

SENATE BILL 358

P1, P2, C8

2lr0135
CF HB 576

By: **The President (By Request – Administration) and Senators Colburn, Currie, DeGrange, Garagiola, Kasemeyer, King, Madaleno, ~~Manno~~, McFadden, Middleton, Peters, Pugh, and Rosapepe**

Introduced and read first time: January 30, 2012

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 1, 2012

CHAPTER _____

1 AN ACT concerning

2 **Public–Private Partnerships**

3 FOR the purpose of establishing the policy of the State on public–private partnerships;
4 altering provisions of law relating to public–private partnerships; authorizing a
5 certain agency to establish a public–private partnership and execute a
6 partnership agreement in connection with certain functions, services, or assets;
7 requiring a certain agency to adopt certain regulations and establish certain
8 processes for the development, solicitation, evaluation, award, and delivery of
9 public–private partnerships; requiring certain legislative committees to review
10 and comment on certain processes and regulations; requiring certain agencies to
11 submit, on or before a certain date each year, certain reports to certain
12 legislative committees; establishing certain requirements for certain reports;
13 establishing deadlines for the review of certain presolicitation reports; requiring
14 certain agencies to comply with certain requirements before issuing a
15 solicitation for a public–private partnership; requiring a certain agency to make
16 a certain responsibility determination concerning certain entities; requiring a
17 certain agency to submit certain reports to certain officials and committees;
18 prohibiting the Board of Public Works from approving a public–private
19 partnership agreement until the completion of certain review by certain officials
20 and committees; establishing deadlines for the review of public–private
21 partnership agreements; requiring a certain agency to post a certain agreement
22 on a certain Web site; requiring certain entities to provide performance bonds;
23 prohibiting a public–private partnership agreement from exceeding a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 number of years, with certain exceptions; prohibiting noncompete agreements
2 for certain assets; authorizing the award of certain compensation under certain
3 circumstances; establishing certain requirements for a final public-private
4 partnership agreement; requiring certain proceeds to accrue to certain funds;
5 requiring a certain agency to post on the Internet a certain final agreement;
6 authorizing a certain agency to establish by regulation certain application fees
7 for certain unsolicited proposals; establishing certain requirements for certain
8 unsolicited proposals; providing that certain provisions of the State ethics law
9 do not preclude a certain individual or firm from entering into a certain
10 agreement; exempting public-private partnerships from certain requirements of
11 the State procurement law; repealing certain obsolete provisions; defining a
12 certain term; altering certain definitions; providing for the application of this
13 Act; and generally relating to public-private partnerships.

14 BY repealing and reenacting, with amendments,
15 Article – State Finance and Procurement
16 Section 10A-101
17 Annotated Code of Maryland
18 (2009 Replacement Volume and 2011 Supplement)

19 BY repealing
20 Article – State Finance and Procurement
21 Section 10A-102
22 Annotated Code of Maryland
23 (2009 Replacement Volume and 2011 Supplement)

24 BY adding to
25 Article – State Finance and Procurement
26 Section 10A-102 through 10A-104 to be under the new subtitle “Subtitle 1.
27 Definitions; General Provisions”; 10A-201 through 10A-204 to be under
28 the new subtitle “Subtitle 2. Solicited Proposals”; 10A-301 to be under
29 the new subtitle “Subtitle 3. Unsolicited Proposals”; 10A-401 and
30 10A-402 to be under the new subtitle “Subtitle 4. Public-Private
31 Partnership Agreements”; and 11-203(h)
32 Annotated Code of Maryland
33 (2009 Replacement Volume and 2011 Supplement)

34 BY repealing
35 Article – Transportation
36 Section 4-205 and 4-406
37 Annotated Code of Maryland
38 (2008 Replacement Volume and 2011 Supplement)

39 Preamble

40 WHEREAS, Sufficient quality public infrastructure and related services are
41 vital to the State’s economic, social, and environmental well-being; and

1 WHEREAS, Traditional methods for infrastructure finance, development,
2 construction, operation, and maintenance are not sufficient to meet the current and
3 future infrastructure needs of the State, and it is therefore necessary to promote
4 innovative measures and nontraditional vehicles of infrastructure delivery; and

5 WHEREAS, The establishment of public–private partnerships by and between
6 the State and the private sector is one mechanism to deliver infrastructure projects,
7 increase private investment in public infrastructure, and create jobs in Maryland; and

8 WHEREAS, Expanding the private sector role will allow public agencies in
9 Maryland to tap private sector technical, management, and financial resources in new
10 ways to achieve public objectives, such as greater cost and schedule certainty,
11 innovative technology applications, specialized expertise, and access to private capital;
12 and

13 WHEREAS, For Maryland to achieve the greatest benefits from public–private
14 partnerships, the process needs to be authorized, transparent, predictable, and
15 expedited; and

16 WHEREAS, The State will comply with all applicable federal, State, and local
17 laws and plans as they relate to public–private partnerships, including the federal
18 Fair Labor Standards Act, State requirements for green buildings, environmental
19 regulations, prevailing wage, living wage, hiring practices, preferences for the
20 purchase of supplies and services, and protections for State employees in the
21 procurement of services; and

22 WHEREAS, The State recognizes the importance of community benefit
23 agreements and encourages agencies to consider their use for all public–private
24 partnerships; and

25 WHEREAS, Minority Business Participation is an important State policy and
26 its use, if not required, should be encouraged for all public asset delivery initiatives;
27 and

28 WHEREAS, The Governor of Maryland intends to establish by executive order a
29 process to improve the management and coordination of future public–private
30 partnership projects to include all of the responsibilities laid out in the final report of
31 the Joint Legislative and Executive Commission on Oversight of Public–Private
32 Partnerships; now, therefore,

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

35 **Article – State Finance and Procurement**

36 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

1 10A-101.

2 (a) [(1)] In this title the following words have the meanings indicated.

3 [(2)] (B) “Budget committees” means the Senate Budget and
4 Taxation Committee, the House Committee on Ways and Means, and the House
5 Appropriations Committee.

6 [(3)] (C) “Private entity” means an individual, a corporation, a
7 general or limited partnership, a limited liability company, a joint venture, a statutory
8 trust, a public benefit corporation, a nonprofit entity, or another business entity.

9 [(4)] (D) “Public notice of solicitation” includes **A REQUEST FOR**
10 **QUALIFICATIONS**, a request for expressions of interest, **OR** a request for proposals[, a
11 memorandum of understanding, an interim development agreement, a letter of intent,
12 or a preliminary development plan].

13 [(5)] (E) [(i)] (1) “Public-private partnership” means [a sale or
14 lease agreement between a unit of State government and a private entity under which:

15 1. the private entity assumes control of the operation
16 and maintenance of an existing State facility; or

17 2. the private entity constructs, reconstructs, finances,
18 or operates a State facility or a facility for State use and will collect fees, charges,
19 rents, or tolls for the use of the facility]:

20 (I) **A METHOD FOR DELIVERING ASSETS USING A**
21 **LONG-TERM, PERFORMANCE-BASED AGREEMENT BETWEEN A REPORTING**
22 **AGENCY AND A PRIVATE ENTITY WHERE APPROPRIATE RISKS AND BENEFITS**
23 **CAN BE ALLOCATED IN A COST-EFFECTIVE MANNER BETWEEN THE**
24 **CONTRACTUAL PARTNERS;**

25 (II) **AN AGREEMENT IN WHICH A PRIVATE ENTITY**
26 **PERFORMS FUNCTIONS NORMALLY UNDERTAKEN BY THE GOVERNMENT, BUT**
27 **THE REPORTING AGENCY REMAINS ULTIMATELY ACCOUNTABLE FOR THE ASSET**
28 **AND ITS PUBLIC FUNCTION; AND**

29 (III) **THE STATE MAY RETAIN OWNERSHIP IN THE ASSET AND**
30 **THE PRIVATE ENTITY MAY BE GIVEN ADDITIONAL DECISION-MAKING RIGHTS IN**
31 **DETERMINING HOW THE ASSET IS FINANCED, DEVELOPED, CONSTRUCTED,**
32 **OPERATED, AND MAINTAINED OVER ITS LIFECYCLE.**

33 [(ii)] (2) “Public-private partnership” does not include:

1 [1.] (I) a short-term operating space lease entered into
2 in the ordinary course of business by a unit of State government and a private entity
3 and approved under § 4-321 OR § 12-204 of this article;

4 [2.] (II) a procurement governed by Division II of this
5 article; or

6 [3.] (III) public-private partnership agreements entered
7 into by the University System of Maryland, **ST. MARY'S COLLEGE OF MARYLAND,**
8 **MORGAN STATE UNIVERSITY, OR BALTIMORE CITY COMMUNITY COLLEGE,**
9 where no State funds are used to fund or finance any portion of a capital project.

10 [(6)] (F) “Reporting agency” means:

11 [(i)] (1) the Department of General Services;

12 [(ii)] (2) the Maryland Department of Transportation, **FOR**
13 **ASSETS OF ANY OF ITS MODAL ADMINISTRATIONS OR THE MARYLAND**
14 **TRANSPORTATION AUTHORITY;**

15 [(iii)] (3) the University System of Maryland;

16 [(iv)] (4) Morgan State University;

17 [(v)] (5) St. Mary's College of Maryland; and

18 [(vi)] (6) the Baltimore City Community College.

19 [(b) The requirements of this title do not apply to the Maryland
20 Transportation Authority or to a public-private partnership proposed or entered into
21 by the Maryland Transportation Authority.

22 (c) (1) The reports provided by the Department of General Services under
23 this section shall include information concerning all public-private partnerships
24 involving units within the Executive Branch of State government, except for those
25 units that are also reporting agencies.

26 (2) Following the submission of each of the reports required under this
27 section, the budget committees shall have 45 days to review and comment on the
28 reports.

29 (d) (1) Not less than 45 days before issuing a public notice of solicitation
30 for a public-private partnership, a reporting agency shall submit to the State
31 Treasurer and the budget committees, in accordance with § 2-1246 of the State
32 Government Article, a report concerning the proposed public-private partnership.

1 (2) By January 1 of each year, each reporting agency shall submit to
2 the budget committees, in accordance with § 2–1246 of the State Government Article,
3 a report concerning each public–private partnership under consideration at that time
4 by the reporting agency that has not been reviewed or approved previously by the
5 General Assembly.

6 (3) By January 1 of each year, each reporting agency shall submit to
7 the budget committees, in accordance with § 2–1246 of the State Government Article,
8 a status report concerning each existing public–private partnership in which the
9 reporting agency is involved.

10 (e) By January 1 of each year, a unit of State government that provides
11 conduit financing for a public–private partnership shall submit to the budget
12 committees, in accordance with § 2–1246 of the State Government Article, a report
13 concerning each public–private partnership for which the unit is providing conduit
14 financing.]

15 **(G) “RESPONSIBILITY DETERMINATION” MEANS THE DETERMINATION**
16 **BY A REPORTING AGENCY THAT A PRIVATE ENTITY THAT RESPONDS TO A**
17 **SOLICITATION FOR A PUBLIC–PRIVATE PARTNERSHIP:**

18 **(1) HAS THE CAPABILITY IN ALL RESPECTS TO PERFORM FULLY**
19 **THE REQUIREMENTS OF A PUBLIC–PRIVATE PARTNERSHIP AGREEMENT; AND**

20 **(2) POSSESSES THE INTEGRITY AND RELIABILITY THAT WILL**
21 **ENSURE GOOD FAITH PERFORMANCE.**

22 [10A–102.

23 (a) The State Treasurer shall analyze the impact of each public–private
24 partnership agreement proposed by a unit of State government on the State’s capital
25 debt affordability limits.

26 (b) The State Treasurer shall submit to the budget committees, in
27 accordance with § 2–1246 of the State Government Article, each analysis required
28 under subsection (a) of this section within 30 days after the State Treasurer receives a
29 proposed public–private partnership agreement from a unit of State government.

30 (c) The Board of Public Works may not approve a public–private partnership
31 agreement under § 10–305 or § 12–204 of this article until the budget committees have
32 had 30 days to review and comment on the State Treasurer’s analysis of the
33 agreement required under subsection (a) of this section.

34 (d) The annual report of the Capital Debt Affordability Committee required
35 under § 8–112 of this article shall include an analysis of the aggregate impact of

1 public-private partnership agreements on the total amount of new State debt that
2 prudently may be authorized for the next fiscal year.]

3 **10A-102.**

4 **IT IS THE PUBLIC POLICY OF THE STATE TO UTILIZE**
5 **PUBLIC-PRIVATE PARTNERSHIPS FOR INFRASTRUCTURE INITIATIVES FOR:**

6 **(1) FURTHERING THE DEVELOPMENT AND MAINTENANCE OF**
7 **INFRASTRUCTURE ASSETS;**

8 **(2) APPORTIONING BETWEEN THE PUBLIC SECTOR AND THE**
9 **PRIVATE SECTOR THE RISKS INVOLVED IN THE DEVELOPMENT, OPERATION, OR**
10 **MAINTENANCE OF INFRASTRUCTURE ASSETS;**

11 **(3) FOSTERING THE CREATION OF JOBS; AND**

12 **(4) PROMOTING THE SOCIOECONOMIC DEVELOPMENT AND**
13 **COMPETITIVENESS OF MARYLAND.**

14 **10A-103.**

15 **(A) A REPORTING AGENCY MAY ESTABLISH A PUBLIC-PRIVATE**
16 **PARTNERSHIP AND EXECUTE A PARTNERSHIP AGREEMENT IN CONNECTION**
17 **WITH ANY FUNCTION, SERVICE, OR ASSET FOR WHICH THE REPORTING AGENCY**
18 **IS RESPONSIBLE IN ACCORDANCE WITH THE PROVISIONS OF THE ANNOTATED**
19 **CODE.**

20 **(B) (1) A REPORTING AGENCY SHALL ADOPT REGULATIONS AND**
21 **ESTABLISH PROCESSES FOR THE DEVELOPMENT, SOLICITATION, EVALUATION,**
22 **AWARD, AND DELIVERY OF PUBLIC-PRIVATE PARTNERSHIPS.**

23 **(2) A REPORTING AGENCY MAY NOT ADOPT REGULATIONS**
24 **UNDER PARAGRAPH (1) OF THIS SUBSECTION UNTIL:**

25 **(I) THE JOINT COMMITTEE ON ADMINISTRATIVE,**
26 **EXECUTIVE, AND LEGISLATIVE REVIEW REVIEWS THE REGULATIONS IN**
27 **ACCORDANCE WITH § 10-110 OF THE STATE GOVERNMENT ARTICLE;**

28 **(II) THE BUDGET COMMITTEES' REVIEW AND COMMENT ON**
29 **THE REGULATIONS; AND**

1 **(III) AT LEAST 45 DAYS AFTER THE FIRST PUBLICATION OF**
2 **THE REGULATIONS IN THE MARYLAND REGISTER.**

3 **(C) A REPORTING AGENCY MAY CREATE A SPECIFIC FUNCTION**
4 **DEDICATED TO PUBLIC-PRIVATE PARTNERSHIP PROCESSES WITHIN THE**
5 **EXISTING REPORTING AGENCY.**

6 **(D) ANY COMBINATION OF FEDERAL, STATE, OR LOCAL FUNDS,**
7 **GRANTS, LOANS, OR DEBT MAY BE USED FOR A PUBLIC-PRIVATE PARTNERSHIP**
8 **PROJECT.**

9 **(E) ANY PUBLIC PROCEEDS FROM A PUBLIC-PRIVATE PARTNERSHIP**
10 **SHALL ACCRUE TO WHATEVER FUND THAT WOULD HAVE NORMALLY RECEIVED**
11 **THOSE FUNDS.**

12 **10A-104.**

13 **(A) (1) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY**
14 **SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246**
15 **OF THE STATE GOVERNMENT ARTICLE:**

16 **(I) A REPORT CONCERNING EACH PUBLIC-PRIVATE**
17 **PARTNERSHIP UNDER CONSIDERATION THAT HAS NOT BEEN REVIEWED OR**
18 **APPROVED PREVIOUSLY BY THE GENERAL ASSEMBLY; AND**

19 **(II) A STATUS REPORT CONCERNING EACH EXISTING**
20 **PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY IS**
21 **INVOLVED.**

22 **(2) THE REPORTS SUBMITTED BY THE DEPARTMENT OF**
23 **GENERAL SERVICES UNDER THIS SUBSECTION SHALL INCLUDE INFORMATION**
24 **CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN**
25 **THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS**
26 **THAT ARE ALSO REPORTING AGENCIES.**

27 **(B) BY JANUARY 1 OF EACH YEAR, A UNIT OF STATE GOVERNMENT**
28 **THAT PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP**
29 **SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246**
30 **OF THE STATE GOVERNMENT ARTICLE, A LIST THAT INCLUDES EACH**
31 **PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING CONDUIT**
32 **FINANCING.**

1 **(C) THE ANNUAL REPORT OF THE CAPITAL DEBT AFFORDABILITY**
2 **COMMITTEE REQUIRED UNDER § 8-112 OF THIS ARTICLE SHALL INCLUDE AN**
3 **ANALYSIS OF THE AGGREGATE IMPACT OF PUBLIC-PRIVATE PARTNERSHIP**
4 **AGREEMENTS ON THE TOTAL AMOUNT OF NEW STATE DEBT THAT PRUDENTLY**
5 **MAY BE AUTHORIZED FOR THE NEXT FISCAL YEAR.**

6 **SUBTITLE 2. SOLICITED PROPOSALS.**

7 **10A-201.**

8 **(A) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
9 **PARAGRAPH, A REPORTING AGENCY MAY NOT ISSUE A PUBLIC NOTICE OF**
10 **SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP UNTIL A**
11 **PRESOLICITATION REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE**
12 **PARTNERSHIP IS SUBMITTED TO THE COMPTROLLER, THE STATE TREASURER,**
13 **THE BUDGET COMMITTEES, AND THE DEPARTMENT OF LEGISLATIVE SERVICES,**
14 **IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.**

15 **(II) A REPORTING AGENCY MAY NOT ISSUE A PUBLIC**
16 **NOTICE OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP FOR A**
17 **TRANSPORTATION FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE**
18 **TRANSPORTATION ARTICLE, UNTIL A PRESOLICITATION REPORT CONCERNING**
19 **THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP IS SUBMITTED TO THE BUDGET**
20 **COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN**
21 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.**

22 **(2) THE BUDGET COMMITTEES MAY NOT HAVE MORE THAN 45**
23 **DAYS TO REVIEW AND COMMENT ON THE PRESOLICITATION REPORT SUBMITTED**
24 **IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.**

25 **(B) (1) A PRESOLICITATION REPORT SHALL:**

26 **(I) STATE THE SPECIFIC POLICY, OPERATIONAL, AND**
27 **FINANCIAL REASONS FOR PURSUING A PUBLIC-PRIVATE PARTNERSHIP;**

28 **(II) IDENTIFY THE ANTICIPATED RISKS AND BENEFITS TO**
29 **THE STATE AND ANY POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR**
30 **ENVIRONMENTAL IMPLICATIONS;**

31 **(III) EVALUATE, IF RELEVANT AND TO THE EXTENT**
32 **NECESSARY, THE RISKS AND BENEFITS OF A PUBLIC-PRIVATE PARTNERSHIP,**
33 **INCLUDING BENEFITS SUCH AS EXPEDITED ASSET DELIVERY, COST SAVINGS,**
34 **RISK TRANSFER, NET NEW REVENUE, STATE-OF-THE-ART TECHNIQUES FOR**

1 ASSET DEVELOPMENT OR OPERATIONS, EFFICIENCY OF OPERATIONS, AND
2 MAINTENANCE VIA INNOVATIVE MANAGEMENT TECHNIQUES, OR EXPERTISE IN
3 ACCESSING AND ORGANIZING THE WIDEST RANGE OF FINANCIAL RESOURCES;

4 (IV) INCLUDE, IF RELEVANT AND TO THE EXTENT POSSIBLE,
5 A PRELIMINARY ANALYSIS ON DEBT AFFORDABILITY AND A STATEMENT OF
6 INTENTION TO USE THE EXEMPTION FROM THE REQUIREMENTS OF DIVISION II
7 OF THIS ARTICLE SET FORTH IN § 11-203 OF THIS ARTICLE;

8 (V) WITHHOLD PROPRIETARY INFORMATION; AND

9 (VI) BE POSTED ONLINE BY THE REPORTING AGENCY
10 DURING THE 45-DAY REVIEW PERIOD IN ACCORDANCE WITH PARAGRAPH (2) OF
11 THIS SUBSECTION.

12 (2) THE ONLINE LOCATION OF THE PRESOLICITATION REPORT
13 MAY BE:

14 (I) ON THE WEB SITE OF THE REPORTING AGENCY; OR

15 (II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE
16 HAS BEEN ESTABLISHED.

17 (3) THE REPORTING AGENCY SHALL INCLUDE IN THE MARYLAND
18 REGISTER A BRIEF SYNOPSIS OF, AND A LINK TO, THE PRESOLICITATION
19 REPORT.

20 10A-202.

21 (A) A REPORTING AGENCY MAY ISSUE A PUBLIC NOTICE OF
22 SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP.

23 (B) FOR ANY PRIVATE ENTITY THAT RESPONDS TO THE SOLICITATION,
24 A REPORTING AGENCY SHALL MAKE A RESPONSIBILITY DETERMINATION.

25 (C) IF THE PRIVATE ENTITY INVOLVES MORE THAN ONE COMPANY OR
26 PARTNER, THE REPORTING AGENCY SHALL MAKE A RESPONSIBILITY
27 DETERMINATION FOR EACH PARTNER OR OFFICER OWNING 20% OR MORE OF
28 THE ENTITY.

29 (D) ANY CHANGES IN THE COMPOSITION OF A PUBLIC-PRIVATE
30 PARTNERSHIP REQUIRE:

1 **(1) A RESPONSIBILITY DETERMINATION;**

2 **(2) 45 DAYS' NOTICE TO THE BUDGET COMMITTEES; AND**

3 **(3) APPROVAL BY THE BOARD OF PUBLIC WORKS.**

4 **(E) A REPORTING AGENCY MAY:**

5 **(1) REIMBURSE A PRIVATE ENTITY FOR THE PORTION OF THE**
6 **ENTITY'S COSTS USED TO DEVELOP A SOLICITATION; AND**

7 **(2) PAY AN ENTITY THAT SUBMITS AN UNSUCCESSFUL PROPOSAL**
8 **FOR THE RIGHT TO USE THE ENTITY'S WORK PRODUCT.**

9 **10A-203.**

10 **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
11 **SUBSECTION, THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
12 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNTIL:**

13 **(I) A COPY OF THE PROPOSED AGREEMENT IS SUBMITTED**
14 **TO THE COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES,**
15 **AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN ACCORDANCE WITH**
16 **§ 2-1246 OF THE STATE GOVERNMENT ARTICLE;**

17 **(II) THE STATE TREASURER, IN COORDINATION WITH THE**
18 **COMPTROLLER, ANALYZES THE IMPACT ON THE STATE'S CAPITAL DEBT**
19 **AFFORDABILITY LIMITS OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP**
20 **AGREEMENT;**

21 **(III) THE STATE TREASURER SUBMITS THE ANALYSIS TO THE**
22 **BUDGET COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN**
23 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE; AND**

24 **(IV) THE BUDGET COMMITTEES HAVE REVIEWED AND**
25 **COMMENTED ON THE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (3) OF**
26 **THIS SUBSECTION.**

27 **(2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
28 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION**
29 **FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION**
30 **ARTICLE, UNTIL THE PROPOSED AGREEMENT IS SUBMITTED TO THE BUDGET**

1 COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES IN
2 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

3 (3) (I) THE PERIOD FOR REVIEW, ANALYSIS, AND COMMENT
4 UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION MAY NOT EXCEED A
5 TOTAL OF 30 DAYS FROM THE DATE THE PROPOSED AGREEMENT IS SUBMITTED
6 TO THE STATE TREASURER, COMPTROLLER, BUDGET COMMITTEES, AND THE
7 DEPARTMENT OF LEGISLATIVE SERVICES.

8 (II) THE BUDGET COMMITTEES MAY FACILITATE A FASTER
9 REVIEW AND COMMENT PERIOD BY SENDING A LETTER TO THE BOARD OF
10 PUBLIC WORKS SUPPORTING A PROPOSED AGREEMENT IN ADVANCE OF THE
11 EXPIRATION OF THE 30-DAY REVIEW PERIOD.

12 (B) (1) THE PROPOSED AGREEMENT:

13 (I) MAY WITHHOLD PROPRIETARY INFORMATION; AND

14 (II) SHALL BE POSTED ONLINE BY THE REPORTING AGENCY
15 DURING THE 30-DAY REVIEW PERIOD IN ACCORDANCE WITH PARAGRAPH (2) OF
16 THIS SUBSECTION.

17 (2) THE ONLINE LOCATION OF THE PROPOSED AGREEMENT MAY
18 BE:

19 (I) ON THE WEB SITE OF THE REPORTING AGENCY; OR

20 (II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE
21 HAS BEEN ESTABLISHED.

22 10A-204.

23 (A) THE REPORTING AGENCY SHALL POST THE FINAL AGREEMENT OF A
24 PUBLIC-PRIVATE PARTNERSHIP ON THE WEB SITE OF THE REPORTING AGENCY
25 OR THE WEB SITE OF THE SPECIFIC PROJECT IF ONE HAS BEEN ESTABLISHED.

26 (B) PROPRIETARY INFORMATION MAY BE WITHHELD FROM THE POSTED
27 VERSION OF THE FINAL AGREEMENT.

28 SUBTITLE 3. UNSOLICITED PROPOSALS.

29 10A-301.

1 **(A) A REPORTING AGENCY MAY ACCEPT, REJECT, OR EVALUATE AN**
2 **UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE PARTNERSHIP THAT WILL**
3 **ASSIST THE AGENCY IN IMPLEMENTING ITS FUNCTIONS IN A MANNER**
4 **CONSISTENT WITH STATE POLICY.**

5 **(B) A REPORTING AGENCY SHALL ESTABLISH THE PROCESS FOR**
6 **DETERMINING WHETHER AN UNSOLICITED PROPOSAL MEETS A NEED OF THE**
7 **REPORTING AGENCY OR IS OTHERWISE ADVANTAGEOUS TO THE REPORTING**
8 **AGENCY.**

9 **(C) (1) A REPORTING AGENCY MAY ESTABLISH BY REGULATION AN**
10 **APPLICATION FEE FOR SUBMITTING AN UNSOLICITED PROPOSAL.**

11 **(2) FOR AN UNSOLICITED PROPOSAL THAT DOES NOT ADDRESS A**
12 **PROJECT ALREADY IN THE STATE'S CAPITAL IMPROVEMENT PROGRAM OR**
13 **CONSOLIDATED TRANSPORTATION PROGRAM PLANNING DOCUMENTS, A**
14 **REPORTING AGENCY MAY REQUIRE A HIGHER PROPOSAL FEE.**

15 **(D) IF A REPORTING AGENCY DETERMINES THAT AN UNSOLICITED**
16 **PROPOSAL MEETS A NEED OF THE REPORTING AGENCY OR IS OTHERWISE**
17 **ADVANTAGEOUS TO THE REPORTING AGENCY, THE REPORTING AGENCY SHALL:**

18 **(1) CONDUCT A COMPETITIVE BIDDING PROCESS; AND**

19 **(2) COMPLY WITH ALL OF THE OTHER PROCEDURAL**
20 **REQUIREMENTS SET FORTH IN THIS TITLE.**

21 **(E) THE PROVISIONS OF § 15-508 OF THE STATE GOVERNMENT**
22 **ARTICLE MAY NOT PRECLUDE AN INDIVIDUAL OR FIRM THAT HAS SUBMITTED**
23 **AN UNSOLICITED PROPOSAL UNDER THIS TITLE FROM SUBMITTING AND**
24 **PARTICIPATING IN THE COMPETITIVE BIDDING PROCESS.**

25 **SUBTITLE 4. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.**

26 **10A-401.**

27 **(A) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL INCLUDE**
28 **THE FOLLOWING PROVISIONS:**

29 **(1) THE STATE RESERVES THE RIGHT OF FIRST REFUSAL AND**
30 **APPROVAL OVER ANY REASSIGNMENTS OF ANY LEASE, SUBLEASE, OR SALE, AND**
31 **THE REPORTING AGENCY OVERSEEING THE AGREEMENT MUST NOTIFY THE**
32 **BUDGET COMMITTEES OF ANY OF THESE ACTIONS;**

1 **(2) THE METHODS FOR FUTURE INCREASES IN TOLLS, FEES, AND**
2 **OTHER CHARGES RELATED TO THE ASSET;**

3 **(3) WHENEVER APPLICABLE, REVENUE-SHARING, IN WHICH THE**
4 **PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET PERFORMANCE,**
5 **SHALL BE UTILIZED;**

6 **(4) MINIMUM QUALITY STANDARDS, PERFORMANCE CRITERIA,**
7 **INCENTIVES, AND DISINCENTIVES;**

8 **(5) OPERATIONS AND MAINTENANCE STANDARDS;**

9 **(6) ALLOW FOR INSPECTION BY THE STATE;**

10 **(7) THE REPORTING AGENCY MAY PROVIDE SERVICES FOR A FEE**
11 **SUFFICIENT TO COVER BOTH DIRECT AND INDIRECT COSTS;**

12 **(8) THE REPORTING AGENCY MAY USE EMINENT DOMAIN FOR THE**
13 **PROJECT IN ACCORDANCE WITH STATE LAW PROCEDURES;**

14 **(9) PROVISIONS FOR AGREEMENT OVERSIGHT AND REMEDIES**
15 **AND PENALTIES FOR DEFAULT;**

16 **(10) THE REPORTING AGENCY ORIGINATING THE PUBLIC-PRIVATE**
17 **PARTNERSHIP SHALL BE RESPONSIBLE FOR ONGOING OVERSIGHT;**

18 **(11) AGREEMENTS, FINANCIAL STATEMENTS, AND PERFORMANCE**
19 **RELATED TO THE PUBLIC-PRIVATE PARTNERSHIP, AS WELL AS ANNUAL**
20 **AUDITED FINANCIAL STATEMENTS OF THE PRIVATE ENTITY, ARE SUBJECT TO**
21 **AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS NO MORE THAN EVERY 3 YEARS;**

22 **(12) ASSETS SHALL BE RETURNED TO THE STATE AT THE**
23 **EXPIRATION OR TERMINATION OF THE AGREEMENT IN AN ACCEPTABLE**
24 **CONDITION; AND**

25 **(13) THE PRIVATE ENTITY SHALL PROVIDE A PERFORMANCE**
26 **BOND.**

27 **(B) (1) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY INCLUDE**
28 **A PROVISION THAT, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
29 **SUBSECTION, COMPENSATION MAY BE PROVIDED FOR COMPETING**

1 INFRASTRUCTURE DEVELOPMENTS THAT RESULT IN A DOCUMENTED REVENUE
2 LOSS FOR THE PRIVATE ENTITY IN A PUBLIC-PRIVATE PARTNERSHIP.

3 (2) COMPENSATION MAY NOT BE PROVIDED AS A RESULT OF
4 STATE INFRASTRUCTURE DEVELOPMENTS ALREADY IN THE STATE'S CAPITAL
5 IMPROVEMENT PROGRAM OR CONSOLIDATED TRANSPORTATION PROGRAM
6 PLANNING DOCUMENTS AT THE TIME THE PUBLIC-PRIVATE PARTNERSHIP
7 AGREEMENT IS EXECUTED, SAFETY INITIATIVES, INFRASTRUCTURE
8 IMPROVEMENTS WITH MINIMAL CAPACITY INCREASES, OR INFRASTRUCTURE
9 FOR OTHER TRANSPORTATION MODES.

10 (C) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT INCLUDE
11 A NONCOMPETE CLAUSE FOR PUBLIC-PRIVATE PARTNERSHIP PROJECTS
12 INVOLVING ROAD, HIGHWAY, OR BRIDGE ASSETS.

13 10A-402.

14 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
15 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT EXCEED 50 YEARS,
16 INCLUDING ALL RENEWALS AND EXTENSIONS.

17 (B) THE BOARD OF PUBLIC WORKS MAY:

18 (1) GRANT AN EXEMPTION TO THE PROHIBITION SET FORTH IN
19 SUBSECTION (B) OF THIS SECTION IF THE BOARD DETERMINES THAT THE
20 REPORTING AGENCY HAS DEMONSTRATED SUFFICIENT REASON FOR THE
21 AGREEMENT TO HAVE A LONGER TERM; AND

22 (2) GRANT AN EXEMPTION TO THE PROHIBITION SET FORTH IN
23 SUBSECTION (B) OF THIS SECTION AT ANY POINT DURING THE
24 PRESOLICITATION, PROPOSAL REVIEW, OR AGREEMENT NEGOTIATIONS
25 PROCESS.

26 11-203.

27 (H) THIS DIVISION II DOES NOT APPLY TO A PUBLIC-PRIVATE
28 PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE.

29 Article - Transportation

30 [4-205.

31 (a) Subject to § 4-306 of this title and in addition to the powers otherwise
32 specifically granted by law, the Authority has the powers described in this section.

1 (b) The Authority may acquire, hold, and dispose of property in the exercise
2 of its powers and performance of its duties.

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

6 (2) Not less than 45 days before entering into any contract or
7 agreement to acquire or construct a revenue-producing transportation facilities
8 project, subject to § 2-1246 of the State Government Article, the Authority shall
9 provide, to the Senate Budget and Taxation Committee, the House Committee on
10 Ways and Means, and the House Appropriations Committee, for review and comment,
11 and to the Department of Legislative Services, a description of the proposed project, a
12 summary of the contract or agreement, and a financing plan that details:

13 (i) The estimated annual revenue from the issuance of bonds to
14 finance the project; and

15 (ii) The estimated impact of the issuance of bonds to finance the
16 project on the bonding capacity of the Authority.

17 (d) (1) Subject to paragraph (2) of this subsection, the Authority may
18 employ and fix the compensation of attorneys, consulting engineers, accountants,
19 construction and financial experts, superintendents, managers, and any other agents
20 and employees that it considers necessary to exercise its powers and perform its
21 duties. The compensation established by the Authority for executive management
22 positions shall be consistent with the compensation of comparable positions in the
23 Department of Transportation. The compensation established by the Authority shall
24 be reported to the General Assembly each year as part of the Authority's presentation
25 of its budget.

26 (2) The expense of employing these persons may be paid only from
27 revenues or from the proceeds of revenue bonds issued by the Authority.

28 (e) The Authority may apply for and receive grants from any federal agency
29 for the planning, construction, operation, or financing of any transportation facilities
30 project and may receive aid or contributions of money, property, labor, or other things
31 of value from any source, to be held, used, and applied for the purposes for which the
32 grants, aid, and contributions are made.

33 (f) The Authority may adopt rules and regulations to carry out the
34 provisions of this title.

35 (g) The Authority may do anything else necessary or convenient to carry out
36 the powers granted in this title.]

1 [4-406.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) “Budget committees” means the Senate Budget and Taxation
4 Committee, the House Committee on Ways and Means, and the House Appropriations
5 Committee.

6 (3) “Private entity” means an individual, a corporation, a general or
7 limited partnership, a limited liability company, a joint venture, a business trust, a
8 public benefit corporation, a nonprofit entity, or another business entity.

9 (4) “Public notice of solicitation” includes a request for expressions of
10 interest, a request for proposals, a memorandum of understanding, an interim
11 development agreement, a letter of intent, or a preliminary development plan.

12 (5) (i) “Public-private partnership” means a sale or lease
13 agreement between the Authority and a private entity under which:

14 1. The private entity assumes control of the operation
15 and maintenance of an existing State facility; or

16 2. The private entity constructs, reconstructs, finances,
17 or operates a State facility or a facility for State use and will collect fees, charges,
18 rents, or tolls for the use of the facility.

19 (ii) “Public-private partnership” does not include:

20 1. A short-term operating space lease entered into in the
21 ordinary course of business by the Authority and a private entity; or

22 2. A procurement governed by Division II of the State
23 Finance and Procurement Article.

24 (b) Following the submission of each of the reports required under this
25 section, the budget committees shall have 45 days to review and comment on the
26 reports.

27 (c) (1) Not less than 45 days before issuing a public notice of solicitation
28 for a public-private partnership, the Authority shall submit to the budget committees,
29 in accordance with § 2-1246 of the State Government Article, a report concerning the
30 proposed public-private partnership.

31 (2) By January 1 of each year, the Authority shall submit to the
32 budget committees, in accordance with § 2-1246 of the State Government Article, a
33 report concerning each public-private partnership under consideration at that time by

1 the Authority that has not been reviewed or approved previously by the General
2 Assembly.

3 (3) By January 1 of each year, the Authority shall submit to the
4 budget committees, in accordance with § 2–1246 of the State Government Article, a
5 status report concerning each existing public–private partnership in which the
6 Authority is involved.

7 (d) By January 1 of each year, the Authority shall submit to the budget
8 committees, in accordance with § 2–1246 of the State Government Article, a report
9 concerning each public–private partnership for which the Authority is providing
10 conduit financing.

11 (e) Not less than 30 days before entering into a public–private partnership
12 agreement, the Authority shall submit to the budget committees, in accordance with §
13 2–1246 of the State Government Article, an analysis of the impact of the proposed
14 public–private partnership agreement on the Authority’s financing plan, including the
15 Authority’s operating and capital budgets and debt capacity.

16 (f) The Board of Public Works may not approve a public–private partnership
17 agreement under § 10–305 or § 12–204 of the State Finance and Procurement Article
18 that the Authority proposes to enter into until the budget committees have had 30
19 days to review and comment on the Authority’s analysis of the agreement required
20 under subsection (e) of this section.]

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
22 to public–private partnerships established on or after the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 July 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.