

# HOUSE BILL 1091

P2, P1

9lr1206

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By: **Delegates Solomon, Carr, Korman, Stewart, and Wilkins**

Introduced and read first time: February 8, 2019

Assigned to: Environment and Transportation and Appropriations

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 13, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Public-Private Partnerships – Reforms**

3 FOR the purpose of requiring a certain reporting agency to include in presolicitation reports  
4 for certain public-private partnerships presolicitation reports of certain contracts  
5 and a certain environmental impact statement under certain circumstances;  
6 requiring certain presolicitation reports to be submitted to the Legislative Policy  
7 Committee; prohibiting the Board of Public Works from approving a public-private  
8 partnership agreement until the Legislative Policy Committee ~~submits approval of~~  
9 has reviewed and commented on the public-private partnership if a certain review  
10 and comment period is during a certain time and until a certain independent rating  
11 assessment survey is ~~completed; requiring the~~ completed under certain  
12 circumstances; extending the period for review, analysis, and comment for certain  
13 public-private partnership agreements; requiring a certain independent rating  
14 assessment survey to include certain information; requiring that a certain  
15 public-private partnership agreement include the minimum credit rating to be  
16 maintained by a certain entity and funding source; requiring, under certain  
17 circumstances, the terms of a public-private partnership to contain certain  
18 provisions; extending a certain prohibition on noncompete clauses in certain  
19 public-private partnership agreements to all transit or road maintenance projects  
20 regardless of funding source; altering a certain definition; and generally relating to  
21 public-private partnerships.

22 BY repealing and reenacting, without amendments,

23 Article – State Finance and Procurement

24 Section 10A-101(a)

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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 Annotated Code of Maryland  
2 (2015 Replacement Volume and 2018 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article – State Finance and Procurement  
5 Section ~~10A–203(a)~~ 10A–101(b), 10A–201(a), 10A–203(a), and 10A–401(a) and (c)  
6 Annotated Code of Maryland  
7 (2015 Replacement Volume and 2018 Supplement)

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

10 **Article – State Finance and Procurement**

11 10A–101.

12 (a) In this title the following words have the meanings indicated.

13 (b) “Budget committees” means the Senate Budget and Taxation Committee, the  
14 House [Committee on Ways and Means] **ENVIRONMENT AND TRANSPORTATION**  
15 COMMITTEE, and the House Appropriations Committee.

16 10A–201.

17 (a) (1) (i) Except as provided in subparagraph (ii) of this paragraph **AND**  
18 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION**, a reporting agency may not issue a  
19 public notice of solicitation for a public–private partnership until a presolicitation report  
20 concerning the proposed public–private partnership is submitted to the Comptroller, the  
21 State Treasurer, the budget committees, and the Department of Legislative Services, in  
22 accordance with § 2–1246 of the State Government Article.

23 (ii) A reporting agency may not issue a public notice of solicitation  
24 for a public–private partnership for a transportation facilities project, as defined in §  
25 4–101(h) of the Transportation Article, until a presolicitation report concerning the  
26 proposed public–private partnership is submitted to the budget committees and the  
27 Department of Legislative Services, in accordance with § 2–1246 of the State Government  
28 Article.

29 (2) (i) The budget committees may not have more than 45 days to  
30 review and comment on the presolicitation report submitted in accordance with paragraph  
31 (1) of this subsection.

32 (ii) 1. If the total value of a proposed public–private partnership  
33 reported in the presolicitation report under paragraph (b)(1) of this subsection exceeds  
34 \$500,000,000, the budget committees may request an additional 15 days to review and  
35 comment on the presolicitation report.

1                                   2.     The request for additional time under this subparagraph  
2 shall:

3                                   A.     be made in writing to the Governor, the Department of  
4 Budget and Management, and the reporting agency; and

5                                   B.     include the reason for the request and any preliminary  
6 issues the budget committees have.

7                                   **(3) FOR A PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL VALUE**  
8 **THAT EXCEEDS \$500,000,000, THE REPORTING AGENCY SHALL INCLUDE IN THE**  
9 **PRESOLICITATION REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS**  
10 **SUBSECTION:**

11                                   **(I) A PRESOLICITATION REPORT OF EACH CONTRACT UNDER**  
12 **THE PUBLIC-PRIVATE PARTNERSHIP; AND**

13                                   **(II) IF A PROJECT REQUIRES AN ENVIRONMENTAL IMPACT**  
14 **STATEMENT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, A COMPLETED**  
15 **ENVIRONMENTAL IMPACT STATEMENT THAT COMPLIES WITH THE NATIONAL**  
16 **ENVIRONMENTAL POLICY ACT.**

17 10A-203.

18                   (a)   (1)   Except as provided in paragraph (2) of this subsection, the Board of  
19 Public Works may not approve a public-private partnership agreement until:

20                                   (i)   a copy of the proposed agreement is submitted simultaneously  
21 to:

22                                   1.    the Comptroller, the State Treasurer, the budget  
23 committees, and the Department of Legislative Services, in accordance with § 2-1246 of  
24 the State Government Article; **AND**

25                                   2.    **FOR A PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL**  
26 **VALUE THAT EXCEEDS \$500,000,000, THE LEGISLATIVE POLICY COMMITTEE;**

27                                   (ii)  the State Treasurer, in coordination with the Comptroller,  
28 analyzes the impact on the State's capital debt affordability limits of the proposed  
29 public-private partnership agreement;

30                                   (iii) the State Treasurer submits the analysis to the budget  
31 committees and the Department of Legislative Services, in accordance with § 2-1246 of the  
32 State Government Article; [and]

1 (iv) the budget committees have reviewed and commented on the  
2 agreement in accordance with paragraph (3) of this subsection; AND

3 (v) FOR A PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL  
4 VALUE THAT EXCEEDS \$500,000,000:

5 1. IF THE REVIEW AND COMMENT PERIOD FOR THE  
6 BUDGET COMMITTEES IS DURING A PERIOD WHEN THE GENERAL ASSEMBLY IS NOT  
7 IN SESSION, THE LEGISLATIVE POLICY COMMITTEE ~~SUBMITS APPROVAL OF~~ HAS  
8 REVIEWED AND COMMENTED ON THE PUBLIC-PRIVATE PARTNERSHIP; AND

9 2. AN INDEPENDENT RATING ASSESSMENT SURVEY IS  
10 COMPLETED FOR EACH CONTRACT UNDER THE PUBLIC-PRIVATE PARTNERSHIP, IN  
11 ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION, BY AN INDEPENDENT  
12 AUDITOR OR A CREDIT RATING AGENCY SELECTED BY THE STATE TREASURER.

13 (2) The Board of Public Works may not approve a public-private  
14 partnership agreement for a transportation facilities project, as defined in § 4-101(h) of the  
15 Transportation Article, until the proposed agreement is submitted to the budget  
16 committees and the Department of Legislative Services, in accordance with § 2-1246 of the  
17 State Government Article.

18 (3) (i) The period for review, analysis, and comment under paragraphs  
19 (1) and (2) of this subsection may not exceed:

20 1. a total of 30 days from the date the proposed  
21 public-private partnership agreement is submitted simultaneously to the State Treasurer,  
22 the Comptroller, the budget committees, and the Department of Legislative Services; AND

23 2. IF THE PUBLIC-PRIVATE PARTNERSHIP HAS A TOTAL  
24 VALUE THAT EXCEEDS \$500,000,000, A TOTAL OF 90 DAYS FROM THE DATE THE  
25 PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IS SUBMITTED  
26 SIMULTANEOUSLY TO THE STATE TREASURER, THE COMPTROLLER, THE BUDGET  
27 COMMITTEES, THE LEGISLATIVE POLICY COMMITTEE, AND THE DEPARTMENT OF  
28 LEGISLATIVE SERVICES.

29 (ii) The budget committees may facilitate a faster review and  
30 comment period by sending a letter to the Board of Public Works supporting a proposed  
31 public-private partnership agreement in advance of the expiration of the ~~30-day~~  
32 period.

33 (4) THE INDEPENDENT RATING ASSESSMENT SURVEY REQUIRED  
34 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

1                   **(I) THE CREDIT STRENGTH OF THE PRIVATE ENTITY AND**  
2 **PRIVATE FUNDING SOURCE;**

3                   **(II) THE IMPACT OF THE PROPOSED AGREEMENT ON THE**  
4 **STATE'S CREDIT RATING;**

5                   **(III) THE IMPACT OF THE PROPOSED AGREEMENT ON ANY LOCAL**  
6 **GOVERNMENT'S CREDIT RATING; AND**

7                   **(IV) A RECOMMENDATION, TO BE INCLUDED IN THE**  
8 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, OF THE MINIMUM CREDIT RATING TO**  
9 **BE MAINTAINED BY THE PRIVATE ENTITY AND PRIVATE FUNDING SOURCE.**

10 10A-401.

11           (a) **(1)** Whenever applicable, a public-private partnership agreement shall  
12 include the following provisions:

13                   **[(1)] (I)** the method and terms for approval of any assignment,  
14 reassignment, or other transfer of interest related to the public-private partnership  
15 agreement;

16                   **[(2)] (II)** the methods and terms for setting and adjusting tolls, fares, fees,  
17 and other charges related to the public infrastructure asset;

18                   **[(3)] (III)** the method and terms for revenue-sharing or other sharing in  
19 fees or charges, in which the public participates in the financial upside of asset performance  
20 of the public infrastructure asset;

21                   **[(4)] (IV)** minimum quality standards, performance criteria, incentives,  
22 and disincentives;

23                   **[(5)] (V)** operations and maintenance standards;

24                   **[(6)] (VI)** the rights for inspection by the State;

25                   **[(7)] (VII)** the terms and conditions under which the reporting agency may  
26 provide services for a fee sufficient to cover both direct and indirect costs;

27                   **[(8)] (VIII)** provisions for oversight and remedies and penalties for default;

28                   **[(9)] (IX)** the terms and conditions under which the reporting agency  
29 originating the public-private partnership shall be responsible for ongoing oversight;

1            [(10)] (X) the terms and conditions for audits by the State, including the  
2 Office of Legislative Audits, related to the agreement's financial records and performance;

3            [(11)] (XI) the terms and conditions under which the public infrastructure  
4 assets shall be returned to the State at the expiration or termination of the agreement;  
5 [and]

6            [(12)] (XII) requirements for the private entity to provide performance  
7 security and payment security in a form and in an amount determined by the responsible  
8 public entity, except that:

9                    [(i)] 1. requirements for the payment security for construction  
10 contracts shall be in accordance with Title 17, Subtitle 1 of this article; and

11                    [(ii)] 2. requirements for the amount of the payment security and  
12 any performance security in the form of a performance bond for a construction contract  
13 shall be based on the value of the respective construction elements of the public-private  
14 partnership agreement and not on the total value of the public-private partnership  
15 agreement; AND

16                    (XIII) THE MINIMUM CREDIT RATING TO BE MAINTAINED BY THE  
17 PRIVATE ENTITY AND PRIVATE FUNDING SOURCE RECOMMENDED UNDER §  
18 10A-203(A) OF THIS TITLE.

19            (2) IF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT REQUIRES  
20 THE STATE OR A SUCCESSOR ENTITY TO TAKE OVER OPERATIONS AND  
21 MAINTENANCE OF A PROJECT, THE TERMS FOR APPROVAL OF ANY ASSIGNMENT,  
22 REASSIGNMENT, OR OTHER TRANSFER OF INTERESTS IN THE PROJECT SHALL  
23 INCLUDE A REQUIREMENT THAT ALL TOLL REVENUE OR OTHER CHARGES RELATED  
24 TO THE PROJECT BE ASSIGNED TO THE STATE OR A SUCCESSOR ENTITY TO APPLY  
25 TO THE OPERATIONS AND MAINTENANCE OF THE PROJECT.

26            (3) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
27 PROVIDING FOR REVENUE-SHARING OR OTHER SHARING IN FEES OR CHARGES, IN  
28 WHICH THE PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET  
29 PERFORMANCE OF THE PUBLIC INFRASTRUCTURE ASSET SHALL REQUIRE:

30                    ~~(I) THE REIMBURSEMENT OF THE STATE FOR ADVANCED~~  
31 ~~PROJECT EXPENSES; AND~~

32                    ~~(II) AN ANNUAL SUBSIDY TO LOCAL GOVERNMENTS IMPACTED~~  
33 ~~BY THE PROJECT.~~

34            (c) A public-private partnership agreement for a project involving road, highway,  
35 or bridge assets may not include a noncompete clause that would inhibit the planning,

1 construction, or implementation of [State-funded] transit OR ROAD MAINTENANCE  
2 projects.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
4 1, 2019.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.