

SENATE BILL 538

C8

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CF HB 560

By: **The President (By Request – Administration) and Senators Colburn, Jones–Rodwell, King, Madaleno, Manno, Middleton, and Peters**

Introduced and read first time: January 31, 2013

Assigned to: Budget and Taxation

A BILL ENTITLED

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 projects to comply with certain provisions of law; requiring that State
15 employees retain certain protections under certain circumstances; requiring a
16 reporting agency to issue a public notice of solicitation for a public–private
17 partnership under certain circumstances; requiring certain agencies to comply
18 with certain requirements before issuing a solicitation for a public–private
19 partnership; providing that a certain entity may be qualified as a bidder
20 through certain processes; authorizing a reporting agency to engage in
21 discussions with qualified bidders at certain times and under certain
22 circumstances; requiring a certain agency to make a certain responsibility
23 determination concerning certain entities; authorizing a reporting agency to
24 reimburse a private entity for certain costs and pay a certain entity for the right
25 to use a certain work product; requiring a reporting agency to adopt certain
26 regulations that establish the process for the reimbursement of a private entity;
27 prohibiting a reporting agency from reimbursing a private entity under certain
28 circumstances; requiring a certain agency to submit certain reports to certain
29 officials and committees; prohibiting the Board of Public Works from approving
30 a public–private partnership agreement until the completion of a certain review

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 by certain officials and committees; establishing deadlines for the review of
2 public-private partnership agreements; requiring a certain agency to post a
3 certain agreement on a certain Web site; requiring certain entities to provide
4 performance bonds; prohibiting a public-private partnership agreement from
5 exceeding a certain number of years, with certain exceptions; prohibiting
6 noncompete agreements for certain assets; authorizing the award of certain
7 compensation under certain circumstances; establishing certain requirements
8 for a final public-private partnership agreement; requiring certain proceeds to
9 accrue to certain funds; requiring a certain agency to post on the Internet a
10 certain final agreement; authorizing a certain agency to establish by regulation
11 certain application fees for certain unsolicited proposals; establishing certain
12 requirements for certain unsolicited proposals; authorizing an individual or firm
13 that submits an unsolicited proposal to participate in a certain subsequent
14 process; providing that certain provisions of the State ethics law do not preclude
15 a certain individual or firm from entering into a certain agreement; providing,
16 under certain circumstances, that the provisions of the Minority Business
17 Enterprise Program apply to public-private partnerships; prohibiting the Board
18 of Public Works from approving a public-private partnership agreement until
19 the reporting agency, in consultation with certain entities, establishes certain
20 minority business enterprise goals and procedures; requiring that certain goals
21 and procedures be based on the requirements of certain provisions of law;
22 exempting public-private partnerships from certain requirements of the State
23 procurement law; repealing certain obsolete provisions; defining a certain term;
24 altering certain definitions; providing for the application of this Act; providing
25 for the termination of certain provisions of this Act; and generally relating to
26 public-private partnerships.

27 BY repealing and reenacting, with amendments,
28 Article – State Finance and Procurement
29 Section 10A-101
30 Annotated Code of Maryland
31 (2009 Replacement Volume and 2012 Supplement)

32 BY repealing
33 Article – State Finance and Procurement
34 Section 10A-102
35 Annotated Code of Maryland
36 (2009 Replacement Volume and 2012 Supplement)

37 BY adding to
38 Article – State Finance and Procurement
39 Section 10A-102 through 10A-105 to be under the new subtitle “Subtitle 1.
40 Definitions; General Provisions”; 10A-201 through 10A-204 to be under
41 the new subtitle “Subtitle 2. Solicited Proposals”; 10A-301 to be under
42 the new subtitle “Subtitle 3. Unsolicited Proposals”; 10A-401 through
43 10A-403 to be under the new subtitle “Subtitle 4. Public-Private
44 Partnership Agreements”; and 11-203(h)

1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2012 Supplement)

3 BY repealing
4 Article – Transportation
5 Section 4–406
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2012 Supplement)

8 Preamble

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

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

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

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

23 **Article – State Finance and Procurement**

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

25 10A–101.

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

27 [(2)] (B) “Budget committees” means the Senate Budget and
28 Taxation Committee, the House Committee on Ways and Means, and the House
29 Appropriations Committee.

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

1 **(D) “PUBLIC INFRASTRUCTURE ASSET” MEANS A CAPITAL FACILITY OR**
 2 **STRUCTURE, INCLUDING SYSTEMS AND EQUIPMENT RELATED TO THE FACILITY**
 3 **OR STRUCTURE INTENDED FOR PUBLIC USE.**

4 **[(4)] (E) “Public notice of solicitation” includes A REQUEST FOR**
 5 **QUALIFICATIONS, a request for expressions of interest, a request for proposals, [a**
 6 **memorandum of understanding, an interim development agreement, a letter of intent,**
 7 **or a preliminary development plan] OR ANY COMBINATION THEREOF.**

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

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

12 2. the private entity constructs, reconstructs, finances,
 13 or operates a State facility or a facility for State use and will collect fees, charges,
 14 rents, or tolls for the use of the facility] **A METHOD FOR DELIVERING PUBLIC**
 15 **INFRASTRUCTURE ASSETS USING A LONG-TERM, PERFORMANCE-BASED**
 16 **AGREEMENT BETWEEN A REPORTING AGENCY AND A PRIVATE ENTITY WHERE**
 17 **APPROPRIATE RISKS AND BENEFITS CAN BE ALLOCATED IN A COST-EFFECTIVE**
 18 **MANNER BETWEEN THE CONTRACTUAL PARTNERS IN WHICH:**

19 **(II) A PRIVATE ENTITY PERFORMS FUNCTIONS NORMALLY**
 20 **UNDERTAKEN BY THE GOVERNMENT, BUT THE REPORTING AGENCY REMAINS**
 21 **ULTIMATELY ACCOUNTABLE FOR THE PUBLIC INFRASTRUCTURE ASSET AND ITS**
 22 **PUBLIC FUNCTION; AND**

23 **(III) THE STATE MAY RETAIN OWNERSHIP IN THE PUBLIC**
 24 **INFRASTRUCTURE ASSET AND THE PRIVATE ENTITY MAY BE GIVEN ADDITIONAL**
 25 **DECISION-MAKING RIGHTS IN DETERMINING HOW THE ASSET IS FINANCED,**
 26 **DEVELOPED, CONSTRUCTED, OPERATED, AND MAINTAINED OVER ITS LIFE**
 27 **CYCLE.**

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

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

32 **[2.] (II) a procurement governed by Division II of this**
 33 **article; [or]**

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

5 **(IV) A REVENUE-PRODUCING TRANSPORTATION FACILITIES**
6 **PROJECT EXEMPTED FROM PROCUREMENT UNDER 21.01.03.03(D) OF COMAR.**

7 **[(6)] (G)** "Reporting agency" means:

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

9 **[(ii)] (2)** the Maryland Department of Transportation, **FOR**
10 **PUBLIC INFRASTRUCTURE ASSETS OF ANY OF ITS MODAL ADMINISTRATIONS;**

11 **(3) THE MARYLAND TRANSPORTATION AUTHORITY;**

12 **[(iii)] (4)** the University System of Maryland;

13 **[(iv)] (5)** Morgan State University;

14 **[(v)] (6)** St. Mary's College of Maryland; and

15 **[(vi)] (7)** the Baltimore City Community College.

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

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

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

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

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

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

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

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

12 (H) **“RESPONSIBILITY DETERMINATION” MEANS THE DETERMINATION**
13 **BY A REPORTING AGENCY THAT A PRIVATE ENTITY THAT RESPONDS TO A**
14 **SOLICITATION FOR A PUBLIC–PRIVATE PARTNERSHIP:**

15 (1) **HAS THE CAPACITY IN ALL RESPECTS TO PERFORM FULLY**
16 **THE REQUIREMENTS OF A PUBLIC–PRIVATE PARTNERSHIP AGREEMENT; AND**

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

19 [10A–102.

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

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

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

31 (d) The annual report of the Capital Debt Affordability Committee required
32 under § 8–112 of this article shall include an analysis of the aggregate impact of
33 public–private partnership agreements on the total amount of new State debt that
34 prudently may be authorized for the next fiscal year.]

35 **10A–102.**

1 **(A) IT IS THE PUBLIC POLICY OF THE STATE TO UTILIZE**
2 **PUBLIC-PRIVATE PARTNERSHIPS, IF APPROPRIATE, TO:**

3 **(1) DEVELOP AND STRENGTHEN THE STATE'S PUBLIC**
4 **INFRASTRUCTURE ASSETS;**

5 **(2) APPORTION BETWEEN THE PUBLIC AND PRIVATE SECTORS**
6 **THE RISKS INVOLVED WITH DEVELOPING AND STRENGTHENING PUBLIC**
7 **INFRASTRUCTURE ASSETS;**

8 **(3) FOSTER THE CREATION OF NEW JOBS; AND**

9 **(4) PROMOTE THE SOCIOECONOMIC DEVELOPMENT AND**
10 **COMPETIVENESS OF MARYLAND.**

11 **(B) IT IS THE PUBLIC POLICY OF THE STATE THAT A PRIVATE ENTITY**
12 **THAT ENTERS INTO A PUBLIC-PRIVATE PARTNERSHIP WITH A REPORTING**
13 **AGENCY COMPLY WITH THE LABOR AND EMPLOYMENT ARTICLE AND THE**
14 **FEDERAL FAIR LABOR STANDARDS ACT.**

15 **10A-103.**

16 **(A) (1) A REPORTING AGENCY MAY ESTABLISH A PUBLIC-PRIVATE**
17 **PARTNERSHIP AND EXECUTE AN AGREEMENT IN CONNECTION WITH ANY PUBLIC**
18 **INFRASTRUCTURE ASSET FOR WHICH THE REPORTING AGENCY IS RESPONSIBLE**
19 **IN ACCORDANCE WITH THE PROVISIONS OF THE ANNOTATED CODE.**

20 **(2) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT EXECUTED**
21 **UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE PROVISIONS THAT**
22 **ARE NECESSARY TO DEVELOP AND STRENGTHEN A PUBLIC INFRASTRUCTURE**
23 **ASSET IN CONJUNCTION WITH A PUBLIC-PRIVATE PARTNERSHIP.**

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

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

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

1 (II) THE BUDGET COMMITTEES REVIEW AND COMMENT ON
2 THE REGULATIONS; AND

3 (III) AT LEAST 45 DAYS AFTER THE FIRST PUBLICATION OF
4 THE REGULATIONS IN THE MARYLAND REGISTER.

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

8 (D) ANY COMBINATION OF FEDERAL, STATE, OR LOCAL FUNDS,
9 GRANTS, LOANS, DEBT, OR OTHER PUBLIC SOURCES OF FUNDING OR FINANCING
10 MAY BE USED AND COMBINED WITH ANY PRIVATE SOURCES OF FUNDING OR
11 FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP PROJECT.

12 (E) ANY PROCEEDS OR REVENUES RECEIVED BY A REPORTING AGENCY
13 FROM A PUBLIC-PRIVATE PARTNERSHIP THAT ARE NOT OTHERWISE PAID OR
14 ALLOCATED TO THE PRIVATE SECTOR SHALL ACCRUE TO THE FUND THAT
15 WOULD HAVE NORMALLY RECEIVED THOSE FUNDS.

16 **10A-104.**

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

20 (I) A REPORT CONCERNING EACH PUBLIC-PRIVATE
21 PARTNERSHIP UNDER CONSIDERATION THAT HAS NOT BEEN REVIEWED OR
22 APPROVED PREVIOUSLY BY THE GENERAL ASSEMBLY; AND

23 (II) A STATUS REPORT CONCERNING EACH EXISTING
24 PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY IS
25 INVOLVED.

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

31 (B) BY JANUARY 1 OF EACH YEAR, A UNIT OF STATE GOVERNMENT
32 THAT PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP

1 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
2 OF THE STATE GOVERNMENT ARTICLE, A LIST THAT INCLUDES EACH
3 PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING CONDUIT
4 FINANCING.

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

10 10A-105.

11 (A) A PROJECT UNDERTAKEN BY A REPORTING AGENCY THROUGH A
12 PUBLIC-PRIVATE PARTNERSHIP SHALL COMPLY WITH THE FOLLOWING
13 PROVISIONS, TO THE EXTENT THAT THE PROVISIONS ARE APPLICABLE TO THE
14 PROJECT:

15 (1) § 3-602.1 OF THIS ARTICLE; AND

16 (2) THE ENVIRONMENT ARTICLE.

17 (B) THE PRIVATE ENTITY AND ANY CONTRACTORS OR
18 SUBCONTRACTORS CONSTRUCTING A PUBLIC INFRASTRUCTURE ASSET SHALL
19 BE SUBJECT TO TITLE 17, SUBTITLE 2 OF THIS ARTICLE REGARDLESS OF
20 WHETHER THE CONTRACT QUALIFIES AS A PUBLIC WORKS CONTRACT.

21 (C) STATE EMPLOYEES SHALL RETAIN ALL OF THE PROTECTIONS IN
22 STATE LAW, REGULATIONS, AND POLICIES THAT ARE IN EFFECT AT THE TIME
23 THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IS APPROVED BY THE BOARD
24 OF PUBLIC WORKS.

25 SUBTITLE 2. SOLICITED PROPOSALS.

26 10A-201.

27 (A) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
28 PARAGRAPH, A REPORTING AGENCY MAY NOT ISSUE A PUBLIC NOTICE OF
29 SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP UNTIL A
30 PRESOLICITATION REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE
31 PARTNERSHIP IS SUBMITTED TO THE COMPTROLLER, THE STATE TREASURER,
32 THE BUDGET COMMITTEES, AND THE DEPARTMENT OF LEGISLATIVE SERVICES,
33 IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

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

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

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

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

14 **(II) IDENTIFY THE ANTICIPATED RISKS AND BENEFITS TO**
15 **THE STATE AND ANY POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR**
16 **ENVIRONMENTAL IMPLICATIONS;**

17 **(III) EVALUATE, IF RELEVANT AND TO THE EXTENT**
18 **NECESSARY, THE RISKS AND BENEFITS OF A PUBLIC-PRIVATE PARTNERSHIP,**
19 **INCLUDING BENEFITS SUCH AS EXPEDITED ASSET DELIVERY, COST SAVINGS,**
20 **RISK TRANSFER, NET NEW REVENUE, STATE-OF-THE-ART TECHNIQUES FOR**
21 **ASSET DEVELOPMENT OR OPERATIONS, EFFICIENCY OF OPERATIONS,**
22 **MAINTENANCE VIA INNOVATIVE MANAGEMENT TECHNIQUES, AND EXPERTISE IN**
23 **ACCESSING AND ORGANIZING THE WIDEST RANGE OF FINANCIAL RESOURCES;**

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

28 **(V) WITHHOLD INFORMATION DEEMED CONFIDENTIAL,**
29 **PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE**
30 **LAW, IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT**
31 **ARTICLE, RELATING TO:**

32 1. **CONFIDENTIAL COMMERCIAL INFORMATION;**

33 2. **CONFIDENTIAL FINANCIAL INFORMATION; AND**

1 **3. TRADE SECRETS; AND**

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

5 **(2) THE ONLINE LOCATION OF THE PRESOLICITATION REPORT**
6 **SHALL BE:**

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

8 **(II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE**
9 **HAS BEEN ESTABLISHED.**

10 **(3) THE REPORTING AGENCY SHALL INCLUDE IN THE MARYLAND**
11 **REGISTER A BRIEF SYNOPSIS OF, AND A LINK TO, THE PRESOLICITATION**
12 **REPORT.**

13 **(C) (1) AFTER THE BUDGET COMMITTEES HAVE HAD 45 DAYS TO**
14 **REVIEW AND COMMENT ON THE PRESOLICITATION REPORT AND BEFORE**
15 **ISSUING A PUBLIC NOTICE OF SOLICITATION, A REPORTING AGENCY SHALL**
16 **SEEK THE OFFICIAL DESIGNATION BY THE BOARD OF PUBLIC WORKS OF THE**
17 **PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP AND**
18 **APPROVAL OF THE SOLICITATION METHOD.**

19 **(2) THE REQUEST FOR OFFICIAL DESIGNATION AND APPROVAL**
20 **SHALL:**

21 **(I) INCLUDE A COPY OF THE PRESOLICITATION REPORT**
22 **REQUIRED UNDER SUBSECTION (A) OF THIS SECTION;**

23 **(II) DESCRIBE THE PROCESS FOR SOLICITING, EVALUATING,**
24 **SELECTING, AND AWARDING THE PUBLIC-PRIVATE PARTNERSHIP;**

25 **(III) INCLUDE A PRELIMINARY SOLICITATION SCHEDULE;**

26 **(IV) OUTLINE THE ORGANIZATION AND CONTENTS OF THE**
27 **PUBLIC NOTICE OF SOLICITATION;**

28 **(V) PROVIDE A SUMMARY OF THE KEY TERMS OF THE**
29 **PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT; AND**

1 (VI) INCLUDE ANY OTHER INFORMATION OR REQUESTS
2 DETERMINED TO BE RELEVANT BY THE REPORTING AGENCY.

3 10A-202.

4 (A) IF A REPORTING AGENCY INTENDS TO ESTABLISH A
5 PUBLIC-PRIVATE PARTNERSHIP UNDER § 10A-103 OF THIS TITLE, THE
6 REPORTING AGENCY SHALL ISSUE A PUBLIC NOTICE OF SOLICITATION FOR THE
7 PUBLIC-PRIVATE PARTNERSHIP.

8 (B) (1) A PRIVATE ENTITY MAY BE QUALIFIED AS A BIDDER THROUGH
9 A REQUEST FOR QUALIFICATIONS, A REQUEST FOR INFORMATION, OR ANY
10 OTHER SIMILAR PROCESS.

11 (2) AFTER A BIDDER IS QUALIFIED AND AT ANY TIME BEFORE THE
12 AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, A REPORTING
13 AGENCY MAY ENGAGE IN DISCUSSIONS WITH QUALIFIED BIDDERS.

14 (3) THESE DISCUSSIONS MAY BE HELD TO:

15 (I) OBTAIN COMMENTS AND MAKE REVISIONS TO
16 SOLICITATION DOCUMENTS;

17 (II) OBTAIN THE BEST PRICE FOR THE STATE; AND

18 (III) ENSURE FULL UNDERSTANDING OF:

19 1. THE REQUIREMENTS OF THE STATE, AS SET
20 FORTH IN THE REQUEST FOR PROPOSALS; AND

21 2. THE PROPOSAL SUBMITTED BY THE BIDDER.

22 (C) FOR ANY PRIVATE ENTITY THAT RESPONDS TO THE PUBLIC NOTICE
23 OF SOLICITATION, A REPORTING AGENCY SHALL MAKE A RESPONSIBILITY
24 DETERMINATION.

25 (D) IF A PRIVATE ENTITY IS COMPOSED OF MULTIPLE SUBENTITIES OR
26 PARTNERS, THE REPORTING AGENCY SHALL MAKE A RESPONSIBILITY
27 DETERMINATION FOR EACH SUBENTITY OR PARTNER OWNING 20% OR MORE OF
28 THE ENTITY.

1 **(E) ANY CHANGES IN THE OWNERSHIP COMPOSITION OF A**
2 **PUBLIC-PRIVATE PARTNERSHIP, AS DESCRIBED IN SUBSECTION (C) OF THIS**
3 **SECTION, REQUIRE:**

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

5 **(2) 45 DAYS' NOTICE TO THE BUDGET COMMITTEES; AND**

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

7 **(F) (1) A REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY**
8 **FOR THE PORTION OF THE ENTITY'S COSTS INCURRED TO DEVELOP A RESPONSE**
9 **TO A PUBLIC NOTICE OF A SOLICITATION.**

10 **(2) A REPORTING AGENCY SHALL ADOPT REGULATIONS THAT**
11 **ESTABLISH THE PROCESS FOR REIMBURSING A PRIVATE ENTITY UNDER**
12 **PARAGRAPH (1) OF THIS SUBSECTION.**

13 **(3) REGULATIONS ADOPTED UNDER PARAGRAPH (2) OF THIS**
14 **SUBSECTION SHALL:**

15 **(I) PROVIDE FOR THE REIMBURSEMENT OF A PRIVATE**
16 **ENTITY BASED ON THE DOLLAR VALUE OF A PROJECT, THE VALUE OF ANY WORK**
17 **PRODUCT RECEIVED FROM THE PRIVATE ENTITY, OR ANY OTHER METHOD FOR**
18 **CALCULATING SUCH REIMBURSEMENT; AND**

19 **(II) SPECIFY A MAXIMUM DOLLAR AMOUNT THAT A**
20 **REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY FOR COSTS INCURRED**
21 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

22 **(4) A REPORTING AGENCY MAY PAY A PRIVATE ENTITY THAT**
23 **SUBMITS AN UNSUCCESSFUL PROPOSAL FOR THE RIGHT TO USE THE PRIVATE**
24 **ENTITY'S WORK PRODUCT.**

25 **(5) A REPORTING AGENCY MAY NOT REIMBURSE A PRIVATE**
26 **ENTITY FOR ANY PORTION OF THE COSTS INCURRED TO DEVELOP A RESPONSE**
27 **TO A PUBLIC NOTICE OF SOLICITATION IF:**

28 **(I) THE PRIVATE ENTITY ENTERS INTO A PUBLIC-PRIVATE**
29 **PARTNERSHIP AGREEMENT WITH THE REPORTING AGENCY;**

1 **(II) THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**
2 **ENTERED INTO UNDER ITEM (I) OF THIS PARAGRAPH IS APPROVED BY THE**
3 **BOARD OF PUBLIC WORKS; AND**

4 **(III) THE PUBLIC NOTICE OF SOLICITATION IS THE SUBJECT**
5 **OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT APPROVED BY THE BOARD**
6 **OF PUBLIC WORKS UNDER ITEM (II) OF THIS PARAGRAPH.**

7 **(G) A REPORTING AGENCY SHALL SUBMIT A COPY OF THE PROPOSED**
8 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SIMULTANEOUSLY TO THE**
9 **COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES, AND THE**
10 **DEPARTMENT OF LEGISLATIVE SERVICES, IN ACCORDANCE WITH §**
11 **2-1246 OF THE STATE GOVERNMENT ARTICLE.**

12 **10A-203.**

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

16 **(I) A COPY OF THE PROPOSED AGREEMENT IS SUBMITTED**
17 **TO THE COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES,**
18 **AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN ACCORDANCE WITH §**
19 **2-1246 OF THE STATE GOVERNMENT ARTICLE;**

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

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

27 **(IV) THE BUDGET COMMITTEES HAVE REVIEWED AND**
28 **COMMENTED ON THE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (3) OF**
29 **THIS SUBSECTION.**

30 **(2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
31 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION**
32 **FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION**
33 **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 PUBLIC-PRIVATE
6 PARTNERSHIP AGREEMENT IS SUBMITTED TO THE STATE TREASURER, THE
7 COMPTROLLER, THE BUDGET COMMITTEES, AND THE DEPARTMENT OF
8 LEGISLATIVE SERVICES.

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

13 (B) (1) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT:

14 (I) MAY WITHHOLD INFORMATION DEEMED CONFIDENTIAL,
15 PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE
16 LAW, INCLUDING IN ACCORDANCE WITH § 10-617(D) OF THE STATE
17 GOVERNMENT ARTICLE, RELATING TO:

- 18 1. CONFIDENTIAL COMMERCIAL INFORMATION;
- 19 2. CONFIDENTIAL FINANCIAL INFORMATION; AND
- 20 3. TRADE SECRETS; AND

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

24 (2) THE ONLINE LOCATION OF THE PROPOSED PUBLIC-PRIVATE
25 PARTNERSHIP AGREEMENT SHALL BE:

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

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

29 10A-204.

1 **(A) THE REPORTING AGENCY SHALL POST THE FINAL PUBLIC-PRIVATE**
2 **PARTNERSHIP AGREEMENT ON THE WEB SITE OF THE REPORTING AGENCY OR**
3 **THE WEB SITE OF THE SPECIFIC PROJECT IF ONE HAS BEEN ESTABLISHED.**

4 **(B) INFORMATION DEEMED PROPRIETARY OR OTHERWISE EXEMPT**
5 **FROM DISCLOSURE UNDER APPLICABLE LAW MAY BE WITHHELD FROM THE**
6 **POSTED VERSION OF THE FINAL PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.**

7 **SUBTITLE 3. UNSOLICITED PROPOSALS.**

8 **10A-301.**

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

13 **(B) A REPORTING AGENCY SHALL ESTABLISH THE PROCESS FOR**
14 **DETERMINING WHETHER AN UNSOLICITED PROPOSAL MEETS A NEED OF THE**
15 **REPORTING AGENCY OR IS OTHERWISE ADVANTAGEOUS TO THE REPORTING**
16 **AGENCY.**

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

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

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

26 **(1) CONDUCT A COMPETITIVE SEALED BID OR A COMPETITIVE**
27 **SEALED PROPOSAL PROCESS;**

28 **(2) PROTECT PROPRIETARY INFORMATION INCLUDED IN THE**
29 **UNSOLICITED PROPOSAL TO THE SAME EXTENT PROPRIETARY INFORMATION IS**
30 **PROTECTED UNDER § 10A-201(B) OF THIS TITLE; AND**

31 **(3) COMPLY WITH ALL OF THE OTHER PROCEDURAL**
32 **REQUIREMENTS SET FORTH IN THIS TITLE.**

1 **(E) AN INDIVIDUAL OR FIRM THAT HAS SUBMITTED AN UNSOLICITED**
2 **PROPOSAL UNDER THIS TITLE MAY PARTICIPATE IN ANY SUBSEQUENT**
3 **COMPETITIVE BID OR COMPETITIVE SEALED PROPOSAL SOLICITATION**
4 **PROCESS.**

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

6 **10A-401.**

7 **(A) WHENEVER APPLICABLE, A PUBLIC-PRIVATE PARTNERSHIP**
8 **AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:**

9 **(1) THE METHOD AND TERMS FOR APPROVAL OF ANY**
10 **ASSIGNMENT, REASSIGNMENT, OR OTHER TRANSFER OF INTEREST RELATED TO**
11 **THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT;**

12 **(2) THE METHODS AND TERMS FOR SETTING AND ADJUSTING**
13 **TOLLS, FARES, FEES, AND OTHER CHARGES RELATED TO THE PUBLIC**
14 **INFRASTRUCTURE ASSET;**

15 **(3) THE METHOD AND TERMS FOR REVENUE-SHARING OR OTHER**
16 **SHARING IN FEES OR CHARGES, IN WHICH THE PUBLIC PARTICIPATES IN THE**
17 **FINANCIAL UPSIDE OF ASSET PERFORMANCE OF THE PUBLIC INFRASTRUCTURE**
18 **ASSET;**

19 **(4) MINIMUM QUALITY STANDARDS, PERFORMANCE CRITERIA,**
20 **INCENTIVES, AND DISINCENTIVES;**

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

22 **(6) THE RIGHTS FOR INSPECTION BY THE STATE;**

23 **(7) THE TERMS AND CONDITIONS UNDER WHICH THE REPORTING**
24 **AGENCY MAY PROVIDE SERVICES FOR A FEE SUFFICIENT TO COVER BOTH**
25 **DIRECT AND INDIRECT COSTS;**

26 **(8) PROVISIONS FOR OVERSIGHT AND REMEDIES AND PENALTIES**
27 **FOR DEFAULT;**

28 **(9) THE TERMS AND CONDITIONS UNDER WHICH THE REPORTING**
29 **AGENCY ORIGINATING THE PUBLIC-PRIVATE PARTNERSHIP SHALL BE**
30 **RESPONSIBLE FOR ONGOING OVERSIGHT;**

1 **(10) THE TERMS AND CONDITIONS UNDER WHICH FINANCIAL**
2 **RECORDS AND PERFORMANCE RELATED TO THE PUBLIC-PRIVATE**
3 **PARTNERSHIP, AS WELL AS ANNUAL AUDITED FINANCIAL STATEMENTS OF THE**
4 **PRIVATE ENTITY, ARE SUBJECT TO AUDIT BY THE OFFICE OF LEGISLATIVE**
5 **AUDITS NO MORE THAN EVERY 3 YEARS;**

6 **(11) THE TERMS AND CONDITIONS UNDER WHICH THE PUBLIC**
7 **INFRASTRUCTURE ASSETS SHALL BE RETURNED TO THE STATE AT THE**
8 **EXPIRATION OR TERMINATION OF THE AGREEMENT; AND**

9 **(12) REQUIREMENTS FOR THE PRIVATE ENTITY TO PROVIDE**
10 **PERFORMANCE AND PAYMENT SECURITY IN A FORM AND IN AN AMOUNT**
11 **DETERMINED BY THE RESPONSIBLE PUBLIC ENTITY.**

12 **(B) (1) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY INCLUDE**
13 **A PROVISION THAT, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
14 **SUBSECTION, COMPENSATION MAY BE PROVIDED FOR COMPETING**
15 **INFRASTRUCTURE DEVELOPMENTS THAT RESULT IN A DOCUMENTED REVENUE**
16 **LOSS FOR THE PRIVATE ENTITY IN A PUBLIC-PRIVATE PARTNERSHIP.**

17 **(2) COMPENSATION MAY NOT BE PROVIDED AS A RESULT OF**
18 **STATE INFRASTRUCTURE DEVELOPMENTS ALREADY IN THE STATE'S CAPITAL**
19 **IMPROVEMENT PROGRAM OR CONSOLIDATED TRANSPORTATION PROGRAM**
20 **PLANNING DOCUMENTS AT THE TIME THE PUBLIC-PRIVATE PARTNERSHIP**
21 **AGREEMENT IS EXECUTED, SAFETY INITIATIVES, INFRASTRUCTURE**
22 **IMPROVEMENTS WITH MINIMAL CAPACITY INCREASES, OR INFRASTRUCTURE**
23 **FOR OTHER TRANSPORTATION MODES THAT ARE NOT THE SUBJECT OF THE**
24 **PUBLIC-PRIVATE PARTNERSHIP.**

25 **(C) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT INCLUDE**
26 **A NONCOMPETE CLAUSE FOR PUBLIC-PRIVATE PARTNERSHIP PROJECTS**
27 **INVOLVING ROAD, HIGHWAY, OR BRIDGE ASSETS.**

28 **10A-402.**

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

32 **(B) THE BOARD OF PUBLIC WORKS MAY:**

33 **(1) WAIVE THE PROHIBITION SET FORTH IN SUBSECTION (A) OF**
34 **THIS SECTION IF THE BOARD DETERMINES THAT THE REPORTING AGENCY HAS**

1 DEMONSTRATED SUFFICIENT REASON FOR THE AGREEMENT TO HAVE A LONGER
2 TERM; AND

3 (2) WAIVE THE PROHIBITION SET FORTH IN SUBSECTION (A) OF
4 THIS SECTION AT ANY POINT DURING THE PRESOLICITATION, PROPOSAL
5 REVIEW, OR AGREEMENT NEGOTIATIONS PROCESS.

6 11-203.

7 (H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
8 SUBSECTION, THIS DIVISION DOES NOT APPLY TO A PUBLIC-PRIVATE
9 PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE.

10 (2) TO THE EXTENT OTHERWISE REQUIRED BY LAW, THE
11 FOLLOWING PROVISIONS OF THIS DIVISION APPLY TO A PUBLIC-PRIVATE
12 PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE:

13 (I) § 11-205 OF THIS SUBTITLE (“COLLUSION”);

14 (II) § 11-205.1 OF THIS SUBTITLE (“FALSIFICATION,
15 CONCEALMENT, ETC. OF MATERIAL FACTS”);

16 (III) TITLE 12, SUBTITLE 4 OF THIS ARTICLE (“POLICIES
17 AND PROCEDURES FOR EXEMPT UNITS”);

18 (IV) § 13-219 OF THIS ARTICLE (“REQUIRED
19 CLAUSES – NONDISCRIMINATION CLAUSE”);

20 (V) TITLE 17, SUBTITLE 2 OF THIS ARTICLE (“PREVAILING
21 WAGE RATES – PUBLIC WORK CONTRACTS”); AND

22 (VI) TITLE 18 OF THIS ARTICLE (“LIVING WAGE”).

23 Article – Transportation

24 [4-406.

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

26 (2) “Budget committees” means the Senate Budget and Taxation
27 Committee, the House Committee on Ways and Means, and the House Appropriations
28 Committee.

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

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

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

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

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

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

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

17 2. A procurement governed by Division II of the State
18 Finance and Procurement Article.

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

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

26 (2) By January 1 of each year, the Authority shall submit to the
27 budget committees, in accordance with § 2-1246 of the State Government Article, a
28 report concerning each public-private partnership under consideration at that time by
29 the Authority that has not been reviewed or approved previously by the General
30 Assembly.

31 (3) 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 status report concerning each existing public-private partnership in which the
34 Authority is involved.

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

5 (e) Not less than 30 days before entering into a public–private partnership
6 agreement, the Authority shall submit to the budget committees, in accordance with §
7 2–1246 of the State Government Article, an analysis of the impact of the proposed
8 public–private partnership agreement on the Authority’s financing plan, including the
9 Authority’s operating and capital budgets and debt capacity.

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
16 read as follows:

17 **Article – State Finance and Procurement**

18 **10A–403.**

19 (A) **THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL**
20 **ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE**
21 **PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE, AS ENACTED BY**
22 **CHAPTER 253 OF THE ACTS OF 2011 AND CHAPTER 154 OF THE ACTS OF 2012,**
23 **ARE HEREBY INCORPORATED.**

24 (B) **TO THE EXTENT PRACTICABLE AND PERMITTED BY THE UNITED**
25 **STATES CONSTITUTION, THE PROVISIONS OF THE MINORITY BUSINESS**
26 **ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE SHALL**
27 **APPLY TO PUBLIC–PRIVATE PARTNERSHIPS ESTABLISHED UNDER THIS TITLE.**

28 (C) (1) **THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
29 **PUBLIC–PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A–203 OF THIS TITLE**
30 **UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR’S**
31 **OFFICE OF MINORITY AFFAIRS, THE OFFICE OF THE ATTORNEY GENERAL, AND**
32 **THE PRIVATE ENTITY, IF PERMISSIBLE, ESTABLISHES REASONABLE AND**
33 **APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS AND**
34 **PROCEDURES FOR THE PROJECT.**

35 (2) **TO THE EXTENT PRACTICABLE, GOALS AND PROCEDURES**
36 **ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED**
37 **ON THE REQUIREMENTS OF:**

1 **(I) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING**
2 **THE IMPLEMENTATION OF REGULATIONS ADOPTED UNDER §§ 14-302 AND**
3 **14-303 OF THIS ARTICLE; AND**

4 **(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT**
5 **THIS SECTION.**

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply only
7 to public-private partnerships established on or after the effective date of this Act.

8 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
9 take effect July 1, 2013. It shall remain effective for a period of 3 years and, at the end
10 of June 30, 2016, with no further action required by the General Assembly, Section 2
11 of this Act shall be abrogated and of no further force and effect.

12 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2013.