
By: **Senator Klausmeier**

Introduced and read first time: February 6, 2004

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Public-Private Partnership Act**

3 FOR the purpose of authorizing specified units of State government to contract for
4 goods or services, or both, in response to a public-private partnership proposal
5 that meets certain requirements; excepting certain public-private partnership
6 proposals from a certain requirement that procurement be by competitive sealed
7 bid; establishing an Interagency Panel to review public-private partnership
8 proposals and to make certain determinations subject to certain requirements
9 and procedures; providing for the effect of certain action or inaction by the
10 Interagency Panel; establishing that a qualifying public-private partnership
11 proposal is not required to be a sole source contract; requiring a procurement
12 officer to obtain certain approval before awarding a contract in response to a
13 public-private partnership proposal; requiring a procurement officer to protect
14 the confidentiality of information contained in an unsolicited proposal; limiting
15 the term of a contract based on a public-private partnership proposal; limiting
16 the annual State expenditures under a contract based on an unsolicited
17 proposal; requiring each contracting unit to publish notice of intent to award,
18 and notice of award of, a public-private partnership proposal in certain
19 publications; requiring certain agencies to implement certain outreach
20 programs; providing for certain reconsideration by the Interagency Panel of
21 approval of public-private partnership proposal; providing that a certain
22 prohibition against assisting in the drafting of specifications, an invitation for
23 bids, or a request for proposals for a procurement does not include providing
24 specifications for certain unsolicited proposal procurements; requiring the
25 Department of Budget and Management to report annually on the impact of this
26 Act to the Governor and certain committees of the General Assembly; defining
27 certain terms; providing for the application of this Act; and generally relating to
28 public-private partnership procurement proposals.

29 BY repealing and reenacting, without amendments,
30 Article - State Finance and Procurement
31 Section 11-101(l)
32 Annotated Code of Maryland
33 (2001 Replacement Volume and 2003 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - State Finance and Procurement
3 Section 13-102
4 Annotated Code of Maryland
5 (2001 Replacement Volume and 2003 Supplement)

6 BY adding to
7 Article - State Finance and Procurement
8 Section 17-501 through 17-514 to be under the new subtitle "Subtitle 5.
9 Public-Private Partnership Act"
10 Annotated Code of Maryland
11 (2001 Replacement Volume and 2003 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - State Government
14 Section 15-508
15 Annotated Code of Maryland
16 (1999 Replacement Volume and 2003 Supplement)

17 Preamble

18 WHEREAS, There is a public need for timely acquisition, design, construction,
19 improvement, renovation, expansion, equipping, maintenance, or operation of public
20 facilities and other public infrastructure and government facilities within the State of
21 Maryland that serve a public need and purpose; and

22 WHEREAS, The public need may not be wholly satisfied by existing methods of
23 procurement in which qualifying projects are acquired, designed, constructed,
24 improved, renovated, expanded, equipped, maintained, or operated; and

25 WHEREAS, There are inadequate resources to develop new public facilities and
26 other public infrastructure and government facilities for the benefit of citizens of the
27 State, and there is demonstrated evidence that public-private partnerships can meet
28 these needs by improving the schedule for delivery, lowering the costs, and providing
29 other benefits to the public; and

30 WHEREAS, Financial incentives exist under state and federal tax laws and
31 policies that promote public entities to enter into partnerships with private entities to
32 develop qualifying projects; and

33 WHEREAS, Authorizing private entities to acquire, design, construct, improve,
34 renovate, expand, equip, maintain, or operate one or more qualifying projects may
35 result in the availability of projects to the public in a more timely or less costly
36 fashion, thereby serving the public safety, benefit, and welfare; and

37 WHEREAS, One of the purposes of the Public-Private Partnership Act is to
38 facilitate public financing, private capital, and other funding sources that support the

1 acquisition, design, construction, improvement, renovation, expansion, equipping,
2 maintenance, or operation of qualifying projects, so that financing for qualifying
3 projects is expanded and accelerated to improve and add to the convenience of the
4 public, and so that public and private entities may have the greatest possible
5 flexibility in contracting with each other for the provision of the public services that
6 are the subject of the Act; and

7 WHEREAS, Public-private partnership proposals allow unique and innovative
8 ideas or approaches that have been developed in the private sector to be made
9 available to public entities to use in accomplishing their public missions; and

10 WHEREAS, Public-private partnership proposals are offered with the intent
11 that the public entity will enter into a contract with the offeror for qualified projects
12 that benefit the citizens of the State and often represent a substantial investment of
13 time and effort by the offeror; now, therefore,

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

16 **Article - State Finance and Procurement**

17 11-101.

18 (1) "Primary procurement units" means:

19 (1) the State Treasurer;

20 (2) the Department of Budget and Management;

21 (3) the Department of General Services;

22 (4) the Department of Transportation;

23 (5) the University System of Maryland;

24 (6) the Maryland Port Commission;

25 (7) the Department of Public Safety and Correctional Services; and

26 (8) the Morgan State University.

27 13-102.

28 (a) Except as provided in Subtitle 3 and Subtitle 4 of this title, all
29 procurement by units shall be by competitive sealed bids unless one of the following
30 methods specifically is authorized:

31 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
32 subtitle;

33 (2) noncompetitive negotiation under § 13-106 of this subtitle;

- 1 (3) sole source procurement under § 13-107 of this subtitle;
- 2 (4) emergency or expedited procurement under § 13-108 of this subtitle;
- 3 (5) small procurement under § 13-109 of this subtitle;
- 4 (6) an intergovernmental cooperative purchasing agreement under §
5 13-110 of this subtitle;
- 6 (7) auction bids under § 13-111 of this subtitle; [or]
- 7 (8) an unsolicited proposal under § 13-107.1 of this subtitle; OR
- 8 (9) A PUBLIC-PRIVATE PARTNERSHIP PROPOSAL UNDER TITLE 17,
9 SUBTITLE 5 OF THIS ARTICLE.

10 (b) (1) In awarding a procurement contract for human, social, cultural, or
11 educational service, the preferred method is by competitive sealed proposals under §
12 13-104 of this subtitle.

13 (2) In awarding a procurement contract for a lease of real property, the
14 preferred method is by competitive sealed proposals under § 13-105 of this subtitle.

15 (3) Procurement under an intergovernmental cooperative purchasing
16 agreement is appropriate in situations where the State is expected to achieve a better
17 price as the result of economies of scale or to otherwise benefit by purchasing in
18 cooperation with another governmental entity.

19 SUBTITLE 5. PUBLIC-PRIVATE PARTNERSHIP ACT.

20 17-501.

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (B) (1) "PUBLIC ENTITY" MEANS A NATURAL PERSON, CORPORATION,
24 LIMITED LIABILITY COMPANY, PARTNERSHIP, JOINT VENTURE, OR OTHER PRIVATE
25 BUSINESS ENTITY.

26 (2) "PUBLIC ENTITY" INCLUDES THE STATE AND AN AGENCY OR
27 AUTHORITY OF THE STATE, A COUNTY, A MUNICIPAL CORPORATION, AND ANY OTHER
28 POLITICAL SUBDIVISION OF THE STATE OR ANY REGIONAL ENTITY THAT SERVES A
29 PUBLIC PURPOSE.

30 (C) "QUALIFYING PROJECT" MEANS:

31 (1) A BUILDING OR FACILITY FOR PRINCIPAL USE BY A PUBLIC ENTITY;

32 (2) UTILITY FACILITY INFRASTRUCTURE AND ANY IMPROVEMENTS
33 TOGETHER WITH EQUIPMENT NECESSARY TO ENHANCE BUILDING OPERATION;

1 (3) AN EDUCATION FACILITY AND ANY DEPRECIABLE PROPERTY
2 PROVIDED FOR USE IN A SCHOOL FACILITY THAT IS OPERATED AS PART OF THE
3 PUBLIC SCHOOL SYSTEM OR AS AN INSTITUTION OF HIGHER EDUCATION;

4 (4) ANY IMPROVEMENTS, TOGETHER WITH EQUIPMENT, NECESSARY TO
5 ENHANCE PUBLIC SAFETY AND SECURITY OF BUILDINGS TO BE PRINCIPALLY USED
6 BY A PUBLIC ENTITY; OR

7 (5) A RECREATIONAL FACILITY.

8 (D) "PROGRAM" MEANS THE PUBLIC-PRIVATE PARTNERSHIP PROGRAM.

9 17-502.

10 (A) THERE IS A PUBLIC-PRIVATE PARTNERSHIP PROGRAM IN THE STATE.

11 17-503.

12 THE PURPOSE OF THE PROGRAM IS TO ESTABLISH PROCEDURES FOR THE
13 SUBMITTAL, EVALUATION, AND DEVELOPMENT OF UNSOLICITED PARTNERSHIP
14 AGREEMENTS BETWEEN PRIVATE AND PUBLIC ENTITIES CONCERNING:

15 (1) THE TIMELY ACQUISITION, DESIGN, CONSTRUCTION,
16 IMPROVEMENT, RENOVATION, EXPANSION, EQUIPPING, MAINTENANCE, OR
17 OPERATION OF QUALIFYING PROJECTS; AND

18 (2) THE IMPLEMENTATION OF AN EDUCATIONAL OUTREACH CAMPAIGN
19 ON THE AVAILABILITY OF THE PROGRAM.

20 17-504.

21 A PROCUREMENT OFFICER OF A PRIMARY PROCUREMENT UNIT MAY ENTER
22 INTO A CONTRACT BASED ON A PUBLIC-PRIVATE PARTNERSHIP PROPOSAL IF THE
23 PROPOSAL:

24 (1) IS IN WRITING;

25 (2) IS SUFFICIENTLY DETAILED TO ALLOW A JUDGEMENT TO BE MADE
26 CONCERNING THE POTENTIAL UTILITY OF THE OFFER TO THE STATE;

27 (3) IS UNIQUE OR INNOVATIVE TO STATE USE;

28 (4) DEMONSTRATES THAT THE PROPRIETARY CHARACTER OF THE
29 OFFERING WARRANTS CONSIDERATION OF THE USE OF SOLE SOURCE
30 PROCUREMENT;

31 (5) MEETS A NEED OF, OR OTHERWISE IS ADVANTAGEOUS TO, THE
32 PUBLIC ENTITY; AND

33 (6) CANNOT BE PROCURED THROUGH COMPETITIVE METHODOLOGIES.

1 17-505.

2 (A) IN CONNECTION WITH THE DEDICATION OF A PROPERTY INTEREST
3 UNDER THIS SUBTITLE, AND SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, A
4 PUBLIC ENTITY MAY CONVEY ANY PROPERTY INTEREST THAT IT HAS TO A PRIVATE
5 ENTITY FOR THE CONSIDERATION THE PUBLIC ENTITY MAY DETERMINE.

6 (B) THE CONSIDERATION PROVIDED FOR IN THIS SECTION MAY INCLUDE THE
7 AGREEMENT OF THE PRIVATE ENTITY TO OPERATE THE QUALIFYING PUBLIC
8 FACILITY.

9 17-506.

10 (A) A PRIVATE ENTITY MAY OWN, LEASE, OR ACQUIRE ANY RIGHT TO USE OR
11 OPERATE A QUALIFYING PUBLIC FACILITY.

12 (B) (1) THE PRIVATE ENTITY MAY FINANCE THE QUALIFYING PUBLIC
13 FACILITY IN AN AMOUNT AND ON TERMS AND CONDITIONS AS MAY BE DETERMINED
14 BY THE PRIVATE ENTITY.

15 (2) THE PRIVATE ENTITY MAY ISSUE DEBT, EQUITY, OR OTHER
16 SECURITIES OR OBLIGATIONS, ENTER INTO SALE OR LEASE BACK TRANSACTIONS,
17 AND SECURE ANY FINANCING WITH A PLEDGE OF, SECURITY INTERESTS IN, OR LIEN
18 ON, ANY OR ALL OF ITS PROPERTY, INCLUDING ALL OF ITS PROPERTY INTERESTS IN
19 THE QUALIFYING PUBLIC FACILITY.

20 17-507.

21 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND SUBJECT TO THE
22 APPROVAL AND CONTROL OF THE BOARD, A PRIMARY PROCUREMENT UNIT IS
23 AUTHORIZED TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP CONTRACTS FOR A
24 TERM OF UP TO 20 YEARS IN LENGTH.

25 17-508.

26 (A) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ENTERED INTO UNDER
27 THIS SUBTITLE SHALL PROVIDE FOR PAYMENT OF THE PREVAILING WAGE RATE
28 UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE.

29 17-509.

30 (A) THERE IS AN INTERAGENCY PANEL CONSISTING OF SEVEN
31 REPRESENTATIVES APPOINTED BY THE GOVERNOR FROM THE FOLLOWING:

32 (1) THE OFFICE OF THE STATE TREASURER;

33 (2) THE DEPARTMENT OF BUDGET AND FISCAL PLANNING; AND

34 (3) THE COUNCIL ON MANAGEMENT AND PRODUCTIVITY.

1 (B) A PROCUREMENT OFFICER SHALL FORWARD A PUBLIC-PRIVATE
2 PARTNERSHIP PROPOSAL SUBMITTED UNDER THIS SECTION TO THE INTERAGENCY
3 PANEL FOR REVIEW AND A DETERMINATION WHETHER THE PUBLIC-PRIVATE
4 PARTNERSHIP PROPOSAL MEETS THE REQUIREMENTS OF THIS SUBTITLE.

5 (C) THE INTERAGENCY PANEL SHALL MAKE A DETERMINATION WHETHER
6 THE PUBLIC-PRIVATE PARTNERSHIP PROPOSAL MEETS THE REQUIREMENTS OF
7 THIS SUBTITLE BY MAJORITY VOTE:

8 (1) AT A MEETING OF PANEL MEMBERS OR THEIR DESIGNEES;

9 (2) BY A TELEPHONE POLL OF PANEL MEMBERS; OR

10 (3) IN WRITING.

11 (D) IF THE INTERAGENCY PANEL DETERMINES THAT THE PUBLIC-PRIVATE
12 PARTNERSHIP PROPOSAL DOES NOT MEET THE REQUIREMENTS OF THIS SUBTITLE,
13 THE PROCUREMENT OFFICER MAY NOT AWARD A PROCUREMENT CONTRACT BASED
14 ON THE PUBLIC-PRIVATE PARTNERSHIP PROPOSAL.

15 (E) (1) THE INTERAGENCY PANEL SHALL MAKE A DETERMINATION UNDER
16 SUBSECTION (C) OF THIS SECTION WITHIN 30 DAYS AFTER RECEIVING THE
17 PUBLIC-PRIVATE PARTNERSHIP PROPOSAL FOR REVIEW.

18 (2) IF THE INTERAGENCY PANEL FAILS TO MAKE A DETERMINATION
19 WITHIN THE 30-DAY PERIOD, THE PUBLIC-PRIVATE PARTNERSHIP PROPOSAL SHALL
20 BE DEEMED TO HAVE BEEN APPROVED BY THE INTERAGENCY PANEL.

21 17-510.

22 (A) IF A PUBLIC-PRIVATE PARTNERSHIP PROPOSAL MEETS THE
23 REQUIREMENTS OF THIS SUBTITLE, THE OFFEROR OF THE PROPOSAL IS NOT
24 REQUIRED TO BE THE ONLY AVAILABLE SOURCE FOR THE CONTRACT AWARDED
25 UNDER THIS SUBTITLE.

26 (B) BEFORE AWARDING A PROCUREMENT CONTRACT UNDER THIS SECTION, A
27 PROCUREMENT OFFICER SHALL OBTAIN:

28 (1) THE APPROVAL OF THE HEAD OF THE UNIT; AND

29 (2) ANY OTHER APPROVAL REQUIRED BY LAW.

30 17-511.

31 ANNUAL STATE EXPENDITURES UNDER A CONTRACT AWARDED UNDER THIS
32 SUBTITLE MAY NOT EXCEED \$5,000,000.

33 17-512.

34 (A) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, A
35 PROCUREMENT OFFICER SHALL TREAT THE INFORMATION CONTAINED IN A

1 PUBLIC-PRIVATE PARTNERSHIP PROPOSAL AS CONFIDENTIAL INFORMATION THAT
2 IS NOT SUBJECT TO DISCLOSURE UNDER ANY OTHER STATE OR LOCAL LAW.

3 (B) IF A CONTRACT IS AWARDED UNDER THIS SECTION, DISCLOSURE OF THE
4 PUBLIC-PRIVATE PARTNERSHIP PROPOSAL IS GOVERNED BY TITLE 10, SUBTITLE 6,
5 PART III OF THE STATE GOVERNMENT ARTICLE.

6 17-513.

7 (A) (1) NOT LESS THAN 30 DAYS BEFORE THE EXECUTION AND AWARD OF A
8 CONTRACT BASED ON A PUBLIC-PRIVATE PARTNERSHIP PROPOSAL UNDER THIS
9 SUBTITLE, THE CONTRACTING UNIT SHALL PUBLISH A GENERAL NOTICE OF THE
10 INTENT TO AWARD THE CONTRACT IN:

11 (I) THE CONTRACT WEEKLY; AND

12 (II) AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN:

13 1. THE COUNTY OF THE AGENCY TO BE SERVED UNDER THE
14 CONTRACT; AND

15 2. IF APPLICABLE, THE COUNTY OF THE CLIENT
16 POPULATION TO BE SERVED BY THE AGENCY UNDER THE CONTRACT.

17 (2) FOR PURPOSES OF THIS SUBSECTION:

18 (I) THE BALTIMORE SUN AND THE WASHINGTON POST SHALL BE
19 CONSIDERED NEWSPAPERS OF GENERAL CIRCULATION IN THE COUNTIES OF THE
20 STATE; AND

21 (II) IN THE CITY OF BALTIMORE, BALTIMORE COUNTY, AND ANNE
22 ARUNDEL COUNTY, THE BALTIMORE AFRO-AMERICAN SHALL BE CONSIDERED A
23 NEWSPAPER OF GENERAL CIRCULATION.

24 (B) IF, DURING THE 30-DAY PERIOD ESTABLISHED UNDER SUBSECTION (A)(1)
25 OF THIS SECTION, A PERSON PETITIONS THE INTERAGENCY PANEL FOR
26 RECONSIDERATION OF A DETERMINATION OF APPROVAL UNDER § 17-509 OF THIS
27 SUBTITLE, THE INTERAGENCY PANEL SHALL RECONSIDER THE DETERMINATION OF
28 APPROVAL, WITHIN 30 DAYS AFTER THE DATE THAT THE PETITION WAS FILED, AND
29 MAKE WRITTEN FINDINGS AFFIRMING OR REVERSING THE DETERMINATION OF
30 APPROVAL.

31 (C) IN ADDITION TO PUBLISHING NOTICE OF THE INTENT TO AWARD A
32 CONTRACT BASED ON A PUBLIC-PRIVATE PARTNERSHIP PROPOSAL UNDER THIS
33 SECTION, NOT MORE THAN 30 DAYS AFTER THE EXECUTION AND APPROVAL OF A
34 PROCUREMENT CONTRACT AWARDED UNDER THIS SECTION, A UNIT SHALL PUBLISH
35 NOTICE OF THE AWARD IN THE CONTRACT WEEKLY.

1 17-514.

2 THIS SUBTITLE MAY BE CITED AS THE PUBLIC-PRIVATE PARTNERSHIP ACT.

3

Article - State Government

4 15-508.

5 (a) An individual or a person that employs an individual who assists an
6 executive unit in the drafting of specifications, an invitation for bids, a request for
7 proposals for a procurement, or the selection or award made in response to an
8 invitation for bids or request for proposals may not:

9 (1) submit a bid or proposal for that procurement; or

10 (2) assist or represent another person, directly or indirectly, who is
11 submitting a bid or proposal for that procurement.

12 (b) For purposes of subsection (a) of this section, assisting in the drafting of
13 specifications, an invitation for bids, or a request for proposals for a procurement does
14 not include:

15 (1) providing descriptive literature such as catalogue sheets, brochures,
16 technical data sheets, or standard specification "samples", whether requested by an
17 executive agency or provided on an unsolicited basis;

18 (2) submitting written comments on a specification prepared by an
19 agency or on a solicitation for a bid or proposal when comments are solicited from two
20 or more persons as part of a request for information or a prebid or preproposal
21 process;

22 (3) providing specifications for a sole source procurement made in
23 accordance with § 13-107 of the State Finance and Procurement Article;

24 (4) providing architectural and engineering services for programming,
25 master planning, or other project planning services; [or]

26 (5) providing specifications for an unsolicited proposal procurement
27 made in accordance with § 13-107.1 of the State Finance and Procurement Article; OR

28 (6) PROVIDING SPECIFICATIONS FOR A PUBLIC-PRIVATE PARTNERSHIP
29 PROPOSAL PROCUREMENT MADE IN ACCORDANCE WITH TITLE 17, SUBTITLE 5 OF
30 THE STATE FINANCE AND PROCUREMENT ARTICLE.

31 SECTION 2. AND BE IT FURTHER ENACTED, That on or before September
32 30 of each year the Department of Budget and Management shall report to the
33 Governor and, in accordance with § 2-1246 of the State Government Article, to the
34 Senate Education, Health, and Environmental Affairs Committee and the House
35 Health and Government Operations Committee on the impact of this Act, including,
36 for the previous fiscal year:

- 1 (1) the number of public-private partnership proposals awarded by each
2 contracting unit;
- 3 (2) the monetary amounts of the contracts awarded under this Act;
- 4 (3) the goods or services for which contracts were awarded under this
5 Act; and
- 6 (4) the number of contracts awarded under this Act to entities that were
7 certified as Minority Business Enterprises.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply only
9 to a public-private partnership proposal offered on or after the effective date of this
10 Act.

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2004.