

HOUSE BILL 560

C8

(3lr0133)

ENROLLED BILL

— *Environmental Matters and Appropriations/Budget and Taxation* —

Introduced by **The Speaker (By Request – Administration) and Delegates Bohanan, Busch, Cardin, Clagett, Conway, Gaines, Griffith, Guzzone, Healey, Hixson, Howard, James, Lafferty, McIntosh, Mitchell, and Zucker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

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; authorizing a
5 certain agency to establish a public-private partnership and execute a
6 partnership agreement in connection with certain functions, services, or assets;
7 requiring a certain agency to adopt certain regulations and establish certain
8 processes for the development, solicitation, evaluation, award, and delivery of
9 public-private partnerships; requiring certain legislative committees to review
10 and comment on certain processes and regulations; requiring certain agencies to
11 submit, on or before a certain date each year, certain reports to certain
12 legislative committees; establishing certain requirements for certain reports;

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.

Italics indicate opposite chamber/conference committee amendments.



1 requiring certain public-private partnerships to be listed in the annual capital
2 budget or the Consolidated Transportation Program; establishing deadlines for
3 the review of certain presolicitation reports; authorizing, under certain
4 circumstances, certain legislative committees to request additional time to review
5 the presolicitation report; requiring certain projects to comply with certain
6 provisions of law; requiring that State employees retain certain protections
7 under certain circumstances; prohibiting the Board of Public Works from
8 approving a public-private partnership that results in the State exceeding
9 certain debt affordability guidelines; requiring a reporting agency to issue a
10 public notice of solicitation for a public-private partnership under certain
11 circumstances; requiring certain agencies to comply with certain requirements
12 before issuing a solicitation for a public-private partnership; providing that a
13 certain entity may be qualified as a bidder through certain processes;
14 authorizing a reporting agency to engage in discussions with qualified bidders
15 at certain times and under certain circumstances; requiring a certain agency to
16 make a certain responsibility determination concerning certain entities;
17 authorizing a reporting agency to reimburse a private entity for certain costs
18 and pay a certain entity for the right to use a certain work product; requiring a
19 reporting agency to adopt certain regulations that establish the process for the
20 reimbursement of a private entity; prohibiting a reporting agency from
21 reimbursing a private entity under certain circumstances; ~~requiring a certain~~
22 ~~agency to submit certain reports to certain officials and committees;~~ prohibiting
23 the Board of Public Works from approving a public-private partnership
24 agreement until the completion of a certain review by certain officials and
25 committees; establishing deadlines for the review of public-private partnership
26 agreements; requiring a certain agency to post a certain agreement on a certain
27 Web site; requiring certain entities to provide performance bonds; prohibiting a
28 public-private partnership agreement from exceeding a certain number of
29 years, with certain exceptions; prohibiting noncompete agreements for certain
30 assets; authorizing the award of certain compensation under certain
31 circumstances; establishing certain requirements for a final public-private
32 partnership agreement; requiring certain proceeds to accrue to certain funds;
33 requiring a certain agency to post on the Internet a certain final agreement;
34 requiring certain information to be withheld from the posted version of the
35 agreement; authorizing a certain agency to establish by regulation certain
36 application fees for certain unsolicited proposals; establishing certain
37 requirements for certain unsolicited proposals; authorizing an individual or firm
38 that submits an unsolicited proposal to participate in a certain subsequent
39 process; providing that certain provisions of the State ethics law do not preclude
40 a certain individual or firm from entering into a certain agreement; providing,
41 under certain circumstances, that the provisions of the Minority Business
42 Enterprise Program apply to public-private partnerships; prohibiting the Board
43 of Public Works from approving a public-private partnership agreement until
44 the reporting agency, in consultation with certain entities, establishes certain
45 minority business enterprise goals and procedures; requiring that certain goals
46 and procedures be based on the requirements of certain provisions of law;
47 exempting public-private partnerships from certain requirements of the State

1 procurement law; repealing certain obsolete provisions; defining a certain term;
2 altering certain definitions; providing for the application of this Act; providing
3 for the termination of certain provisions of this Act; and generally relating to
4 public-private partnerships.

5 BY repealing and reenacting, with amendments,
6 Article – State Finance and Procurement
7 Section 10A-101
8 Annotated Code of Maryland
9 (2009 Replacement Volume and 2012 Supplement)

10 BY repealing
11 Article – State Finance and Procurement
12 Section 10A-102
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2012 Supplement)

15 BY adding to
16 Article – State Finance and Procurement
17 Section 10A-102 through 10A-105 to be under the new subtitle “Subtitle 1.
18 Definitions; General Provisions”; 10A-201 through 10A-204 to be under
19 the new subtitle “Subtitle 2. Solicited Proposals”; 10A-301 to be under
20 the new subtitle “Subtitle 3. Unsolicited Proposals”; 10A-401 through
21 10A-403 to be under the new subtitle “Subtitle 4. Public-Private
22 Partnership Agreements”; and 11-203(h)
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2012 Supplement)

25 BY repealing
26 Article – Transportation
27 Section 4-406
28 Annotated Code of Maryland
29 (2008 Replacement Volume and 2012 Supplement)

30 Preamble

31 WHEREAS, Traditional methods for infrastructure finance, development,
32 construction, operation, and maintenance are not sufficient to meet the current and
33 future infrastructure needs of the State, and it is therefore necessary to promote
34 innovative measures and nontraditional vehicles of infrastructure delivery; and

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

38 WHEREAS, The Governor of Maryland intends to establish by executive order a
39 process to improve the management and coordination of future public-private

1 partnership projects to include all of the responsibilities laid out in the final report of
 2 the Joint Legislative and Executive Commission on Oversight of Public–Private
 3 Partnerships; now, therefore,

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

6 **Article – State Finance and Procurement**

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

8 10A–101.

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

10 [(2)] (B) “Budget committees” means the Senate Budget and
 11 Taxation Committee, the House Committee on Ways and Means, and the House
 12 Appropriations Committee.

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

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

19 [(4)] (E) “Public notice of solicitation” includes **A REQUEST FOR**
 20 **QUALIFICATIONS**, a request for expressions of interest, a request for proposals, [a
 21 memorandum of understanding, an interim development agreement, a letter of intent,
 22 or a preliminary development plan] **OR ANY COMBINATION THEREOF.**

23 [(5) (i)] (F) (1) “Public–private partnership” means [a sale or lease
 24 agreement between a unit of State government and a private entity under which:

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

27 2. the private entity constructs, reconstructs, finances,
 28 or operates a State facility or a facility for State use and will collect fees, charges,
 29 rents, or tolls for the use of the facility] **A METHOD FOR DELIVERING PUBLIC**
 30 **INFRASTRUCTURE ASSETS USING A LONG–TERM, PERFORMANCE–BASED**
 31 **AGREEMENT BETWEEN A REPORTING AGENCY AND A PRIVATE ENTITY WHERE**
 32 **APPROPRIATE RISKS AND BENEFITS CAN BE ALLOCATED IN A COST–EFFECTIVE**
 33 **MANNER BETWEEN THE CONTRACTUAL PARTNERS IN WHICH:**

1 ~~(H)~~ **(I)** A PRIVATE ENTITY PERFORMS FUNCTIONS
 2 NORMALLY UNDERTAKEN BY THE GOVERNMENT, BUT THE REPORTING AGENCY
 3 REMAINS ULTIMATELY ACCOUNTABLE FOR THE PUBLIC INFRASTRUCTURE
 4 ASSET AND ITS PUBLIC FUNCTION; AND

5 ~~(H)~~ **(II)** THE STATE MAY RETAIN OWNERSHIP IN THE
 6 PUBLIC INFRASTRUCTURE ASSET AND THE PRIVATE ENTITY MAY BE GIVEN
 7 ADDITIONAL DECISION-MAKING RIGHTS IN DETERMINING HOW THE ASSET IS
 8 FINANCED, DEVELOPED, CONSTRUCTED, OPERATED, AND MAINTAINED OVER
 9 ITS LIFE CYCLE.

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

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

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

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

20 **(IV)** ~~A REVENUE-PRODUCING TRANSPORTATION FACILITIES~~
 21 ~~PROJECT EXEMPTED FROM PROCUREMENT UNDER 21.01.03.03(D)~~ UNDER
 22 21.01.03.03(B)(1)(D) OF COMAR THE CODE OF MARYLAND REGULATIONS
 23 THAT IS NOT A PUBLIC-PRIVATE PARTNERSHIP AS DEFINED UNDER PARAGRAPH
 24 (1) OF THIS SUBSECTION.

25 **[(6)] (G)** “Reporting agency” means:

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

27 **[(ii)] (2)** the Maryland Department of Transportation, **FOR**
 28 **PUBLIC INFRASTRUCTURE ASSETS OF ANY OF ITS MODAL ADMINISTRATIONS;**

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

30 **[(iii)] (4)** the University System of Maryland;

31 **[(iv)] (5)** Morgan State University;

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

2 [(vi)] (7) the Baltimore City Community College.

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

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

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

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

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

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

26 (e) By January 1 of each year, a unit of State government that provides
27 conduit financing for a public-private partnership shall submit to the budget
28 committees, in accordance with § 2-1246 of the State Government Article, a report
29 concerning each public-private partnership for which the unit is providing conduit
30 financing.]

31 **(H) "RESPONSIBILITY DETERMINATION" MEANS THE DETERMINATION**
32 **BY A REPORTING AGENCY THAT A PRIVATE ENTITY THAT RESPONDS TO A**
33 **SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP:**

34 **(1) HAS THE CAPACITY IN ALL RESPECTS TO PERFORM FULLY**
35 **THE REQUIREMENTS OF A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT; AND**

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

3 [10A-102.

4 (a) The State Treasurer shall analyze the impact of each public-private
5 partnership agreement proposed by a unit of State government on the State's capital
6 debt affordability limits.

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

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

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

19 **10A-102.**

20 **(A) IT IS THE PUBLIC POLICY OF THE STATE TO UTILIZE**
21 **PUBLIC-PRIVATE PARTNERSHIPS, IF APPROPRIATE, TO:**

22 **(1) DEVELOP AND STRENGTHEN THE STATE'S PUBLIC**
23 **INFRASTRUCTURE ASSETS;**

24 **(2) APPORTION BETWEEN THE PUBLIC AND PRIVATE SECTORS**
25 **THE RISKS INVOLVED WITH DEVELOPING AND STRENGTHENING PUBLIC**
26 **INFRASTRUCTURE ASSETS;**

27 **(3) FOSTER THE CREATION OF NEW JOBS; AND**

28 **(4) PROMOTE THE SOCIOECONOMIC DEVELOPMENT AND**
29 **COMPETIVENESS OF MARYLAND.**

30 **(B) IT IS THE PUBLIC POLICY OF THE STATE THAT A PRIVATE ENTITY**
31 **THAT ENTERS INTO A PUBLIC-PRIVATE PARTNERSHIP WITH A REPORTING**

1 AGENCY COMPLY WITH THE LABOR AND EMPLOYMENT ARTICLE AND THE
2 FEDERAL FAIR LABOR STANDARDS ACT.

3 **10A-103.**

4 (A) (1) A REPORTING AGENCY MAY ESTABLISH A PUBLIC-PRIVATE
5 PARTNERSHIP AND EXECUTE AN AGREEMENT IN CONNECTION WITH ANY PUBLIC
6 INFRASTRUCTURE ASSET FOR WHICH THE REPORTING AGENCY IS RESPONSIBLE
7 IN ACCORDANCE WITH THE PROVISIONS OF THE ANNOTATED CODE.

8 (2) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT EXECUTED
9 UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE PROVISIONS THAT
10 ARE NECESSARY TO DEVELOP AND STRENGTHEN A PUBLIC INFRASTRUCTURE
11 ASSET IN CONJUNCTION WITH A PUBLIC-PRIVATE PARTNERSHIP.

12 (B) (1) A REPORTING AGENCY SHALL ADOPT REGULATIONS AND
13 ESTABLISH PROCESSES FOR THE DEVELOPMENT, SOLICITATION, EVALUATION,
14 AWARD, AND DELIVERY OF PUBLIC-PRIVATE PARTNERSHIPS.

15 (2) A REPORTING AGENCY MAY NOT ADOPT REGULATIONS UNDER
16 PARAGRAPH (1) OF THIS SUBSECTION UNTIL:

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

20 (II) THE BUDGET COMMITTEES REVIEW AND COMMENT ON
21 THE REGULATIONS; AND

22 (III) AT LEAST 45 DAYS AFTER THE FIRST PUBLICATION OF
23 THE REGULATIONS IN THE MARYLAND REGISTER.

24 (C) A REPORTING AGENCY MAY CREATE A SPECIFIC FUNCTION
25 DEDICATED TO PUBLIC-PRIVATE PARTNERSHIP PROCESSES WITHIN THE
26 EXISTING REPORTING AGENCY.

27 (D) ANY COMBINATION OF FEDERAL, STATE, OR LOCAL FUNDS,
28 GRANTS, LOANS, DEBT, OR OTHER PUBLIC SOURCES OF FUNDING OR FINANCING
29 MAY BE USED AND COMBINED WITH ANY PRIVATE SOURCES OF FUNDING OR
30 FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP PROJECT.

31 (E) ANY PROCEEDS OR REVENUES RECEIVED BY A REPORTING AGENCY
32 FROM A PUBLIC-PRIVATE PARTNERSHIP THAT ARE NOT OTHERWISE PAID OR

1 ALLOCATED TO THE PRIVATE SECTOR SHALL ACCRUE TO THE FUND THAT
2 WOULD HAVE NORMALLY RECEIVED THOSE FUNDS.

3 **10A-104.**

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

7 (I) A REPORT CONCERNING EACH PUBLIC-PRIVATE
8 PARTNERSHIP UNDER CONSIDERATION THAT HAS NOT BEEN REVIEWED OR
9 APPROVED PREVIOUSLY BY THE GENERAL ASSEMBLY; AND

10 (II) A STATUS REPORT CONCERNING EACH EXISTING
11 PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY IS
12 INVOLVED.

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

18 (B) BY JANUARY 1 OF EACH YEAR, A UNIT OF STATE GOVERNMENT
19 THAT PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP
20 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246
21 OF THE STATE GOVERNMENT ARTICLE, A LIST THAT INCLUDES EACH
22 PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING CONDUIT
23 FINANCING.

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

29 (D) ALL EXISTING PUBLIC-PRIVATE PARTNERSHIPS AND ANY
30 PUBLIC-PRIVATE PARTNERSHIP THAT IS EXPECTED TO BE SOLICITED SHALL BE
31 LISTED ANNUALLY AS APPROPRIATE IN THE ANNUAL CAPITAL BUDGET OR THE
32 CONSOLIDATED TRANSPORTATION PROGRAM.

33 **10A-105.**

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

5 (1) § 3-602.1 OF THIS ARTICLE; AND

6 (2) THE ENVIRONMENT ARTICLE.

7 (B) THE PRIVATE ENTITY AND ANY CONTRACTORS OR
8 SUBCONTRACTORS CONSTRUCTING A PUBLIC INFRASTRUCTURE ASSET SHALL
9 BE SUBJECT TO TITLE 17, ~~SUBTITLE~~ SUBTITLES 1 AND 2 OF THIS ARTICLE
10 REGARDLESS OF WHETHER THE CONTRACT QUALIFIES AS A PUBLIC WORKS
11 CONTRACT.

12 (C) STATE EMPLOYEES SHALL RETAIN ALL OF THE PROTECTIONS IN
13 STATE LAW, REGULATIONS, AND POLICIES THAT ARE IN EFFECT AT THE TIME
14 THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IS APPROVED BY THE BOARD
15 OF PUBLIC WORKS.

16 (D) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
17 PUBLIC-PRIVATE PARTNERSHIP THAT RESULTS IN THE STATE EXCEEDING ITS
18 DEBT AFFORDABILITY GUIDELINES.

19 SUBTITLE 2. SOLICITED PROPOSALS.

20 10A-201.

21 (A) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
22 PARAGRAPH, A REPORTING AGENCY MAY NOT ISSUE A PUBLIC NOTICE OF
23 SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP UNTIL A
24 PRESOLICITATION REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE
25 PARTNERSHIP IS SUBMITTED TO THE COMPTROLLER, THE STATE TREASURER,
26 THE BUDGET COMMITTEES, AND THE DEPARTMENT OF LEGISLATIVE SERVICES,
27 IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

28 (II) A REPORTING AGENCY MAY NOT ISSUE A PUBLIC
29 NOTICE OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP FOR A
30 TRANSPORTATION FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE
31 TRANSPORTATION ARTICLE, UNTIL A PRESOLICITATION REPORT CONCERNING
32 THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP IS SUBMITTED TO THE BUDGET
33 COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN
34 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

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

4 (II) 1. IF THE TOTAL VALUE OF A PROPOSED
5 PUBLIC-PRIVATE PARTNERSHIP REPORTED IN THE PRESOLICITATION REPORT
6 UNDER PARAGRAPH (B)(1) OF THIS SUBSECTION EXCEEDS \$500,000,000, THE
7 BUDGET COMMITTEES MAY REQUEST AN ADDITIONAL 15 DAYS TO REVIEW AND
8 COMMENT ON THE PRESOLICITATION REPORT.

9 2. THE REQUEST FOR ADDITIONAL TIME UNDER THIS
10 SUBPARAGRAPH SHALL:

11 A. BE MADE IN WRITING TO THE GOVERNOR, THE
12 DEPARTMENT OF BUDGET AND MANAGEMENT, AND THE REPORTING AGENCY;
13 AND

14 B. INCLUDE THE REASON FOR THE REQUEST AND
15 ANY PRELIMINARY ISSUES THE BUDGET COMMITTEES HAVE.

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

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

19 (II) IDENTIFY THE ANTICIPATED VALUE OF THE PROPOSED
20 PUBLIC-PRIVATE PARTNERSHIP, RISKS AND BENEFITS TO THE STATE, AND ANY
21 POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR ENVIRONMENTAL
22 IMPLICATIONS;

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

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

1 (IV) INCLUDE, IF RELEVANT AND TO THE EXTENT POSSIBLE,
 2 THE FOLLOWING INFORMATION PREPARED BY THE REPORTING AGENCY, IN
 3 CONSULTATION WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT:

4 1. A PRELIMINARY ANALYSIS ON DEBT
 5 AFFORDABILITY;

6 2. A PRELIMINARY SUMMARY OF THE PROPOSED
 7 SOLICITATION PROCESS; AND

8 3. A STATEMENT OF INTENTION TO USE THE
 9 EXEMPTION FROM THE REQUIREMENTS OF DIVISION II OF THIS ARTICLE SET
 10 FORTH IN § 11-203 OF THIS ARTICLE;

11 (V) WITHHOLD INFORMATION DEEMED CONFIDENTIAL,
 12 PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE
 13 LAW, IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT
 14 ARTICLE, RELATING TO:

15 1. CONFIDENTIAL COMMERCIAL INFORMATION;

16 2. CONFIDENTIAL FINANCIAL INFORMATION; AND

17 3. TRADE SECRETS; AND

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

21 (2) THE ONLINE LOCATION OF THE PRESOLICITATION REPORT
 22 SHALL BE:

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

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

26 (3) THE REPORTING AGENCY SHALL INCLUDE IN THE MARYLAND
 27 REGISTER A BRIEF SYNOPSIS OF, AND A LINK TO, THE PRESOLICITATION
 28 REPORT.

29 (C) (1) AFTER THE BUDGET ~~COMMITTEES HAVE HAD 45 DAYS TO~~
 30 COMMITTEES' REVIEW AND COMMENT PERIOD ON THE PRESOLICITATION
 31 REPORT AND BEFORE ISSUING A PUBLIC NOTICE OF SOLICITATION, A

1 REPORTING AGENCY SHALL SEEK THE OFFICIAL DESIGNATION BY THE BOARD
2 OF PUBLIC WORKS OF THE PUBLIC INFRASTRUCTURE ASSET AS A
3 PUBLIC-PRIVATE PARTNERSHIP AND APPROVAL OF THE SOLICITATION
4 METHOD.

5 (2) THE REQUEST FOR OFFICIAL DESIGNATION AND APPROVAL
6 SHALL:

7 (I) INCLUDE A COPY OF THE PRESOLICITATION REPORT
8 REQUIRED UNDER SUBSECTION (A) OF THIS SECTION;

9 (II) DESCRIBE THE PROCESS FOR SOLICITING, EVALUATING,
10 SELECTING, AND AWARDING THE PUBLIC-PRIVATE PARTNERSHIP;

11 (III) INCLUDE A PRELIMINARY SOLICITATION SCHEDULE;

12 (IV) OUTLINE THE ORGANIZATION AND CONTENTS OF THE
13 PUBLIC NOTICE OF SOLICITATION;

14 (V) PROVIDE A SUMMARY OF THE KEY TERMS OF THE
15 PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT; AND

16 (VI) INCLUDE ANY OTHER INFORMATION OR REQUESTS
17 DETERMINED TO BE RELEVANT BY THE REPORTING AGENCY.

18 **10A-202.**

19 (A) IF A REPORTING AGENCY INTENDS TO ESTABLISH A
20 PUBLIC-PRIVATE PARTNERSHIP UNDER § 10A-103 OF THIS TITLE, THE
21 REPORTING AGENCY SHALL ISSUE A PUBLIC NOTICE OF SOLICITATION FOR THE
22 PUBLIC-PRIVATE PARTNERSHIP.

23 (B) (1) A PRIVATE ENTITY MAY BE QUALIFIED AS A BIDDER THROUGH
24 A REQUEST FOR QUALIFICATIONS, ~~A REQUEST FOR INFORMATION, OR ANY~~
25 ~~OTHER SIMILAR PROCESS.~~

26 (2) AFTER A BIDDER IS QUALIFIED AND AT ANY TIME BEFORE THE
27 AWARD OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, A REPORTING
28 AGENCY MAY ENGAGE IN DISCUSSIONS WITH QUALIFIED BIDDERS.

29 (3) THESE DISCUSSIONS MAY BE HELD TO:

30 (I) OBTAIN COMMENTS AND MAKE REVISIONS TO
31 SOLICITATION DOCUMENTS;

1 (II) OBTAIN THE BEST ~~PRICE~~ VALUE FOR THE STATE; AND

2 (III) ENSURE FULL UNDERSTANDING OF:

3 1. THE REQUIREMENTS OF THE STATE, AS SET
4 FORTH IN THE REQUEST FOR PROPOSALS; AND

5 2. THE PROPOSAL SUBMITTED BY THE BIDDER.

6 (C) FOR ANY PRIVATE ENTITY THAT RESPONDS TO THE PUBLIC NOTICE
7 OF SOLICITATION, A REPORTING AGENCY SHALL MAKE A RESPONSIBILITY
8 DETERMINATION.

9 (D) IF A PRIVATE ENTITY IS COMPOSED OF MULTIPLE SUBENTITIES OR
10 PARTNERS, THE REPORTING AGENCY SHALL MAKE A RESPONSIBILITY
11 DETERMINATION FOR EACH SUBENTITY OR PARTNER OWNING 20% OR MORE OF
12 THE ENTITY.

13 (E) ANY CHANGES IN THE OWNERSHIP COMPOSITION OF A
14 PUBLIC-PRIVATE PARTNERSHIP, AS DESCRIBED IN SUBSECTION ~~(E)~~ (D) OF THIS
15 SECTION, REQUIRE:

16 (1) A RESPONSIBILITY DETERMINATION;

17 (2) 45 ~~DAYS~~ DAYS DAYS' NOTICE TO THE BUDGET COMMITTEES;
18 AND

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

20 (F) (1) A REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY
21 FOR THE PORTION OF THE ENTITY'S COSTS INCURRED ~~TO DEVELOP A RESPONSE~~
22 ~~TO A PUBLIC NOTICE OF A SOLICITATION~~ IN RESPONSE TO THE SOLICITATION
23 OF A PUBLIC-PRIVATE PARTNERSHIP.

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

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

29 (I) PROVIDE FOR THE REIMBURSEMENT OF A PRIVATE
30 ENTITY BASED ON THE DOLLAR VALUE OF A PROJECT, THE VALUE OF ANY WORK

1 PRODUCT RECEIVED FROM THE PRIVATE ENTITY, OR ANY OTHER METHOD FOR
2 CALCULATING SUCH REIMBURSEMENT; AND

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

6 (4) A REPORTING AGENCY MAY PAY A PRIVATE ENTITY THAT
7 SUBMITS AN UNSUCCESSFUL PROPOSAL FOR THE RIGHT TO USE THE PRIVATE
8 ENTITY'S WORK PRODUCT.

9 (5) A REPORTING AGENCY MAY NOT REIMBURSE A PRIVATE
10 ENTITY FOR ANY PORTION OF THE COSTS INCURRED TO DEVELOP A RESPONSE
11 TO A PUBLIC NOTICE OF SOLICITATION IF:

12 (I) THE PRIVATE ENTITY ENTERS INTO A PUBLIC-PRIVATE
13 PARTNERSHIP AGREEMENT WITH THE REPORTING AGENCY; AND

14 (II) THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
15 ENTERED INTO UNDER ITEM (I) OF THIS PARAGRAPH IS APPROVED BY THE
16 BOARD OF PUBLIC WORKS; ~~AND~~

17 ~~(III) THE PUBLIC NOTICE OF SOLICITATION IS THE SUBJECT~~
18 ~~OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT APPROVED BY THE BOARD~~
19 ~~OF PUBLIC WORKS UNDER ITEM (II) OF THIS PARAGRAPH.~~

20 ~~(C) A REPORTING AGENCY SHALL SUBMIT A COPY OF THE PROPOSED~~
21 ~~PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SIMULTANEOUSLY TO THE~~
22 ~~COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES, AND THE~~
23 ~~DEPARTMENT OF LEGISLATIVE SERVICES, IN ACCORDANCE WITH §~~
24 ~~2-1246 OF THE STATE GOVERNMENT ARTICLE.~~

25 10A-203.

26 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
27 SUBSECTION, THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
28 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNTIL:

29 (I) A COPY OF THE PROPOSED AGREEMENT IS SUBMITTED
30 SIMULTANEOUSLY TO THE COMPTROLLER, THE STATE TREASURER, THE
31 BUDGET COMMITTEES, AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN
32 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE;

1 **(II) THE STATE TREASURER, IN COORDINATION WITH THE**
2 **COMPTROLLER, ANALYZES THE IMPACT ON THE STATE'S CAPITAL DEBT**
3 **AFFORDABILITY LIMITS OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP**
4 **AGREEMENT;**

5 **(III) THE STATE TREASURER SUBMITS THE ANALYSIS TO THE**
6 **BUDGET COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN**
7 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE; AND**

8 **(IV) THE BUDGET COMMITTEES HAVE REVIEWED AND**
9 **COMMENTED ON THE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (3) OF**
10 **THIS SUBSECTION.**

11 **(2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**
12 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION**
13 **FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION**
14 **ARTICLE, UNTIL THE PROPOSED AGREEMENT IS SUBMITTED TO THE BUDGET**
15 **COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN**
16 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.**

17 **(3) (I) THE PERIOD FOR REVIEW, ANALYSIS, AND COMMENT**
18 **UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION MAY NOT EXCEED A**
19 **TOTAL OF 30 DAYS FROM THE DATE THE PROPOSED PUBLIC-PRIVATE**
20 **PARTNERSHIP AGREEMENT IS SUBMITTED SIMULTANEOUSLY TO THE STATE**
21 **TREASURER, THE COMPTROLLER, THE BUDGET COMMITTEES, AND THE**
22 **DEPARTMENT OF LEGISLATIVE SERVICES.**

23 **(II) THE BUDGET COMMITTEES MAY FACILITATE A FASTER**
24 **REVIEW AND COMMENT PERIOD BY SENDING A LETTER TO THE BOARD OF**
25 **PUBLIC WORKS SUPPORTING A PROPOSED PUBLIC-PRIVATE PARTNERSHIP**
26 **AGREEMENT IN ADVANCE OF THE EXPIRATION OF THE 30-DAY REVIEW PERIOD.**

27 **(B) (1) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**
28 **MADE AVAILABLE TO THE PUBLIC SHALL:**

29 **(I) ~~MAY~~ AFTER CONSULTATION WITH THE PRIVATE ENTITY,**
30 **WITHHOLD INFORMATION DEEMED CONFIDENTIAL, PROPRIETARY, OR**
31 **OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW, INCLUDING**
32 **IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT ARTICLE,**
33 **RELATING TO:**

34 1. **CONFIDENTIAL COMMERCIAL INFORMATION;**

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

1 **3. TRADE SECRETS; AND**

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

5 **(2) THE ONLINE LOCATION OF THE PROPOSED PUBLIC-PRIVATE**
6 **PARTNERSHIP AGREEMENT 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 **10A-204.**

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

14 **(B) INFORMATION DEEMED ~~PROPRIETARY~~ CONFIDENTIAL,**
15 **PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE**
16 **LAW ~~MAY~~ SHALL BE WITHHELD FROM THE POSTED VERSION OF THE FINAL**
17 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IN ACCORDANCE WITH §**
18 **10-617(D) OF THE STATE GOVERNMENT ARTICLE RELATING TO:**

19 **(1) A TRADE SECRET;**

20 **(2) CONFIDENTIAL COMMERCIAL INFORMATION; AND**

21 **(3) CONFIDENTIAL FINANCIAL INFORMATION.**

22 **SUBTITLE 3. UNSOLICITED PROPOSALS.**

23 **10A-301.**

24 **(A) A REPORTING AGENCY MAY ACCEPT, REJECT, OR EVALUATE AN**
25 **UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE PARTNERSHIP THAT WILL**
26 **ASSIST THE REPORTING AGENCY IN IMPLEMENTING ITS FUNCTIONS IN A**
27 **MANNER CONSISTENT WITH STATE POLICY.**

28 **(B) A REPORTING AGENCY SHALL ESTABLISH THE PROCESS FOR**
29 **DETERMINING WHETHER AN UNSOLICITED PROPOSAL MEETS A NEED OF THE**

1 REPORTING AGENCY OR IS OTHERWISE ADVANTAGEOUS TO THE REPORTING
2 AGENCY.

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

5 (2) FOR AN UNSOLICITED PROPOSAL THAT DOES NOT ADDRESS A
6 PROJECT ALREADY IN THE STATE'S CAPITAL IMPROVEMENT PROGRAM OR
7 CONSOLIDATED TRANSPORTATION PROGRAM PLANNING DOCUMENTS, A
8 REPORTING AGENCY MAY REQUIRE A HIGHER APPLICATION FEE.

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

12 (1) CONDUCT A COMPETITIVE ~~SEALED BID OR A COMPETITIVE~~
13 ~~SEALED PROPOSAL PROCESS~~ SOLICITATION PROCESS AS DESCRIBED UNDER
14 SUBTITLE 2 OF THIS TITLE;

15 (2) PROTECT PROPRIETARY INFORMATION INCLUDED IN THE
16 UNSOLICITED PROPOSAL TO THE SAME EXTENT PROPRIETARY INFORMATION IS
17 PROTECTED UNDER § ~~10A-201(B)~~ 10A-203(B) OF THIS TITLE; AND

18 (3) COMPLY WITH ALL OF THE OTHER PROCEDURAL
19 REQUIREMENTS SET FORTH IN THIS TITLE.

20 (E) AN INDIVIDUAL OR FIRM THAT HAS SUBMITTED AN UNSOLICITED
21 PROPOSAL UNDER THIS TITLE MAY PARTICIPATE IN ANY SUBSEQUENT
22 COMPETITIVE ~~BID OR COMPETITIVE SEALED PROPOSAL~~ SOLICITATION
23 PROCESS.

24 SUBTITLE 4. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.

25 10A-401.

26 (A) WHENEVER APPLICABLE, A PUBLIC-PRIVATE PARTNERSHIP
27 AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

28 (1) THE METHOD AND TERMS FOR APPROVAL OF ANY
29 ASSIGNMENT, REASSIGNMENT, OR OTHER TRANSFER OF INTEREST RELATED TO
30 THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT;

1 (2) THE METHODS AND TERMS FOR SETTING AND ADJUSTING
2 TOLLS, FARES, FEES, AND OTHER CHARGES RELATED TO THE PUBLIC
3 INFRASTRUCTURE ASSET;

4 (3) THE METHOD AND TERMS FOR REVENUE-SHARING OR OTHER
5 SHARING IN FEES OR CHARGES, IN WHICH THE PUBLIC PARTICIPATES IN THE
6 FINANCIAL UPSIDE OF ASSET PERFORMANCE OF THE PUBLIC INFRASTRUCTURE
7 ASSET;

8 (4) MINIMUM QUALITY STANDARDS, PERFORMANCE CRITERIA,
9 INCENTIVES, AND DISINCENTIVES;

10 (5) OPERATIONS AND MAINTENANCE STANDARDS;

11 (6) THE RIGHTS FOR INSPECTION BY THE STATE;

12 (7) THE TERMS AND CONDITIONS UNDER WHICH THE REPORTING
13 AGENCY MAY PROVIDE SERVICES FOR A FEE SUFFICIENT TO COVER BOTH
14 DIRECT AND INDIRECT COSTS;

15 (8) PROVISIONS FOR OVERSIGHT AND REMEDIES AND PENALTIES
16 FOR DEFAULT;

17 (9) THE TERMS AND CONDITIONS UNDER WHICH THE REPORTING
18 AGENCY ORIGINATING THE PUBLIC-PRIVATE PARTNERSHIP SHALL BE
19 RESPONSIBLE FOR ONGOING OVERSIGHT;

20 ~~(10) THE TERMS AND CONDITIONS UNDER WHICH FINANCIAL~~
21 ~~RECORDS AND PERFORMANCE RELATED TO THE PUBLIC-PRIVATE~~
22 ~~PARTNERSHIP, AS WELL AS ANNUAL AUDITED FINANCIAL STATEMENTS OF THE~~
23 ~~PRIVATE ENTITY, ARE SUBJECT TO AUDIT BY THE OFFICE OF LEGISLATIVE~~
24 ~~AUDITS NO MORE THAN EVERY 3 YEARS;~~

25 (10) THE TERMS AND CONDITIONS FOR AUDITS BY THE STATE,
26 INCLUDING THE OFFICE OF LEGISLATIVE AUDITS, RELATED TO THE
27 AGREEMENT'S FINANCIAL RECORDS AND PERFORMANCE;

28 (11) THE TERMS AND CONDITIONS UNDER WHICH THE PUBLIC
29 INFRASTRUCTURE ASSETS SHALL BE RETURNED TO THE STATE AT THE
30 EXPIRATION OR TERMINATION OF THE AGREEMENT; AND

31 (12) REQUIREMENTS FOR THE PRIVATE ENTITY TO PROVIDE
32 PERFORMANCE AND PAYMENT SECURITY IN A FORM AND IN AN AMOUNT
33 DETERMINED BY THE RESPONSIBLE PUBLIC ENTITY, EXCEPT THAT

1 REQUIREMENTS FOR THE PAYMENT SECURITY FOR CONSTRUCTION CONTRACTS
2 SHALL BE IN ACCORDANCE WITH TITLE 17, SUBTITLE 1 OF THIS ARTICLE,
3 INCLUDING THE REQUIREMENT THAT PAYMENT SECURITY SHALL BE
4 ESTABLISHED ON THE VALUE OF THE CONSTRUCTION ELEMENTS OF THE
5 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT AND NOT ON THE TOTAL VALUE OF
6 THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

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 DIRECTLY RESULT IN A DOCUMENTED
11 REVENUE 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 THAT ARE NOT THE SUBJECT OF THE
19 PUBLIC-PRIVATE PARTNERSHIP.

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

23 10A-402.

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

27 (B) THE BOARD OF PUBLIC WORKS MAY:

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

32 (2) WAIVE THE PROHIBITION SET FORTH IN SUBSECTION (A) OF
33 THIS SECTION AT ANY POINT DURING THE PRESOLICITATION, PROPOSAL
34 REVIEW, OR AGREEMENT NEGOTIATIONS PROCESS.

35 11-203.

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

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

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

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

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

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

14 **(V) TITLE 17, SUBTITLE 1 OF THIS ARTICLE (“SECURITY**
 15 **FOR CONSTRUCTION CONTRACTS”);**

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

18 ~~**(VII)**~~ **(VII) TITLE 18 OF THIS ARTICLE (“LIVING WAGE”).**

19 **Article – Transportation**

20 **[4-406.**

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

22 (2) “Budget committees” means the Senate Budget and Taxation
 23 Committee, the House Committee on Ways and Means, and the House Appropriations
 24 Committee.

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

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

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

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

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

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

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

11 2. A procurement governed by Division II of the State
12 Finance and Procurement Article.

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

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

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

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

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

33 (e) Not less than 30 days before entering into a public-private partnership
34 agreement, the Authority shall submit to the budget committees, in accordance with §
35 2-1246 of the State Government Article, an analysis of the impact of the proposed

1 public-private partnership agreement on the Authority's financing plan, including the
2 Authority's operating and capital budgets and debt capacity.

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

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

10 **Article – State Finance and Procurement**

11 **10A-403.**

12 (A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL
13 ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE
14 PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE, AS ENACTED BY
15 CHAPTER 253 OF THE ACTS OF 2011 AND CHAPTER 154 OF THE ACTS OF 2012,
16 ARE HEREBY INCORPORATED.

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

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

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

31 (I) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING
32 THE IMPLEMENTATION OF REGULATIONS ADOPTED UNDER §§ 14-302 AND
33 14-303 OF THIS ARTICLE; AND

34 (II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT
35 THIS SECTION.

1 ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply only~~
2 ~~to public-private partnerships established on or after the effective date of this Act.~~

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is intended to be
4 prospective only and shall apply to public-private partnerships established on or after
5 the effective date of this Act. Further provided that, nothing in this Act may be
6 construed to apply to, authorize, or have any effect on an existing procurement, lease,
7 sale or development agreement, and nothing in this Act is intended to affect or alter any
8 pending litigation.

9 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
10 take effect July 1, 2013. It shall remain effective for a period of 3 years and, at the end
11 of June 30, 2016, with no further action required by the General Assembly, Section 2
12 of this Act shall be abrogated and of no further force and effect.

13 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.