

HOUSE BILL 1556

P1, P2

8lr3263

By: **Delegates Valentino-Smith, Beidle, B. Barnes, Barron, Chang, Fennell,
Holmes, J. Lewis, Pena-Melnyk, Sanchez, Vallario, and A. Washington**

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Public-Private Partnerships – Public Notice of Solicitations and Approval of**
3 **Agreements**

4 FOR the purpose of prohibiting a certain reporting agency from issuing a public notice of
5 solicitation for a public-private partnership unless the reporting agency provided
6 certain notice and an opportunity to submit written comments to certain counties
7 and municipalities; prohibiting the Board of Public Works, except under certain
8 circumstances, from approving a public-private partnership agreement submitted
9 by a certain reporting agency that involves foreign investment; prohibiting the Board
10 from approving a public-private partnership agreement submitted by a certain
11 reporting agency unless the reporting agency provided certain notice to certain
12 counties, municipalities, and land owners and held at least a certain number of
13 public hearings; making conforming changes; and generally relating to
14 public-private partnerships.

15 BY repealing and reenacting, without amendments,
16 Article – State Finance and Procurement
17 Section 10A-101(a) and (g)(1), (2), and (3)
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2017 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – State Finance and Procurement
22 Section 10A-202 and 10A-203
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2017 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Finance and Procurement

10A–101.

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

(g) “Reporting agency” means:

(1) the Department of General Services;

(2) the Maryland Department of Transportation, for public infrastructure assets of any of its modal administrations;

(3) the Maryland Transportation Authority;

10A–202.

(a) **(1) [If] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, 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.

(2) A REPORTING AGENCY LISTED UNDER § 10A–101(G)(1), (2), OR (3) OF THIS TITLE MAY NOT ISSUE A PUBLIC NOTICE OF SOLICITATION FOR A PUBLIC–PRIVATE PARTNERSHIP UNLESS THE REPORTING AGENCY PROVIDED AT LEAST 45 DAYS’ NOTICE AND AN OPPORTUNITY TO SUBMIT WRITTEN COMMENTS WITHIN THAT PERIOD TO EACH COUNTY AND MUNICIPALITY IN WHICH THE PROPOSED PROJECT WOULD BE LOCATED.

(b) (1) A private entity may be qualified as a bidder through a request for qualifications.

(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 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

1 (a) (1) Except as provided in [paragraph (2)] PARAGRAPHS (2), (3), AND (4)
2 of this subsection, the Board of Public Works may not approve a public-private partnership
3 agreement until:

4 (i) a copy of the proposed agreement is submitted simultaneously to
5 the Comptroller, the State Treasurer, the budget committees, and the Department of
6 Legislative Services, in accordance with § 2-1246 of the State Government Article;

7 (ii) the State Treasurer, in coordination with the Comptroller,
8 analyzes the impact on the State's capital debt affordability limits of the proposed
9 public-private partnership agreement;

10 (iii) the State Treasurer submits the analysis to the budget
11 committees and the Department of Legislative Services, in accordance with § 2-1246 of the
12 State Government Article; and

13 (iv) the budget committees have reviewed and commented on the
14 agreement in accordance with paragraph [(3)] (5) of this subsection.

15 (2) The Board of Public Works may not approve a public-private
16 partnership agreement for a transportation facilities project, as defined in § 4-101(h) of the
17 Transportation Article, until the proposed agreement is submitted to the budget
18 committees and the Department of Legislative Services, in accordance with § 2-1246 of the
19 State Government Article.

20 **(3) IF A REPORTING AGENCY LISTED IN § 10A-101(G)(1), (2), OR (3)**
21 **OF THIS TITLE SUBMITS A PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**
22 **THAT INVOLVES FOREIGN INVESTMENT, THE BOARD OF PUBLIC WORKS MAY NOT**
23 **APPROVE THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNLESS:**

24 **(I) THE PUBLIC-PRIVATE PARTNERSHIP INVOLVES LESS THAN**
25 **25% INVESTMENT FROM A FOREIGN GOVERNMENT, AN ENTITY THAT IS ORGANIZED**
26 **IN A FOREIGN COUNTRY, OR A SUBSIDIARY OF AN ENTITY THAT IS ORGANIZED IN A**
27 **FOREIGN COUNTRY;**

28 **(II) THE PROPOSED AGREEMENT EXPRESSLY STATES THE TYPE**
29 **AND AMOUNT OF FOREIGN INVESTMENT THAT WILL BE USED FOR THE PROJECT; AND**

30 **(III) THE DEPARTMENT OF BUDGET AND MANAGEMENT, IN**
31 **COORDINATION WITH ANY OTHER STATE AGENCY AS NECESSARY, HAS ANALYZED**
32 **THE IMPACT THE FOREIGN INVESTMENT MAY HAVE ON THE ECONOMIC AND**
33 **SECURITY INTERESTS OF THE STATE.**

34 **(4) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**

1 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SUBMITTED BY A REPORTING AGENCY
2 LISTED IN § 10A-101(G)(1), (2), OR (3) OF THIS TITLE UNLESS THE REPORTING
3 AGENCY, AT LEAST 60 DAYS BEFORE SUBMISSION OF THE PROPOSED AGREEMENT:

4 (I) PROVIDED NOTICE TO EACH COUNTY, MUNICIPALITY, AND
5 LAND OWNER THAT IS WITHIN A 25-MILE RADIUS OF THE PROPOSED PROJECT
6 DESIGNATED FOR CONSTRUCTION; AND

7 (II) HELD AT LEAST TWO PUBLIC HEARINGS REGARDING THE
8 PROPOSED AGREEMENT.

9 [(3)] (5) (i) The period for review, analysis, and comment under
10 paragraphs (1) and (2) of this subsection may not exceed a total of 30 days from the date
11 the proposed public-private partnership agreement is submitted simultaneously to the
12 State Treasurer, the Comptroller, the budget committees, and the Department of
13 Legislative Services.

14 (ii) The budget committees may facilitate a faster review and
15 comment period by sending a letter to the Board of Public Works supporting a proposed
16 public-private partnership agreement in advance of the expiration of the 30-day review
17 period.

18 (b) (1) The proposed public-private partnership agreement made available to
19 the public shall:

20 (i) after consultation with the private entity, withhold information
21 deemed confidential, proprietary, or otherwise exempt from disclosure under applicable
22 law, including in accordance with § 4-335 of the General Provisions Article, relating to:

- 23 1. confidential commercial information;
- 24 2. confidential financial information; and
- 25 3. trade secrets; and

26 (ii) be posted online by the reporting agency during the 30-day
27 review period in accordance with paragraph (2) of this subsection.

28 (2) The online location of the proposed public-private partnership
29 agreement shall be:

- 30 (i) on the Web site of the reporting agency; or
- 31 (ii) on the Web site of the specific project if one has been established.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

1 October 1, 2018.