

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1604
Ways and Means

(Delegate Kerr)

Rules

Public School System Contracts - Prohibited Provisions

This bill prohibits specified provisions from being included in a public school system contract, except as required by State or federal law. If a public school system contract contains one of the specified provisions, the provision is void and the contract is enforceable as if it did not contain the provision. A public school system contract that contains one of the specified provisions must be governed by and construed in accordance with State law, notwithstanding any term or condition to the contrary in the contract. The bill does not apply to collective bargaining agreements entered into by local school systems with public employees, public school certificated or noncertificated employees, or family child care providers. The bill applies only prospectively and does not apply to a public school system contract executed before the effective date of the bill (or to renewals or extensions of such contracts). **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: None. The bill applies only to public school system contracts.

Local Effect: Expenditures increase beginning in FY 2027 to the extent that contractors decline to submit bids in response to the prohibited provisions. Conversely, the bill may positively impact school system operations and finances through reduced risk and fewer unanticipated costs. However, a reliable estimate for either of these effects is not feasible without experience under the bill. Local school systems can generally implement the bill with existing resources. No effect on revenues.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Public school system contract” means any agreement entered into by a public school system. This bill prohibits public school system contracts from including a provision that:

- requires the public school system to indemnify, defend, or hold harmless another person without an appropriation of funds for that purpose;
- requires the public school system to agree to binding arbitration or any other binding extrajudicial dispute resolution process;
- names a jurisdiction or venue for any action or dispute against the public school system other than a court of proper jurisdiction in the State;
- requires the public school system to agree to limit the liability for any direct loss to the public school system, as specified, or that would otherwise impose an indemnification obligation on the public school system;
- requires the public school system to be bound by a term or condition that (1) is unknown to the public school system at the time of signing a contract; (2) may be unilaterally changed by the other party; or (3) is electronically accepted by a public school system without authority;
- restricts a public school system’s discretion to select the appropriate legal counsel to represent its interests;
- is inconsistent with the public school system’s obligations under the Open Meetings Act or the Public Information Act;
- that binds a public school system to pay unappropriated amounts or otherwise causes a public school system to incur unfunded liabilities, as specified under State law;
- requires automatic renewal of the contract and obligates the public school system to allocate funding in subsequent fiscal years; or
- limits the public school system’s ability to recover the cost of a replacement contractor.

Current Law:

Prohibited Provisions in State Law

Chapter 433 of 2024 prohibited the same provisions as listed in the bill from being included in State contracts. If a State contract contains any of the prohibited provisions, the provision is void and the contract containing that provision is enforceable as if it did not contain the provision. The prohibitions do not apply to a State contract relating to the purchase, redevelopment, or operation of a racing facility or training facility site.

Collective Bargaining

State law grants public employees, public school employees, and family child care providers the right to engage in collective bargaining. “Public employee” means an individual who holds a position by appointment or employment in the service of a public employer with collective bargaining rights. “Family child care provider” means an individual who cares for children in a registered family child care home or a registered large family child care home.

Among other provisions, State law authorizes collective bargaining agreements involving public school employees to allow for binding arbitration of any grievances arising under the agreement that the parties have agreed to be subject to arbitration.

Local Expenditures: In general, local school systems can implement the bill with existing resources, although Prince George’s County anticipates needing additional legal staff to review contracts. The bill may have a generally positive effect on local school system operations and finances, as prohibiting the specified contract provisions could reduce exposure to risk and unanticipated costs (*e.g.*, costs to hire additional contractors for incomplete or unsatisfactory work by initial contractor). However, the inability to include certain provisions in contracts executed on or after the bill’s effective date may lead some contractors to decline to submit bids or offers altogether. To the extent that occurs, local school system contract expenditures increase beginning in fiscal 2027. However, a reliable estimate of any such impact is not feasible without experience under the bill.

Small Business Effect: The bill’s prohibited contract provisions could meaningfully affect small businesses to the extent that businesses must alter standard terms previously used in contracts with public school systems. For example, the bill would prohibit a provision requiring arbitration to resolve disputes between a local school system and a contractor, because it bars any requirement that a dispute be resolved in a jurisdiction or venue other than a court of proper jurisdiction. As a result, contractors that would otherwise have resolved disputes through arbitration may face higher litigation costs by having to proceed through the courts. To the extent these changes are viewed as too burdensome, some small businesses may choose not to submit bids or offers for procurements.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 646 (Senator King) - Education, Energy, and the Environment.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Interagency Commission on School Construction; Department of General Services; Baltimore City Public Schools; Anne Arundel County Public Schools; Prince George’s County Public Schools; Charles County Public Schools; Frederick County Public Schools; St. Mary’s County Public Schools; Wicomico County Public Schools; Department of Legislative Services

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