

HOUSE BILL 1572

P2, P1

9lr3479
CF SB 1066

By: **Delegates Gaines, Aumann, Beitzel, Branch, Bronrott, and Levy**

Rules suspended

Introduced and read first time: March 20, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Public-Private Partnerships – Authorization and Oversight**

3 FOR the purpose of authorizing the Department of General Services, the State
4 Department of Transportation, and the Maryland Transportation Authority to
5 enter into certain agreements related to soliciting and entering into certain
6 public-private partnerships after providing certain notice and opportunity for
7 review and comment; requiring certain contracting agencies to submit to certain
8 budget committees, at least a certain number of days before entering into a
9 solicitation of a public-private partnership, a certain preliminary project plan;
10 requiring certain contracting agencies to submit certain information and a
11 certain pro forma analysis to certain budget committees at least a certain
12 number of days before entering into a master development agreement for a
13 public-private partnership; requiring the pro forma analysis, containing certain
14 information, to be submitted to the Department of Legislative Services in
15 certain formats; requiring certain contracting agencies to report to certain
16 budget committees of the General Assembly each year on or before a certain
17 date; altering the authority of the Maryland Transportation Authority to enter
18 into certain public-private partnerships; prohibiting the Board of Public Works
19 from approving a certain master development agreement for certain State
20 facilities located in Baltimore City; requiring the Department of General
21 Services to report to the General Assembly on or before a certain date; defining
22 certain terms; and generally relating to the authority to solicit and enter into
23 and oversee certain public-private partnerships.

24 BY adding to

25 Article – State Finance and Procurement

26 Section 10A-101 to be under the new title “Title 10A. Public-Private
27 Partnerships”

28 Annotated Code of Maryland

29 (2006 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Transportation
3 Section 4–205(c)(1)
4 Annotated Code of Maryland
5 (2008 Replacement Volume)

6 BY repealing
7 Article – Transportation
8 Section 4–205(c)(3)
9 Annotated Code of Maryland
10 (2008 Replacement Volume)

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

13 **Article – State Finance and Procurement**

14 **TITLE 10A. PUBLIC–PRIVATE PARTNERSHIPS.**

15 **10A–101.**

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
17 MEANINGS INDICATED.

18 (2) “BUDGET COMMITTEES” MEANS THE SENATE BUDGET AND
19 TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND
20 THE HOUSE APPROPRIATIONS COMMITTEE.

21 (3) “CONTRACTING AGENCY” MEANS:

22 (I) THE DEPARTMENT OF GENERAL SERVICES;

23 (II) THE STATE DEPARTMENT OF TRANSPORTATION; AND

24 (III) THE MARYLAND TRANSPORTATION AUTHORITY.

25 (4) “LETTER OF INTENT” MEANS A WRITTEN STATEMENT OF
26 MUTUAL INTENT BY THE CONTRACTING AGENCY AND A PRIVATE ENTITY TO
27 DEVELOP AND IMPLEMENT A COURSE OF NEGOTIATION, WITHIN A SUBSTANTIVE
28 FRAMEWORK, THAT IF SUCCESSFUL COULD LEAD TO A BINDING CONTRACTUAL
29 AGREEMENT TO ACCOMPLISH A PROJECT USING A PUBLIC–PRIVATE
30 PARTNERSHIP.

31 (5) “NONBUDGETED AGENCY” INCLUDES:

1 (I) THE MARYLAND ECONOMIC DEVELOPMENT
2 CORPORATION;

3 (II) THE MARYLAND TRANSPORTATION AUTHORITY; OR

4 (III) ANY OTHER QUASI-GOVERNMENTAL AGENCY.

5 (6) (I) "PRELIMINARY PROJECT PLAN" MEANS A DESCRIPTION
6 OF THE PROPOSED PROJECT THAT DESCRIBES:

7 1. THE PURPOSE OF AND NEED SERVED BY THE
8 PROJECT;

9 2. THE BUILDING AND LAND INVOLVED IN THE
10 PROJECT; AND

11 3. THE INVOLVEMENT AND ROLE OF ANY UNITS OF
12 STATE GOVERNMENT OR LOCAL GOVERNMENTS.

13 (II) "PRELIMINARY PROJECT PLAN" INCLUDES AN
14 ANALYSIS OF:

15 1. THE JUSTIFICATION FOR PURSUING A
16 PUBLIC-PRIVATE PARTNERSHIP RATHER THAN TRADITIONAL STATE
17 CONSTRUCTION AND FINANCING; AND

18 2. THE SOURCES AND USE OF STATE
19 PREDEVELOPMENT COSTS AND PRIVATE SECTOR PREDEVELOPMENT COSTS.

20 (7) "PRIVATE ENTITY" MEANS AN INDIVIDUAL, CORPORATION,
21 GENERAL OR LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, JOINT
22 VENTURE, BUSINESS TRUST, PUBLIC BENEFIT CORPORATION, NONPROFIT
23 ENTITY, OR OTHER BUSINESS ENTITY.

24 (8) (I) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A SALE OR
25 LONG-TERM LEASE AGREEMENT BETWEEN A CONTRACTING AGENCY AND A
26 PRIVATE ENTITY UNDER WHICH:

27 1. THE PRIVATE ENTITY ASSUMES CONTROL OF THE
28 OPERATION AND MAINTENANCE OF AN EXISTING STATE FACILITY; OR

29 2. THE PRIVATE ENTITY CONSTRUCTS OR
30 RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY AND IS

1 AUTHORIZED TO COLLECT CHARGES, RENTS, OR TOLLS FOR THE USE OF THE
2 FACILITY.

3 (II) "PUBLIC-PRIVATE PARTNERSHIP" DOES NOT INCLUDE:

4 1. A LEASE ENTERED INTO IN THE ORDINARY
5 COURSE OF BUSINESS BY A UNIT OF STATE GOVERNMENT AND A PRIVATE
6 ENTITY IF APPROVED UNDER § 10-305 OF THIS ARTICLE; OR

7 2. A PROCUREMENT GOVERNED BY DIVISION II OF
8 THIS ARTICLE.

9 (B) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,
10 A CONTRACTING AGENCY MAY ENTER INTO AN AGREEMENT FOR THE
11 SOLICITATION OF A PUBLIC-PRIVATE PARTNERSHIP.

12 (2) NOT LESS THAN 45 DAYS BEFORE ENTERING INTO AN
13 AGREEMENT FOR THE SOLICITATION OF A PUBLIC-PRIVATE PARTNERSHIP, THE
14 CONTRACTING AGENCY SHALL SUBMIT TO THE BUDGET COMMITTEES, IN
15 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, A
16 PRELIMINARY PROJECT PLAN.

17 (3) FORTY-FIVE DAYS AFTER SUBMITTING THE PRELIMINARY
18 PROJECT PLAN UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE
19 CONTRACTING AGENCY MAY:

20 (I) SOLICIT A REQUEST FOR PROPOSALS TO SELECT
21 COMPETITIVELY A MASTER DEVELOPER;

22 (II) ENTER INTO A MEMORANDUM OF UNDERSTANDING TO
23 ESTABLISH NEGOTIATING RIGHTS;

24 (III) ENTER INTO AN INTERIM DEVELOPMENT AGREEMENT
25 TO ESTABLISH A TIME PERIOD FOR NEGOTIATING A LETTER OF INTENT;

26 (IV) SIGN A LETTER OF INTENT TO ESTABLISH THE BASIC
27 PARAMETERS OF THE PROJECT, INCLUDING THE PREFERRED OWNERSHIP
28 STRUCTURE; AND

29 (V) ESTABLISH A PRELIMINARY DEVELOPMENT PLAN THAT
30 INCLUDES:

31 1. AN OUTLINE OF THE PROPOSED BUILD-OUT AND
32 PROJECT DEVELOPMENT PHASES;

1 **2. AN ANALYSIS OF THE ANTICIPATED**
2 **DEVELOPMENT COSTS; AND**

3 **3. AN ASSESSMENT OF THE PROJECT'S ECONOMIC**
4 **IMPACT.**

5 **(C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,**
6 **A CONTRACTING AGENCY MAY ENTER INTO A MASTER DEVELOPMENT**
7 **AGREEMENT FOR A PUBLIC-PRIVATE PARTNERSHIP.**

8 **(2) NOT LESS THAN 60 DAYS BEFORE ENTERING INTO A MASTER**
9 **DEVELOPMENT AGREEMENT FOR A PUBLIC-PRIVATE PARTNERSHIP, THE**
10 **CONTRACTING AGENCY SHALL SUBMIT TO THE BUDGET COMMITTEES FOR**
11 **REVIEW AND COMMENT:**

12 **(I) AN ANALYSIS, REVIEWED BY THE DEPARTMENT OF**
13 **PLANNING UNDER THE STATE CLEARINGHOUSE PROCESS, OF THE PROPOSED**
14 **USE OF ANY STATE-OWNED BUILDINGS OR LAND;**

15 **(II) AN ESTIMATE, INCLUDING ANY ASSUMPTIONS**
16 **SUPPORTING THE ESTIMATE, OF STATE AND LOCAL TAXES GENERATED BY THE**
17 **PROPOSED PROJECT;**

18 **(III) AN ESTIMATE OF THE NUMBER OF JOBS THE PROJECT**
19 **CREATES, INCLUDING:**

20 **1. ONETIME JOBS CREATED AS PART OF THE**
21 **CONSTRUCTION OF THE PROJECT; AND**

22 **2. ONGOING JOBS THAT ARE NOT LIMITED TO**
23 **CONSTRUCTION OF THE PROJECT OR RELOCATED FROM ONE AREA OF THE**
24 **STATE TO ANOTHER;**

25 **(IV) TWO INDEPENDENT APPRAISALS, PREPARED BY THE**
26 **DEPARTMENT OF GENERAL SERVICES, OF ANY LAND OR BUILDINGS INVOLVED**
27 **IN THE PROJECT; AND**

28 **(V) A PRO FORMA ANALYSIS, AS DESCRIBED UNDER**
29 **PARAGRAPH (3) OF THIS SUBSECTION, IN HARD COPY AND ELECTRONIC FORMAT**
30 **AND SUBMITTED TO THE DEPARTMENT OF LEGISLATIVE SERVICES.**

31 **(3) A PRO FORMA ANALYSIS REQUIRED UNDER PARAGRAPH (2)**
32 **OF THIS SUBSECTION SHALL OUTLINE:**

1 (I) THE PROJECT FINANCING PLAN, INCLUDING THE
2 SOURCE AND AMOUNT OF ANY:

3 1. CASH;

4 2. IN-KIND CONTRIBUTIONS;

5 3. PRIVATE DEBT INCLUDING THE TYPE OF DEBT,
6 INTEREST RATE, AND MATURITY ASSUMPTIONS;

7 4. STATE DEBT AND LOCAL GOVERNMENT DEBT,
8 INCLUDING THE TYPE OF DEBT, INTEREST RATE, AND MATURITY ASSUMPTIONS;

9 5. DEBT ISSUED BY A NONBUDGETED AGENCY ON
10 BEHALF OF THE STATE, A LOCAL GOVERNMENT, OR PRIVATE ENTITY,
11 INCLUDING THE TYPE OF DEBT, INTEREST RATE, AND MATURITY ASSUMPTIONS;

12 6. TAX CREDITS, INCLUDING TAX CREDIT PRICING;

13 7. TAX INCREMENT FINANCING, INCLUDING THE
14 ISSUER AND INTEREST AND MATURITY ASSUMPTIONS; AND

15 8. INVESTOR EQUITY FROM ANY SOURCE,
16 INCLUDING TERMS, INTERNAL RATE OF RETURN, AND MATURITY;

17 (II) THE TOTAL ONGOING AND ONETIME REVENUES OF THE
18 PROJECT, INCLUDING:

19 1. ANY ONETIME CONCESSIONS FOR A PRIVATE
20 ENTITY;

21 2. INCOME FROM CHARGES, RENTS, OR TOLLS,
22 INCLUDING THE PROJECTED RATES AND ESCALATION ASSUMPTIONS; AND

23 3. STATE, PRIVATE, OR OTHER RENTAL INCOME,
24 INCLUDING THE COST PER SQUARE FOOT, DETAILS ON RENT COMPONENTS, AND
25 DESCRIPTION OF ESCALATION PROVISIONS AND ASSUMPTIONS;

26 (III) THE TOTAL ANCILLARY COSTS AND IMPACT ON THE
27 STATE OPERATING BUDGET;

28 (IV) THE PROJECTED RATES OF RETURN FOR DEVELOPERS
29 AND THE USE OF ANY PRIVATE EQUITY; AND

1 (V) AN ASSESSMENT BY THE STATE TREASURER, AFTER
2 CONSULTATION WITH BOND COUNSEL, THE COMPTROLLER, BOND RATING
3 AGENCIES, AND THE OFFICE OF LEGISLATIVE AUDITS AS TO WHETHER THE
4 PROJECT REPRESENTS A CAPITAL LEASE AND IS SUBJECT TO STATE DEBT
5 AFFORDABILITY LIMITS.

6 (4) SIXTY DAYS AFTER SUBMITTING THE INFORMATION
7 REQUIRED UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, THE
8 CONTRACTING AGENCY MAY ENTER INTO A MASTER DEVELOPMENT AGREEMENT
9 THAT ESTABLISHES THE LEGAL FRAMEWORK FOR THE DEVELOPMENT OF THE
10 PROJECT.

11 (D) ON OR BEFORE JANUARY 1 OF EACH YEAR, EACH CONTRACTING
12 AGENCY SHALL REPORT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH §
13 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON:

14 (1) ANY PUBLIC-PRIVATE PARTNERSHIP PROJECTS UNDER
15 CONSIDERATION THAT HAVE NOT REACHED THE PRELIMINARY PROJECT PHASE;
16 AND

17 (2) THE STATUS OF ALL EXISTING PUBLIC-PRIVATE
18 PARTNERSHIP PROJECTS.

19 **Article – Transportation**

20 4-205.

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

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

26 2. “Public notice of procurement” includes a request for
27 proposals issued by the Authority.

28 3. “Public-private partnership arrangement” means a
29 lease agreement between the Authority and a private entity under which the private
30 entity assumes control of the operation and maintenance of an existing or future
31 revenue-producing highway, bridge, tunnel, or transit facility.

32 (ii) Not less than 45 days before issuing a public notice of
33 procurement related to a public-private partnership arrangement, subject to § 2-1246

1 of the State Government Article, the Authority shall provide, to the Senate Budget
2 and Taxation Committee, the House Committee on Ways and Means, and the House
3 Appropriations Committee, for review and comment, and to the Department of
4 Legislative Services, a summary of the proposed procurement document to be used for
5 solicitation of the public-private partnership arrangement.

6 (iii) Not less than 45 days before entering into any
7 public-private partnership arrangement, subject to § 2-1246 of the State Government
8 Article, the Authority shall provide, to the Senate Budget and Taxation Committee,
9 the House Committee on Ways and Means, and the House Appropriations Committee,
10 for review and comment, and to the Department of Legislative Services, a description
11 of the proposed lease agreement and a financing plan, including:

- 12 1. The length of the proposed lease;
- 13 2. The scope of any toll-setting authority to be granted
14 to the private entity;
- 15 3. The scope of payments to the Authority from the
16 proposed public-private partnership arrangement;
- 17 4. A cost-benefit analysis of the proposed public-private
18 partnership arrangement; and
- 19 5. Requirements pertaining to the ongoing operation and
20 maintenance of the facility and contract oversight.]

21 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any
22 other provision of law to the contrary, the Board of Public Works may not approve a
23 master development agreement or other legally binding document for the State Center
24 facility located in Baltimore City.

25 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before June 1,
26 2010, the Department of General Services shall report to the General Assembly, in
27 accordance with § 2-1246 of the State Government Article, on the best way to provide
28 funding to equally compensate private developers in order to prepare competitive
29 proposals for public-private partnership projects while balancing the need for
30 transparency of State funding for predevelopment costs.

31 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 June 1, 2009.