

HOUSE BILL 576

P1, P2, C8

2lr0136
CF SB 358

By: **The Speaker (By Request – Administration) and Delegates Arora, Bohanan, Clagett, Gaines, Griffith, Healey, Hixson, Holmes, Howard, James, Jones, Lafferty, Lee, Love, A. Miller, Niemann, Proctor, Ross, Rudolph, Summers, ~~and Washington~~ Washington, Beidle, Glenn, Guzzone, Tarrant, Walker, B. Robinson, Mizeur, and Zucker**

Introduced and read first time: February 3, 2012

Assigned to: Environmental Matters and Appropriations

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 21, 2012

CHAPTER _____

1 AN ACT concerning

2 **Public-Private Partnerships**

3 FOR the purpose of establishing the policy of the State on public-private partnerships;
4 altering provisions of law relating to public-private partnerships; establishing
5 that the Court of Special Appeals has jurisdiction over certain immediate
6 appeals related to certain public-private partnerships; establishing certain time
7 limits related to certain appeals; authorizing a certain agency to establish a
8 public-private partnership and execute ~~a partnership~~ an agreement in
9 connection with ~~certain functions, services, or assets~~ any public infrastructure
10 asset; providing that an agreement executed under a certain provision of law
11 may include certain provisions; prohibiting certain units of State government
12 from establishing a public-private partnership; requiring a certain agency to
13 adopt certain regulations and establish certain processes for the development,
14 solicitation, evaluation, award, and delivery of public-private partnerships;
15 requiring certain legislative committees to review and comment on certain
16 processes and regulations; requiring certain agencies to submit, on or before a
17 certain date each year, certain reports to certain legislative committees;
18 establishing certain requirements for certain reports; establishing deadlines for
19 the review of certain presolicitation reports; requiring certain projects to comply
20 with certain provisions of law; requiring a reporting agency to issue a public
21 notice of solicitation for a public-private partnership under certain

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 circumstances; requiring certain agencies to comply with certain requirements
2 before issuing a solicitation for a public-private partnership; requiring a certain
3 agency to make a certain responsibility determination concerning certain
4 entities; authorizing a reporting agency to reimburse a private entity for certain
5 costs and pay a certain entity for the right to use a certain work product;
6 requiring a reporting agency to adopt certain regulations that establish the
7 process for the reimbursement of a private entity; prohibiting a reporting
8 agency from reimbursing a private entity under certain circumstances;
9 requiring a certain agency to submit certain reports to certain officials and
10 committees; requiring the Board of Public Works to approve or disapprove each
11 partnership agreement; prohibiting the Board of Public Works from approving a
12 public-private partnership agreement until the completion of certain review by
13 certain officials and committees; establishing deadlines for the review of
14 public-private partnership agreements; requiring a certain agency to post a
15 certain agreement on a certain Web site; requiring certain entities to provide
16 performance bonds; prohibiting a public-private partnership agreement from
17 exceeding a certain number of years, with certain exceptions; prohibiting
18 noncompete agreements for certain assets; authorizing the award of certain
19 compensation under certain circumstances; establishing certain requirements
20 for a final public-private partnership agreement; requiring certain proceeds to
21 accrue to certain funds; requiring a certain agency to post on the Internet a
22 certain final agreement; authorizing a certain agency to establish by regulation
23 certain application fees for certain unsolicited proposals; establishing certain
24 requirements for certain unsolicited proposals; providing that certain provisions
25 of the State ethics law do not preclude a certain individual or firm from entering
26 into a certain agreement; specifying the provisions that a public-private
27 partnership agreement must, may, and may not include; authorizing the Board
28 of Public Works to grant a waiver from a certain time limitation under certain
29 circumstances; providing, under certain circumstances, that the provisions of
30 the Minority Business Enterprise Program apply to public-private
31 partnerships; prohibiting the Board of Public Works from approving a
32 public-private partnership agreement until the reporting agency, in
33 consultation with certain entities, establishes certain minority business
34 enterprise goals and procedures; requiring that certain goals and procedures be
35 based on the requirements of certain provisions of law; requiring a circuit court
36 to decide a certain motion within a certain period of time; exempting
37 public-private partnerships from certain requirements of the State
38 procurement law; altering the requirement that the Maryland Transportation
39 Authority provide certain information to certain entities before entering into a
40 certain contract or agreement; repealing a certain obsolete provisions provision;
41 defining a certain term terms; altering certain definitions; providing for the
42 application of certain provisions of this Act; providing for the termination of
43 certain provisions of this Act; and generally relating to public-private
44 partnerships.

45 BY adding to

46 Article – Courts and Judicial Proceedings

1 Section 12–309
2 Annotated Code of Maryland
3 (2006 Replacement Volume and 2011 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – State Finance and Procurement
6 Section 10A–101
7 Annotated Code of Maryland
8 (2009 Replacement Volume and 2011 Supplement)

9 BY repealing
10 Article – State Finance and Procurement
11 Section 10A–102
12 Annotated Code of Maryland
13 (2009 Replacement Volume and 2011 Supplement)

14 BY adding to
15 Article – State Finance and Procurement
16 Section 10A–102 through ~~10A–104~~ 10A–105 to be under the new subtitle
17 “Subtitle 1. Definitions; General Provisions”; 10A–201 through 10A–204
18 to be under the new subtitle “Subtitle 2. Solicited Proposals”; 10A–301 to
19 be under the new subtitle “Subtitle 3. Unsolicited Proposals”; 10A–401
20 ~~and through 10A–402~~ 10A–404 to be under the new subtitle “Subtitle 4.
21 Public–Private Partnership Agreements”; and 11–203(h)
22 Annotated Code of Maryland
23 (2009 Replacement Volume and 2011 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Transportation
26 Section 4–205
27 Annotated Code of Maryland
28 (2008 Replacement Volume and 2011 Supplement)

29 BY repealing
30 Article – Transportation
31 Section ~~4–205 and~~ 4–406
32 Annotated Code of Maryland
33 (2008 Replacement Volume and 2011 Supplement)

34 Preamble

35 WHEREAS, Sufficient quality public infrastructure and related services are
36 vital to the State’s economic, social, and environmental well–being; and

37 WHEREAS, Traditional methods for infrastructure finance, development,
38 construction, operation, and maintenance are not sufficient to meet the current and

1 future infrastructure needs of the State, and it is therefore necessary to promote
2 innovative measures and nontraditional vehicles of infrastructure delivery; and

3 WHEREAS, The establishment of public-private partnerships by and between
4 the State and the private sector is one mechanism to deliver infrastructure projects,
5 increase private investment in public infrastructure, and create jobs in Maryland; and

6 WHEREAS, Expanding the private sector role will allow public agencies in
7 Maryland to tap private sector technical, management, operational, and financial
8 resources and expertise in new ways to achieve public objectives, such as greater cost
9 and schedule certainty, innovative technology applications, specialized expertise, and
10 access to private capital; and

11 WHEREAS, For Maryland to achieve the greatest benefits from public-private
12 partnerships, the process needs to be authorized, transparent, predictable, and
13 expedited; and

14 ~~WHEREAS, The State will comply with all applicable federal, State, and local~~
15 ~~laws and plans as they relate to public-private partnerships, including the federal~~
16 ~~Fair Labor Standards Act, State requirements for green buildings, environmental~~
17 ~~regulations, prevailing wage, living wage, hiring practices, preferences for the~~
18 ~~purchase of supplies and services, and protections for State employees in the~~
19 ~~procurement of services; and~~

20 WHEREAS, The State recognizes the importance of community benefit
21 agreements and encourages agencies to consider their use for all public-private
22 partnerships; and

23 WHEREAS, Minority business participation is an important State policy and its
24 use, if not required, should be encouraged for all public asset delivery initiatives; and

25 WHEREAS, The Governor of Maryland intends to establish by executive order a
26 process to improve the management and coordination of future public-private
27 partnership projects to include all of the responsibilities laid out in the final report of
28 the Joint Legislative and Executive Commission on Oversight of Public-Private
29 Partnerships; now, therefore,

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

32 **Article – Courts and Judicial Proceedings**

33 **12-309.**

34 **(A) THE COURT OF SPECIAL APPEALS HAS JURISDICTION TO HEAR AN**
35 **IMMEDIATE APPEAL FROM ANY ORDER OF A CIRCUIT COURT, INCLUDING A**
36 **FINAL JUDGMENT OR AN INTERLOCUTORY ORDER, AFFECTING OF A MOTION TO**

1 DISMISS, MOTION FOR SUMMARY JUDGMENT THAT DISPOSES OF THE ENTIRE
2 ACTION, OR FINAL ORDER OF A CIRCUIT COURT THAT AFFECTS THE VALIDITY
3 OF A PUBLIC-PRIVATE PARTNERSHIP, AS DEFINED UNDER § 10A-101 OF THE
4 STATE FINANCE AND PROCUREMENT ARTICLE.

5 (B) BRIEFING FOR AN APPEAL UNDER SUBSECTION (A) OF THIS
6 SECTION SHALL BE COMPLETED WITHIN 60 DAYS AFTER THE FILING OF THE
7 APPEAL.

8 (C) THE COURT OF SPECIAL APPEALS SHALL ISSUE A DECISION ON AN
9 APPEAL UNDER SUBSECTION (A) OF THIS SECTION WITHIN ~~150~~ 90 DAYS AFTER
10 THE FILING OF THE APPEAL.

11 (D) IF ANY PARTY SEEKS REVIEW OF A DECISION ISSUED BY THE COURT
12 OF SPECIAL APPEALS UNDER SUBSECTION (C) OF THIS SECTION BY THE COURT
13 OF APPEALS, THE COURT OF APPEALS SHALL:

14 (1) ACT EXPEDITIOUSLY TO CONSIDER THE PETITION FOR A WRIT
15 OF CERTIORARI; AND

16 (2) IF THE WRIT IS GRANTED:

17 (i) ESTABLISH AN EXPEDITIOUS BRIEFING SCHEDULE; AND

18 (ii) ISSUE A DECISION AS EXPEDITIOUSLY AS POSSIBLE.

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

21 **Article – State Finance and Procurement**

22 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

23 10A-101.

24 (a) [(1)] In this title the following words have the meanings indicated.

25 [(2)] (B) “Budget committees” means the Senate Budget and
26 Taxation Committee, the House Committee on Ways and Means, and the House
27 Appropriations Committee.

28 [(3)] (C) “Private entity” means an individual, a corporation, a
29 general or limited partnership, a limited liability company, a joint venture, a statutory
30 trust, a public benefit corporation, a nonprofit entity, or another business entity.

1 **(D) “PUBLIC INFRASTRUCTURE ASSET” MEANS A CAPITAL FACILITY OR**
 2 **STRUCTURE, INCLUDING SYSTEMS AND EQUIPMENT RELATED TO THE FACILITY**
 3 **OR STRUCTURE, INTENDED FOR PUBLIC USE.**

4 **~~[(4)]~~ ~~(D)~~ (E)** “Public notice of solicitation” includes **A REQUEST FOR**
 5 **QUALIFICATIONS**, a request for expressions of interest, **OR** a request for proposals[, a
 6 memorandum of understanding, an interim development agreement, a letter of intent,
 7 or a preliminary development plan].

8 **~~[(5)]~~ ~~(E)~~ (F) [(i)] (1)** “Public-private partnership” means [a sale or
 9 lease agreement between a unit of State government and a private entity under which:

10 1. the private entity assumes control of the operation
 11 and maintenance of an existing State facility; or

12 2. the private entity constructs, reconstructs, finances,
 13 or operates a State facility or a facility for State use and will collect fees, charges,
 14 rents, or tolls for the use of the facility]:

15 **(I) A METHOD FOR DELIVERING ASSETS USING A**
 16 **LONG-TERM, PERFORMANCE-BASED AGREEMENT BETWEEN A REPORTING**
 17 **AGENCY AND A PRIVATE ENTITY WHERE APPROPRIATE RISKS AND BENEFITS**
 18 **CAN BE ALLOCATED IN A COST-EFFECTIVE MANNER BETWEEN THE**
 19 **CONTRACTUAL PARTNERS;**

20 **(II) AN AGREEMENT IN WHICH A PRIVATE ENTITY**
 21 **PERFORMS FUNCTIONS NORMALLY UNDERTAKEN BY THE GOVERNMENT, BUT**
 22 **THE REPORTING AGENCY REMAINS ULTIMATELY ACCOUNTABLE FOR THE ASSET**
 23 **AND ITS PUBLIC FUNCTION; AND**

24 **(III) THE STATE MAY RETAIN OWNERSHIP IN THE ASSET AND**
 25 **THE PRIVATE ENTITY MAY BE GIVEN ADDITIONAL DECISION-MAKING RIGHTS IN**
 26 **DETERMINING HOW THE ASSET IS FINANCED, DEVELOPED, CONSTRUCTED,**
 27 **OPERATED, AND MAINTAINED OVER ITS LIFECYCLE.**

28 **[(ii)] (2)** “Public-private partnership” does not include:

29 **[1.] (I)** a short-term operating space lease entered into
 30 in the ordinary course of business by a unit of State government and a private entity
 31 and approved under § 4-321 **OR § 12-204** of this article;

32 **[2.] (II)** a procurement governed by Division II of this
 33 article; or

1 [3.] (III) public-private partnership agreements entered
 2 into by the University System of Maryland, **ST. MARY'S COLLEGE OF MARYLAND,**
 3 **MORGAN STATE UNIVERSITY, OR BALTIMORE CITY COMMUNITY COLLEGE,**
 4 where no State funds are used to fund or finance any portion of a capital project.

5 [(6)] ~~(F)~~ (G) "Reporting agency" means:

6 [(i)] (1) the Department of General Services;

7 [(ii)] (2) the Maryland Department of Transportation, **FOR**
 8 **ASSETS OF ANY OF ITS MODAL ADMINISTRATIONS ~~OR THE MARYLAND~~**
 9 **~~TRANSPORTATION AUTHORITY;~~**

10 (3) **THE MARYLAND TRANSPORTATION AUTHORITY;**

11 [(iii)] ~~(3)~~ (4) the University System of Maryland;

12 [(iv)] ~~(4)~~ (5) Morgan State University;

13 [(v)] ~~(5)~~ (6) St. Mary's College of Maryland; and

14 [(vi)] ~~(6)~~ (7) the Baltimore City Community College.

15 [(b) The requirements of this title do not apply to the Maryland
 16 Transportation Authority or to a public-private partnership proposed or entered into
 17 by the Maryland Transportation Authority.

18 (c) (1) The reports provided by the Department of General Services under
 19 this section shall include information concerning all public-private partnerships
 20 involving units within the Executive Branch of State government, except for those
 21 units that are also reporting agencies.

22 (2) Following the submission of each of the reports required under this
 23 section, the budget committees shall have 45 days to review and comment on the
 24 reports.

25 (d) (1) Not less than 45 days before issuing a public notice of solicitation
 26 for a public-private partnership, a reporting agency shall submit to the State
 27 Treasurer and the budget committees, in accordance with § 2-1246 of the State
 28 Government Article, a report concerning the proposed public-private partnership.

29 (2) By January 1 of each year, each reporting agency shall submit to
 30 the budget committees, in accordance with § 2-1246 of the State Government Article,
 31 a report concerning each public-private partnership under consideration at that time
 32 by the reporting agency that has not been reviewed or approved previously by the
 33 General Assembly.

1 (3) By January 1 of each year, each reporting agency shall submit to
2 the budget committees, in accordance with § 2–1246 of the State Government Article,
3 a status report concerning each existing public–private partnership in which the
4 reporting agency is involved.

5 (e) By January 1 of each year, a unit of State government that provides
6 conduit financing for a public–private partnership shall submit to the budget
7 committees, in accordance with § 2–1246 of the State Government Article, a report
8 concerning each public–private partnership for which the unit is providing conduit
9 financing.]

10 ~~(G)~~ **(H) “RESPONSIBILITY DETERMINATION” MEANS THE**
11 **DETERMINATION BY A REPORTING AGENCY THAT A PRIVATE ENTITY THAT**
12 **RESPONDS TO A SOLICITATION FOR A PUBLIC–PRIVATE PARTNERSHIP:**

13 **(1) HAS THE CAPABILITY IN ALL RESPECTS TO PERFORM FULLY**
14 **THE REQUIREMENTS OF A PUBLIC–PRIVATE PARTNERSHIP AGREEMENT; AND**

15 **(2) POSSESSES THE INTEGRITY AND RELIABILITY THAT WILL**
16 **ENSURE GOOD FAITH PERFORMANCE.**

17 [10A–102.

18 (a) The State Treasurer shall analyze the impact of each public–private
19 partnership agreement proposed by a unit of State government on the State’s capital
20 debt affordability limits.

21 (b) The State Treasurer shall submit to the budget committees, in
22 accordance with § 2–1246 of the State Government Article, each analysis required
23 under subsection (a) of this section within 30 days after the State Treasurer receives a
24 proposed public–private partnership agreement from a unit of State government.

25 (c) The Board of Public Works may not approve a public–private partnership
26 agreement under § 10–305 or § 12–204 of this article until the budget committees have
27 had 30 days to review and comment on the State Treasurer’s analysis of the
28 agreement required under subsection (a) of this section.

29 (d) The annual report of the Capital Debt Affordability Committee required
30 under § 8–112 of this article shall include an analysis of the aggregate impact of
31 public–private partnership agreements on the total amount of new State debt that
32 prudently may be authorized for the next fiscal year.]

33 **10A–102.**

1 (A) IT IS THE PUBLIC POLICY OF THE STATE TO UTILIZE
2 PUBLIC-PRIVATE PARTNERSHIPS ~~FOR INFRASTRUCTURE INITIATIVES FOR, IF~~
3 APPROPRIATE, TO:

4 (1) ~~FURTHERING THE DEVELOPMENT AND MAINTENANCE OF~~
5 DEVELOP AND STRENGTHEN THE STATE'S PUBLIC INFRASTRUCTURE ASSETS;

6 (2) ~~APPORTIONING APPORTION~~ BETWEEN THE PUBLIC ~~SECTOR~~
7 AND ~~THE~~ PRIVATE ~~SECTOR~~ SECTORS THE RISKS INVOLVED ~~IN THE~~
8 ~~DEVELOPMENT, OPERATION, OR MAINTENANCE OF~~ WITH DEVELOPING AND
9 STRENGTHENING PUBLIC INFRASTRUCTURE ASSETS;

10 (3) ~~FOSTERING~~ FOSTER THE CREATION OF JOBS; AND

11 (4) ~~PROMOTING~~ PROMOTE THE SOCIOECONOMIC DEVELOPMENT
12 AND COMPETITIVENESS OF MARYLAND.

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

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

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

21 10A-103.

22 (A) (1) (I) A REPORTING AGENCY MAY ESTABLISH A
23 PUBLIC-PRIVATE PARTNERSHIP AND EXECUTE ~~A PARTNERSHIP~~ AN AGREEMENT
24 IN CONNECTION WITH ANY FUNCTION, SERVICE, OR PUBLIC INFRASTRUCTURE
25 ASSET FOR WHICH THE REPORTING AGENCY IS RESPONSIBLE IN ACCORDANCE
26 WITH THE PROVISIONS OF THE ANNOTATED CODE.

27 (II) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
28 EXECUTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE
29 PROVISIONS THAT ARE NECESSARY TO DEVELOP AND STRENGTHEN A PUBLIC
30 INFRASTRUCTURE ASSET IN CONJUNCTION WITH A PUBLIC-PRIVATE
31 PARTNERSHIP.

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

4 **(B) (1) A REPORTING AGENCY SHALL ADOPT REGULATIONS AND**
5 **ESTABLISH PROCESSES FOR THE DEVELOPMENT, SOLICITATION, EVALUATION,**
6 **AWARD, AND DELIVERY OF PUBLIC-PRIVATE PARTNERSHIPS.**

7 **(2) A REPORTING AGENCY MAY NOT ADOPT REGULATIONS UNDER**
8 **PARAGRAPH (1) OF THIS SUBSECTION UNTIL:**

9 **(I) THE JOINT COMMITTEE ON ADMINISTRATIVE,**
10 **EXECUTIVE, AND LEGISLATIVE REVIEW REVIEWS THE REGULATIONS IN**
11 **ACCORDANCE WITH § 10-110 OF THE STATE GOVERNMENT ARTICLE;**

12 **(II) THE BUDGET COMMITTEES' REVIEW AND COMMENT ON**
13 **THE REGULATIONS; AND**

14 **(III) AT LEAST 45 DAYS AFTER THE FIRST PUBLICATION OF**
15 **THE REGULATIONS IN THE MARYLAND REGISTER.**

16 **(C) A REPORTING AGENCY MAY CREATE A SPECIFIC FUNCTION**
17 **DEDICATED TO PUBLIC-PRIVATE PARTNERSHIP PROCESSES WITHIN THE**
18 **EXISTING REPORTING AGENCY.**

19 **(D) ANY COMBINATION OF FEDERAL, STATE, OR LOCAL FUNDS,**
20 **GRANTS, LOANS, OR DEBT MAY BE USED FOR A PUBLIC-PRIVATE PARTNERSHIP**
21 **PROJECT.**

22 **(E) ANY PUBLIC PROCEEDS FROM A PUBLIC-PRIVATE PARTNERSHIP**
23 **SHALL ACCRUE TO WHATEVER FUND THAT WOULD HAVE NORMALLY RECEIVED**
24 **THOSE FUNDS.**

25 **10A-104.**

26 **(A) (1) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY**
27 **SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246**
28 **OF THE STATE GOVERNMENT ARTICLE:**

29 **(I) A REPORT CONCERNING EACH PUBLIC-PRIVATE**
30 **PARTNERSHIP UNDER CONSIDERATION THAT HAS NOT BEEN REVIEWED OR**
31 **APPROVED PREVIOUSLY BY THE GENERAL ASSEMBLY; AND**

1 (II) A STATUS REPORT CONCERNING EACH EXISTING
2 PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY IS
3 INVOLVED.

4 (2) THE REPORTS SUBMITTED BY THE DEPARTMENT OF
5 GENERAL SERVICES UNDER THIS SUBSECTION SHALL INCLUDE INFORMATION
6 CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN
7 THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS
8 THAT ARE ALSO REPORTING AGENCIES.

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

15 (C) THE ANNUAL REPORT OF THE CAPITAL DEBT AFFORDABILITY
16 COMMITTEE REQUIRED UNDER § 8-112 OF THIS ARTICLE SHALL INCLUDE AN
17 ANALYSIS OF THE AGGREGATE IMPACT OF PUBLIC-PRIVATE PARTNERSHIP
18 AGREEMENTS ON THE TOTAL AMOUNT OF NEW STATE DEBT THAT PRUDENTLY
19 MAY BE AUTHORIZED FOR THE NEXT FISCAL YEAR.

20 10A-105.

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

25 (1) § 3-602.1 OF THIS ARTICLE; AND

26 (2) THE ENVIRONMENT ARTICLE.

27 SUBTITLE 2. SOLICITED PROPOSALS.

28 10A-201.

29 (A) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
30 PARAGRAPH, A REPORTING AGENCY MAY NOT ISSUE A PUBLIC NOTICE OF
31 SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP UNTIL A
32 PRESOLICITATION REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE
33 PARTNERSHIP IS SUBMITTED TO THE COMPTROLLER, THE STATE TREASURER,

1 THE BUDGET COMMITTEES, AND THE DEPARTMENT OF LEGISLATIVE SERVICES,
2 IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

3 (II) A REPORTING AGENCY MAY NOT ISSUE A PUBLIC
4 NOTICE OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP FOR A
5 TRANSPORTATION FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE
6 TRANSPORTATION ARTICLE, UNTIL A PRESOLICITATION REPORT CONCERNING
7 THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP IS SUBMITTED TO THE BUDGET
8 COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN
9 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

10 (2) THE BUDGET COMMITTEES MAY NOT HAVE MORE THAN 45
11 DAYS TO REVIEW AND COMMENT ON THE PRESOLICITATION REPORT SUBMITTED
12 IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

13 (B) (1) A PRESOLICITATION REPORT SHALL:

14 (I) STATE THE SPECIFIC POLICY, OPERATIONAL, AND
15 FINANCIAL REASONS FOR PURSUING A PUBLIC-PRIVATE PARTNERSHIP;

16 (II) IDENTIFY THE ANTICIPATED RISKS AND BENEFITS TO
17 THE STATE AND ANY POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR
18 ENVIRONMENTAL IMPLICATIONS;

19 (III) EVALUATE, IF RELEVANT AND TO THE EXTENT
20 NECESSARY, THE RISKS AND BENEFITS OF A PUBLIC-PRIVATE PARTNERSHIP,
21 INCLUDING BENEFITS SUCH AS EXPEDITED ASSET DELIVERY, COST SAVINGS,
22 RISK TRANSFER, NET NEW REVENUE, STATE-OF-THE-ART TECHNIQUES FOR
23 ASSET DEVELOPMENT OR OPERATIONS, EFFICIENCY OF OPERATIONS, AND
24 MAINTENANCE VIA INNOVATIVE MANAGEMENT TECHNIQUES, OR EXPERTISE IN
25 ACCESSING AND ORGANIZING THE WIDEST RANGE OF FINANCIAL RESOURCES;

26 (IV) INCLUDE, IF RELEVANT AND TO THE EXTENT POSSIBLE,
27 A PRELIMINARY ANALYSIS ON DEBT AFFORDABILITY AND A STATEMENT OF
28 INTENTION TO USE THE EXEMPTION FROM THE REQUIREMENTS OF DIVISION II
29 OF THIS ARTICLE SET FORTH IN § 11-203 OF THIS ARTICLE;

30 (V) WITHHOLD A PRIVATE ENTITY'S PROPRIETARY
31 INFORMATION, INCLUDING IN ACCORDANCE WITH § 10-617(D) OF THE STATE
32 GOVERNMENT ARTICLE, RELATING TO:

33 1. CONFIDENTIAL COMMERCIAL INFORMATION;

34 2. CONFIDENTIAL FINANCIAL INFORMATION; AND

1 **3. TRADE SECRETS; AND**

2 (VI) BE POSTED ONLINE BY THE REPORTING AGENCY
3 DURING THE 45-DAY REVIEW PERIOD IN ACCORDANCE WITH PARAGRAPH (2) OF
4 THIS SUBSECTION.

5 (2) THE ONLINE LOCATION OF THE PRESOLICITATION REPORT
6 ~~MAY~~ SHALL BE:

7 (I) ON THE WEB SITE OF THE REPORTING AGENCY; OR

8 (II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE
9 HAS BEEN ESTABLISHED.

10 (3) THE REPORTING AGENCY SHALL INCLUDE IN THE MARYLAND
11 REGISTER A BRIEF SYNOPSIS OF, AND A LINK TO, THE PRESOLICITATION
12 REPORT.

13 **10A-202.**

14 (A) ~~A~~ IF A REPORTING AGENCY INTENDS TO ESTABLISH A
15 PUBLIC-PRIVATE PARTNERSHIP UNDER § 10A-103 OF THIS TITLE, THE
16 REPORTING AGENCY ~~MAY~~ SHALL ISSUE A PUBLIC NOTICE OF SOLICITATION FOR
17 ~~A~~ THE PUBLIC-PRIVATE PARTNERSHIP.

18 (B) FOR ANY PRIVATE ENTITY THAT RESPONDS TO THE SOLICITATION,
19 A REPORTING AGENCY SHALL MAKE A RESPONSIBILITY DETERMINATION.

20 (C) ~~IF THE A PRIVATE ENTITY INVOLVES MORE THAN ONE COMPANY OR~~
21 ~~PARTNER~~ IS COMPRISED OF MULTIPLE SUBENTITIES OR PARTNERS, THE
22 REPORTING AGENCY SHALL MAKE A RESPONSIBILITY DETERMINATION FOR
23 EACH SUBENTITY OR PARTNER ~~OR OFFICER~~ OWNING 20% OR MORE OF THE
24 ENTITY.

25 (D) ANY CHANGES IN THE OWNERSHIP COMPOSITION OF A
26 PUBLIC-PRIVATE PARTNERSHIP, AS DESCRIBED IN SUBSECTION (C) OF THIS
27 SECTION, REQUIRE:

28 (1) A RESPONSIBILITY DETERMINATION;

29 (2) 45 DAYS' NOTICE TO THE BUDGET COMMITTEES; AND

30 (3) APPROVAL BY THE BOARD OF PUBLIC WORKS.

1 (E) (1) A REPORTING AGENCY MAY:

2 ~~(1)~~ REIMBURSE A PRIVATE ENTITY FOR THE PORTION OF THE
3 ENTITY'S COSTS USED TO DEVELOP A RESPONSE TO A PUBLIC NOTICE OF A
4 SOLICITATION;~~AND.~~

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

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

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

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

15 ~~(2)~~ (4) A REPORTING AGENCY MAY PAY AN ENTITY THAT
16 SUBMITS AN UNSUCCESSFUL PROPOSAL FOR THE RIGHT TO USE THE ENTITY'S
17 WORK PRODUCT.

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

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

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

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

29 (F) A REPORTING AGENCY SHALL SUBMIT A COPY OF THE PROPOSED
30 AGREEMENT SIMULTANEOUSLY TO THE COMPTROLLER, THE STATE
31 TREASURER, THE BUDGET COMMITTEES, AND THE DEPARTMENT OF

1 LEGISLATIVE SERVICES, IN ACCORDANCE WITH § 2-1246 OF THE STATE
2 GOVERNMENT ARTICLE.

3 **10A-203.**

4 (A) THE BOARD OF PUBLIC WORKS SHALL APPROVE OR DISAPPROVE
5 EACH PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

6 ~~(A)~~ (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
7 SUBSECTION, THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
8 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNTIL:

9 (I) A COPY OF THE PROPOSED AGREEMENT IS SUBMITTED
10 TO THE COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES,
11 AND THE DEPARTMENT OF LEGISLATIVE SERVICES, ~~IN ACCORDANCE WITH~~
12 ~~§ 2-1246 OF THE STATE GOVERNMENT ARTICLE~~ AS REQUIRED BY § 10A-202(F)
13 OF THIS SUBTITLE;

14 (II) THE STATE TREASURER, IN COORDINATION WITH THE
15 COMPTROLLER, ANALYZES THE IMPACT ON THE STATE'S CAPITAL DEBT
16 AFFORDABILITY LIMITS OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP
17 AGREEMENT;

18 (III) THE STATE TREASURER SUBMITS THE ANALYSIS TO THE
19 BUDGET COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN
20 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE; AND

21 (IV) THE BUDGET COMMITTEES HAVE REVIEWED AND
22 COMMENTED ON THE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (3) OF
23 THIS SUBSECTION.

24 (2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
25 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION
26 FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION
27 ARTICLE, UNTIL THE PROPOSED AGREEMENT IS SUBMITTED TO THE BUDGET
28 COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES IN
29 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

30 (3) (I) THE PERIOD FOR REVIEW, ANALYSIS, AND COMMENT
31 UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION MAY NOT EXCEED A
32 TOTAL OF 30 DAYS FROM THE DATE THE PROPOSED AGREEMENT IS SUBMITTED
33 TO THE STATE TREASURER, COMPTROLLER, BUDGET COMMITTEES, AND THE
34 DEPARTMENT OF LEGISLATIVE SERVICES.

1 **(II) THE BUDGET COMMITTEES MAY FACILITATE A FASTER**
2 **REVIEW AND COMMENT PERIOD BY SENDING A LETTER TO THE BOARD OF**
3 **PUBLIC WORKS SUPPORTING A PROPOSED AGREEMENT IN ADVANCE OF THE**
4 **EXPIRATION OF THE 30-DAY REVIEW PERIOD.**

5 ~~(B)~~ (C) **(1) THE PROPOSED AGREEMENT:**

6 **(I) MAY WITHHOLD A PRIVATE ENTITY'S PROPRIETARY**
7 **INFORMATION, ~~INCLUDING~~ IN ACCORDANCE WITH § 10-617(D) OF THE STATE**
8 **GOVERNMENT ARTICLE, RELATING TO:**

9 **1. CONFIDENTIAL COMMERCIAL INFORMATION;**

10 **2. CONFIDENTIAL FINANCIAL INFORMATION; AND**

11 **3. TRADE SECRETS; AND**

12 **(II) SHALL BE POSTED ONLINE BY THE REPORTING AGENCY**
13 **DURING THE 30-DAY REVIEW PERIOD IN ACCORDANCE WITH PARAGRAPH (2) OF**
14 **THIS SUBSECTION.**

15 **(2) THE ONLINE LOCATION OF THE PROPOSED AGREEMENT ~~MAY~~**
16 **SHALL BE:**

17 **(I) ON THE WEB SITE OF THE REPORTING AGENCY; OR**

18 **(II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE**
19 **HAS BEEN ESTABLISHED.**

20 **10A-204.**

21 **(A) THE REPORTING AGENCY SHALL POST THE FINAL AGREEMENT OF A**
22 **PUBLIC-PRIVATE PARTNERSHIP ON THE WEB SITE OF THE REPORTING AGENCY**
23 **OR THE WEB SITE OF THE SPECIFIC PROJECT IF ONE HAS BEEN ESTABLISHED.**

24 **(B) PROPRIETARY INFORMATION MAY BE WITHHELD FROM THE POSTED**
25 **VERSION OF THE FINAL AGREEMENT.**

26 **SUBTITLE 3. UNSOLICITED PROPOSALS.**

27 **10A-301.**

28 **(A) A REPORTING AGENCY MAY ACCEPT, REJECT, OR EVALUATE AN**
29 **UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE PARTNERSHIP THAT WILL**

1 ASSIST THE AGENCY IN IMPLEMENTING ITS FUNCTIONS IN A MANNER
2 CONSISTENT WITH STATE POLICY.

3 (B) A REPORTING AGENCY SHALL ESTABLISH THE PROCESS FOR
4 DETERMINING WHETHER AN UNSOLICITED PROPOSAL MEETS A NEED OF THE
5 REPORTING AGENCY OR IS OTHERWISE ADVANTAGEOUS TO THE REPORTING
6 AGENCY.

7 (C) (1) A REPORTING AGENCY MAY ESTABLISH BY REGULATION AN
8 APPLICATION FEE FOR SUBMITTING AN UNSOLICITED PROPOSAL.

9 (2) FOR AN UNSOLICITED PROPOSAL THAT DOES NOT ADDRESS A
10 PROJECT ALREADY IN THE STATE'S CAPITAL IMPROVEMENT PROGRAM OR
11 CONSOLIDATED TRANSPORTATION PROGRAM PLANNING DOCUMENTS, A
12 REPORTING AGENCY MAY REQUIRE A HIGHER PROPOSAL FEE.

13 (D) IF A REPORTING AGENCY DETERMINES THAT AN UNSOLICITED
14 PROPOSAL MEETS A NEED OF THE REPORTING AGENCY OR IS OTHERWISE
15 ADVANTAGEOUS TO THE REPORTING AGENCY, THE REPORTING AGENCY SHALL:

16 (1) CONDUCT A COMPETITIVE BIDDING SOLICITATION PROCESS;
17 ~~AND~~

18 (2) PROTECT PROPRIETARY INFORMATION INCLUDED IN THE
19 UNSOLICITED PROPOSAL TO THE SAME EXTENT PROPRIETARY INFORMATION IS
20 PROTECTED UNDER § 10A-201(B) OF THIS TITLE; AND

21 ~~(2)~~ (3) COMPLY WITH ALL OF THE OTHER PROCEDURAL
22 REQUIREMENTS SET FORTH IN THIS TITLE.

23 (E) THE PROVISIONS OF § 15-508 OF THE STATE GOVERNMENT
24 ARTICLE MAY NOT PRECLUDE AN INDIVIDUAL OR FIRM THAT HAS SUBMITTED
25 AN UNSOLICITED PROPOSAL UNDER THIS TITLE FROM SUBMITTING AND
26 PARTICIPATING IN THE COMPETITIVE BIDDING PROCESS.

27 SUBTITLE 4. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.

28 10A-401.

29 (A) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL INCLUDE
30 THE FOLLOWING PROVISIONS:

31 (1) THE METHOD FOR APPROVAL OF ANY REASSIGNMENT OF ANY
32 LEASE, SUBLEASE, OR SALE, INCLUDING WHETHER THE STATE RESERVES THE

1 ~~RIGHT OF FIRST REFUSAL AND APPROVAL OVER ANY REASSIGNMENTS OF ANY~~
2 ~~LEASE, SUBLEASE, OR SALE, AND THAT THE REPORTING AGENCY OVERSEEING~~
3 ~~THE AGREEMENT MUST NOTIFY THE BUDGET COMMITTEES OF ANY OF THESE~~
4 ~~ACTIONS;~~

5 (2) THE METHODS FOR FUTURE INCREASES IN TOLLS, FEES, AND
6 OTHER CHARGES RELATED TO THE ASSET;

7 (3) WHENEVER APPLICABLE, REVENUE-SHARING, IN WHICH THE
8 PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET PERFORMANCE,
9 SHALL BE UTILIZED;

10 (4) MINIMUM QUALITY STANDARDS, PERFORMANCE CRITERIA,
11 INCENTIVES, AND DISINCENTIVES;

12 (5) OPERATIONS AND MAINTENANCE STANDARDS;

13 (6) ALLOW FOR INSPECTION BY THE STATE;

14 (7) THE REPORTING AGENCY MAY PROVIDE SERVICES, AS
15 APPLICABLE, FOR A FEE SUFFICIENT TO COVER BOTH DIRECT AND INDIRECT
16 COSTS;

17 ~~(8) THE REPORTING AGENCY MAY USE EMINENT DOMAIN FOR THE~~
18 ~~PROJECT IN ACCORDANCE WITH STATE LAW PROCEDURES;~~

19 ~~(9)~~ (8) PROVISIONS FOR AGREEMENT OVERSIGHT AND
20 REMEDIES AND PENALTIES FOR DEFAULT;

21 ~~(10)~~ (9) THE REPORTING AGENCY ORIGINATING THE
22 PUBLIC-PRIVATE PARTNERSHIP SHALL BE RESPONSIBLE FOR ONGOING
23 OVERSIGHT;

24 ~~(11)~~ (10) AGREEMENTS, FINANCIAL STATEMENTS RECORDS, AND
25 PERFORMANCE RELATED TO THE PUBLIC-PRIVATE PARTNERSHIP, ~~AS WELL AS~~
26 ~~ANNUAL AUDITED FINANCIAL STATEMENTS OF THE PRIVATE ENTITY,~~ ARE
27 SUBJECT TO AUDIT BY THE STATE, INCLUDING THE OFFICE OF LEGISLATIVE
28 AUDITS NO MORE THAN EVERY 3 YEARS;

29 ~~(12)~~ (11) ASSETS SHALL BE RETURNED TO THE STATE AT THE
30 EXPIRATION OR TERMINATION OF THE AGREEMENT IN AN ACCEPTABLE
31 CONDITION; ~~AND~~

1 ~~(13)~~ **(12)** **THE PRIVATE ENTITY SHALL PROVIDE, IF APPLICABLE,**
2 **A PERFORMANCE BOND OR A LETTER OF CREDIT; AND**

3 **(13) THE PRIVATE ENTITY AND ANY CONTRACTORS OR**
4 **SUBCONTRACTORS CONSTRUCTING A PUBLIC INFRASTRUCTURE ASSET SHALL**
5 **BE SUBJECT TO TITLE 17, SUBTITLE 2 OF THIS ARTICLE REGARDLESS OF**
6 **WHETHER THE CONTRACT QUALIFIES AS A PUBLIC WORKS CONTRACT.**

7 **(B) (1) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY INCLUDE**
8 **A PROVISION THAT, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
9 **SUBSECTION, COMPENSATION MAY BE PROVIDED FOR COMPETING**
10 **INFRASTRUCTURE DEVELOPMENTS THAT RESULT IN A DOCUMENTED REVENUE**
11 **LOSS FOR THE PRIVATE ENTITY IN A PUBLIC-PRIVATE PARTNERSHIP.**

12 **(2) COMPENSATION MAY NOT BE PROVIDED AS A RESULT OF**
13 **STATE INFRASTRUCTURE DEVELOPMENTS ALREADY IN THE STATE'S CAPITAL**
14 **IMPROVEMENT PROGRAM OR CONSOLIDATED TRANSPORTATION PROGRAM**
15 **PLANNING DOCUMENTS AT THE TIME THE PUBLIC-PRIVATE PARTNERSHIP**
16 **AGREEMENT IS EXECUTED, SAFETY INITIATIVES, INFRASTRUCTURE**
17 **IMPROVEMENTS WITH MINIMAL CAPACITY INCREASES, OR INFRASTRUCTURE**
18 **FOR OTHER TRANSPORTATION MODES.**

19 **(C) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT INCLUDE**
20 **A NONCOMPETE CLAUSE FOR PUBLIC-PRIVATE PARTNERSHIP PROJECTS**
21 **INVOLVING ROAD, HIGHWAY, OR BRIDGE ASSETS.**

22 **10A-402.**

23 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**
24 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT EXCEED 50 YEARS,**
25 **INCLUDING ALL RENEWALS AND EXTENSIONS.**

26 **(B) THE BOARD OF PUBLIC WORKS MAY:**

27 **(1) ~~GRANT AN EXEMPTION TO~~ WAIVE THE PROHIBITION SET**
28 **FORTH IN SUBSECTION ~~(B)~~ (A) OF THIS SECTION IF THE BOARD DETERMINES**
29 **THAT THE REPORTING AGENCY HAS DEMONSTRATED SUFFICIENT REASON FOR**
30 **THE AGREEMENT TO HAVE A LONGER TERM; AND**

31 **(2) ~~GRANT AN EXEMPTION TO~~ WAIVE THE PROHIBITION SET**
32 **FORTH IN SUBSECTION ~~(B)~~ (A) OF THIS SECTION AT ANY POINT DURING THE**
33 **PRESOLICITATION, PROPOSAL REVIEW, OR AGREEMENT NEGOTIATIONS**
34 **PROCESS.**

1 **10A-403.**

2 **IN AN ACTION RELATED TO A PUBLIC-PRIVATE PARTNERSHIP, THE**
 3 **CIRCUIT COURT SHALL DECIDE A MOTION TO DISMISS OR MOTION FOR**
 4 **SUMMARY JUDGMENT AFFECTING THE VALIDITY OF THE PUBLIC-PRIVATE**
 5 **PARTNERSHIP WITHIN 120 DAYS AFTER THE FILING OF THE MOTION.**

6 11-203.

7 **(H) (1) ~~THIS DIVISION IS~~ EXCEPT AS PROVIDED IN PARAGRAPH (2)**
 8 **OF THIS SUBSECTION, THIS DIVISION DOES NOT APPLY TO A PUBLIC-PRIVATE**
 9 **PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE.**

10 **(2) THE FOLLOWING PROVISIONS OF THIS DIVISION APPLY TO A**
 11 **PUBLIC-PRIVATE PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE:**

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

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

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

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

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

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

22 **Article – Transportation**

23 ~~4~~4-205.

24 (a) Subject to § 4-306 of this title and in addition to the powers otherwise
 25 specifically granted by law, the Authority has the powers described in this section.

26 (b) The Authority may acquire, hold, and dispose of property in the exercise
 27 of its powers and performance of its duties.

28 (c) (1) Subject to the limitations described in paragraph (2) of this
 29 subsection, the Authority may make any contracts and agreements necessary or
 30 incidental to the exercise of its powers and performance of its duties.

1 (2) Not less than ~~45~~ 30 days before entering into any contract or
2 agreement to acquire or construct a revenue-producing transportation facilities
3 project, subject to § 2-1246 of the State Government Article, the Authority shall
4 provide, to the Senate Budget and Taxation Committee, the House Committee on
5 Ways and Means, and the House Appropriations Committee, for review and comment,
6 and to the Department of Legislative Services, a description of the proposed project, a
7 summary of the contract or agreement, and a financing plan that details:

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

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

12 (d) (1) Subject to paragraph (2) of this subsection, the Authority may
13 employ and fix the compensation of attorneys, consulting engineers, accountants,
14 construction and financial experts, superintendents, managers, and any other agents
15 and employees that it considers necessary to exercise its powers and perform its
16 duties. The compensation established by the Authority for executive management
17 positions shall be consistent with the compensation of comparable positions in the
18 Department of Transportation. The compensation established by the Authority shall
19 be reported to the General Assembly each year as part of the Authority's presentation
20 of its budget.

21 (2) The expense of employing these persons may be paid only from
22 revenues or from the proceeds of revenue bonds issued by the Authority.

23 (e) The Authority may apply for and receive grants from any federal agency
24 for the planning, construction, operation, or financing of any transportation facilities
25 project and may receive aid or contributions of money, property, labor, or other things
26 of value from any source, to be held, used, and applied for the purposes for which the
27 grants, aid, and contributions are made.

28 (f) The Authority may adopt rules and regulations to carry out the
29 provisions of this title.

30 (g) The Authority may do anything else necessary or convenient to carry out
31 the powers granted in this title.†

32 [4-406.

33 (a) (1) In this section the following words have the meanings indicated.

34 (2) "Budget committees" means the Senate Budget and Taxation
35 Committee, the House Committee on Ways and Means, and the House Appropriations
36 Committee.

1 (3) “Private entity” means an individual, a corporation, a general or
2 limited partnership, a limited liability company, a joint venture, a business trust, a
3 public benefit corporation, a nonprofit entity, or another business entity.

4 (4) “Public notice of solicitation” includes a request for expressions of
5 interest, a request for proposals, a memorandum of understanding, an interim
6 development agreement, a letter of intent, or a preliminary development plan.

7 (5) (i) “Public-private partnership” means a sale or lease
8 agreement between the Authority and a private entity under which:

9 1. The private entity assumes control of the operation
10 and maintenance of an existing State facility; or

11 2. The private entity constructs, reconstructs, finances,
12 or operates a State facility or a facility for State use and will collect fees, charges,
13 rents, or tolls for the use of the facility.

14 (ii) “Public-private partnership” does not include:

15 1. A short-term operating space lease entered into in the
16 ordinary course of business by the Authority and a private entity; or

17 2. A procurement governed by Division II of the State
18 Finance and Procurement Article.

19 (b) Following the submission of each of the reports required under this
20 section, the budget committees shall have 45 days to review and comment on the
21 reports.

22 (c) (1) Not less than 45 days before issuing a public notice of solicitation
23 for a public-private partnership, the Authority shall submit to the budget committees,
24 in accordance with § 2-1246 of the State Government Article, a report concerning the
25 proposed public-private partnership.

26 (2) By January 1 of each year, the Authority shall submit to the
27 budget committees, in accordance with § 2-1246 of the State Government Article, a
28 report concerning each public-private partnership under consideration at that time by
29 the Authority that has not been reviewed or approved previously by the General
30 Assembly.

31 (3) By January 1 of each year, the Authority shall submit to the
32 budget committees, in accordance with § 2-1246 of the State Government Article, a
33 status report concerning each existing public-private partnership in which the
34 Authority is involved.

1 (d) By January 1 of each year, the Authority shall submit to the budget
2 committees, in accordance with § 2-1246 of the State Government Article, a report
3 concerning each public-private partnership for which the Authority is providing
4 conduit financing.

5 (e) Not less than 30 days before entering into a public-private partnership
6 agreement, the Authority shall submit to the budget committees, in accordance with §
7 2-1246 of the State Government Article, an analysis of the impact of the proposed
8 public-private partnership agreement on the Authority's financing plan, including the
9 Authority's operating and capital budgets and debt capacity.

10 (f) The Board of Public Works may not approve a public-private partnership
11 agreement under § 10-305 or § 12-204 of the State Finance and Procurement Article
12 that the Authority proposes to enter into until the budget committees have had 30
13 days to review and comment on the Authority's analysis of the agreement required
14 under subsection (e) of this section.]

15 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
16 read as follows:

17 Article – State Finance and Procurement

18 10A-404.

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

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

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

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

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

7 **(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT**
 8 **THIS SECTION.**

9 **SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall**
 10 **apply to a public-private partnership established before, on, or after the effective date**
 11 **of this Act.**

12 **SECTION 5. AND BE IT FURTHER ENACTED, That on or before July 31,**
 13 **2012, a party may appeal an order of a circuit court issued before the effective date of**
 14 **this Act to the Court of Special Appeals under Section 1 of this Act.**

15 **SECTION ~~2~~ 6. AND BE IT FURTHER ENACTED, That, except as provided in**
 16 **Section 4 of this Act, this Act shall apply only to public-private partnerships**
 17 **established on or after the effective date of this Act.**

18 **SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall**
 19 **take effect July 1, 2012. It shall remain effective for a period of 4 years and, at the end**
 20 **of June 30, 2016, with no further action required by the General Assembly, Section 3**
 21 **of this Act shall be abrogated and of no further force and effect.**

22 **SECTION ~~3~~ 8. AND BE IT FURTHER ENACTED, That this Act shall take**
 23 **effect July 1, 2012.**

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.