts  
16 adhere to the requirements of Title 17, Subtitle 2 and Title 14 of the State Finance and  
17 Procurement Article if the requirements would otherwise be applicable; AND

18 (II) REGULATIONS THAT SPECIFY ELEMENTS TO BE  
19 INCLUDED IN ANY PREFERENCE-BASED ARRANGEMENT ADOPTED BY A LOCAL  
20 GOVERNING BODY THAT GIVES PREFERENCE FIRST TO LOCAL BUSINESS  
21 ENTITIES LOCATED IN THE COUNTY AND THEN TO BUSINESS ENTITIES LOCATED  
22 IN OTHER COUNTIES IN THE STATE FOR ANY CONSTRUCTION THAT IS NOT  
23 SUBJECT TO PREVAILING WAGE RATES UNDER TITLE 17, SUBTITLE 2 OF THE  
24 STATE FINANCE AND PROCUREMENT ARTICLE.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be  
26 construed to impair an obligation of a local governing body under the State Minority  
27 Business Enterprise law.

28 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
29 effect October 1, 2010.