

HOUSE BILL 1220

P1, R1

0lr1851

By: **Delegates Barve, Korman, and Stein**

Introduced and read first time: February 7, 2020

Assigned to: Environment and Transportation and Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2020

CHAPTER _____

1 AN ACT concerning

2 **Public-Private Partnerships – Highway and Bridge Toll Facilities – Rates**
3 **(No Lexus Lane Act)**

4 FOR the purpose of ~~requiring~~ prohibiting a public-private partnership agreement for a
5 project involving road, highway, or bridge assets ~~to prohibit toll rates that exceed a~~
6 ~~certain amount under certain circumstances; establishing that a public-private~~
7 ~~partnership agreement for a project involving road, highway, or bridge assets may~~
8 ~~authorize toll rates that exceed a certain amount with the approval of from~~
9 establishing or altering toll rates, a range of toll rates, a formula or algorithm to
10 determine fluctuating toll rates, or any late payment fees unless approved by the
11 Board of Public Works; and generally relating to toll rates and late payment fees
12 under a public-private partnership for projects involving road, highway, or bridge
13 assets.

14 BY repealing and reenacting, with amendments,
15 Article – State Finance and Procurement
16 Section 10A-401
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2019 Supplement)

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

21 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

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



1 10A-401.

2 (a) Whenever applicable, a public-private partnership agreement shall include
3 the following provisions:

4 (1) the method and terms for approval of any assignment, reassignment,
5 or other transfer of interest related to the public-private partnership agreement;

6 (2) the methods and terms for setting and adjusting tolls, fares, fees, and
7 other charges related to the public infrastructure asset;

8 (3) the method and terms for revenue-sharing or other sharing in fees or
9 charges, in which the public participates in the financial upside of asset performance of the
10 public infrastructure asset;

11 (4) minimum quality standards, performance criteria, incentives, and
12 disincentives;

13 (5) operations and maintenance standards;

14 (6) the rights for inspection by the State;

15 (7) the terms and conditions under which the reporting agency may provide
16 services for a fee sufficient to cover both direct and indirect costs;

17 (8) provisions for oversight and remedies and penalties for default;

18 (9) the terms and conditions under which the reporting agency originating
19 the public-private partnership shall be responsible for ongoing oversight;

20 (10) the terms and conditions for audits by the State, including the Office of
21 Legislative Audits, related to the agreement's financial records and performance;

22 (11) the terms and conditions under which the public infrastructure assets
23 shall be returned to the State at the expiration or termination of the agreement; and

24 (12) requirements for the private entity to provide performance security and
25 payment security in a form and in an amount determined by the responsible public entity,
26 except that:

27 (i) requirements for the payment security for construction contracts
28 shall be in accordance with Title 17, Subtitle 1 of this article; and

29 (ii) requirements for the amount of the payment security and any
30 performance security in the form of a performance bond for a construction contract shall be
31 based on the value of the respective construction elements of the public-private partnership
32 agreement and not on the total value of the public-private partnership agreement.

1 (b) (1) A public-private partnership agreement may include a provision that,
 2 except as provided in paragraph (2) of this subsection, compensation may be provided for
 3 competing infrastructure developments that directly result in a documented revenue loss
 4 for the private entity in a public-private partnership.

5 (2) Compensation may not be provided as a result of State infrastructure
 6 developments already in the State's Capital Improvement Program or Consolidated
 7 Transportation Program planning documents at the time the public-private partnership
 8 agreement is executed, safety initiatives, transit projects, infrastructure improvements
 9 with minimal capacity increases, or infrastructure or transit service improvements for
 10 other transportation modes that are not the subject of the public-private partnership.

11 (c) (1) A public-private partnership agreement for a project involving road,
 12 highway, or bridge assets may not include a noncompete clause that would inhibit the
 13 planning, construction, or implementation of State-funded transit projects.

14 (2) ~~(H) SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH, A A~~
 15 ~~PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A PROJECT INVOLVING ROAD,~~
 16 ~~HIGHWAY, OR BRIDGE ASSETS SHALL PROHIBIT TOLL RATES THAT EXCEED 10 CENTS~~
 17 ~~PER MILE.~~

18 ~~(H) A PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR A~~
 19 ~~PROJECT INVOLVING ROAD, HIGHWAY, OR BRIDGE ASSETS MAY AUTHORIZE TOLL~~
 20 ~~RATES THAT EXCEED 10 CENTS PER MILE WITH THE APPROVAL OF~~ MAY NOT
 21 AUTHORIZE THE ESTABLISHMENT OR ALTERATION OF TOLL RATES, A RANGE OF
 22 TOLL RATES, A FORMULA OR ALGORITHM TO DETERMINE FLUCTUATING TOLL
 23 RATES, OR ANY LATE PAYMENT FEES UNLESS THE TOLL RATES, RANGE OF TOLL
 24 RATES, FORMULA OR ALGORITHM TO DETERMINE FLUCTUATING TOLL RATES, AND
 25 LATE PAYMENT FEES ARE APPROVED BY THE BOARD OF PUBLIC WORKS.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
 27 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.