

HOUSE BILL 1402

F5

9lr3249
CF SB 1011

By: **Delegate Jackson**

Introduced and read first time: February 27, 2019

Rules suspended

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Prince George's County – Public School Construction – Prince George's County**
3 **Alternative Financing Fund**

4 FOR the purpose of exempting certain public school construction projects that use
5 alternative financing methods and that receive State funding from certain
6 requirements; requiring public school construction projects in Prince George's
7 County that use alternative financing methods and that receive State funding to
8 comply with certain requirements and a certain memorandum of understanding;
9 establishing the Prince George's County Alternative Financing Fund as a special
10 fund; specifying the purpose of the Fund; requiring the Prince George's County public
11 school system to administer the Fund; specifying the contents of the Fund; specifying
12 the purpose for which the Fund may be used; altering the distribution of certain
13 State lottery revenues and requiring the Comptroller to distribute certain State
14 lottery revenues in the Prince George's County Alternative Financing Fund; defining
15 a certain term; and generally relating to alternative financing for school construction
16 in Prince George's County.

17 BY repealing and reenacting, with amendments,
18 Article – Education
19 Section 4–126
20 Annotated Code of Maryland
21 (2018 Replacement Volume and 2018 Supplement)

22 BY adding to
23 Article – Education
24 Section 4–126.1
25 Annotated Code of Maryland
26 (2018 Replacement Volume and 2018 Supplement)

27 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Government
2 Section 9–120
3 Annotated Code of Maryland
4 (2014 Replacement Volume and 2018 Supplement)

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

7 **Article – Education**

8 4–126.

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) “Alternative financing methods” includes one or more of the following
11 methods:

12 (i) Sale–leaseback arrangements, in which a county board agrees to
13 transfer title to a property, including improvements, to a private entity that simultaneously
14 agrees to lease the property back to the county board and, on a specified date, transfer title
15 back to the county board;

16 (ii) Lease–leaseback arrangements, in which a county board leases
17 a property to a private entity that improves the property and leases the property, with the
18 improvements, back to the county board;

19 (iii) Public–private partnership agreements, in which a county board
20 contracts with a county revenue authority or a private entity for the acquisition, design,
21 construction, improvement, renovation, expansion, equipping, or financing of a public
22 school, and may include provisions for cooperative use of the school or an adjacent property
23 and generation of revenue to offset the cost of construction or use of the school;

24 (iv) Performance–based contracting, in which a county board enters
25 into an energy performance contract to obtain funding for a project with guaranteed energy
26 savings over a specified time period;

27 (v) Preference–based arrangements, by which a local governing body
28 gives 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 prevailing
30 wage rates under Title 17, Subtitle 2 of the State Finance and Procurement Article;

31 (vi) Design–build arrangements, that permit a county board to
32 contract with a design–build business entity for the combined design and construction of
33 qualified education facilities, including financing mechanisms where the business entity
34 assists the local governing body in obtaining project financing; and

35 (vii) Design–construct–operate–maintain–finance arrangements that

1 permit a county board to contract with a county revenue authority or a private entity for
2 the design, construction, operation, and maintenance of a public school under terms agreed
3 to by the parties.

4 (b) (1) Except when prohibited by local law, in order to finance or to speed
5 delivery of, transfer risks of, or otherwise enhance the delivery of public school construction,
6 a county board, with the approval of the county governing body in accordance with
7 subsection (d) of this section, may:

8 (i) Use alternative financing methods;

9 (ii) Engage in competitive negotiation, rather than competitive
10 bidding, in limited circumstances, including construction management at-risk
11 arrangements and other alternative project delivery arrangements, as provided in
12 regulations adopted by the Interagency Commission on School Construction;

13 (iii) Accept unsolicited proposals for the development of public
14 schools in limited circumstances, as provided in regulations adopted by the Interagency
15 Commission on School Construction;

16 (iv) Solicit proposals for the development of public schools;

17 (v) Lease property from a county revenue authority or a private
18 entity for use as a public school facility; and

19 (vi) Use quality-based selection, in which selection is based on a
20 combination of qualifications and cost factors, to select developers and builders, as provided
21 in regulations adopted by the Interagency Commission on School Construction.

22 (2) The alternative financing methods described under paragraph (1)(i) of
23 this subsection may include reserves sufficient to cover operation, facility renewal,
24 maintenance, and energy costs as part of a contract.

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

28 (d) A county board may not use alternative financing methods under this section
29 without the approval of the county governing body.

30 (e) (1) (i) Except as provided in paragraphs (2) and (3) of this subsection, §
31 2-303(f) and Title 5, Subtitle 3 of this article and the regulations that govern the Public
32 School Construction Program do not apply to projects that use alternative financing
33 methods under this section.

34 (ii) Nothing in this section may be construed to authorize or require
35 State approval before an alternative financing method may be used by a local school system.

1 (2) If a project that receives State funding uses alternative financing
 2 methods under this section, the project shall be submitted to the Interagency Commission
 3 on School Construction for review.

4 (3) (I) Projects that use alternative financing methods under this
 5 section and receive State funding shall comply with the following requirements:

6 [(i)] 1. [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)**
 7 **OF THIS PARAGRAPH, THE** State and local cost–share established for each county in
 8 regulations;

9 [(ii)] 2. [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)**
 10 **OF THIS PARAGRAPH, THE** maximum State construction allocation for each project
 11 approved for State funding;

12 [(iii)] 3. [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)**
 13 **OF THIS PARAGRAPH, THE** approval of project funding by the Interagency Commission;

14 [(iv)] 4. Smart growth requirements;

15 [(v)] 5. Minority business enterprise requirements;

16 [(vi)] 6. Prevailing wage requirements;

17 [(vii)] 7. Environmental requirements; and

18 [(viii)] 8. A requirement for a procurement process that
 19 includes public notice and results in the most advantageous proposal.

20 (II) **IN PRINCE GEORGE’S COUNTY, PROJECTS THAT USE**
 21 **ALTERNATIVE FINANCING METHODS UNDER THIS SECTION AND RECEIVE STATE**
 22 **FUNDING:**

23 1. **DO NOT HAVE TO COMPLY WITH THE REQUIREMENTS**
 24 **UNDER SUBPARAGRAPH (I)1 THROUGH 3 OF THIS PARAGRAPH;**

25 2. **SHALL COMPLY WITH THE REQUIREMENTS UNDER**
 26 **SUBPARAGRAPH (I)4 THROUGH 8 OF THIS PARAGRAPH; AND**

27 3. **SHALL COMPLY WITH A THREE–PARTY MEMORANDUM**
 28 **OF UNDERSTANDING ENTERED INTO AND SIGNED BY THE PRINCE GEORGE’S**
 29 **COUNTY BOARD, PRINCE GEORGE’S COUNTY, AND THE INTERAGENCY**
 30 **COMMISSION ON SCHOOL CONSTRUCTION THAT:**

1 **A. SPECIFIES THE ROLES, RIGHTS, TERMS, AND**
2 **RESPONSIBILITIES OF EACH PARTY WITH RESPECT TO SCHOOL PROJECTS**
3 **UNDERTAKEN WITH A PRIVATE ENTITY USING ALTERNATIVE FINANCING METHODS,**
4 **INCLUDING ANY AMOUNTS THE PARTIES ARE REQUIRED TO DEPOSIT INTO THE**
5 **PRINCE GEORGE’S COUNTY ALTERNATIVE FINANCING FUND ESTABLISHED UNDER**
6 **§ 4-404 OF THIS TITLE;**

7 **B. SPECIFIES THAT § 2-203(F) AND TITLE 5, SUBTITLE 3**
8 **OF THIS ARTICLE AND REGULATIONS GOVERNING THE PUBLIC SCHOOL**
9 **CONSTRUCTION PROGRAM ARE NOT APPLICABLE TO PROJECTS USING**
10 **ALTERNATIVE FINANCING METHODS;**

11 **C. REQUIRES THE PRINCE GEORGE’S COUNTY BOARD**
12 **TO SUBMIT PROJECTS TO THE INTERAGENCY COMMISSION ON SCHOOL**
13 **CONSTRUCTION FOR REVIEW BEFORE COMMENCEMENT OF THE PROJECT;**

14 **D. SPECIFIES THE TIME FRAMES IN WHICH THE**
15 **INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION SHALL COMPLETE ITS**
16 **REVIEW OF PROJECTS; AND**

17 **E. REQUIRES THE PRINCE GEORGE’S COUNTY BOARD**
18 **TO SUBMIT ANNUAL REPORTS TO PRINCE GEORGE’S COUNTY AND THE**
19 **INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION DURING THE TERM OF**
20 **THE ALTERNATIVE FINANCING METHOD CONTRACT WITH THE PRIVATE ENTITY.**

21 **4-126.1.**

22 **(A) IN THIS SECTION, “FUND” MEANS THE PRINCE GEORGE’S COUNTY**
23 **ALTERNATIVE FINANCING FUND.**

24 **(B) THERE IS A PRINCE GEORGE’S COUNTY ALTERNATIVE FINANCING**
25 **FUND.**

26 **(C) THE PURPOSE OF THE FUND IS TO PROVIDE SUPPLEMENTAL STATE**
27 **FUNDS TO FINANCE ALTERNATIVE FINANCING METHODS UNDER § 4-126 OF THIS**
28 **SUBTITLE IN PRINCE GEORGE’S COUNTY.**

29 **(D) THE PRINCE GEORGE’S COUNTY PUBLIC SCHOOL SYSTEM SHALL:**

30 **(1) ADMINISTER THE FUND;**

31 **(2) HOLD THE FUND SEPARATELY;**

1 **(3) ACCOUNT FOR THE FUND; AND**

2 **(4) INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS ANY**
3 **OTHER PRINCE GEORGE'S COUNTY MONEY MAY BE INVESTED.**

4 **(E) THE FUND CONSISTS OF:**

5 **(1) MONEY DEPOSITED INTO THE FUND BY PRINCE GEORGE'S**
6 **COUNTY AND THE PRINCE GEORGE'S COUNTY BOARD;**

7 **(2) FUNDS TO BE DEPOSITED IN ACCORDANCE WITH § 9-120(B)(VI)**
8 **OF THE STATE GOVERNMENT ARTICLE; AND**

9 **(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
10 **THE BENEFIT OF THE FUND.**

11 **(F) THE FUND MAY BE USED ONLY TO PROVIDE FUNDING FOR ALTERNATIVE**
12 **FINANCING METHODS UNDER § 4-126 OF THIS SUBTITLE IN PRINCE GEORGE'S**
13 **COUNTY.**

14 **(G) THE MONEY IN THE FUND SHALL BE USED TO SUPPLEMENT, BUT NOT**
15 **SUPPLANT, MONEY APPROPRIATED TO PRINCE GEORGE'S COUNTY FOR PUBLIC**
16 **SCHOOL CONSTRUCTION UNDER THE PUBLIC SCHOOL CONSTRUCTION PROGRAM**
17 **ESTABLISHED IN TITLE 5, SUBTITLE 3 OF THIS ARTICLE.**

18 **(H) ON OR BEFORE JANUARY 1, 2020, AND EACH JANUARY 1 THEREAFTER,**
19 **IF THE PRINCE GEORGE'S COUNTY BOARD, PRINCE GEORGE'S COUNTY, AND THE**
20 **INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION REMAIN IN AN**
21 **ALTERNATIVE FINANCING METHODS MEMORANDUM OF UNDERSTANDING UNDER §**
22 **4-126 OF THIS SUBTITLE AND THE PROJECT SUBJECT TO THE MEMORANDUM OF**
23 **UNDERSTANDING CONTINUES TO RECEIVE STATE FUNDS, THE PRINCE GEORGE'S**
24 **COUNTY BOARD AND PRINCE GEORGE'S COUNTY SHALL DEPOSIT INTO THE FUND**
25 **THE AMOUNTS REQUIRED UNDER THE MEMORANDUM OF UNDERSTANDING.**

26 **(I) ON JANUARY 15, 2021, AND EACH JANUARY 15 THEREAFTER, THE**
27 **PRINCE GEORGE'S COUNTY BOARD, PRINCE GEORGE'S COUNTY, AND THE**
28 **INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION JOINTLY SHALL REPORT**
29 **TO THE GOVERNOR, THE BOARD OF PUBLIC WORKS, AND, IN ACCORDANCE WITH §**
30 **2-1246 OF THE STATE GOVERNMENT ARTICLE, THE FISCAL COMMITTEES OF THE**
31 **GENERAL ASSEMBLY, ON THE PROGRESS OF CONSTRUCTION AND RENOVATIONS OF**
32 **PUBLIC SCHOOL FACILITIES USING AN ALTERNATIVE FINANCING METHOD AND THAT**
33 **RECEIVE STATE FUNDS, INCLUDING ACTIONS:**

1 Lottery Fund after the distributions under subsection (a) of this section and items (i), (ii),
2 (iii), and (iv) of this paragraph, an amount equal to \$1,000,000 in each fiscal year; [and]

3 **(VI) AFTER JUNE 30, 2020, INTO THE PRINCE GEORGE'S**
4 **COUNTY ALTERNATIVE FINANCING FUND ESTABLISHED UNDER § 4-126.1 OF THE**
5 **EDUCATION ARTICLE THE MONEY THAT REMAINS IN THE STATE LOTTERY FUND**
6 **FROM THE PROCEEDS OF ALL LOTTERIES AFTER THE DISTRIBUTIONS UNDER**
7 **SUBSECTION (A) OF THIS SECTION AND ITEMS (I) THROUGH (V) OF THIS PARAGRAPH,**
8 **AN AMOUNT EQUAL TO \$30,000,000 IN EACH FISCAL YEAR THAT THE PRINCE**
9 **GEORGE'S COUNTY BOARD, PRINCE GEORGE'S COUNTY, AND THE INTERAGENCY**
10 **COMMISSION ON SCHOOL CONSTRUCTION REMAIN IN AN ALTERNATIVE FINANCING**
11 **METHODS MEMORANDUM OF UNDERSTANDING UNDER § 4-126 OF THE EDUCATION**
12 **ARTICLE AND THE PROJECT RECEIVES STATE FUNDS, TO BE PAID IN TWO**
13 **INSTALLMENTS WITH AT LEAST \$15,000,000 PAID NOT LATER THAN DECEMBER 1**
14 **EACH FISCAL YEAR; AND**

15 [(vi)] **(VII)** into the General Fund of the State the money that remains
16 in the State Lottery Fund from the proceeds of all lotteries after the distributions under
17 subsection (a) of this section and items (i), (ii), (iii), (iv), [and] (v), **AND (VI)** of this
18 paragraph.

19 (2) The money paid into the General Fund under this subsection is
20 available in the fiscal year in which the money accumulates in the State Lottery Fund.

21 (c) The regulations of the Agency shall apportion the money in the State Lottery
22 Fund in accordance with subsection (b) of this section.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
24 1, 2019.