

BILL: House Bill 330
TITLE: County Boards of Education - Procurements for Construction or Repair of School Projects
POSITION: OPPOSE
DATE: March 22, 2016
COMMITTEE: Appropriations Committee
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all of the state's twenty-four local boards of education, opposes House Bill 330.

MABE opposes House Bill 330 because this legislation would introduce confusing and unnecessary definitions and further amend the section of the Education Article governing procurements by local boards of education. Local boards and school facilities and procurement staff are deeply concerned about the unintended consequences of introducing the new definitions proposed for "commodities", "construction", "goods", and "improvement". Specifically, MABE opposes this bill to avoid any impediment to school systems utilizing cooperative purchasing opportunities which would run counter to the legislature's intent that local boards optimize cost savings and efficiencies in procurement.

This legislation arises from a longstanding legal dispute regarding the Baltimore County School System's use of cooperative purchasing for roofing repair materials. In 2015, and in prior sessions, MABE joined the Baltimore County Board of Education in opposing a local bill to prohibit the purchase of roofing repair services for public schools through an intergovernmental purchasing cooperative. MABE opposed this legislation as conflicting with the intent of the Public School Facilities Act of 2004 (Chapters 306/307, Laws of Maryland 2004), which authorized new methods of financing school facility projects. The law clearly authorizes local school systems to use "alternative financing methods" for public school construction in accordance with regulations adopted by the Board of Public Works. In addition, the law allows school systems to use alternative methods of project delivery, and to procure school construction by methods other than competitive bidding.

Importantly, the Maryland Court of Appeals had already ruled in favor of the Baltimore County Board of Education, finding that a county board of education, which must ordinarily procure construction services through a locally-conducted competitive bid process, may purchase roofing repair services for public schools through an intergovernmental purchasing cooperative when it acts pursuant to authority granted by the Board of Public Works in regulations authorized by the General Assembly (*Building Materials Corp. of America v. Board of Education of Baltimore County*, No. 71, September Term 2011).

To be clear, MABE's opposition to this legislation is grounded in broader concerns regarding enacting such extensive amendments to the procurement statute; the law which provides the basis of virtually all school system purchasing authority and practices.

Local school systems, and professional procurement staff, rely on a well-established understanding of the existing procurement law. The amendments to school system procurement law proposed in this bill should not be enacted to redress the Building Materials Corp. case; and should be rejected in order to avoid the unintended result of frustrating school system efforts to achieve the cost savings and efficiencies the General Assembly has consistently encouraged school systems to employ.

For these reasons, MABE requests an unfavorable report on House Bill 330.