

Chapter 5

(House Bill 560)

AN ACT concerning

Public-Private Partnerships

FOR the purpose of establishing the policy of the State on public-private partnerships; altering provisions of law relating to public-private partnerships; authorizing a certain agency to establish a public-private partnership and execute a partnership agreement in connection with certain functions, services, or assets; requiring a certain agency to adopt certain regulations and establish certain processes for the development, solicitation, evaluation, award, and delivery of public-private partnerships; requiring certain legislative committees to review and comment on certain processes and regulations; requiring certain agencies to submit, on or before a certain date each year, certain reports to certain legislative committees; establishing certain requirements for certain reports; requiring certain public-private partnerships to be listed in the annual capital budget or the Consolidated Transportation Program; establishing deadlines for the review of certain presolicitation reports; authorizing, under certain circumstances, certain legislative committees to request additional time to review the presolicitation report; requiring certain projects to comply with certain provisions of law; requiring that State employees retain certain protections under certain circumstances; prohibiting the Board of Public Works from approving a public-private partnership that results in the State exceeding certain debt affordability guidelines; requiring a reporting agency to issue a public notice of solicitation for a public-private partnership under certain circumstances; requiring certain agencies to comply with certain requirements before issuing a solicitation for a public-private partnership; providing that a certain entity may be qualified as a bidder through certain processes; authorizing a reporting agency to engage in discussions with qualified bidders at certain times and under certain circumstances; requiring a certain agency to make a certain responsibility determination concerning certain entities; authorizing a reporting agency to reimburse a private entity for certain costs and pay a certain entity for the right to use a certain work product; requiring a reporting agency to adopt certain regulations that establish the process for the reimbursement of a private entity; prohibiting a reporting agency from reimbursing a private entity under certain circumstances; ~~requiring a certain agency to submit certain reports to certain officials and committees~~; prohibiting the Board of Public Works from approving a public-private partnership agreement until the completion of a certain review by certain officials and committees; establishing deadlines for the review of public-private partnership agreements; requiring a certain agency to post a certain agreement on a certain Web site; requiring certain entities to provide performance bonds; prohibiting a

public-private partnership agreement from exceeding a certain number of years, with certain exceptions; prohibiting noncompete agreements for certain assets; authorizing the award of certain compensation under certain circumstances; establishing certain requirements for a final public-private partnership agreement; requiring certain proceeds to accrue to certain funds; requiring a certain agency to post on the Internet a certain final agreement; requiring certain information to be withheld from the posted version of the agreement; authorizing a certain agency to establish by regulation certain application fees for certain unsolicited proposals; establishing certain requirements for certain unsolicited proposals; authorizing an individual or firm that submits an unsolicited proposal to participate in a certain subsequent process; providing that certain provisions of the State ethics law do not preclude a certain individual or firm from entering into a certain agreement; providing, under certain circumstances, that the provisions of the Minority Business Enterprise Program apply to public-private partnerships; prohibiting the Board of Public Works from approving a public-private partnership agreement until the reporting agency, in consultation with certain entities, establishes certain minority business enterprise goals and procedures; requiring that certain goals and procedures be based on the requirements of certain provisions of law; exempting public-private partnerships from certain requirements of the State procurement law; repealing certain obsolete provisions; defining a certain term; altering certain definitions; providing for the application of this Act; providing for the termination of certain provisions of this Act; and generally relating to public-private partnerships.

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

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

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

(2009 Replacement Volume and 2012 Supplement)

BY repealing

Article – Transportation

Section 4–406

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

Preamble

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

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

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

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

Article – State Finance and Procurement

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

10A–101.

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

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

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

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

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

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

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

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

~~(H) (I)~~ **A PRIVATE ENTITY PERFORMS FUNCTIONS NORMALLY UNDERTAKEN BY THE GOVERNMENT, BUT THE REPORTING AGENCY REMAINS ULTIMATELY ACCOUNTABLE FOR THE PUBLIC INFRASTRUCTURE ASSET AND ITS PUBLIC FUNCTION; AND**

~~(H) (II)~~ **THE STATE MAY RETAIN OWNERSHIP IN THE PUBLIC INFRASTRUCTURE ASSET AND THE PRIVATE ENTITY MAY BE GIVEN ADDITIONAL DECISION–MAKING RIGHTS IN DETERMINING HOW THE ASSET IS FINANCED, DEVELOPED, CONSTRUCTED, OPERATED, AND MAINTAINED OVER ITS LIFE CYCLE.**

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

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

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

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

(IV) ~~A REVENUE-PRODUCING TRANSPORTATION FACILITIES PROJECT EXEMPTED FROM PROCUREMENT UNDER 21.01.03.03(D) UNDER 21.01.03.03(B)(1)(D) OF COMAR~~ THE CODE OF MARYLAND REGULATIONS THAT IS NOT A PUBLIC-PRIVATE PARTNERSHIP AS DEFINED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[10A–102.

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

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

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

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

10A-102.

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

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

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

(3) FOSTER THE CREATION OF NEW JOBS; AND

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

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

10A-103.

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

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

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

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

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

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

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

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

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

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

10A–104.

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

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

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

(2) THE REPORTS SUBMITTED BY THE DEPARTMENT OF GENERAL SERVICES UNDER THIS SUBSECTION SHALL INCLUDE INFORMATION

CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS THAT ARE ALSO REPORTING AGENCIES.

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

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

(D) ALL EXISTING PUBLIC-PRIVATE PARTNERSHIPS AND ANY PUBLIC-PRIVATE PARTNERSHIP THAT IS EXPECTED TO BE SOLICITED SHALL BE LISTED ANNUALLY AS APPROPRIATE IN THE ANNUAL CAPITAL BUDGET OR THE CONSOLIDATED TRANSPORTATION PROGRAM.

10A-105.

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

- (1) § 3-602.1 OF THIS ARTICLE; AND
- (2) THE ENVIRONMENT ARTICLE.

(B) THE PRIVATE ENTITY AND ANY CONTRACTORS OR SUBCONTRACTORS CONSTRUCTING A PUBLIC INFRASTRUCTURE ASSET SHALL BE SUBJECT TO TITLE 17, ~~SUBTITLE~~ SUBTITLES 1 AND 2 OF THIS ARTICLE REGARDLESS OF WHETHER THE CONTRACT QUALIFIES AS A PUBLIC WORKS CONTRACT.

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

(D) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A PUBLIC-PRIVATE PARTNERSHIP THAT RESULTS IN THE STATE EXCEEDING ITS DEBT AFFORDABILITY GUIDELINES.

SUBTITLE 2. SOLICITED PROPOSALS.

10A-201.

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

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

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

(II) 1. IF THE TOTAL VALUE OF A PROPOSED PUBLIC-PRIVATE PARTNERSHIP REPORTED IN THE PRESOLICITATION REPORT UNDER PARAGRAPH (B)(1) OF THIS SUBSECTION EXCEEDS \$500,000,000, THE BUDGET COMMITTEES MAY REQUEST AN ADDITIONAL 15 DAYS TO REVIEW AND COMMENT ON THE PRESOLICITATION REPORT.

2. THE REQUEST FOR ADDITIONAL TIME UNDER THIS SUBPARAGRAPH SHALL:

A. BE MADE IN WRITING TO THE GOVERNOR, THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND THE REPORTING AGENCY; AND

B. INCLUDE THE REASON FOR THE REQUEST AND ANY PRELIMINARY ISSUES THE BUDGET COMMITTEES HAVE.

(B) (1) A PRESOLICITATION REPORT SHALL:

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

(II) IDENTIFY THE ANTICIPATED VALUE OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP, RISKS AND BENEFITS TO THE STATE, AND ANY POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR ENVIRONMENTAL IMPLICATIONS;

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

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

(IV) INCLUDE, IF RELEVANT AND TO THE EXTENT POSSIBLE, THE FOLLOWING INFORMATION PREPARED BY THE REPORTING AGENCY, IN CONSULTATION WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT:

1. A PRELIMINARY ANALYSIS ON DEBT AFFORDABILITY;

2. A PRELIMINARY SUMMARY OF THE PROPOSED SOLICITATION PROCESS; AND

3. A STATEMENT OF INTENTION TO USE THE EXEMPTION FROM THE REQUIREMENTS OF DIVISION II OF THIS ARTICLE SET FORTH IN § 11-203 OF THIS ARTICLE;

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

1. CONFIDENTIAL COMMERCIAL INFORMATION;

2. CONFIDENTIAL FINANCIAL INFORMATION; AND

3. TRADE SECRETS; AND

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

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

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

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

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

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

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

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

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

(III) INCLUDE A PRELIMINARY SOLICITATION SCHEDULE;

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

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

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

10A-202.

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

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

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

(3) THESE DISCUSSIONS MAY BE HELD TO:

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

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

(III) ENSURE FULL UNDERSTANDING OF:

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

2. THE PROPOSAL SUBMITTED BY THE BIDDER.

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

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

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

(1) A RESPONSIBILITY DETERMINATION;

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

AND

(3) APPROVAL BY THE BOARD OF PUBLIC WORKS.

(F) (1) A REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY FOR THE PORTION OF THE ENTITY'S COSTS INCURRED ~~TO DEVELOP A RESPONSE TO A PUBLIC NOTICE OF A SOLICITATION~~ IN RESPONSE TO THE SOLICITATION OF A PUBLIC-PRIVATE PARTNERSHIP.

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

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

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

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

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

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

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

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

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

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

10A-203.

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

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

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

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

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

(2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION ARTICLE, UNTIL THE PROPOSED AGREEMENT IS SUBMITTED TO THE BUDGET COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

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

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

(B) (1) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MADE AVAILABLE TO THE PUBLIC SHALL:

(I) ~~MAY~~ AFTER CONSULTATION WITH THE PRIVATE ENTITY, WITHHOLD INFORMATION DEEMED CONFIDENTIAL, PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW, INCLUDING IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT ARTICLE, RELATING TO:

- 1. CONFIDENTIAL COMMERCIAL INFORMATION;**
- 2. CONFIDENTIAL FINANCIAL INFORMATION; AND**
- 3. TRADE SECRETS; AND**

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

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

- (I) ON THE WEB SITE OF THE REPORTING AGENCY; OR**
- (II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE HAS BEEN ESTABLISHED.**

10A-204.

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

(B) INFORMATION DEEMED ~~PROPRIETARY~~ CONFIDENTIAL, PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW MAY SHALL BE WITHHELD FROM THE POSTED VERSION OF THE FINAL PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT ARTICLE RELATING TO:

- (1) A TRADE SECRET;
- (2) CONFIDENTIAL COMMERCIAL INFORMATION; AND
- (3) CONFIDENTIAL FINANCIAL INFORMATION.

SUBTITLE 3. UNSOLICITED PROPOSALS.

10A-301.

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

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

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

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

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

(1) CONDUCT A COMPETITIVE ~~SEALED BID OR A COMPETITIVE SEALED PROPOSAL PROCESS~~ SOLICITATION PROCESS AS DESCRIBED UNDER SUBTITLE 2 OF THIS TITLE;

(2) PROTECT PROPRIETARY INFORMATION INCLUDED IN THE UNSOLICITED PROPOSAL TO THE SAME EXTENT PROPRIETARY INFORMATION IS PROTECTED UNDER § ~~10A-201(B)~~ 10A-203(B) OF THIS TITLE; AND

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

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

SUBTITLE 4. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.

10A-401.

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

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

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

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

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

(5) OPERATIONS AND MAINTENANCE STANDARDS;

(6) THE RIGHTS FOR INSPECTION BY THE STATE;

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

(8) PROVISIONS FOR OVERSIGHT AND REMEDIES AND PENALTIES FOR DEFAULT;

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

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

(10) THE TERMS AND CONDITIONS FOR AUDITS BY THE STATE, INCLUDING THE OFFICE OF LEGISLATIVE AUDITS, RELATED TO THE AGREEMENT'S FINANCIAL RECORDS AND PERFORMANCE;

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

(12) REQUIREMENTS FOR THE PRIVATE ENTITY TO PROVIDE PERFORMANCE AND PAYMENT SECURITY IN A FORM AND IN AN AMOUNT DETERMINED BY THE RESPONSIBLE PUBLIC ENTITY, EXCEPT THAT REQUIREMENTS FOR THE PAYMENT SECURITY FOR CONSTRUCTION CONTRACTS SHALL BE IN ACCORDANCE WITH TITLE 17, SUBTITLE 1 OF THIS ARTICLE, INCLUDING THE REQUIREMENT THAT PAYMENT SECURITY SHALL BE ESTABLISHED ON THE VALUE OF THE CONSTRUCTION ELEMENTS OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT AND NOT ON THE TOTAL VALUE OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

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

(2) COMPENSATION MAY NOT BE PROVIDED AS A RESULT OF STATE INFRASTRUCTURE DEVELOPMENTS ALREADY IN THE STATE'S CAPITAL

IMPROVEMENT PROGRAM OR CONSOLIDATED TRANSPORTATION PROGRAM PLANNING DOCUMENTS AT THE TIME THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IS EXECUTED, SAFETY INITIATIVES, INFRASTRUCTURE IMPROVEMENTS WITH MINIMAL CAPACITY INCREASES, OR INFRASTRUCTURE FOR OTHER TRANSPORTATION MODES THAT ARE NOT THE SUBJECT OF THE PUBLIC-PRIVATE PARTNERSHIP.

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

10A-402.

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

(B) THE BOARD OF PUBLIC WORKS MAY:

(1) WAIVE THE PROHIBITION SET FORTH IN SUBSECTION (A) OF THIS SECTION IF THE BOARD DETERMINES THAT THE REPORTING AGENCY HAS DEMONSTRATED SUFFICIENT REASON FOR THE AGREEMENT TO HAVE A LONGER TERM; AND

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

11-203.

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

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

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

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

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

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

(V) TITLE 17, SUBTITLE 1 OF THIS ARTICLE (“SECURITY FOR CONSTRUCTION CONTRACTS”);

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

~~(VII)~~ (VII) TITLE 18 OF THIS ARTICLE (“LIVING WAGE”).

Article – Transportation

[4-406.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article – State Finance and Procurement

10A-403.

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

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

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

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

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

(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT THIS SECTION.

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

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is intended to be prospective only and shall apply to public-private partnerships established on or after the effective date of this Act. Further provided that, nothing in this Act may be construed to apply to, authorize, or have any effect on an existing procurement, lease, sale or development agreement, and nothing in this Act is intended to affect or alter any pending litigation.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2013. It shall remain effective for a period of 3 years and, at the end

of June 30, 2016, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

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

Approved by the Governor, April 9, 2013.