
By: Delegates Rosapepe, Hixson, Campbell, Muse, Franchot, Shriver, McKee, Fry, Stocksdale, Pitkin, Edwards, Parker, and Rawlings ~~Rawlings, and Cryor~~

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Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 1996

CHAPTER _____

1 AN ACT concerning

2 Public-Private Partnership Financing of Transportation Facility Projects

3 FOR the purpose of authorizing the Maryland Transportation Authority to enter into
4 public-private partnership agreements with certain persons for the purpose of
5 providing private involvement in a certain manner in certain transportation facilities
6 projects; exempting certain partnership agreements from certain provisions of law
7 under certain circumstances; ~~requiring that certain agreements comply with certain~~
8 ~~provisions of law under certain circumstances~~; requiring the Department of
9 Transportation and the Authority to establish procedures and policies for soliciting
10 and establishing public-private partnership agreements, as appropriate, for
11 transportation systems and facilities; requiring the Department and the Authority to
12 develop criteria for reviewing and evaluating unsolicited and solicited private sector
13 proposals; requiring the Department and the Authority to review certain current
14 programs to identify projects that can be accelerated by private financing; requiring
15 the Department to establish a certain advisory task force; requiring the task force to
16 report to the Governor and the General Assembly by a certain date; requiring the
17 Department and the Authority to report to the Governor and the General Assembly
18 before a certain date with recommendations on how the State can encourage
19 increased private sector investment in transportation facilities; providing for the
20 construction of this Act; and generally relating to the Maryland Transportation
21 Authority and public-private partnership agreements.

22 BY repealing and reenacting, with amendments,
23 Article - Transportation
24 Section 4-205(c)
25 Annotated Code of Maryland
26 (1993 Replacement Volume and 1995 Supplement)

2

1 Preamble

2 WHEREAS, Additional sources of revenue beyond those available to the public
3 sector can help improve the State's ability to address Maryland's ever expanding
4 transportation needs; and

5 WHEREAS, It is in the public interest to encourage the Maryland Department of
6 Transportation and the Maryland Transportation Authority to enter into partnerships or
7 agreements with the private sector for the financing and construction or operation of
8 transportation facilities; and

9 WHEREAS, The Department and the Authority should take advantage of
10 opportunities under the Intermodal Surface Transportation Efficiency Act of 1991
11 (ISTEA) and any successor federal legislation with emphasis on leveraging federal funds
12 with private sector capital; now, therefore,

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

15 **Article - Transportation**

16 4-205.

17 (c) (1) Subject to the limitations described in paragraph [(2)] (4) of this
18 subsection, the Authority may make any contracts and agreements necessary or incidental
19 to the exercise of its powers and performance of its duties.

20 (2) THE AUTHORITY MAY ENTER INTO PUBLIC-PRIVATE PARTNERSHIP
21 CONTRACTS OR AGREEMENTS WITH ANY CORPORATION, FIRM, PARTNERSHIP,
22 ASSOCIATION OR OTHER ENTITY FOR THE PURPOSE OF PROVIDING PRIVATE
23 SECTOR PARTICIPATION IN THE FINANCING, CONSTRUCTION, OPERATION, AND
24 MAINTENANCE OF TRANSPORTATION FACILITIES PROJECTS, INCLUDING THE SALE
25 OR LEASE OF REAL PROPERTY OR RIGHTS OF WAY.

26 (3) THE FINANCING, CONSTRUCTION, OPERATION, AND MAINTENANCE
27 OF TRANSPORTATION FACILITIES PROJECTS UNDER PARAGRAPH (2) OF THIS
28 SUBSECTION SHALL:

29 (I) BE EXEMPT FROM THE REQUIREMENTS OF:

- 30 1. ARTICLE 23, §§ 328 THROUGH 330 OF THE CODE; AND
- 31 2. ~~ARTICLE 25, §§ 2, 135, AND 236 OF THE CODE; AND~~
- 32 3. ARTICLE 25A, §§ 5(K), 5(S), AND 5(T) OF THE CODE;

33 ~~(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS~~
34 ~~PARAGRAPH, BE EXEMPT FROM DIVISION II OF THE STATE FINANCE AND~~
35 ~~PROCUREMENT ARTICLE, PROVIDED THAT:~~

- 36 1. ~~THE AUTHORITY'S EQUITY INVESTMENT IN A PROJECT~~
37 ~~DOES NOT EXCEED 50% OF THE TOTAL PROJECT COSTS; OR~~

1 ~~2. IF THE AUTHORITY'S EQUITY INVESTMENT IN A PROJECT~~
2 ~~EXCEEDS 50% OF THE TOTAL PROJECT COSTS, THE EXEMPTION UNDER THIS~~
3 ~~SUBPARAGRAPH IS APPROVED BY THE BOARD OF PUBLIC WORKS; AND~~

4 ~~(H) (II) COMPLY WITH THE REQUIREMENTS OF §§ 14-301~~
5 ~~THROUGH 14-309 OF THE STATE FINANCE AND PROCUREMENT ARTICLE TO THE~~
6 ~~EXTENT OF THE AUTHORITY'S FINANCING OF CONSTRUCTION, OPERATIONS, OR~~
7 ~~MAINTENANCE OF A PROJECT.~~

8 [(2)] (4) Not less than 30 days before entering into any contract or
9 agreement to acquire or construct a revenue-producing transportation facilities project,
10 the Authority shall provide, subject to § 2-1312 of the State Government Article, the
11 Legislative Policy Committee and the Department of Fiscal Services with information on
12 the proposed contract or agreement.

13 SECTION 2. AND BE IT FURTHER ENACTED, That:

14 (a) The Department of Transportation and the Maryland Transportation
15 Authority shall develop policies and procedures for soliciting and establishing
16 public-private partnership agreements, as appropriate, for transportation systems and
17 facilities;

18 (b) The Department and the Authority shall develop criteria for reviewing and
19 evaluating unsolicited and solicited private sector proposals;

20 (c) The Department's policies and procedures shall, at a minimum:

21 (1) Require that any highway facility must comply with federal, State, and
22 local laws and will be considered part of the State highway system;

23 (2) Allow for the development of initiatives in cooperation with local
24 jurisdictions;

25 (3) Require projects to be compatible with current transportation systems
26 and facilities and long-term transportation needs; and

27 (4) Require the operator to maintain the facility in accordance with
28 appropriate standards for similar facilities;

29 (d) The Department and the Authority shall review both the Consolidated
30 Transportation Program and Maryland Transportation Plan to identify projects that
31 might be accelerated by private financing for all or part of the costs; and

32 (e) The Department shall establish an advisory task force to develop
33 recommendations for the Governor and the General Assembly on the extent to which the
34 State Procurement Law should apply to public-private partnerships.

35 (1) The advisory task force shall be chaired by the Secretary of
36 Transportation and shall include the following members:

37 (i) 2 representatives of the local contracting and financial community
38 designated by the Secretary;

1 (ii) 2 representatives with national experience with public-private
2 partnerships designated by the Secretary;

3 (iii) 2 members of the House of Delegates designated by the Speaker of
4 the House;

5 (iv) 2 members of the Maryland Senate designated by the President of
6 the Senate; and

7 (v) 2 members from the public or private sector designated by the
8 Secretary.

9 (2) The task force shall report back to the Governor and, in accordance with
10 § 2-1312 of the State Government Article, the General Assembly by December 1, 1996.

11 (↔) (f) The Department and the Authority shall report their plans and
12 recommendations to facilitate the establishment of public-private partnerships to the
13 Governor and, in accordance with § 2-1312 of the State Government Article, the General
14 Assembly by October 1, 1996.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be
16 construed to preclude the Department of Transportation or the Maryland Transportation
17 Authority from entering into public-private partnerships prior to ~~October~~ July 1, 1996.

18 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 ~~October~~ July 1, 1996.