



Senate Bill 1145

County Boards of Education - Leasing of School Property

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Budget & Taxation Committee

Date: March 15, 2018

From: Robin Clark Eilenberg

The Maryland Association of Counties (MACo) **SUPPORTS SB 1145 WITH AMENDMENTS**. This legislation would expand county and school board authorities with regard to alternative financing for school construction and clarify laws of school funding regarding school leases.

Alternative Financing Laws Need To Clearly Define Financial Responsibilities

Maryland counties seek to have every tool in the toolbox available to help confront rising costs of school construction and critical facility needs. For this reason, MACo has advocated for greater access to alternative financing arrangements, and supports this bill's alternative financing provisions.

Counties and school boards who pursue novel school financing arrangements must be able to rely on state law that clearly defines financial responsibilities. Lack of clarity in existing law may be a stumbling block to pursuing this school construction tool.

Under current law, when a county board leases a school facility, the payment of that lease may be made out of the school board's annual appropriation from its county government. State law, however, creates strict guidelines for that annual appropriation – under maintenance of effort laws, the amount may never decrease.

In the case of a lease payment, this means that even after a lease is finished, a county government must continue to provide funding for the lease in its annual school board funding. This legislation would fix that quirk, and clarify that leases would be considered outside of the maintenance of effort calculation from the start.

The bill would also create several new authorities for local school boards, including allowing them to:

1. use alternative financing methods;
2. engage in competitive negotiation, including construction management at-risk arrangements;
3. accept unsolicited proposals for the development of public schools;
4. Use quality-based selection, in which selection is based on a combination of qualifications and cost factors, to select developers and builders; AND
5. Lease property from a county or private entity for use as a public school.

Under current law, a county governing body has the ability to approve any alternative financing arrangement pursued by a school board. While this bill does not strike that statement, the new authorities stated may create a conflict within the code regarding the approval authority. MACo suggests an amendment to the code to clarify that this approval remains in effect.

SB 1145 will make many positive changes to State school construction law, and requires only one technical fix. For these reasons, MACo urges a **FAVORABLE WITH AMENDMENTS** report on SB 1145.

Proposed Amendment

On Page 2, in Line 19, following “county board,” insert “with approval of a county governing body”

Amended Bill Text

Except when prohibited by local law, in order to finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction, a county **OR COUNTY BOARD WITH APPROVAL OF A COUNTY GOVERNING BODY** may:

- (1) Use alternative financing methods;
- (2) Engage in competitive negotiation, rather than competitive bidding, in limited circumstances, including construction management at-risk arrangements and other alternative project delivery arrangements, as provided in regulations adopted by the Board of Public Works;
- (3) Accept unsolicited proposals for the development of public schools in limited circumstances, as provided in regulations adopted by the Board of Public Works; [and]
- (4) Use quality-based selection, in which selection is based on a combination of qualifications and cost factors, to select developers and builders, as provided in regulations adopted by the Board of Public Works; **AND**
- (5) LEASE PROPERTY FROM A COUNTY OR A PRIVATE ENTITY FOR USE AS A PUBLIC SCHOOL FACILITY.**