

HOUSE BILL 1176

R2

9lr2293

By: **Delegates Rice and Hixson, Hixson, and Howard**

Introduced and read first time: February 13, 2009

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 10, 2009

CHAPTER _____

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**

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.



TITLE 3.5. PUBLIC-PRIVATE PARTNERSHIPS.

SUBTITLE 1. DEFINITIONS.

3.5-101.

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

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

(C) "PUBLIC NOTICE OF SOLICITATION" MEANS A REQUEST FOR BIDS OR A REQUEST FOR PROPOSALS ISSUED BY THE DEPARTMENT.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, "PUBLIC-PRIVATE PARTNERSHIP" MEANS:

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

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

(2) "PUBLIC-PRIVATE PARTNERSHIP" DOES NOT INCLUDE THE FOLLOWING TRANSACTIONS ENTERED INTO BY THE DEPARTMENT AND A PRIVATE ENTITY IN THE ORDINARY COURSE OF THE DEPARTMENT'S BUSINESS:

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

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

(E) "TRANSPORTATION FACILITY" MEANS:

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

(2) AN ENTIRE PORT TERMINAL; OR

(3) THE FOLLOWING ~~ENTIRE~~ AIRPORT FACILITIES IN THEIR ENTIRETY:

(I) A TERMINAL;

(II) A CARGO COMPLEX; OR

(III) A FIXED BASE OPERATION.

SUBTITLE 2. NOTICE TO THE GENERAL ASSEMBLY.

3.5-201.

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

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

(2) THE DEPARTMENT OF LEGISLATIVE SERVICES.

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

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

(II) THE DEPARTMENT OF LEGISLATIVE SERVICES.

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

1 (I) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP
2 AGREEMENT;

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

5 (III) A COST-BENEFIT ANALYSIS OF THE
6 PUBLIC-PRIVATE PARTNERSHIP;

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

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

16 (3) THE DEPARTMENT IS NOT REQUIRED TO PROVIDE
17 INFORMATION THAT MAY BE WITHHELD FROM PUBLIC INSPECTION UNDER §
18 10-618(K) OF THE STATE GOVERNMENT ARTICLE.

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

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

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

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