

# HOUSE BILL 867

F1, J1, M3

2lr1573

---

By: **Delegate Hubbard**

Introduced and read first time: February 9, 2012

Assigned to: Appropriations and Ways and Means

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Education – Public School Construction Funding and Children’s Indoor**  
3 **Environmental Health**

4 FOR the purpose of authorizing a certain alternative financing method for a public  
5 school construction or capital improvement; authorizing a county board of  
6 education to establish an independent nonprofit entity or enter into contracts  
7 with nonprofit entities for a public school construction or capital improvement;  
8 requiring the Board of Public Works to adopt certain regulations concerning the  
9 health and safety of the occupants of a school building during a public school  
10 construction or capital improvement; altering the definition of “green product  
11 cleaning supplies” that are used in schools; requiring a county board to adopt  
12 written policies relating to the procurement of green products for schools;  
13 repealing the authority of a county board to use standards devised by certain  
14 rating entities to determine whether the board’s specifications for the  
15 certification of green product cleaning supplies are met; repealing the authority  
16 of a county board to make a determination whether a product is a “green  
17 product”; altering requirements concerning LEED certification for certain new  
18 State-funded school construction; altering the definition of a “high performance  
19 building”; requiring certain high performance buildings to meet or exceed  
20 certain indoor environmental quality credits; and generally relating to public  
21 school construction funding and children’s indoor environmental health.

22 BY repealing and reenacting, with amendments,  
23 Article – Education  
24 Section 4–126 and 5–112(e), (f), and (g)  
25 Annotated Code of Maryland  
26 (2008 Replacement Volume and 2011 Supplement)

27 BY repealing and reenacting, without amendments,  
28 Article – Education  
29 Section 5–301(b–1) and 5–312

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2008 Replacement Volume and 2011 Supplement)

3 BY adding to  
4 Article – Education  
5 Section 5–112(f) and 5–313  
6 Annotated Code of Maryland  
7 (2008 Replacement Volume and 2011 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article – State Finance and Procurement  
10 Section 3–602.1(a)  
11 Annotated Code of Maryland  
12 (2009 Replacement Volume and 2011 Supplement)

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

15 **Article – Education**

16 4–126.

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

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

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

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

30 (4) Performance–based contracting, in which a county board enters  
31 into an energy performance contract to obtain funding for a project with guaranteed  
32 energy savings over a specified time period;

33 (5) Preference–based arrangements, by which a local governing body  
34 gives preference first to business entities located in the county and then to business  
35 entities located in other counties in the State for any construction that is not subject to

1 prevailing wage rates under Title 17, Subtitle 2 of the State Finance and Procurement  
2 Article; [and]

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

7 (7) **NONPROFIT PARTNERSHIP ARRANGEMENTS THAT PERMIT A**  
8 **COUNTY BOARD TO:**

9 (I) **ESTABLISH AN INDEPENDENT NONPROFIT ENTITY OR**  
10 **ENTER INTO CONTRACTS WITH AN ENTITY OR ENTITIES HAVING NONPROFIT**  
11 **STATUS, AS DETERMINED BY THE INTERNAL REVENUE SERVICE, FOR THE**  
12 **ACQUISITION, CONSTRUCTION, RECONSTRUCTION, EQUIPPING, MAINTENANCE,**  
13 **REPAIR, OR RENOVATION OF PUBLIC SCHOOL FACILITIES; AND**

14 (II) **RECEIVE ITS SHARE OF SCHOOL CONSTRUCTION FUNDS**  
15 **DISTRIBUTED UNDER TITLE 5, SUBTITLE 3 OF THIS ARTICLE AS A BLOCK**  
16 **GRANT THAT MAY BE USED TO MAKE PAYMENTS FOR BONDS ISSUED OR FOR**  
17 **LEASES, INSTALLMENT PURCHASE AGREEMENTS, OR OTHER SIMILAR**  
18 **AGREEMENTS FOR THE FINANCING OF PUBLIC SCHOOL FACILITIES.**

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

22 (1) Use alternative financing methods;

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

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

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

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

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

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

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

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

6 (d) Projects that qualify for alternative financing methods under this  
7 subsection:

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

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

13 (i) The county governing body;

14 (ii) The State Superintendent of Schools; or

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

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

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

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

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

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

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

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

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

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

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

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

15 5-112.

16 (e) (1) **(I)** In this subsection, “green product cleaning supplies” means  
17 [cleaning and sanitizing] **ENVIRONMENTALLY PREFERABLE CLEANING AND**  
18 **CLEANING MAINTENANCE PRODUCTS AND** supplies **INTENDED FOR ROUTINE**  
19 **MAINTENANCE** that perform well and [that] have positive **HEALTH AND**  
20 environmental attributes, including:

21 **1. LESSER OR REDUCED EFFECTS ON HUMAN**  
22 **HEALTH AND THE ENVIRONMENT WHEN COMPARED TO COMPETING PRODUCTS**  
23 **THAT SERVE THE SAME PURPOSE;**

24 [(i)] **2.** Biodegradability;

25 [(ii)] **3.** Low toxicity;

26 [(iii)] **4.** Low volatile organic compound content;

27 [(iv)] **5.** Reduced packaging; and

28 [(v)] **6.** Low life cycle energy use.

29 **(II) “GREEN PRODUCT CLEANING SUPPLIES” INCLUDES**  
30 **GENERAL PURPOSE CLEANERS, BATHROOM CLEANERS, CARPET CLEANERS,**  
31 **GLASS CLEANERS, FLOOR CLEANERS, FLOOR FINISHES, FLOOR STRIPPERS,**  
32 **WALL CLEANERS, DESK CLEANERS, LAVATORY CLEANERS, SURFACE CLEANERS,**

1 WINDOW CLEANERS, WHITEBOARD CLEANERS, HAND CLEANERS, AND SOAPS  
2 THAT MEET THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.

3 (III) "GREEN PRODUCT CLEANING SUPPLIES" DO NOT  
4 INCLUDE ROOM DEODORIZERS, AIR FRESHENERS, OR TOILET DEODORIZERS.

5 (2) (i) To the extent practicable, and economically feasible, a  
6 county board shall procure green product cleaning supplies for use in its schools.

7 (ii) In accordance with subsection (b)(3) of this section, a county  
8 board shall draft specifications that provide a clear and accurate description of the  
9 functional characteristics or nature of the green product cleaning supplies that are to  
10 be procured.

11 (iii) The specifications drafted by a county board under  
12 subparagraph (ii) of this paragraph:

13 1. May not preclude the use when necessary of a  
14 disinfectant, disinfecting cleaner, sanitizer, or other antimicrobial product regulated  
15 by the Federal Insecticide, Fungicide, and Rodenticide Act under 7 U.S.C. § 136 et  
16 seq.; and

17 2. Shall allow for multiple avenues to obtain green  
18 product cleaning supplies certification[, including:

19 A. The United States Environmental Protection Agency's  
20 Design for the Environment Program (DfE);

21 B. Green Seal, Green Label, Environmental Choice, or  
22 U.S. Green Building Council; and

23 C. Any] THROUGH ANY [other accreditation]  
24 NATIONALLY RECOGNIZED INDEPENDENT THIRD PARTY ENTITY THAT  
25 CERTIFIES ENVIRONMENTALLY PREFERABLE PRODUCTS, AS the county board  
26 determines to be appropriate.

27 (3) (I) EXCEPT AS PROVIDED UNDER PARAGRAPH (2)(I) OF  
28 THIS SUBSECTION, ON OR BEFORE JULY 1, 2013, A COUNTY BOARD SHALL  
29 ADOPT A WRITTEN POLICY FOR THE PROCUREMENT OF GREEN PRODUCT  
30 CLEANING SUPPLIES FOR USE IN ITS SCHOOLS.

31 (II) THE WRITTEN POLICY REQUIRED UNDER  
32 SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:

1                   1.    **REQUIRE THE USE OF GREEN PRODUCT**  
2 **CLEANING SUPPLIES;**

3                   2.    **ON OR BEFORE JULY 1, 2014, ESTABLISH**  
4 **GUIDELINES FOR PURCHASING GREEN PRODUCT CLEANING SUPPLIES THAT**  
5 **MEET THE CERTIFICATION REQUIREMENTS OF AN ESTABLISHED, NATIONALLY**  
6 **RECOGNIZED, INDEPENDENT THIRD PARTY CERTIFICATION ENTITY THAT**  
7 **ADHERES TO THE CONSENSUS STANDARDS ESTABLISHED BY A CERTIFICATION**  
8 **ENTITY DESCRIBED UNDER PARAGRAPH (2)(III)2 OF THIS SUBSECTION FOR**  
9 **LESSER OR REDUCED EFFECTS ON HUMAN HEALTH AND ENVIRONMENT WHEN**  
10 **COMPARED WITH COMPETING GOODS OR SERVICES THAT SERVE THE SAME**  
11 **PURPOSE;**

12                   3.    **ESTABLISH GREEN CLEANING PRACTICES**  
13 **GOVERNING THE STORAGE, APPLICATION, FREQUENCY OF USE, AND DISPOSAL**  
14 **OF SUPPLIES TO ENSURE THAT THE OCCUPANTS OF A SCHOOL BUILDING DO**  
15 **NOT SUFFER ANY ADVERSE HEALTH EFFECTS AS A RESULT OF THESE**  
16 **ACTIVITIES; AND**

17                   4.    **REQUIRE STAFF TRAINING ON THE**  
18 **IMPLEMENTATION OF THE POLICY.**

19                   **(F) ON OR BEFORE JUNE 30 EACH YEAR, A COUNTY BOARD THAT DOES**  
20 **NOT PROCURE GREEN PRODUCT CLEANING SUPPLIES FOR USE IN ITS SCHOOLS**  
21 **BECAUSE DOING SO IS NOT PRACTICABLE OR NOT ECONOMICALLY FEASIBLE**  
22 **SHALL PROVIDE WRITTEN NOTICE OF THAT DECISION TO THE DEPARTMENT.**

23                   **[(f)] (G)**    Nonpublic schools may participate under any contracts for goods or  
24 commodities that are awarded by county boards, other public agencies, or  
25 intergovernmental purchasing organizations, if the lead agency for the contract award  
26 follows public bidding procedures.

27                   **[(g)] (H)**    A contract entered into or purchase made in violation of this  
28 section is void.

29 5-301.

30                   (b-1) The Board of Public Works, in consultation with the Department of  
31 General Services and the Department of Housing and Community Development, shall  
32 adopt regulations establishing criteria designed to enhance indoor air quality for the  
33 occupants of relocatable classrooms purchased or leased using State or local funds,  
34 including specifications that:

35                   (1)    Require each unit to include appropriate air barriers to limit  
36 infiltration;

1           (2)     Require that each unit be constructed in a manner that provides  
2 protection against water damage through the use of proper roofing materials, exterior  
3 sheathing, water drainage systems, and flashing;

4           (3)     Require that each unit provide continuous forced ventilation when  
5 the unit is occupied;

6           (4)     Require each unit to include a programmable thermostat;

7           (5)     Require each unit to be outfitted with energy efficient lighting and  
8 heating and air-conditioning systems; and

9           (6)     Mandate that each unit be constructed with building materials  
10 that contain low amounts of volatile organic compounds (VOC).

11     5-312.

12           (a)     In this section, "high performance building" has the meaning stated in §  
13 3-602.1 of the State Finance and Procurement Article.

14           (b)     This section applies to the construction of new schools that have not  
15 initiated a Request For Proposal for the selection of an architectural and engineering  
16 consultant on or before July 1, 2009.

17           (c)     Except as provided in subsection (d) of this section, a new school that  
18 receives State public school construction funds shall be constructed to be a high  
19 performance building.

20           (d)     (1)     The Board of Public Works shall establish a process to allow a  
21 school system to obtain a waiver from complying with subsection (c) of this section.

22                   (2)     The waiver process shall:

23                           (i)     Include a review by the Interagency Committee to determine  
24 if the construction of a high performance building is not practicable; and

25                           (ii)    Require the approval of a waiver by the Interagency  
26 Committee.

27           (e)     For fiscal years 2010 through 2014 only, the State shall pay 50% of the  
28 local share of the extra costs, identified and approved by the Interagency Committee,  
29 that are incurred in constructing a new school to meet the high performance building  
30 requirements of this section.

31           (f)     The Board of Public Works shall adopt regulations to implement the  
32 requirements of this section.



1 5-313.

2 (A) THIS SECTION APPLIES TO ANY PUBLIC SCHOOL CONSTRUCTION OR  
3 CAPITAL IMPROVEMENT FOR WHICH ALL OR PART OF THE COSTS ARE PAID BY  
4 THE STATE UNDER THIS SUBTITLE.

5 (B) (1) ON OR BEFORE JULY 1, 2013, THE BOARD OF PUBLIC WORKS  
6 SHALL ADOPT REGULATIONS TO:

7 (I) PROTECT THE HEALTH AND SAFETY OF THE  
8 OCCUPANTS OF A SCHOOL BUILDING DURING A PUBLIC SCHOOL CONSTRUCTION  
9 OR CAPITAL IMPROVEMENT; AND

10 (II) ESTABLISH AN INTEGRATED DESIGN PROCESS TO  
11 ACHIEVE ENVIRONMENTAL AND BUILDING PERFORMANCE GOALS ESTABLISHED  
12 BY A COUNTY BOARD FOR THE SCHOOL BUILDING WHILE ALSO ENSURING THAT  
13 ALL OF THE COMPONENTS AND MATERIALS THAT ARE USED FOR THE PUBLIC  
14 SCHOOL CONSTRUCTION OR CAPITAL IMPROVEMENT DO NOT DETRACT FROM  
15 THE GOAL PRESCRIBED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

16 (2) THE REGULATIONS ADOPTED IN ACCORDANCE WITH  
17 PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE STANDARDS  
18 CONCERNING:

19 (I) INDOOR AIR QUALITY, INDOOR ENVIRONMENTAL  
20 QUALITY, AND NOISE MANAGEMENT PLANS FOR EACH PROJECT TO INCLUDE:

21 A. NOTICE TO PARENTS, STAFF, AND THE SCHOOL  
22 COMMUNITY AT LEAST 3 MONTHS BEFORE THE START OF A PROJECT;

23 B. PROCEDURES TO SEPARATE CONSTRUCTION  
24 AREAS FROM OCCUPIED SPACES;

25 C. PROCEDURES TO PREVENT THE PASSAGE OF  
26 DUST AND CONTAMINANTS INTO AREAS OF THE BUILDING OCCUPIED BY  
27 STUDENTS AND STAFF; AND

28 D. PROCEDURES TO VENTILATE DUST, FUMES, AND  
29 ODORS AND TO MITIGATE NOISE DURING THE PROJECT;

30 (II) EROSION AND SEDIMENT CONTROL;

- 1                   **(III) SMOKING ON THE PREMISES;**
- 2                   **(IV) AN INTEGRATED PEST MANAGEMENT PLAN FOR THE**  
3 **PROJECT THAT UTILIZES BEST PRACTICES DURING THE DESIGN AND**  
4 **CONSTRUCTION PHASE;**
- 5                   **(V) THE USE OF CHLOROFLUOROCARBON-BASED**  
6 **REFRIGERANTS;**
- 7                   **(VI) OUTDOOR VENTILATION;**
- 8                   **(VII) ON-SITE MATERIALS STORAGE;**
- 9                   **(VIII) HAZARDOUS SUBSTANCE REMOVAL PLANS, INCLUDING**  
10 **PROVISIONS TO MAKE MODIFICATIONS TO EXISTING FACILITIES, EQUIPMENT,**  
11 **HAZARD COMMUNICATION PROGRAMS AND CHEMICAL HYGIENE PLANS TO**  
12 **MINIMIZE PERSONAL EXPOSURE TO HAZARDOUS SUBSTANCES;**
- 13                   **(IX) FIRE AND LIFE SAFETY CODE REPAIRS;**
- 14                   **(X) WATER INTRUSION AND MOISTURE CONTAINMENT; AND**
- 15                   **(XI) ANY OTHER ISSUE THE BOARD DETERMINES IS**  
16 **APPROPRIATE.**

17                   **Article – State Finance and Procurement**

18 3–602.1.

- 19           (a)   (1)   In this section the following words have the meanings indicated.
- 20                   (2)   “High performance building” means a building that:
- 21                           (i)   meets or exceeds **ALL OF** the current version of the U.S.  
22 Green Building Council’s LEED (Leadership in Energy and Environmental Design)  
23 Green Building Rating System Silver **CERTIFICATION, INCLUDING SELECTING ALL**  
24 **AVAILABLE INDOOR ENVIRONMENTAL QUALITY CREDITS [rating] AND ANY**  
25 **LEED CREDITS UNIQUE TO SCHOOLS; or**
- 26                           (ii)   achieves at least a comparable numeric rating according to a  
27 nationally recognized, accepted, and appropriate numeric sustainable development  
28 rating system, guideline, or standard approved by the Secretaries of Budget and  
29 Management and General Services **THAT INCLUDES ALL ITEMS COVERED BY THE**  
30 **LEED IEQ CREDITS AND ANY LEED CREDITS UNIQUE TO SCHOOLS.**

- 1                   (3)   “Major renovation” means the renovation of a building where:
- 2                           (i)   the building shell is to be reused for the new construction;
- 3                           (ii)  the heating, ventilating, and air conditioning (HVAC),
- 4   electrical, and plumbing systems are to be replaced; and
- 5                           (iii)  the scope of the renovation is 7,500 square feet or greater.

6                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

7   October 1, 2012.