

SENATE BILL 979

P2, P1

0lr3366
CF HB 1370

By: **Senator Jones**

Introduced and read first time: February 22, 2010

Assigned to: Rules

Re-referred to: Budget and Taxation, March 12, 2010

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 3, 2010

CHAPTER _____

1 AN ACT concerning

2 **Public-Private Partnerships - Oversight**

3 FOR the purpose of requiring certain State agencies to submit a report concerning a
4 proposed public-private partnership to the State Treasurer and certain
5 committees of the General Assembly at a certain time prior to issuing a public
6 notice of solicitation for the public-private partnership; requiring certain State
7 agencies to submit an annual report concerning public-private partnerships
8 that are under consideration to certain committees of the General Assembly;
9 requiring certain State agencies to submit an annual report concerning existing
10 public-private partnerships to certain committees of the General Assembly;
11 requiring certain units of State government to submit an annual report
12 concerning public-private partnerships for which the unit is providing conduit
13 financing to certain committees of the General Assembly; requiring the State
14 Treasurer to analyze the impact of a proposed public-private partnership
15 ~~operating lease agreement~~ agreement on the State's capital debt affordability limits;
16 requiring the State Treasurer to submit each analysis of a public-private
17 partnership ~~operating lease agreement~~ agreement to certain committees of the General
18 Assembly within a certain time; prohibiting the Board of Public Works from
19 approving a public-private partnership ~~operating lease agreement~~ agreement until certain
20 committees of the General Assembly have ~~commented~~ had a certain period of
21 time to review and comment on the State Treasurer's analysis of the ~~lease~~
22 agreement; requiring that the annual report of the Capital Debt Affordability
23 Committee include certain information concerning the impact of public-private
24 partnership ~~operating leases;~~ agreements; requiring the Maryland

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.



1 Transportation Authority to submit a certain analysis of a proposed
 2 public-private partnership agreement to certain committees of the General
 3 Assembly within a certain period of time before entering into the agreement;
 4 prohibiting the Board of Public Works from approving a public-private
 5 partnership agreement that the Authority proposes to enter into until certain
 6 committees of the General Assembly have had a certain period of time to review
 7 and comment on the Authority's analysis of the agreement; establishing a Joint
 8 Legislative and Executive Commission on Oversight of Public-Private
 9 Partnerships; specifying the membership of the Commission; providing for the
 10 chair and staffing of the Commission; prohibiting a member of the Commission
 11 from receiving certain compensation but authorizing a member of the
 12 Commission to receive certain reimbursements; requiring the Commission to
 13 study and make recommendations regarding certain issues; requiring the
 14 Commission to report its findings and recommendations to the Governor and
 15 the General Assembly on or before a certain date; repealing certain provisions of
 16 law requiring the ~~Maryland Transportation~~ Authority to provide certain
 17 information to certain committees of the General Assembly concerning
 18 public-private partnerships; providing that certain committees of the General
 19 Assembly have a certain period of time to review and comment on reports
 20 submitted under this Act; defining certain terms; providing for the termination
 21 of certain provisions of this Act; and generally relating to oversight of
 22 public-private partnerships.

23 BY adding to
 24 Article – State Finance and Procurement
 25 Section 10A-101 and 10A-102 to be under the new title “Title 10A.
 26 Public-Private Partnerships”
 27 Annotated Code of Maryland
 28 (2009 Replacement Volume)

29 BY repealing and reenacting, with amendments,
 30 Article – Transportation
 31 Section 4-205(c)
 32 Annotated Code of Maryland
 33 (2008 Replacement Volume and 2009 Supplement)

34 BY adding to
 35 Article – Transportation
 36 Section 4-406
 37 Annotated Code of Maryland
 38 (2008 Replacement Volume and 2009 Supplement)

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

41 **Article – State Finance and Procurement**

1 TITLE 10A. PUBLIC-PRIVATE PARTNERSHIPS.

2 10A-101.

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

5 (2) "BUDGET COMMITTEES" MEANS THE SENATE BUDGET AND
6 TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND
7 THE HOUSE APPROPRIATIONS COMMITTEE.

8 (3) "PRIVATE ENTITY" MEANS AN INDIVIDUAL, A CORPORATION,
9 A GENERAL OR LIMITED PARTNERSHIP, A LIMITED LIABILITY COMPANY, A JOINT
10 VENTURE, A BUSINESS TRUST, A PUBLIC BENEFIT CORPORATION, A NONPROFIT
11 ENTITY, OR ANOTHER BUSINESS ENTITY.

12 (4) "PUBLIC NOTICE OF SOLICITATION" INCLUDES A REQUEST
13 FOR EXPRESSIONS OF INTEREST, A REQUEST FOR PROPOSALS, A MEMORANDUM
14 OF UNDERSTANDING, AN INTERIM DEVELOPMENT AGREEMENT, A LETTER OF
15 INTENT, OR A PRELIMINARY DEVELOPMENT PLAN.

16 (5) (I) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A SALE OR
17 ~~LONG-TERM LEASE AGREEMENT BETWEEN A CONTRACTING AGENCY~~ UNIT OF
18 STATE GOVERNMENT AND A PRIVATE ENTITY UNDER WHICH:

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

21 2. THE PRIVATE ENTITY CONSTRUCTS,
22 RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY ~~AND IS~~
23 ~~AUTHORIZED TO COLLECT~~ OR A FACILITY FOR STATE USE AND WILL COLLECT
24 FEES, CHARGES, RENTS, OR TOLLS FOR THE USE OF THE FACILITY.

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

26 1. A SHORT-TERM OPERATING SPACE LEASE
27 ENTERED INTO IN THE ORDINARY COURSE OF BUSINESS BY A UNIT OF STATE
28 GOVERNMENT AND A PRIVATE ENTITY ~~IF~~ AND APPROVED UNDER § 10-305 OF
29 THIS ARTICLE; ~~OR~~

30 2. A PROCUREMENT GOVERNED BY DIVISION II OF
31 THIS ARTICLE; OR

1 **3. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS**
 2 **ENTERED INTO BY THE UNIVERSITY SYSTEM OF MARYLAND, WHERE NO STATE**
 3 **FUNDS ARE USED TO FUND OR FINANCE ANY PORTION OF A CAPITAL PROJECT.**

4 **(6) "REPORTING AGENCY" MEANS:**

5 **(I) THE DEPARTMENT OF GENERAL SERVICES;**

6 **(II) THE MARYLAND DEPARTMENT OF TRANSPORTATION;**

7 **(III) THE UNIVERSITY SYSTEM OF MARYLAND;**

8 **(IV) MORGAN STATE UNIVERSITY;**

9 **(V) ST. MARY'S COLLEGE OF MARYLAND; AND**

10 **(VI) THE BALTIMORE CITY COMMUNITY COLLEGE.**

11 **(B) THE REQUIREMENTS OF THIS TITLE DO NOT APPLY TO THE**
 12 **MARYLAND TRANSPORTATION AUTHORITY OR TO A PUBLIC-PRIVATE**
 13 **PARTNERSHIP PROPOSED OR ENTERED INTO BY THE MARYLAND**
 14 **TRANSPORTATION AUTHORITY.**

15 ~~(B)~~ **(C) (1) THE REPORTS PROVIDED BY THE DEPARTMENT OF**
 16 **GENERAL SERVICES UNDER THIS SECTION SHALL INCLUDE INFORMATION**
 17 **CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN**
 18 **THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS**
 19 **THAT ARE ALSO REPORTING AGENCIES.**

20 **(2) FOLLOWING THE SUBMISSION OF EACH OF THE REPORTS**
 21 **REQUIRED UNDER THIS SECTION, THE BUDGET COMMITTEES SHALL HAVE 45**
 22 **DAYS TO REVIEW AND COMMENT ON THE REPORTS.**

23 ~~(C)~~ **(D) (1) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC**
 24 **NOTICE OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP, A REPORTING**
 25 **AGENCY SHALL SUBMIT TO THE STATE TREASURER AND THE BUDGET**
 26 **COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**
 27 **ARTICLE, A REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE**
 28 **PARTNERSHIP.**

29 **(2) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, EACH REPORTING**
 30 **AGENCY SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH §**
 31 **2-1246 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH**
 32 **PUBLIC-PRIVATE PARTNERSHIP UNDER CONSIDERATION AT THAT TIME BY THE**

1 REPORTING AGENCY THAT HAS NOT BEEN REVIEWED OR APPROVED
2 PREVIOUSLY BY THE GENERAL ASSEMBLY.

3 (3) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY
4 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
5 OF THE STATE GOVERNMENT ARTICLE, A STATUS REPORT CONCERNING EACH
6 EXISTING PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY
7 IS INVOLVED.

8 ~~(D)~~ (E) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, A UNIT OF STATE
9 GOVERNMENT THAT PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE
10 PARTNERSHIP SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE
11 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING
12 EACH PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING
13 CONDUIT FINANCING.

14 10A-102.

15 (A) THE STATE TREASURER SHALL ANALYZE THE IMPACT OF EACH
16 PUBLIC-PRIVATE PARTNERSHIP ~~OPERATING LEASE ENTERED INTO~~ AGREEMENT
17 PROPOSED BY A UNIT OF STATE GOVERNMENT ON THE STATE'S CAPITAL DEBT
18 AFFORDABILITY LIMITS.

19 (B) ~~(1)~~ THE STATE TREASURER SHALL SUBMIT TO THE BUDGET
20 COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
21 ARTICLE, EACH ANALYSIS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION
22 WITHIN 30 DAYS AFTER THE STATE TREASURER RECEIVES A PROPOSED
23 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FROM A UNIT OF STATE
24 GOVERNMENT.

25 ~~(2) FOLLOWING THE SUBMISSION OF EACH ANALYSIS, THE~~
26 ~~BUDGET COMMITTEES SHALL HAVE 45 DAYS TO REVIEW AND COMMENT ON THE~~
27 ~~ANALYSIS.~~

28 (C) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
29 PUBLIC-PRIVATE PARTNERSHIP ~~OPERATING LEASE UNDER~~ AGREEMENT UNDER
30 § 10-305 OR § 12-204 OF THIS ARTICLE UNTIL THE BUDGET COMMITTEES HAVE
31 COMMENTED HAD 30 DAYS TO REVIEW AND COMMENT ON THE STATE
32 TREASURER'S ANALYSIS OF THE ~~LEASE~~ AGREEMENT REQUIRED UNDER
33 SUBSECTION (A) OF THIS SECTION.

34 (D) THE ANNUAL REPORT OF THE CAPITAL DEBT AFFORDABILITY
35 COMMITTEE REQUIRED UNDER § 8-112 OF THIS ARTICLE SHALL INCLUDE AN
36 ANALYSIS OF THE AGGREGATE IMPACT OF PUBLIC-PRIVATE PARTNERSHIP

1 ~~OPERATING LEASES~~ AGREEMENTS ON THE TOTAL AMOUNT OF NEW STATE DEBT
 2 THAT PRUDENTLY MAY BE AUTHORIZED FOR THE NEXT FISCAL YEAR.

3 **Article – Transportation**

4 4–205.

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

9 (2) Not less than 45 days before entering into any contract or
 10 agreement to acquire or construct a revenue-producing transportation facilities
 11 project, subject to § 2–1246 of the State Government Article, the Authority shall
 12 provide, to the Senate Budget and Taxation Committee, the House Committee on
 13 Ways and Means, and the House Appropriations Committee, for review and comment,
 14 and to the Department of Legislative Services, a description of the proposed project, a
 15 summary of the contract or agreement, and a financing plan that details:

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

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

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

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

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

28 (ii) Not less than 45 days before issuing a public notice of
 29 procurement related to a public-private partnership arrangement, subject to § 2–1246
 30 of the State Government Article, the Authority shall provide, to the Senate Budget
 31 and Taxation Committee, the House Committee on Ways and Means, and the House
 32 Appropriations Committee, for review and comment, and to the Department of
 33 Legislative Services, a summary of the proposed procurement document to be used for
 34 solicitation of the public-private partnership arrangement.

35 (iii) Not less than 45 days before entering into any
 36 public-private partnership arrangement, subject to § 2–1246 of the State Government

1 Article, the Authority shall provide, to the Senate Budget and Taxation Committee,
 2 the House Committee on Ways and Means, and the House Appropriations Committee,
 3 for review and comment, and to the Department of Legislative Services, a description
 4 of the proposed lease agreement and a financing plan, including:

- 5 1. The length of the proposed lease;
- 6 2. The scope of any toll-setting authority to be granted
 7 to the private entity;
- 8 3. The scope of payments to the Authority from the
 9 proposed public-private partnership arrangement;
- 10 4. A cost-benefit analysis of the proposed public-private
 11 partnership arrangement; and
- 12 5. Requirements pertaining to the ongoing operation and
 13 maintenance of the facility and contract oversight.]

14 **4-406.**

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

17 (2) "BUDGET COMMITTEES" MEANS THE SENATE BUDGET AND
 18 TAXATION COMMITTEE, THE HOUSE COMMITTEE ON WAYS AND MEANS, AND
 19 THE HOUSE APPROPRIATIONS COMMITTEE.

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

24 (4) "PUBLIC NOTICE OF SOLICITATION" INCLUDES A REQUEST
 25 FOR EXPRESSIONS OF INTEREST, A REQUEST FOR PROPOSALS, A MEMORANDUM
 26 OF UNDERSTANDING, AN INTERIM DEVELOPMENT AGREEMENT, A LETTER OF
 27 INTENT, OR A PRELIMINARY DEVELOPMENT PLAN.

28 (5) (I) "PUBLIC-PRIVATE PARTNERSHIP" MEANS A SALE OR
 29 ~~LONG-TERM~~ LEASE AGREEMENT BETWEEN THE AUTHORITY AND A PRIVATE
 30 ENTITY UNDER WHICH:

- 31 1. THE PRIVATE ENTITY ASSUMES CONTROL OF THE
 32 OPERATION AND MAINTENANCE OF AN EXISTING STATE FACILITY; OR

1 2. THE PRIVATE ENTITY CONSTRUCTS,
2 RECONSTRUCTS, FINANCES, OR OPERATES A STATE FACILITY ~~AND IS~~
3 ~~AUTHORIZED TO COLLECT~~ OR A FACILITY FOR STATE USE AND WILL COLLECT
4 FEES, CHARGES, RENTS, OR TOLLS FOR THE USE OF THE FACILITY.

5 (ii) “PUBLIC-PRIVATE PARTNERSHIP” DOES NOT INCLUDE:

6 1. A SHORT-TERM OPERATING SPACE LEASE
7 ENTERED INTO IN THE ORDINARY COURSE OF BUSINESS BY THE AUTHORITY
8 AND A PRIVATE ENTITY ~~HE~~ AND APPROVED UNDER § 10-305 OF THE STATE
9 FINANCE AND PROCUREMENT ARTICLE; OR

10 2. A PROCUREMENT GOVERNED BY DIVISION II OF
11 THE STATE FINANCE AND PROCUREMENT ARTICLE.

12 (b) FOLLOWING THE SUBMISSION OF EACH OF THE REPORTS REQUIRED
13 UNDER THIS SECTION, THE BUDGET COMMITTEES SHALL HAVE 45 DAYS TO
14 REVIEW AND COMMENT ON THE REPORTS.

15 (c) (1) NOT LESS THAN 45 DAYS BEFORE ISSUING A PUBLIC NOTICE
16 OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP, THE AUTHORITY
17 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
18 OF THE STATE GOVERNMENT ARTICLE, A REPORT CONCERNING THE PROPOSED
19 PUBLIC-PRIVATE PARTNERSHIP.

20 (2) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
21 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
22 STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
23 PUBLIC-PRIVATE PARTNERSHIP UNDER CONSIDERATION AT THAT TIME BY THE
24 AUTHORITY THAT HAS NOT BEEN REVIEWED OR APPROVED PREVIOUSLY BY THE
25 GENERAL ASSEMBLY.

26 (3) BY JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
27 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
28 STATE GOVERNMENT ARTICLE, A STATUS REPORT CONCERNING EACH
29 EXISTING PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE AUTHORITY IS
30 INVOLVED.

31 (d) BY ~~JULY~~ JANUARY 1 OF EACH YEAR, THE AUTHORITY SHALL
32 SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE
33 STATE GOVERNMENT ARTICLE, A REPORT CONCERNING EACH
34 PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE AUTHORITY IS PROVIDING
35 CONDUIT FINANCING.

1 **(E) NOT LESS THAN 30 DAYS BEFORE ENTERING INTO A**
2 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, THE AUTHORITY SHALL SUBMIT**
3 **TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246 OF THE STATE**
4 **GOVERNMENT ARTICLE, AN ANALYSIS OF THE IMPACT OF THE PROPOSED**
5 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ON THE AUTHORITY'S FINANCING**
6 **PLAN, INCLUDING THE AUTHORITY'S OPERATING AND CAPITAL BUDGETS AND**
7 **DEBT CAPACITY.**

8 **(F) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
9 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER § 10-305 OR § 12-204 OF**
10 **THE STATE FINANCE AND PROCUREMENT ARTICLE THAT THE AUTHORITY**
11 **PROPOSES TO ENTER INTO UNTIL THE BUDGET COMMITTEES HAVE HAD 30 DAYS**
12 **TO REVIEW AND COMMENT ON THE AUTHORITY'S ANALYSIS OF THE AGREEMENT**
13 **REQUIRED UNDER SUBSECTION (E) OF THIS SECTION.**

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

15 (a) There is a Joint Legislative and Executive Commission on Oversight of
16 Public-Private Partnerships.

17 (b) The Commission consists of the following members:

18 (1) two members of the Senate of Maryland, appointed by the
19 President of the Senate;

20 (2) two members of the House of Delegates, appointed by the Speaker
21 of the House;

22 (3) the Secretary of Budget and Management, or the Secretary's
23 designee;

24 (4) the Secretary of General Services, or the Secretary's designee;

25 (5) the Secretary of Transportation, or the Secretary's designee;

26 (6) the Chancellor of the University System of Maryland, or the
27 Chancellor's designee;

28 (7) the State Treasurer, or the State Treasurer's designee;

29 (8) the Executive Director of the Maryland Stadium Authority, or the
30 Executive Director's designee;

31 (9) the Executive Director of the Maryland Economic Development
32 Corporation, or the Executive Director's designee;

1 (10) the President of the Baltimore City Community College, or the
2 President's designee;

3 (11) the President of Morgan State University, or the President's
4 designee;

5 (12) the President of St. Mary's College of Maryland, or the President's
6 designee; and

7 (13) a representative of the private sector who has experience and
8 expertise in developing public-private partnerships, appointed by the Governor in
9 consultation with the President of the Senate and the Speaker of the House.

10 (c) The Governor shall designate the chair of the Commission.

11 (d) The Department of ~~Budget and Management~~ Transportation,
12 Department of General Services, and the Department of Legislative Services shall
13 provide staff for the Commission.

14 (e) A member of the Commission:

15 (1) may not receive compensation as a member of the Commission; but

16 (2) is entitled to reimbursement for expenses under the Standard
17 State Travel Regulations, as provided in the State budget.

18 (f) The Commission shall:

19 (1) assess the oversight, best practices, and approval processes for
20 public-private partnerships in other states, including the Army Enhanced Use Lease
21 Program;

22 (2) evaluate the statutory ~~definition of~~ definitions of "public notice of
23 solicitation" and "public-private partnership", as enacted by Section 1 of this Act, and
24 recommend any amendments to the ~~definition~~ definitions to enhance ~~its~~ their utility
25 and refine ~~its~~ their scope;

26 (3) make recommendations concerning the appropriate manner of
27 conducting ongoing legislative monitoring and oversight of public-private
28 partnerships, including the following issues:

29 (i) the appropriate time for submission for legislative review of
30 a proposed conceptual plan, a letter of intent, an interim development agreement, a
31 master development agreement, and an operating lease for a public-private
32 partnership;

- 1 (ii) the need for a State agency to state its justifications for
2 seeking a public–private partnership before issuing a request for proposals or any
3 other solicitation;
- 4 (iii) the appropriate way to assess the effects of a public–private
5 partnership on the State budget, including the aggregate effect on spending by fund
6 source and revenues;
- 7 (iv) the need for disclosure of all public–private partnership
8 revenue and expenditure data and assumptions;
- 9 (v) the need for disclosure of all public–private partnership
10 financing assumptions, including projected return on investment and a cost–benefit
11 analysis; and
- 12 (vi) the appropriate periods for legislative review and comment;
13 and
- 14 (4) make recommendations concerning broad policy parameters within
15 which public–private partnerships should be negotiated, which may include the
16 following issues:
- 17 (i) the processes for reviewing and approving a letter of intent,
18 an interim development agreement, a master development agreement, an operating
19 lease, and a request for qualifications;
- 20 (ii) the length of a public–private partnership agreement,
21 including ground rent, operating leases, and renewal terms;
- 22 (iii) noncompete clauses and adverse action clauses;
- 23 (iv) revenue–sharing;
- 24 (v) limits on the timing and size of rent, toll, or other revenue
25 source increases;
- 26 (vi) the use of proceeds from concession agreements;
- 27 (vii) guidelines on minority business enterprise involvement and
28 goals;
- 29 (viii) performance measures that are linked to State payments;
- 30 (ix) the number and timing of appraisals of land and structures;
- 31 (x) green building requirements;

1 (xi) structuring public-private partnerships in a manner that
2 preserves and promotes important State policy objectives;

3 (xii) contract oversight and remedies for default;

4 (xiii) police jurisdiction;

5 (xiv) eminent domain;

6 (xv) maintenance requirements;

7 (xvi) solicitation of public comment regarding proposed
8 public-private partnerships and proposed toll rates or user rates;

9 (xvii) methods for developing competitive solicitations for
10 public-private partnerships, including the advisability of establishing a special fund to
11 reimburse a private entity for predevelopment expenses;

12 (xviii) the role of the Maryland Economic Development Corporation
13 or other State entities in the issuance of tax increment financing bonds,
14 tax-exempt financing, or other conduit financing;

15 (xix) the effect on the State workforce of requiring a private entity
16 to give a hiring preference to State employees;

17 (xx) a policy on foreign ownership of State assets and
18 requirements to meet conditions of the Committee on Foreign Investment in the
19 United States;

20 (xxi) the transition and process for the return of assets to State
21 control at the conclusion of a public-private partnership agreement;

22 (xxii) the time period for assignment of a lease or sale of facilities
23 without requiring State consent or providing the State the right of first refusal; and

24 (xxiii) the advisability of considering unsolicited public-private
25 partnership proposals.

26 (g) On or before December 1, 2011, the Commission shall report its findings
27 and legislative recommendations concerning the issues outlined in subsection (f) of
28 this section for consideration during the 2012 regular session of the General Assembly
29 to the Governor and, in accordance with § 2-1246 of the State Government Article, the
30 General Assembly.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 June 1, 2010. Section 2 of this Act shall remain effective for a period of 2 years and 1
33 month and, at the end of ~~May 31, 2012~~ June 30, 2012, with no further action required

1 by the General Assembly, Section 2 of this Act shall be abrogated and of no further
2 force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.