

**SB0358/240213/1**

BY: Environmental Matters Committee

AMENDMENTS TO SENATE BILL 358  
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 13, after “reports;” insert “requiring certain projects to comply with certain provisions of law; requiring a reporting agency to issue a public notice of solicitation for a public-private partnership under certain circumstances;”; and in line 16, after “entities;” insert “authorizing a reporting agency to reimburse a private entity for certain costs and pay a certain entity for the right to use a certain work product; requiring a reporting agency to adopt certain regulations that establish the process for the reimbursement of a private entity; prohibiting a reporting agency from reimbursing a private entity under certain circumstances;”.

On page 2, in line 10, after “agreement;” insert “providing, under certain circumstances, that the provisions of the Minority Business Enterprise Program apply to public-private partnerships; prohibiting the Board of Public Works from approving a public-private partnership agreement until the reporting agency, in consultation with certain entities, establishes certain minority business enterprise goals and procedures; requiring that certain goals and procedures be based on the requirements of certain provisions of law;”; in line 13, after “Act;” insert “providing for the termination of certain provisions of this Act;”; in line 26, strike “10A-104” and substitute “10A-105”; in line 30, strike “10A-402” and substitute “10A-403”; after line 33, insert:

“BY repealing and reenacting, without amendments,

Article - Transportation

Section 4-205

Annotated Code of Maryland

(2008 Replacement Volume and 2011 Supplement)”;

and in line 36, strike “4-205 and”.

(Over)

AMENDMENT NO. 2

On page 7, in line 4, before “IT” insert “(A)”; in line 5, strike “FOR INFRASTRUCTURE INITIATIVES FOR” and substitute “, IF APPROPRIATE, TO”; in line 6, strike “FURTHERING THE DEVELOPMENT AND MAINTENANCE OF” and substitute “DEVELOP AND STRENGTHEN THE STATE’S PUBLIC”; in line 8, strike “APPORTIONING” and substitute “APPORTION”; in the same line, strike “SECTOR”; in the same line, strike the second “THE”; in line 9, strike “SECTOR” and substitute “SECTORS”; strike beginning with “IN” in line 9 down through “OF” in line 10 and substitute “WITH DEVELOPING AND STRENGTHENING PUBLIC”; in line 11, strike “FOSTERING” and substitute “FOSTER”; in line 12, strike “PROMOTING” and substitute “PROMOTE”; after line 13, insert:

“(B) IT IS THE PUBLIC POLICY OF THE STATE:

(1) THAT A PRIVATE ENTITY THAT ENTERS INTO A PUBLIC-PRIVATE PARTNERSHIP WITH A REPORTING AGENCY COMPLY WITH THE LABOR AND EMPLOYMENT ARTICLE AND THE FEDERAL FAIR LABOR STANDARDS ACT; AND

(2) TO USE STATE EMPLOYEES TO PERFORM ALL STATE FUNCTIONS IN STATE-OPERATED FACILITIES IN PREFERENCE TO CONTRACTING WITH THE PRIVATE SECTOR TO PERFORM THOSE FUNCTIONS.”;

in line 15, after “(A)” insert “(1) (I)”; in line 16, strike “A PARTNERSHIP” and substitute “AN”; in line 17, strike “FUNCTION, SERVICE, OR” and substitute “PUBLIC INFRASTRUCTURE”; and after line 19, insert:

“(II) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT EXECUTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE

PROVISIONS THAT ARE NECESSARY TO DEVELOP AND STRENGTHEN A PUBLIC INFRASTRUCTURE ASSET IN CONJUNCTION WITH A PUBLIC-PRIVATE PARTNERSHIP.

(2) A UNIT OF STATE GOVERNMENT THAT IS NOT A REPORTING AGENCY MAY NOT ESTABLISH A PUBLIC-PRIVATE PARTNERSHIP UNDER PARAGRAPH (1) OF THIS SUBSECTION.”.

On page 9, after line 5, insert:

“10A-105.

A PROJECT UNDERTAKEN BY A REPORTING AGENCY THROUGH A PUBLIC-PRIVATE PARTNERSHIP SHALL COMPLY WITH THE FOLLOWING PROVISIONS, TO THE EXTENT THAT THE PROVISIONS ARE APPLICABLE TO THE PROJECT:

(1) § 3-602.1 OF THIS ARTICLE; AND

(2) THE ENVIRONMENT ARTICLE.”.

AMENDMENT NO. 3

On page 10, in line 8, after “WITHHOLD” insert “A PRIVATE ENTITY’S”; and in the same line, after “INFORMATION” insert “IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT ARTICLE, RELATING TO:

1. CONFIDENTIAL COMMERCIAL INFORMATION;

2. CONFIDENTIAL FINANCIAL INFORMATION; AND

3. TRADE SECRETS”.

(Over)

On page 12, in line 13, after “WITHHOLD” insert “A PRIVATE ENTITY’S”; and in the same line, after “INFORMATION” insert “IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT ARTICLE, RELATING TO:

1. CONFIDENTIAL COMMERCIAL INFORMATION;
2. CONFIDENTIAL FINANCIAL INFORMATION; AND
3. TRADE SECRETS”.

AMENDMENT NO. 4

On page 10, in line 21, strike “A” and substitute “IF A REPORTING AGENCY INTENDS TO ESTABLISH A PUBLIC-PRIVATE PARTNERSHIP UNDER § 10A-103 OF THIS TITLE, THE”; in the same line, strike “MAY” and substitute “SHALL”; and in line 22, strike “A” and substitute “THE”.

On page 11, in line 4, after “(E)” insert “(1)”; in the same line, strike the colon; in line 5, strike “(1)”; in line 6, after “A” insert “RESPONSE TO A PUBLIC NOTICE OF A”; in the same line, strike “; AND” and substitute a period; after line 6, insert:

“(2) A REPORTING AGENCY SHALL ADOPT REGULATIONS THAT ESTABLISH THE PROCESS FOR REIMBURSING A PRIVATE ENTITY UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) REGULATIONS ADOPTED UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:

(1) PROVIDE FOR THE REIMBURSEMENT OF A PRIVATE ENTITY BASED ON THE DOLLAR VALUE OF A PROJECT; AND

(II) SPECIFY A MAXIMUM DOLLAR AMOUNT THAT A REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY FOR COSTS INCURRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

in line 7, strike “(2)” and substitute “(4) A REPORTING AGENCY MAY”; and after line 8, insert:

“(5) A REPORTING AGENCY MAY NOT REIMBURSE A PRIVATE ENTITY FOR ANY PORTION OF THE COSTS INCURRED TO DEVELOP A SOLICITATION IF:

(I) THE PRIVATE ENTITY ENTERS INTO A PARTNERSHIP AGREEMENT WITH THE REPORTING AGENCY;

(II) THE PARTNERSHIP AGREEMENT ENTERED INTO UNDER ITEM (I) OF THIS PARAGRAPH IS APPROVED BY THE BOARD OF PUBLIC WORKS; AND

(III) THE SOLICITATION IS THE SUBJECT OF THE PARTNERSHIP AGREEMENT APPROVED BY THE BOARD OF PUBLIC WORKS UNDER ITEM (II) OF THIS PARAGRAPH.

On page 14, strike in their entirety lines 12 and 13; in lines 14, 16, 18, 22, and 25, strike “(9)”, “(10)”, “(11)”, “(12)”, and “(13)”, respectively, and substitute “(8)”, “(9)”, “(10)”, “(11)”, and “(12)”, respectively.

On page 15, in line 27, after “(H)” insert “(1)”; in the same line, strike “THIS DIVISION II” and substitute “EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS DIVISION”; after line 28, insert:

(Over)

“(2) TO THE EXTENT OTHERWISE REQUIRED BY LAW, THE FOLLOWING PROVISIONS OF THIS DIVISION APPLY TO A PUBLIC-PRIVATE PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE:

(I) § 11-205 OF THIS SUBTITLE (“COLLUSION”);

(II) § 11-205.1 OF THIS SUBTITLE (“FALSIFICATION, CONCEALMENT, ETC. OF MATERIAL FACTS”);

(III) TITLE 12, SUBTITLE 4 OF THIS ARTICLE (“POLICIES AND PROCEDURES FOR EXEMPT UNITS”);

(IV) § 13-219 OF THIS ARTICLE (“REQUIRED CLAUSES – NONDISCRIMINATION CLAUSE”);

(V) TITLE 17, SUBTITLE 2 OF THIS ARTICLE (“PREVAILING WAGE RATES – PUBLIC WORK CONTRACTS”); AND

(VI) TITLE 18 OF THIS ARTICLE (“LIVING WAGE”).”;

and in line 30, strike the bracket.

On page 16, in line 36, strike the bracket.

AMENDMENT NO. 5

On page 18, after line 20, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

10A-403.

(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE, AS ENACTED BY CHAPTER 253 OF THE ACTS OF 2011 AND CHAPTER (H.B. 1370) OF THE ACTS OF 2012, ARE HEREBY INCORPORATED.

(B) TO THE EXTENT PRACTICABLE AND PERMITTED BY THE UNITED STATES CONSTITUTION, THE PROVISIONS OF THE MINORITY BUSINESS ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE SHALL APPLY TO PUBLIC-PRIVATE PARTNERSHIPS ESTABLISHED UNDER THIS TITLE.

(C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A-203 OF THIS TITLE UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR’S OFFICE OF MINORITY AFFAIRS, THE OFFICE OF THE ATTORNEY GENERAL, AND THE PRIVATE ENTITY, ESTABLISHES REASONABLE AND APPROPRIATE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS AND PROCEDURES FOR THE PROJECT.

(2) TO THE EXTENT PRACTICABLE, GOALS AND PROCEDURES ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED ON THE REQUIREMENTS OF:

(Over)

(I) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING THE IMPLEMENTING OF REGULATIONS ADOPTED UNDER § 14-303 OF THIS ARTICLE; AND

(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT THIS SECTION.”;

in line 21, strike “2.” and substitute “3.”; after line 22, insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2012. It shall remain effective for a period of 4 years and, at the end of June 30, 2016, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.”;

and in line 23, strike “3.” and substitute “5.”.