

HOUSE BILL 1238

R2

8lr2826

By: **Delegates Hixson, Elmore, Gilchrist, Howard, Ivey, Kaiser, Olszewski, Rice, Ross, and Stukes**

Introduced and read first time: February 8, 2008

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Transportation – Public–Private Partnerships – Notice to the General**
3 **Assembly**

4 FOR the purpose of requiring the Maryland Transportation Authority or the State
5 Department of Transportation to provide certain information to certain
6 committees of the General Assembly and the Department of Legislative Services
7 by a certain date prior to issuing a public notice of procurement related to a
8 public–private partnership; requiring the Authority or the State Department of
9 Transportation to provide certain information to certain committees of the
10 General Assembly and the Department of Legislative Services by a certain date
11 prior to entering into a public–private partnership; defining certain terms;
12 repealing certain redundant provisions of law relating to disclosure of certain
13 public–private partnerships involving the Authority; and generally relating to
14 providing notice to the General Assembly of public–private partnerships
15 involving the Maryland Transportation Authority and the State Department of
16 Transportation.

17 BY adding to

18 Article – Transportation
19 Section 3.5–101 and 3.5–201 to be under the new title “Title 3.5. Public–Private
20 Partnerships”
21 Annotated Code of Maryland
22 (2001 Replacement Volume and 2007 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – Transportation
25 Section 4–205(c)
26 Annotated Code of Maryland
27 (2001 Replacement Volume and 2007 Supplement)
28 (As enacted by Chapter 383 of the Acts of the General Assembly of 2007)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article - Transportation**

4 **TITLE 3.5. PUBLIC-PRIVATE PARTNERSHIPS.**

5 **SUBTITLE 1. DEFINITIONS.**

6 **3.5-101.**

7 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (B) "AUTHORITY" MEANS THE MARYLAND TRANSPORTATION
10 AUTHORITY ESTABLISHED UNDER TITLE 4 OF THIS ARTICLE.

11 (C) "PRIVATE ENTITY" INCLUDES ANY NATURAL PERSON,
12 CORPORATION, GENERAL OR LIMITED PARTNERSHIP, LIMITED LIABILITY
13 COMPANY, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT CORPORATION,
14 NONPROFIT ENTITY, OR OTHER BUSINESS ENTITY.

15 (D) "PUBLIC FUNDS" INCLUDES STATE REVENUE, FEDERAL REVENUE
16 RECEIVED BY THE STATE, TOLL REVENUE, OR ANY DEBT ISSUANCES OF THE
17 STATE, INCLUDING REVENUE BONDS ISSUED BY THE AUTHORITY OR CONDUIT
18 FINANCING.

19 (E) "PUBLIC NOTICE OF PROCUREMENT" INCLUDES A REQUEST FOR
20 PROPOSALS, REQUEST FOR INFORMATION, OR REQUEST FOR EXPRESSIONS OF
21 INTEREST ISSUED BY THE AUTHORITY OR THE DEPARTMENT.

22 (F) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A PROJECT OR
23 AGREEMENT THAT INVOLVES A PRIVATE ENTITY AND THE AUTHORITY, THE
24 DEPARTMENT, OR THE TRANSPORTATION TRUST FUND AND PROVIDES FOR:

25 (1) ACCEPTANCE OF A CONTRIBUTION FROM A PRIVATE ENTITY,
26 INCLUDING MONEY OR REAL PROPERTY, FOR A PROJECT OR SERVICE
27 INVOLVING A TRANSPORTATION FACILITY, TRANSPORTATION FACILITIES
28 PROJECT, OR PARKING FACILITY;

29 (2) THE USE OF PUBLIC FUNDS OR REAL PROPERTY BY A PRIVATE
30 ENTITY FOR A PROJECT OR SERVICE INVOLVING A TRANSPORTATION FACILITY,
31 TRANSPORTATION FACILITIES PROJECT, OR PARKING FACILITY;

1 **(3) ANY SHARING OF PUBLIC AND PRIVATE RESOURCES FOR A**
2 **PROJECT OR SERVICE INVOLVING A TRANSPORTATION FACILITY,**
3 **TRANSPORTATION FACILITIES PROJECT, OR PARKING FACILITY; OR**

4 **(4) ANY PUBLIC-PRIVATE COOPERATION IN RESEARCHING,**
5 **PLANNING, ACQUIRING, FINANCING, DEVELOPING, DESIGNING, CONSTRUCTING,**
6 **RECONSTRUCTING, REPLACING, IMPROVING, MAINTAINING, MANAGING,**
7 **REPAIRING, LEASING, OR OPERATING A PROJECT OR SERVICE INVOLVING A**
8 **TRANSPORTATION FACILITY, TRANSPORTATION FACILITIES PROJECT, OR**
9 **PARKING FACILITY.**

10 **(G) “TRANSPORTATION FACILITIES PROJECT” HAS THE MEANING**
11 **STATED IN § 4-101 OF THIS ARTICLE.**

12 **(H) “TRANSPORTATION FACILITY” HAS THE MEANING STATED IN §**
13 **3-101 OF THIS ARTICLE.**

14 **SUBTITLE 2. NOTICE TO THE GENERAL ASSEMBLY.**

15 **3.5-201.**

16 **(A) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE OF**
17 **PROCUREMENT RELATED TO A PUBLIC-PRIVATE PARTNERSHIP, THE**
18 **AUTHORITY OR THE DEPARTMENT SHALL PROVIDE, SUBJECT TO § 2-1246 OF**
19 **THE STATE GOVERNMENT ARTICLE, A SUMMARY OF THE PROPOSED**
20 **PROCUREMENT DOCUMENT TO BE USED FOR SOLICITATION OF THE**
21 **PUBLIC-PRIVATE PARTNERSHIP TO:**

22 **(1) THE SENATE BUDGET AND TAXATION COMMITTEE, HOUSE**
23 **COMMITTEE ON WAYS AND MEANS, AND HOUSE APPROPRIATIONS COMMITTEE**
24 **FOR REVIEW AND COMMENT; AND**

25 **(2) THE DEPARTMENT OF LEGISLATIVE SERVICES.**

26 **(B) (1) NOT LESS THAN 45 DAYS BEFORE ENTERING INTO A**
27 **PUBLIC-PRIVATE PARTNERSHIP, THE AUTHORITY OR THE DEPARTMENT SHALL**
28 **PROVIDE, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, A**
29 **DESCRIPTION OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AND A**
30 **FINANCING PLAN, INCLUDING THE INFORMATION REQUIRED UNDER**
31 **PARAGRAPH (2) OF THIS SUBSECTION, TO:**

1 (I) **THE SENATE BUDGET AND TAXATION COMMITTEE,**
2 **HOUSE COMMITTEE ON WAYS AND MEANS, AND HOUSE APPROPRIATIONS**
3 **COMMITTEE FOR REVIEW AND COMMENT; AND**

4 (II) **THE DEPARTMENT OF LEGISLATIVE SERVICES.**

5 (2) **THE AUTHORITY OR THE DEPARTMENT SHALL PROVIDE THE**
6 **FOLLOWING INFORMATION:**

7 (I) **THE TERMS OF ANY SALE, CONCESSION AGREEMENT,**
8 **REVENUE AGREEMENT, OR LEASE OF A STATE-OWNED TRANSPORTATION**
9 **FACILITY, TRANSPORTATION FACILITIES PROJECT, OR PARKING FACILITY TO A**
10 **PRIVATE ENTITY;**

11 (II) **THE SCOPE OF ANY AUTHORITY THAT IS GRANTED TO A**
12 **PRIVATE ENTITY TO CHARGE THE PUBLIC TOLLS OR OTHER FEES;**

13 (III) **THE ESTIMATED AMOUNT OF ANY ADDITIONAL**
14 **REVENUE OR COSTS TO THE AUTHORITY, DEPARTMENT, OR TRANSPORTATION**
15 **TRUST FUND AS A RESULT OF THE PUBLIC-PRIVATE PARTNERSHIP;**

16 (IV) **A COST-BENEFIT ANALYSIS OF THE PUBLIC-PRIVATE**
17 **PARTNERSHIP;**

18 (V) **THE ESTIMATED ANNUAL REVENUE FROM THE**
19 **ISSUANCE OF ANY BONDS USED TO FINANCE THE PUBLIC-PRIVATE**
20 **PARTNERSHIP AND THE ESTIMATED IMPACT OF THE ISSUANCE OF THE BONDS**
21 **ON THE BONDING CAPACITY OF THE AUTHORITY OR THE DEPARTMENT; AND**

22 (VI) **A DESCRIPTION, INCLUDING THE ESTIMATED VALUE,**
23 **OF ANY LAND, BUILDINGS, OR OTHER STRUCTURES OR ASSETS THAT ARE**
24 **TRANSFERRED TO OR EXCHANGED WITH A PRIVATE ENTITY AS PART OF THE**
25 **PUBLIC-PRIVATE PARTNERSHIP.**

26 4-205.

27 (c) (1) Subject to the limitations described in [paragraphs (2) and (3)]
28 **PARAGRAPH (2)** of this subsection, the Authority may make any contracts and
29 agreements necessary or incidental to the exercise of its powers and performance of its
30 duties.

31 (2) Not less than 45 days before entering into any contract or
32 agreement to acquire or construct a revenue-producing transportation facilities
33 project, subject to § 2-1246 of the State Government Article, the Authority shall
34 provide, to the Senate Budget and Taxation Committee, the House Committee on

1 Ways and Means, and the House Appropriations Committee, for review and comment,
2 and to the Department of Legislative Services, a description of the proposed project, a
3 summary of the contract or agreement, and a financing plan that details:

4 (i) The estimated annual revenue from the issuance of bonds to
5 finance the project; and

6 (ii) The estimated impact of the issuance of bonds to finance the
7 project on the bonding capacity of the Authority.

8 [(3) (i) 1. In this paragraph the following words have the
9 meanings indicated.

10 2. "Public notice of procurement" includes a request for
11 proposals issued by the Authority.

12 3. "Public-private partnership arrangement" means a
13 lease agreement between the Authority and a private entity under which the private
14 entity assumes control of the operation and maintenance of an existing or future
15 revenue-producing highway, bridge, tunnel, or transit facility.

16 (ii) Not less than 45 days before issuing a public notice of
17 procurement related to a public-private partnership arrangement, subject to § 2-1246
18 of the State Government Article, the Authority shall provide, to the Senate Budget
19 and Taxation Committee, the House Committee on Ways and Means, and the House
20 Appropriations Committee, for review and comment, and to the Department of
21 Legislative Services, a summary of the proposed procurement document to be used for
22 solicitation of the public-private partnership arrangement.

23 (iii) Not less than 45 days before entering into any
24 public-private partnership arrangement, subject to § 2-1246 of the State Government
25 article, the Authority shall provide, to the Senate Budget and Taxation Committee,
26 the House Committee on Ways and Means, and the House Appropriations Committee,
27 for review and comment, and to the Department of Legislative Services, a description
28 of the proposed lease agreement and a financing plan, including:

29 1. The length of the proposed lease;

30 2. The scope of any toll-setting authority to be granted
31 to the private entity;

32 3. The scope of payments to the Authority from the
33 proposed public-private partnership arrangement;

34 4. A cost-benefit analysis of the proposed public-private
35 partnership arrangement; and

