

Chapter 290

(House Bill 936)

AN ACT concerning

**Public-Private Partnership Agreements – Construction Contracts –
~~Performance~~ Security Requirements**

FOR the purpose of ~~requiring~~ clarifying the value on which requirements for the amount of the payment security and certain performance security shall be based in a public-private partnership agreement for a construction contract ~~to include certain requirements for performance security in accordance with certain provisions of law, including a requirement to establish performance security on the value of certain construction elements;~~ and generally relating to public-private partnership agreements for construction contracts.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 10A-401
 Annotated Code of Maryland
 (2009 Replacement Volume and 2014 Supplement)

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

Article – State Finance and Procurement

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 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 SECURITY and payment security in a form and in an amount determined by the responsible public entity, except that:

(I) requirements for the ~~PERFORMANCE AND~~ payment security for construction contracts shall be in accordance with Title 17, Subtitle 1 of this article, ~~including the requirement that PERFORMANCE AND;~~ AND

(II) REQUIREMENTS FOR THE AMOUNT OF THE payment security AND ANY PERFORMANCE SECURITY IN THE FORM OF A PERFORMANCE BOND FOR A CONSTRUCTION CONTRACT shall be ~~established~~ BASED on the value of the RESPECTIVE 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved by the Governor, May 12, 2015.