

HOUSE BILL 1176

R2

9lr2293

By: **Delegates Rice and Hixson**

Introduced and read first time: February 13, 2009

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 Department of Transportation to provide certain
5 information to certain committees of the General Assembly and the Department
6 of Legislative Services by a certain date prior to issuing a public notice of
7 solicitation related to certain public–private partnerships; requiring the
8 Department to provide certain information to certain committees of the General
9 Assembly and the Department of Legislative Services by a certain date prior to
10 entering into certain public–private partnerships; stating the intent of the
11 General Assembly regarding the application of this Act; defining certain terms;
12 and generally relating to providing notice to the General Assembly of
13 public–private partnerships involving the Department of Transportation.

14 BY adding to
15 Article – Transportation
16 Section 3.5–101 and 3.5–201 to be under the new title “Title 3.5. Public–Private
17 Partnerships”
18 Annotated Code of Maryland
19 (2008 Replacement Volume)

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

22 **Article – Transportation**

23 **TITLE 3.5. PUBLIC–PRIVATE PARTNERSHIPS.**

24 **SUBTITLE 1. DEFINITIONS.**

25 **3.5–101.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) **“PRIVATE ENTITY”** INCLUDES ANY NATURAL PERSON,
4 CORPORATION, GENERAL OR LIMITED PARTNERSHIP, LIMITED LIABILITY
5 COMPANY, JOINT VENTURE, BUSINESS TRUST, PUBLIC BENEFIT CORPORATION,
6 NONPROFIT ENTITY, OR OTHER BUSINESS ENTITY.

7 (C) **“PUBLIC NOTICE OF SOLICITATION”** MEANS A REQUEST FOR BIDS
8 OR A REQUEST FOR PROPOSALS ISSUED BY THE DEPARTMENT.

9 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
10 SUBSECTION, **“PUBLIC-PRIVATE PARTNERSHIP”** MEANS:

11 (I) A SALE OR LONG-TERM LEASE AGREEMENT BETWEEN
12 THE DEPARTMENT AND A PRIVATE ENTITY UNDER WHICH THE PRIVATE ENTITY
13 ASSUMES CONTROL OF THE OPERATION AND MAINTENANCE OF AN EXISTING
14 TRANSPORTATION FACILITY; OR

15 (II) AN AGREEMENT BETWEEN THE DEPARTMENT AND A
16 PRIVATE ENTITY UNDER WHICH THE PRIVATE ENTITY CONSTRUCTS OR
17 RECONSTRUCTS, FINANCES, AND OPERATES A TRANSPORTATION FACILITY AND
18 IS AUTHORIZED TO COLLECT TOLLS OR FEES FOR THE USE OF THE
19 TRANSPORTATION FACILITY BY THE PUBLIC.

20 (2) **“PUBLIC-PRIVATE PARTNERSHIP”** DOES NOT INCLUDE THE
21 FOLLOWING TRANSACTIONS ENTERED INTO BY THE DEPARTMENT AND A
22 PRIVATE ENTITY IN THE ORDINARY COURSE OF THE DEPARTMENT’S BUSINESS:

23 (I) A LEASE AUTHORIZED BY § 10-305 OF THE STATE
24 FINANCE AND PROCUREMENT ARTICLE; OR

25 (II) A PROCUREMENT GOVERNED BY DIVISION II OF THE
26 STATE FINANCE AND PROCUREMENT ARTICLE.

27 (E) **“TRANSPORTATION FACILITY”** MEANS:

28 (1) A HIGHWAY FACILITY, RAILROAD FACILITY, OR TRANSIT
29 FACILITY AS DEFINED IN § 3-101 OF THIS ARTICLE;

30 (2) AN ENTIRE PORT TERMINAL; OR

31 (3) THE FOLLOWING ENTIRE AIRPORT FACILITIES:

- 1 (I) A TERMINAL;
- 2 (II) A CARGO COMPLEX; OR
- 3 (III) A FIXED BASE OPERATION.

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

5 **3.5-201.**

6 (A) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE OF
7 SOLICITATION RELATED TO A PUBLIC-PRIVATE PARTNERSHIP, THE
8 DEPARTMENT SHALL PROVIDE, SUBJECT TO § 2-1246 OF THE STATE
9 GOVERNMENT ARTICLE, A SUMMARY OF THE PROPOSED DOCUMENT TO BE
10 USED FOR SOLICITATION OF THE PUBLIC-PRIVATE PARTNERSHIP TO:

11 (1) THE SENATE BUDGET AND TAXATION COMMITTEE, SENATE
12 FINANCE COMMITTEE, HOUSE COMMITTEE ON WAYS AND MEANS, AND HOUSE
13 APPROPRIATIONS COMMITTEE FOR REVIEW AND COMMENT; AND

14 (2) THE DEPARTMENT OF LEGISLATIVE SERVICES.

15 (B) (1) NOT LESS THAN 10 DAYS BEFORE ENTERING INTO A
16 PUBLIC-PRIVATE PARTNERSHIP, THE DEPARTMENT SHALL PROVIDE, SUBJECT
17 TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, A DESCRIPTION OF THE
18 PROPOSED PUBLIC-PRIVATE PARTNERSHIP AND A FINANCING PLAN,
19 INCLUDING THE INFORMATION REQUIRED UNDER PARAGRAPH (2) OF THIS
20 SUBSECTION, TO:

21 (I) THE SENATE BUDGET AND TAXATION COMMITTEE,
22 SENATE FINANCE COMMITTEE, HOUSE COMMITTEE ON WAYS AND MEANS, AND
23 HOUSE APPROPRIATIONS COMMITTEE FOR REVIEW AND COMMENT; AND

24 (II) THE DEPARTMENT OF LEGISLATIVE SERVICES.

25 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE
26 DEPARTMENT SHALL PROVIDE THE FOLLOWING INFORMATION:

27 (I) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP
28 AGREEMENT;

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

1 (III) A COST-BENEFIT ANALYSIS OF THE
2 PUBLIC-PRIVATE PARTNERSHIP;

3 (IV) THE ESTIMATED DOLLAR AMOUNT OF ANY BONDS,
4 INCLUDING PRIVATE ACTIVITY BONDS, TO BE USED TO FINANCE THE
5 PUBLIC-PRIVATE PARTNERSHIP AND THE ESTIMATED IMPACT OF THE
6 ISSUANCE OF THE BONDS ON THE BONDING CAPACITY OF THE DEPARTMENT OR
7 OTHER ISSUING ENTITY; AND

8 (V) A DESCRIPTION, INCLUDING THE ESTIMATED VALUE OF
9 ANY LAND, BUILDINGS, OR OTHER STRUCTURES OR ASSETS THAT ARE TO BE
10 TRANSFERRED TO OR EXCHANGED WITH A PRIVATE ENTITY AS PART OF THE
11 PUBLIC-PRIVATE PARTNERSHIP.

12 (3) THE DEPARTMENT IS NOT REQUIRED TO PROVIDE
13 INFORMATION THAT MAY BE WITHHELD FROM PUBLIC INSPECTION UNDER §
14 10-618(K) OF THE STATE GOVERNMENT ARTICLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That:

16 (1) This Act is not intended to apply to a procurement, contract, lease,
17 or agreement of the kind that the Department of Transportation has routinely entered
18 into to develop, operate, or maintain transportation facilities; but

19 (2) In enacting this Act, it is the intent of the General Assembly to
20 require the Department of Transportation to notify the General Assembly when the
21 Department enters into an agreement with a private entity under which the private
22 entity assumes exceptional new responsibility for the development, operation,
23 financing, or maintenance of a transportation facility.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 June 1, 2009.