

HOUSE BILL 560

C8

3lr0133
CF SB 538

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**

Introduced and read first time: January 30, 2013

Assigned to: Environmental Matters and Appropriations

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 6, 2013

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;
13 establishing deadlines for the review of certain presolicitation reports; requiring
14 certain projects to comply with certain provisions of law; requiring that State
15 employees retain certain protections under certain circumstances; requiring a
16 reporting agency to issue a public notice of solicitation for a public-private
17 partnership under certain circumstances; requiring certain agencies to comply
18 with certain requirements before issuing a solicitation for a public-private
19 partnership; providing that a certain entity may be qualified as a bidder
20 through certain processes; authorizing a reporting agency to engage in
21 discussions with qualified bidders at certain times and under certain
22 circumstances; requiring a certain agency to make a certain responsibility
23 determination concerning certain entities; authorizing a reporting agency to

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 reimburse a private entity for certain costs and pay a certain entity for the right
2 to use a certain work product; requiring a reporting agency to adopt certain
3 regulations that establish the process for the reimbursement of a private entity;
4 prohibiting a reporting agency from reimbursing a private entity under certain
5 circumstances; ~~requiring a certain agency to submit certain reports to certain~~
6 ~~officials and committees;~~ prohibiting the Board of Public Works from approving
7 a public-private partnership agreement until the completion of a certain review
8 by certain officials and committees; establishing deadlines for the review of
9 public-private partnership agreements; requiring a certain agency to post a
10 certain agreement on a certain Web site; requiring certain entities to provide
11 performance bonds; prohibiting a public-private partnership agreement from
12 exceeding a certain number of years, with certain exceptions; prohibiting
13 noncompete agreements for certain assets; authorizing the award of certain
14 compensation under certain circumstances; establishing certain requirements
15 for a final public-private partnership agreement; requiring certain proceeds to
16 accrue to certain funds; requiring a certain agency to post on the Internet a
17 certain final agreement; requiring certain information to be withheld from the
18 posted version of the agreement; authorizing a certain agency to establish by
19 regulation certain application fees for certain unsolicited proposals; establishing
20 certain requirements for certain unsolicited proposals; authorizing an
21 individual or firm that submits an unsolicited proposal to participate in a
22 certain subsequent process; providing that certain provisions of the State ethics
23 law do not preclude a certain individual or firm from entering into a certain
24 agreement; providing, under certain circumstances, that the provisions of the
25 Minority Business Enterprise Program apply to public-private partnerships;
26 prohibiting the Board of Public Works from approving a public-private
27 partnership agreement until the reporting agency, in consultation with certain
28 entities, establishes certain minority business enterprise goals and procedures;
29 requiring that certain goals and procedures be based on the requirements of
30 certain provisions of law; exempting public-private partnerships from certain
31 requirements of the State procurement law; repealing certain obsolete
32 provisions; defining a certain term; altering certain definitions; providing for
33 the application of this Act; providing for the termination of certain provisions of
34 this Act; and generally relating to public-private partnerships.

35 BY repealing and reenacting, with amendments,
36 Article – State Finance and Procurement
37 Section 10A–101
38 Annotated Code of Maryland
39 (2009 Replacement Volume and 2012 Supplement)

40 BY repealing
41 Article – State Finance and Procurement
42 Section 10A–102
43 Annotated Code of Maryland
44 (2009 Replacement Volume and 2012 Supplement)

1 BY adding to
2 Article – State Finance and Procurement
3 Section 10A–102 through 10A–105 to be under the new subtitle “Subtitle 1.
4 Definitions; General Provisions”; 10A–201 through 10A–204 to be under
5 the new subtitle “Subtitle 2. Solicited Proposals”; 10A–301 to be under
6 the new subtitle “Subtitle 3. Unsolicited Proposals”; 10A–401 through
7 10A–403 to be under the new subtitle “Subtitle 4. Public–Private
8 Partnership Agreements”; and 11–203(h)
9 Annotated Code of Maryland
10 (2009 Replacement Volume and 2012 Supplement)

11 BY repealing
12 Article – Transportation
13 Section 4–406
14 Annotated Code of Maryland
15 (2008 Replacement Volume and 2012 Supplement)

16 Preamble

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

21 WHEREAS, The establishment of public–private partnerships by and between
22 the State and the private sector is one mechanism to deliver infrastructure projects,
23 increase private investment in public infrastructure, and create jobs in Maryland; and

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

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

31 **Article – State Finance and Procurement**

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

33 10A–101.

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

1 **[(2)] (B)** “Budget committees” means the Senate Budget and
2 Taxation Committee, the House Committee on Ways and Means, and the House
3 Appropriations Committee.

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

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

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

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

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

18 2. the private entity constructs, reconstructs, finances,
19 or operates a State facility or a facility for State use and will collect fees, charges,
20 rents, or tolls for the use of the facility] **A METHOD FOR DELIVERING PUBLIC**
21 **INFRASTRUCTURE ASSETS USING A LONG-TERM, PERFORMANCE-BASED**
22 **AGREEMENT BETWEEN A REPORTING AGENCY AND A PRIVATE ENTITY WHERE**
23 **APPROPRIATE RISKS AND BENEFITS CAN BE ALLOCATED IN A COST-EFFECTIVE**
24 **MANNER BETWEEN THE CONTRACTUAL PARTNERS IN WHICH:**

25 ~~(H)~~ **(I)** **A PRIVATE ENTITY PERFORMS FUNCTIONS**
26 **NORMALLY UNDERTAKEN BY THE GOVERNMENT, BUT THE REPORTING AGENCY**
27 **REMAINS ULTIMATELY ACCOUNTABLE FOR THE PUBLIC INFRASTRUCTURE**
28 **ASSET AND ITS PUBLIC FUNCTION; AND**

29 ~~(H)~~ **(II)** **THE STATE MAY RETAIN OWNERSHIP IN THE**
30 **PUBLIC INFRASTRUCTURE ASSET AND THE PRIVATE ENTITY MAY BE GIVEN**
31 **ADDITIONAL DECISION-MAKING RIGHTS IN DETERMINING HOW THE ASSET IS**
32 **FINANCED, DEVELOPED, CONSTRUCTED, OPERATED, AND MAINTAINED OVER**
33 **ITS LIFE CYCLE.**

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

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

4 [2.] (II) a procurement governed by Division II of this
5 article; [or]

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

10 (IV) **A REVENUE-PRODUCING TRANSPORTATION FACILITIES**
11 **PROJECT EXEMPTED FROM PROCUREMENT UNDER 21.01.03.03(D) OF ~~COMAR~~**
12 **THE CODE OF MARYLAND REGULATIONS.**

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

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

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

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

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

19 [(iv)] (5) Morgan State University;

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

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

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

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

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

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

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

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

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

19 (H) **“RESPONSIBILITY DETERMINATION” MEANS THE DETERMINATION**
20 **BY A REPORTING AGENCY THAT A PRIVATE ENTITY THAT RESPONDS TO A**
21 **SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP:**

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

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

26 [10A-102.

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

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

34 (c) The Board of Public Works may not approve a public-private partnership
35 agreement under § 10-305 or § 12-204 of this article until the budget committees have

1 had 30 days to review and comment on the State Treasurer's analysis of the
2 agreement required under subsection (a) of this section.

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

7 **10A-102.**

8 (A) IT IS THE PUBLIC POLICY OF THE STATE TO UTILIZE
9 PUBLIC-PRIVATE PARTNERSHIPS, IF APPROPRIATE, TO:

10 (1) DEVELOP AND STRENGTHEN THE STATE'S PUBLIC
11 INFRASTRUCTURE ASSETS;

12 (2) APPORTION BETWEEN THE PUBLIC AND PRIVATE SECTORS
13 THE RISKS INVOLVED WITH DEVELOPING AND STRENGTHENING PUBLIC
14 INFRASTRUCTURE ASSETS;

15 (3) FOSTER THE CREATION OF NEW JOBS; AND

16 (4) PROMOTE THE SOCIOECONOMIC DEVELOPMENT AND
17 COMPETIVENESS OF MARYLAND.

18 (B) IT IS THE PUBLIC POLICY OF THE STATE THAT A PRIVATE ENTITY
19 THAT ENTERS INTO A PUBLIC-PRIVATE PARTNERSHIP WITH A REPORTING
20 AGENCY COMPLY WITH THE LABOR AND EMPLOYMENT ARTICLE AND THE
21 FEDERAL FAIR LABOR STANDARDS ACT.

22 **10A-103.**

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

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

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

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

3 **(I) THE JOINT COMMITTEE ON ADMINISTRATIVE,**
4 **EXECUTIVE, AND LEGISLATIVE REVIEW REVIEWS THE REGULATIONS IN**
5 **ACCORDANCE WITH § 10–110 OF THE STATE GOVERNMENT ARTICLE;**

6 **(II) THE BUDGET COMMITTEES REVIEW AND COMMENT ON**
7 **THE REGULATIONS; AND**

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

10 **(C) A REPORTING AGENCY MAY CREATE A SPECIFIC FUNCTION**
11 **DEDICATED TO PUBLIC–PRIVATE PARTNERSHIP PROCESSES WITHIN THE**
12 **EXISTING REPORTING AGENCY.**

13 **(D) ANY COMBINATION OF FEDERAL, STATE, OR LOCAL FUNDS,**
14 **GRANTS, LOANS, DEBT, OR OTHER PUBLIC SOURCES OF FUNDING OR FINANCING**
15 **MAY BE USED AND COMBINED WITH ANY PRIVATE SOURCES OF FUNDING OR**
16 **FINANCING FOR A PUBLIC–PRIVATE PARTNERSHIP PROJECT.**

17 **(E) ANY PROCEEDS OR REVENUES RECEIVED BY A REPORTING AGENCY**
18 **FROM A PUBLIC–PRIVATE PARTNERSHIP THAT ARE NOT OTHERWISE PAID OR**
19 **ALLOCATED TO THE PRIVATE SECTOR SHALL ACCRUE TO THE FUND THAT**
20 **WOULD HAVE NORMALLY RECEIVED THOSE FUNDS.**

21 **10A–104.**

22 **(A) (1) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY**
23 **SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2–1246**
24 **OF THE STATE GOVERNMENT ARTICLE:**

25 **(I) A REPORT CONCERNING EACH PUBLIC–PRIVATE**
26 **PARTNERSHIP UNDER CONSIDERATION THAT HAS NOT BEEN REVIEWED OR**
27 **APPROVED PREVIOUSLY BY THE GENERAL ASSEMBLY; AND**

28 **(II) A STATUS REPORT CONCERNING EACH EXISTING**
29 **PUBLIC–PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY IS**
30 **INVOLVED.**

31 **(2) THE REPORTS SUBMITTED BY THE DEPARTMENT OF**
32 **GENERAL SERVICES UNDER THIS SUBSECTION SHALL INCLUDE INFORMATION**

1 CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN
2 THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS
3 THAT ARE ALSO REPORTING AGENCIES.

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

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

15 10A-105.

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

20 (1) § 3-602.1 OF THIS ARTICLE; AND

21 (2) THE ENVIRONMENT ARTICLE.

22 (B) THE PRIVATE ENTITY AND ANY CONTRACTORS OR
23 SUBCONTRACTORS CONSTRUCTING A PUBLIC INFRASTRUCTURE ASSET SHALL
24 BE SUBJECT TO TITLE 17, ~~SUBTITLE~~ SUBTITLES 1 AND 2 OF THIS ARTICLE
25 REGARDLESS OF WHETHER THE CONTRACT QUALIFIES AS A PUBLIC WORKS
26 CONTRACT.

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

31 SUBTITLE 2. SOLICITED PROPOSALS.

32 10A-201.

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

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

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

18 **(B) (1) A PRESOLICITATION REPORT SHALL:**

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

21 **(II) IDENTIFY THE ANTICIPATED RISKS AND BENEFITS TO**
22 **THE STATE AND ANY POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR**
23 **ENVIRONMENTAL IMPLICATIONS;**

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

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

35 **(V) WITHHOLD INFORMATION DEEMED CONFIDENTIAL,**
36 **PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE**

1 LAW, IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT
2 ARTICLE, RELATING TO:

- 3 1. CONFIDENTIAL COMMERCIAL INFORMATION;
4 2. CONFIDENTIAL FINANCIAL INFORMATION; AND
5 3. TRADE SECRETS; AND

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

9 (2) THE ONLINE LOCATION OF THE PRESOLICITATION REPORT
10 SHALL BE:

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

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

14 (3) THE REPORTING AGENCY SHALL INCLUDE IN THE MARYLAND
15 REGISTER A BRIEF SYNOPSIS OF, AND A LINK TO, THE PRESOLICITATION
16 REPORT.

17 (C) (1) AFTER THE BUDGET COMMITTEES HAVE HAD 45 DAYS TO
18 REVIEW AND COMMENT ON THE PRESOLICITATION REPORT AND BEFORE
19 ISSUING A PUBLIC NOTICE OF SOLICITATION, A REPORTING AGENCY SHALL
20 SEEK THE OFFICIAL DESIGNATION BY THE BOARD OF PUBLIC WORKS OF THE
21 PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP AND
22 APPROVAL OF THE SOLICITATION METHOD.

23 (2) THE REQUEST FOR OFFICIAL DESIGNATION AND APPROVAL
24 SHALL:

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

27 (II) DESCRIBE THE PROCESS FOR SOLICITING, EVALUATING,
28 SELECTING, AND AWARDED THE PUBLIC-PRIVATE PARTNERSHIP;

29 (III) INCLUDE A PRELIMINARY SOLICITATION SCHEDULE;

1 (IV) OUTLINE THE ORGANIZATION AND CONTENTS OF THE
2 PUBLIC NOTICE OF SOLICITATION;

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

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

7 **10A-202.**

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

12 (B) (1) A PRIVATE ENTITY MAY BE QUALIFIED AS A BIDDER THROUGH
13 A REQUEST FOR QUALIFICATIONS, A REQUEST FOR INFORMATION, OR ANY
14 OTHER SIMILAR PROCESS.

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

18 (3) THESE DISCUSSIONS MAY BE HELD TO:

19 (I) OBTAIN COMMENTS AND MAKE REVISIONS TO
20 SOLICITATION DOCUMENTS;

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

22 (III) ENSURE FULL UNDERSTANDING OF:

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

25 2. THE PROPOSAL SUBMITTED BY THE BIDDER.

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

29 (D) IF A PRIVATE ENTITY IS COMPOSED OF MULTIPLE SUBENTITIES OR
30 PARTNERS, THE REPORTING AGENCY SHALL MAKE A RESPONSIBILITY

1 DETERMINATION FOR EACH SUBENTITY OR PARTNER OWNING 20% OR MORE OF
2 THE ENTITY.

3 (E) ANY CHANGES IN THE OWNERSHIP COMPOSITION OF A
4 PUBLIC-PRIVATE PARTNERSHIP, AS DESCRIBED IN SUBSECTION ~~(C)~~ (D) OF THIS
5 SECTION, REQUIRE:

6 (1) A RESPONSIBILITY DETERMINATION;

7 (2) ~~45 DAYS~~ DAYS NOTICE TO THE BUDGET COMMITTEES; AND

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

9 (F) (1) A REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY
10 FOR THE PORTION OF THE ENTITY'S COSTS INCURRED ~~TO DEVELOP A RESPONSE~~
11 ~~TO A PUBLIC NOTICE OF A SOLICITATION~~ IN RESPONSE TO THE SOLICITATION
12 OF A PUBLIC-PRIVATE PARTNERSHIP.

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

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

18 (I) PROVIDE FOR THE REIMBURSEMENT OF A PRIVATE
19 ENTITY BASED ON THE DOLLAR VALUE OF A PROJECT, THE VALUE OF ANY WORK
20 PRODUCT RECEIVED FROM THE PRIVATE ENTITY, OR ANY OTHER METHOD FOR
21 CALCULATING SUCH REIMBURSEMENT; AND

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

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

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

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

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

4 ~~(III) THE PUBLIC NOTICE OF SOLICITATION IS THE SUBJECT~~
5 ~~OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT APPROVED BY THE BOARD~~
6 ~~OF PUBLIC WORKS UNDER ITEM (I) OF THIS PARAGRAPH.~~

7 ~~(G) A REPORTING AGENCY SHALL SUBMIT A COPY OF THE PROPOSED~~
8 ~~PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SIMULTANEOUSLY TO THE~~
9 ~~COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES, AND THE~~
10 ~~DEPARTMENT OF LEGISLATIVE SERVICES, IN ACCORDANCE WITH §~~
11 ~~2-1246 OF THE STATE GOVERNMENT ARTICLE.~~

12 10A-203.

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

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

20 (II) THE STATE TREASURER, IN COORDINATION WITH THE
21 COMPTROLLER, ANALYZES THE IMPACT ON THE STATE'S CAPITAL DEBT
22 AFFORDABILITY LIMITS OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP
23 AGREEMENT;

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

27 (IV) THE BUDGET COMMITTEES HAVE REVIEWED AND
28 COMMENTED ON THE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (3) OF
29 THIS SUBSECTION.

30 (2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A
31 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION
32 FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION
33 ARTICLE, UNTIL THE PROPOSED AGREEMENT IS SUBMITTED TO THE BUDGET

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

3 (3) (I) THE PERIOD FOR REVIEW, ANALYSIS, AND COMMENT
4 UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION MAY NOT EXCEED A
5 TOTAL OF 30 DAYS FROM THE DATE THE PROPOSED PUBLIC-PRIVATE
6 PARTNERSHIP AGREEMENT IS SUBMITTED SIMULTANEOUSLY TO THE STATE
7 TREASURER, THE COMPTROLLER, THE BUDGET COMMITTEES, AND THE
8 DEPARTMENT OF LEGISLATIVE SERVICES.

9 (II) THE BUDGET COMMITTEES MAY FACILITATE A FASTER
10 REVIEW AND COMMENT PERIOD BY SENDING A LETTER TO THE BOARD OF
11 PUBLIC WORKS SUPPORTING A PROPOSED PUBLIC-PRIVATE PARTNERSHIP
12 AGREEMENT IN ADVANCE OF THE EXPIRATION OF THE 30-DAY REVIEW PERIOD.

13 (B) (1) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
14 MADE AVAILABLE TO THE PUBLIC SHALL:

15 (I) MAY AFTER CONSULTATION WITH THE PRIVATE ENTITY,
16 WITHHOLD INFORMATION DEEMED CONFIDENTIAL, PROPRIETARY, OR
17 OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW, INCLUDING
18 IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT ARTICLE,
19 RELATING TO:

- 20 1. CONFIDENTIAL COMMERCIAL INFORMATION;
- 21 2. CONFIDENTIAL FINANCIAL INFORMATION; AND
- 22 3. TRADE SECRETS; AND

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

26 (2) THE ONLINE LOCATION OF THE PROPOSED PUBLIC-PRIVATE
27 PARTNERSHIP AGREEMENT SHALL BE:

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

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

31 10A-204.

1 (A) THE REPORTING AGENCY SHALL POST THE FINAL PUBLIC-PRIVATE
2 PARTNERSHIP AGREEMENT ON THE WEB SITE OF THE REPORTING AGENCY OR
3 THE WEB SITE OF THE SPECIFIC PROJECT IF ONE HAS BEEN ESTABLISHED.

4 (B) INFORMATION DEEMED ~~PROPRIETARY~~ CONFIDENTIAL,
5 PROPRIETARY, OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE
6 LAW ~~MAY~~ SHALL BE WITHHELD FROM THE POSTED VERSION OF THE FINAL
7 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IN ACCORDANCE WITH §
8 10-617(D) OF THE STATE GOVERNMENT ARTICLE RELATING TO:

9 (1) A TRADE SECRET;

10 (2) CONFIDENTIAL COMMERCIAL INFORMATION; AND

11 (3) CONFIDENTIAL FINANCIAL INFORMATION.

12 SUBTITLE 3. UNSOLICITED PROPOSALS.

13 10A-301.

14 (A) A REPORTING AGENCY MAY ACCEPT, REJECT, OR EVALUATE AN
15 UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE PARTNERSHIP THAT WILL
16 ASSIST THE REPORTING AGENCY IN IMPLEMENTING ITS FUNCTIONS IN A
17 MANNER CONSISTENT WITH STATE POLICY.

18 (B) A REPORTING AGENCY SHALL ESTABLISH THE PROCESS FOR
19 DETERMINING WHETHER AN UNSOLICITED PROPOSAL MEETS A NEED OF THE
20 REPORTING AGENCY OR IS OTHERWISE ADVANTAGEOUS TO THE REPORTING
21 AGENCY.

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

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

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

31 (1) CONDUCT A COMPETITIVE SEALED BID OR A COMPETITIVE
32 SEALED PROPOSAL PROCESS;

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

4 **(3) COMPLY WITH ALL OF THE OTHER PROCEDURAL**
5 **REQUIREMENTS SET FORTH IN THIS TITLE.**

6 **(E) AN INDIVIDUAL OR FIRM THAT HAS SUBMITTED AN UNSOLICITED**
7 **PROPOSAL UNDER THIS TITLE MAY PARTICIPATE IN ANY SUBSEQUENT**
8 **COMPETITIVE BID OR COMPETITIVE SEALED PROPOSAL SOLICITATION**
9 **PROCESS.**

10 **SUBTITLE 4. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.**

11 **10A-401.**

12 **(A) WHENEVER APPLICABLE, A PUBLIC-PRIVATE PARTNERSHIP**
13 **AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:**

14 **(1) THE METHOD AND TERMS FOR APPROVAL OF ANY**
15 **ASSIGNMENT, REASSIGNMENT, OR OTHER TRANSFER OF INTEREST RELATED TO**
16 **THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT;**

17 **(2) THE METHODS AND TERMS FOR SETTING AND ADJUSTING**
18 **TOLLS, FARES, FEES, AND OTHER CHARGES RELATED TO THE PUBLIC**
19 **INFRASTRUCTURE ASSET;**

20 **(3) THE METHOD AND TERMS FOR REVENUE-SHARING OR OTHER**
21 **SHARING IN FEES OR CHARGES, IN WHICH THE PUBLIC PARTICIPATES IN THE**
22 **FINANCIAL UPSIDE OF ASSET PERFORMANCE OF THE PUBLIC INFRASTRUCTURE**
23 **ASSET;**

24 **(4) MINIMUM QUALITY STANDARDS, PERFORMANCE CRITERIA,**
25 **INCENTIVES, AND DISINCENTIVES;**

26 **(5) OPERATIONS AND MAINTENANCE STANDARDS;**

27 **(6) THE RIGHTS FOR INSPECTION BY THE STATE;**

28 **(7) THE TERMS AND CONDITIONS UNDER WHICH THE REPORTING**
29 **AGENCY MAY PROVIDE SERVICES FOR A FEE SUFFICIENT TO COVER BOTH**
30 **DIRECT AND INDIRECT COSTS;**

1 **(8) PROVISIONS FOR OVERSIGHT AND REMEDIES AND PENALTIES**
2 **FOR DEFAULT;**

3 **(9) THE TERMS AND CONDITIONS UNDER WHICH THE REPORTING**
4 **AGENCY ORIGINATING THE PUBLIC-PRIVATE PARTNERSHIP SHALL BE**
5 **RESPONSIBLE FOR ONGOING OVERSIGHT;**

6 **(10) THE TERMS AND CONDITIONS UNDER WHICH FINANCIAL**
7 **RECORDS AND PERFORMANCE RELATED TO THE PUBLIC-PRIVATE**
8 **PARTNERSHIP, AS WELL AS ANNUAL AUDITED FINANCIAL STATEMENTS OF THE**
9 **PRIVATE ENTITY, ARE SUBJECT TO AUDIT BY THE OFFICE OF LEGISLATIVE**
10 **AUDITS NO MORE THAN EVERY 3 YEARS;**

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

14 **(12) REQUIREMENTS FOR THE PRIVATE ENTITY TO PROVIDE**
15 **PERFORMANCE AND PAYMENT SECURITY IN A FORM AND IN AN AMOUNT**
16 **DETERMINED BY THE RESPONSIBLE PUBLIC ENTITY, EXCEPT THAT**
17 **REQUIREMENTS FOR THE PAYMENT SECURITY FOR CONSTRUCTION CONTRACTS**
18 **SHALL BE IN ACCORDANCE WITH TITLE 17, SUBTITLE 1 OF THIS ARTICLE,**
19 **INCLUDING THE REQUIREMENT THAT PAYMENT SECURITY SHALL BE**
20 **ESTABLISHED ON THE VALUE OF THE CONSTRUCTION ELEMENTS OF THE**
21 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT AND NOT ON THE TOTAL VALUE OF**
22 **THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.**

23 **(B) (1) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY INCLUDE**
24 **A PROVISION THAT, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
25 **SUBSECTION, COMPENSATION MAY BE PROVIDED FOR COMPETING**
26 **INFRASTRUCTURE DEVELOPMENTS THAT DIRECTLY RESULT IN A DOCUMENTED**
27 **REVENUE LOSS FOR THE PRIVATE ENTITY IN A PUBLIC-PRIVATE PARTNERSHIP.**

28 **(2) COMPENSATION MAY NOT BE PROVIDED AS A RESULT OF**
29 **STATE INFRASTRUCTURE DEVELOPMENTS ALREADY IN THE STATE'S CAPITAL**
30 **IMPROVEMENT PROGRAM OR CONSOLIDATED TRANSPORTATION PROGRAM**
31 **PLANNING DOCUMENTS AT THE TIME THE PUBLIC-PRIVATE PARTNERSHIP**
32 **AGREEMENT IS EXECUTED, SAFETY INITIATIVES, INFRASTRUCTURE**
33 **IMPROVEMENTS WITH MINIMAL CAPACITY INCREASES, OR INFRASTRUCTURE**
34 **FOR OTHER TRANSPORTATION MODES THAT ARE NOT THE SUBJECT OF THE**
35 **PUBLIC-PRIVATE PARTNERSHIP.**

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

4 10A-402.

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

8 (B) THE BOARD OF PUBLIC WORKS MAY:

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

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

16 11-203.

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

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

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

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

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

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

30 (V) TITLE 17, SUBTITLE 1 OF THIS ARTICLE (“SECURITY
31 FOR CONSTRUCTION CONTRACTS”);

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

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

4 **Article – Transportation**

5 [4–406.

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

7 (2) “Budget committees” means the Senate Budget and Taxation
8 Committee, the House Committee on Ways and Means, and the House Appropriations
9 Committee.

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

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

16 (5) (i) “Public–private partnership” means a sale or lease
17 agreement between the Authority and a private entity under which:

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

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

23 (ii) “Public–private partnership” does not include:

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

26 2. A procurement governed by Division II of the State
27 Finance and Procurement Article.

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

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

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

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

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

18 (e) Not less than 30 days before entering into a public-private partnership
19 agreement, the Authority shall submit to the budget committees, in accordance with §
20 2-1246 of the State Government Article, an analysis of the impact of the proposed
21 public-private partnership agreement on the Authority's financing plan, including the
22 Authority's operating and capital budgets and debt capacity.

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

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

30 **Article – State Finance and Procurement**

31 **10A-403.**

32 **(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL**
33 **ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE**
34 **PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE, AS ENACTED BY**
35 **CHAPTER 253 OF THE ACTS OF 2011 AND CHAPTER 154 OF THE ACTS OF 2012,**
36 **ARE HEREBY INCORPORATED.**

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

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

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

15 **(I) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING**
16 **THE IMPLEMENTATION OF REGULATIONS ADOPTED UNDER §§ 14-302 AND**
17 **14-303 OF THIS ARTICLE; AND**

18 **(II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT**
19 **THIS SECTION.**

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

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

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