

# HOUSE BILL 1257

R1, P1, M3

9lr0540  
CF 9lr3146

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By: **Delegate Carr**

Introduced and read first time: February 8, 2019

Assigned to: Environment and Transportation and Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Transportation Public–Private Partnership Oversight Act**

3 FOR the purpose of exempting certain actions brought by certain individuals or entities  
4 against certain parties to a transportation–related public–private partnership  
5 agreement from certain provisions of the Environmental Standing Act related to  
6 relief and fee–shifting; applying the motor fuel tax to bunker fuel; requiring the  
7 Comptroller and the State Treasurer to establish a certain motor fuel tax rate for  
8 diesel fuel and bunker fuel; stating the intent of the General Assembly regarding  
9 providing effective assistance of counsel to certain persons alleging a violation of a  
10 transportation–related public–private partnership; establishing the Office of  
11 Transportation Oversight as an independent unit in the Executive Branch of State  
12 government; specifying the purpose of the Office; providing for the appointment and  
13 term of the Director of the Office; requiring the Governor to appoint an Interim  
14 Director of the Office on or before a certain date under certain circumstances;  
15 requiring the Interim Director to serve until a Director is appointed and qualifies;  
16 specifying the duty, powers, and authority of the Office to regulate and oversee  
17 transportation–related public–private partnerships under certain circumstances  
18 and subject to certain limitations; requiring the Office to submit a certain operating  
19 plan to the Board of Directors of the Office on or before a certain date each year;  
20 requiring the Office to submit a certain strategic plan to the Board on or before a  
21 certain date with a certain frequency; specifying the contents of a certain operating  
22 plan and a certain strategic plan; authorizing the Board to revise a certain operating  
23 plan and a certain strategic plan; requiring the Board to return a certain operating  
24 plan or a certain strategic plan to the Office if the Board revises the operating plan  
25 or strategic plan; requiring the Board to approve a certain operating plan on or before  
26 a certain date each year; requiring the Board to approve a certain strategic plan on  
27 or before a certain date of a certain year; requiring the Governor to appropriate  
28 annually a certain amount for the Office; requiring the Director to submit a certain  
29 initial budget to the Board within a certain number of days after the Director is  
30 appointed; requiring the Director to submit a certain annual budget to the Board on  
31 or before a certain date each year; authorizing the Board to revise a certain initial

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 budget and a certain annual budget; requiring the Board to return a certain initial  
2 budget and a certain annual budget if the Board revises the initial budget or the  
3 annual budget; requiring the Board to approve a certain initial budget within a  
4 certain number of days of receipt; requiring the Board to approve a certain annual  
5 budget on or before a certain date each year; requiring the Office to adopt certain  
6 regulations; establishing a rebuttable presumption that a certain party to a  
7 transportation-related public-private partnership agreement violated certain  
8 provisions of the agreement under certain circumstances; specifying that a party to  
9 a transportation-related public-private partnership agreement may overcome the  
10 rebuttable presumption under certain circumstances; requiring the Maryland Rules  
11 to ensure that certain legal matters shall, as circumstances require, be scheduled in  
12 an expeditious manner; establishing a Board of Directors of the Office; requiring the  
13 Board to manage the Office; providing for the membership, terms, and chair of the  
14 Board; authorizing the Board to act with an affirmative vote of a certain number of  
15 Board members; establishing the authority and duties of the Board; requiring the  
16 Secretary of Transportation and the Director, in coordination with specified entities,  
17 to develop a Statewide Transportation Plan on or before a certain date; requiring the  
18 Secretary and the Director, in coordination with specified entities, to consult with  
19 certain entities in the development of the plan; requiring the Secretary and the  
20 Director, in coordination with certain entities, to update the plan with a certain  
21 frequency; requiring that all work associated with a certain partnership agreement  
22 be placed on hold on or before a certain date while the Director reviews the  
23 partnership agreement for compliance with certain provisions of this Act; prohibiting  
24 a person from taking certain actions while a partnership agreement is on hold;  
25 authorizing the Director to suspend a hold placed on a certain partnership  
26 agreement for a certain amount of time if the Director makes a certain preliminary  
27 finding; requiring the Director to provide an opportunity for public comment and  
28 review of a certain partnership agreement and use any public comments received to  
29 make a certain determination; authorizing the Director to negotiate and impose  
30 certain aspects of a partnership agreement during or after development of the plan;  
31 requiring that the plan provide a certain framework and requirements for certain  
32 transportation projects; requiring the Director, in coordination with certain entities,  
33 to develop a method for assigning a value to certain factors; requiring the Governor  
34 to appropriate certain funds in the State budget to the Department of Transportation  
35 for certain purposes in certain fiscal years; requiring the Secretary to adopt certain  
36 regulations; requiring the Governor to ensure staff are available to establish the  
37 Office with the cost to be reimbursed from the Transportation Trust Fund under  
38 certain circumstances; stating the intent of the General Assembly regarding use of  
39 the Transportation Trust Fund to assist the Office in carrying out its duties and to  
40 pay certain legal fees; defining certain terms; and generally relating to  
41 transportation-related public-private partnership agreements and the  
42 establishment of the Office of Transportation Oversight and the Board of Directors  
43 of the Office of Transportation Oversight.

44 BY repealing and reenacting, with amendments,

45 Article – Natural Resources

46 Section 1-504 and 1-507

1 Annotated Code of Maryland  
2 (2018 Replacement Volume)

3 BY repealing and reenacting, with amendments,  
4 Article – Tax – General  
5 Section 9–303(b) and 9–305(a)  
6 Annotated Code of Maryland  
7 (2016 Replacement Volume and 2018 Supplement)

8 BY adding to  
9 Article – Transportation  
10 Section 28–101 through 28–405 to be under the new title “Title 28. Transportation  
11 Oversight”  
12 Annotated Code of Maryland  
13 (2012 Replacement Volume and 2018 Supplement)

14 Preamble

15 WHEREAS, The General Assembly has reviewed the record and recent decisions by  
16 federal and state governments that reduce or limit the effectiveness of laws protecting the  
17 environment, consumers, labor, civil rights, and property rights and mitigation  
18 commitments made under those laws; and

19 WHEREAS, It is the expectation of the General Assembly that there will be  
20 additional infrastructure initiatives involving public–private partnerships that are more  
21 removed from State and federal oversight mechanisms; and

22 WHEREAS, Public–private partnership projects impact workers, consumers,  
23 property owners, small businesses, environmental justice communities, the environment,  
24 and preexisting transportation systems; and

25 WHEREAS, The General Assembly has determined that Maryland should enhance  
26 its protection of the public interests mentioned above; now, therefore,

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

29 **Article – Natural Resources**

30 1–504.

31 (a) This subtitle may not be construed to create or authorize any new substantive  
32 cause of action or theory of recovery not now recognized by the courts of this State, nor may  
33 it be construed as abrogating any cause of action or theory of recovery now recognized by  
34 the courts of this State but is for the sole purpose of providing standing to sue to the persons  
35 set forth in § 1–503 of this subtitle, subject to the provisions and limitations set forth in  
36 this subtitle.

1 (b) Except as provided in § 1-503(b) of this subtitle, nothing in this subtitle  
2 constitutes a waiver by the State or any agency of the defense of sovereign immunity, and  
3 this defense is expressly reserved.

4 (c) This subtitle does not authorize an action for monetary damages. The  
5 remedies available to any plaintiff who acquires standing to sue solely by virtue of this  
6 subtitle are limited to mandamus or equitable relief, including declaratory relief as to  
7 whether a permit or order has been unlawfully issued or is being violated, and a judgment  
8 or decree for monetary damages may not be awarded. However, a judgment for monetary  
9 damages may be awarded in any action where a judgment is appropriate to a plaintiff who  
10 has standing to sue other than by virtue of this subtitle.

11 (d) This subtitle does not abrogate the existing requirement and principles of  
12 exhaustion of administrative remedies, and this subtitle does not broaden, except as  
13 specifically set forth, the rights of intervention of persons in administrative hearings and  
14 in appeals from the hearings.

15 (e) This subtitle is not to be construed in any way to alter the present provisions  
16 of law relating to standing in any matter affecting local zoning.

17 (f) (1) Except as provided in this subtitle, relief may not be granted in any  
18 action filed under this subtitle with respect to any defendant who shows that the condition,  
19 activity, or failure complained of is under and in compliance with:

20 (i) A lawful, current permit or order of an agency of the State or a  
21 political subdivision authorized to issue the permit or order;

22 (ii) An order or other adjudication of a court of competent jurisdiction  
23 in a proceeding in which all of the material issues involved in the action were raised and  
24 determined, whether or not the parties to the prior litigation were identical to the parties  
25 in the pending action; or

26 (iii) A lawful current permit or order of an agency of the United  
27 States government authorized to issue the permit or order.

28 (2) If the court finds, upon clear and convincing evidence at any stage of  
29 the proceeding, that the condition, activity, or failure complained of exists and either  
30 presents an imminent danger to the health, welfare, or safety of the people of the State, or  
31 results in or is likely to result in irreversible or irreparable damage to the air, water, or  
32 other natural resources of the State, the court may remand the matter to the agency with  
33 instructions to consider and make factual determinations with respect to the material  
34 issues, as determined by the court, within a time considered reasonable by the court. A  
35 finding may not be made until the defendant has been provided an opportunity by the court  
36 to present evidence rebutting the plaintiff's evidence.

1 (G) THIS SECTION DOES NOT APPLY TO AN ACTION BROUGHT BY A RESIDENT  
2 OR A COUNTY OR MUNICIPALITY OF THE STATE OR AN ENTITY OF THE EXECUTIVE  
3 BRANCH OF STATE GOVERNMENT AGAINST A PARTY TO A  
4 TRANSPORTATION-RELATED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
5 ENTERED INTO UNDER TITLE 10A OF THE STATE FINANCE AND PROCUREMENT  
6 ARTICLE, OR CONTRACTORS, AGENTS, OR ENTITIES ACTING IN FURTHERANCE OF  
7 THAT PARTNERSHIP AGREEMENT, FOR RELIEF AS A RESULT OF A VIOLATION OF THE  
8 PARTNERSHIP AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT  
9 THE PARTNERSHIP IS UNDERTAKING, LAW, OR REGULATION.

10 1-507.

11 (a) An action brought pursuant to this subtitle may not be compromised,  
12 discontinued, or dismissed by consent, by default, or for neglect to prosecute, except with  
13 the approval of the court. The approval may not be granted when the court determines that  
14 a monetary settlement, in excess of court costs and attorneys fees, has been offered by a  
15 defendant to a plaintiff, who has standing to sue only by virtue of this subtitle, as  
16 consideration for the settlement. If the court upon application of a defendant determines  
17 that an action in which a plaintiff has acquired standing solely by virtue of this subtitle  
18 was brought in bad faith or solely for purposes of harassment or delay, it may, after further  
19 hearing on this specific question, award to the defendant against the plaintiff a judgment  
20 for all or part of the court costs, including attorneys fees, as the defendant may establish  
21 were incurred by him in defending the action together with any damages sustained by the  
22 defendant as a result of the action having been brought, including witness fees.

23 (b) The Maryland Rules apply to all actions brought under this subtitle except  
24 where the provisions of this subtitle specifically describe other procedures.

25 (C) THIS SECTION DOES NOT APPLY TO AN ACTION BROUGHT BY A RESIDENT  
26 OR A COUNTY OR MUNICIPALITY OF THE STATE OR AN ENTITY OF THE EXECUTIVE  
27 BRANCH OF STATE GOVERNMENT AGAINST A PARTY TO A  
28 TRANSPORTATION-RELATED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
29 ENTERED INTO UNDER TITLE 10A OF THE STATE FINANCE AND PROCUREMENT  
30 ARTICLE, OR CONTRACTORS, AGENTS, OR ENTITIES ACTING IN FURTHERANCE OF  
31 THAT PARTNERSHIP AGREEMENT, FOR RELIEF AS A RESULT OF A VIOLATION OF THE  
32 PARTNERSHIP AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT  
33 THE PARTNERSHIP IS UNDERTAKING, LAW, OR REGULATION.

34 Article – Tax – General

35 9-303.

36 (b) [The] EXCEPT FOR BUNKER FUEL, THE motor fuel tax does not apply to  
37 special fuel:

1 (1) containing dye and sold for uses other than in a licensed motor vehicle;

2 (2) delivered into a tank used only for heating; or

3 (3) used for any purpose other than propelling a motor vehicle or  
4 turbine-powered aircraft.

5 9-305.

6 (a) Except as provided in subsection (b) of this section, the motor fuel tax rate is:

7 (1) 7 cents for each gallon of aviation gasoline;

8 (2) 23.5 cents for each gallon of gasoline other than aviation gasoline;

9 (3) 24.25 cents for each gallon of special fuel other than clean-burning fuel  
10 or turbine fuel;

11 (4) 7 cents for each gallon of turbine fuel; [and]

12 (5) 23.5 cents for each gasoline-equivalent gallon of clean-burning fuel  
13 except electricity; AND

14 **(6) FOR DIESEL FUEL AND BUNKER FUEL, IN ADDITION TO ANY OTHER**  
15 **TAX ASSESSED, AN AMOUNT DETERMINED BY THE COMPTROLLER AND THE STATE**  
16 **TREASURER TO BE SUFFICIENT TO PROVIDE THE OFFICE OF TRANSPORTATION**  
17 **OVERSIGHT WITH:**

18 **(I) \$25,000,000 PER YEAR; OR**

19 **(II) AN AMOUNT DETERMINED BY THE COMPTROLLER AND THE**  
20 **STATE TREASURER TO BE SUFFICIENT TO COVER THE COSTS OF OPERATING THE**  
21 **OFFICE OF TRANSPORTATION OVERSIGHT, BUT NOT LESS THAN \$15,000,000 PER**  
22 **YEAR.**

23 **Article - Transportation**

24 **TITLE 28. TRANSPORTATION OVERSIGHT.**

25 **SUBTITLE 1. GENERAL PROVISIONS.**

26 **28-101.**

27 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
28 **INDICATED.**

1 (B) "ADMINISTRATION" MEANS THE MARYLAND TRANSIT  
2 ADMINISTRATION.

3 (C) (1) "AGENCY" MEANS AN ENTITY OF THE EXECUTIVE BRANCH OF  
4 STATE GOVERNMENT.

5 (2) "AGENCY" INCLUDES AN INDEPENDENT ENTITY OF THE  
6 EXECUTIVE BRANCH OF STATE GOVERNMENT.

7 (D) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE OFFICE OF  
8 TRANSPORTATION OVERSIGHT ESTABLISHED UNDER § 28-301 OF THIS TITLE.

9 (E) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF  
10 TRANSPORTATION OVERSIGHT APPOINTED UNDER § 28-203 OF THIS TITLE.

11 (F) "LOCAL GOVERNMENT" MEANS A COUNTY OR MUNICIPALITY OF THE  
12 STATE.

13 (G) "OFFICE" MEANS THE OFFICE OF TRANSPORTATION OVERSIGHT  
14 ESTABLISHED UNDER § 28-202 OF THIS TITLE.

15 (H) "PARTNERSHIP AGREEMENT" MEANS A TRANSPORTATION-RELATED  
16 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

17 (I) "PLAN" MEANS THE STATEWIDE TRANSPORTATION PLAN  
18 ESTABLISHED IN § 28-401 OF THIS TITLE.

19 (J) "PUBLIC-PRIVATE PARTNERSHIP" HAS THE MEANING STATED IN §  
20 10A-101 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

21 (K) "WMATA" MEANS THE WASHINGTON METROPOLITAN AREA TRANSIT  
22 AUTHORITY.

23 SUBTITLE 2. PUBLIC-PRIVATE PARTNERSHIPS.

24 PART I. OFFICE OF TRANSPORTATION OVERSIGHT.

25 28-201.

26 THE GENERAL ASSEMBLY INTENDS THIS SUBTITLE TO PROVIDE PERSONS  
27 AFFECTED BY A TRANSPORTATION-RELATED PUBLIC-PRIVATE PARTNERSHIP WITH  
28 ASSISTANCE OF COUNSEL, EXPERT WITNESSES, AND THE RESOURCES FOR

1 ACQUIRING EFFECTIVE ASSISTANCE OF COUNSEL AFTER AN INITIAL SHOWING OF  
2 SPECIFIC AND CREDIBLE EVIDENCE THAT A LAW, REGULATION, OR MITIGATION  
3 COMMITMENT RELATING TO A TRANSPORTATION-RELATED PUBLIC-PRIVATE  
4 PARTNERSHIP MAY HAVE BEEN VIOLATED OR NOT OBEYED IN A TIMELY MANNER.

5 **28-202.**

6 (A) THERE IS AN OFFICE OF TRANSPORTATION OVERSIGHT.

7 (B) THE PURPOSE OF THE OFFICE IS TO ENSURE THAT  
8 TRANSPORTATION-RELATED PUBLIC-PRIVATE PARTNERSHIPS AND PARTNERSHIP  
9 AGREEMENTS SERVE THE RESIDENTS OF MARYLAND BY BEING FAIR, BEING  
10 RESPONSIVE TO CITIZEN CONCERNS, COMPLYING WITH APPLICABLE LAWS, AND  
11 IMPROVING THE QUALITY OF LIFE FOR MARYLAND RESIDENTS AND RESIDENTS OF  
12 NEIGHBORING STATES.

13 (C) THE OFFICE IS AN INDEPENDENT UNIT IN THE EXECUTIVE BRANCH OF  
14 STATE GOVERNMENT.

15 (D) THE OFFICE SHALL CARRY OUT THE FUNCTIONS ASSIGNED TO IT BY  
16 LAW.

17 **28-203.**

18 (A) WITH THE ADVICE AND CONSENT OF THE SENATE, THE GOVERNOR  
19 SHALL APPOINT A DIRECTOR OF THE OFFICE OF TRANSPORTATION OVERSIGHT.

20 (B) (1) THE TERM OF THE DIRECTOR IS 5 YEARS AND BEGINS ON JULY 1.

21 (2) AT THE END OF A TERM, THE DIRECTOR CONTINUES TO SERVE  
22 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

23 (3) A DIRECTOR WHO IS APPOINTED AFTER A TERM HAS BEGUN  
24 SERVES FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND  
25 QUALIFIES.

26 (C) (1) ON OR BEFORE NOVEMBER 1, 2019, THE GOVERNOR SHALL  
27 APPOINT AN INTERIM DIRECTOR IF A DIRECTOR HAS NOT BEEN APPOINTED UNDER  
28 SUBSECTION (A) OF THIS SECTION.

29 (2) THE INTERIM DIRECTOR SHALL SERVE UNTIL A DIRECTOR IS  
30 APPOINTED AND QUALIFIES.



1 **28-204.**

2 **THE OFFICE HAS A DUTY, AMONG OTHER THINGS, TO OVERSEE THE**  
3 **DRAFTING, LEGISLATIVE REVIEW, IMPLEMENTATION, EXTENSION, MODIFICATION,**  
4 **AND TERMINATION OF TRANSPORTATION-RELATED PUBLIC-PRIVATE**  
5 **PARTNERSHIPS AND PARTNERSHIP AGREEMENTS.**

6 **28-205.**

7 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE OFFICE IS**  
8 **CHARGED WITH THE FOLLOWING POWERS AND AUTHORITY TO ACCOMPLISH THE**  
9 **DUTIES AND PURPOSE OF THE OFFICE:**

10 **(1) THE POWER TO:**

11 **(I) REQUIRE MODIFICATIONS TO CONTRACTS, WORK ORDERS,**  
12 **OR DESIGNS RELATING TO PARTNERSHIP AGREEMENTS IN ORDER TO CARRY OUT**  
13 **THE DUTIES OF THE OFFICE UNDER THIS TITLE OR OTHERWISE TO PROTECT OR**  
14 **MORE FULLY AND FAIRLY SERVE THE RESIDENTS OF THE STATE OR CONSERVE OR**  
15 **RESTORE ITS NATURAL RESOURCES;**

16 **(II) REGULATE TRANSIT FARES AND SERVICES RELATED TO OR**  
17 **CARRIED OUT, APPLIED, OR USED UNDER A PARTNERSHIP AGREEMENT; AND**

18 **(III) APPLY LEGAL AND EQUITABLE REMEDIES TO ENFORCE ANY**  
19 **RELEVANT LAW, CONTRACT, OR MITIGATION COMMITMENT, AND IN THE**  
20 **REGULATION OF FARES AND SERVICES RELATED TO A PARTNERSHIP AGREEMENT;**  
21 **AND**

22 **(2) THE AUTHORITY TO:**

23 **(I) INSPECT, INVESTIGATE, OR MONITOR, ON ITS OWN**  
24 **INITIATIVE OR AT THE REQUEST OF AN AGENCY, A LOCAL GOVERNMENT, OR A**  
25 **RESIDENT OF THE STATE, ANY ISSUES REGARDING THE OPERATION OR**  
26 **IMPLEMENTATION OF A PARTNERSHIP AGREEMENT;**

27 **(II) CONSULT WITH AND MAKE RECOMMENDATIONS TO THE**  
28 **APPROPRIATE FEDERAL AND STATE AGENCIES REGARDING IMPROVEMENTS OR**  
29 **ISSUES IN A PARTNERSHIP AGREEMENT;**

30 **(III) IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION,**  
31 **BRING AN ACTION AGAINST A PARTY TO A PARTNERSHIP AGREEMENT, OR**  
32 **CONTRACTORS, AGENTS, OR ENTITIES ACTING IN FURTHERANCE OF THE**

1 PARTNERSHIP AGREEMENT, FOR RELIEF AS A RESULT OF A VIOLATION OF THE  
2 PARTNERSHIP AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT  
3 UNDERTAKEN BY THE PARTNERSHIP, LAW, OR REGULATION;

4 (IV) SUBJECT TO APPROVAL OF THE BOARD, REPRESENT OR  
5 ADVISE AN AGENCY, A LOCAL GOVERNMENT, OR A RESIDENT OF THE STATE IN AN  
6 ACTION AGAINST A PARTY TO A PARTNERSHIP AGREEMENT FOR RELIEF AS A RESULT  
7 OF A VIOLATION OF THE PARTNERSHIP AGREEMENT, LAW, OR REGULATION; AND

8 (V) REQUIRE THAT A DEFENDANT OR RESPONDENT PAY THE  
9 REASONABLE ATTORNEY'S AND EXPERT WITNESS'S FEES AND COSTS OF THE  
10 PETITIONER OR PLAINTIFF AT EACH OF THE FOLLOWING PHASES:

11 1. ON AN INITIAL SHOWING OF SPECIFIC AND CREDIBLE  
12 EVIDENCE THAT A VIOLATION MAY HAVE BEEN COMMITTED;

13 2. ON EACH RULING OR APPEAL FINDING FOR THE  
14 PETITIONER OR PLAINTIFF; AND

15 3. ON COMPLETION OF THE CASE, UNLESS THE  
16 PETITIONER IS FOUND TO HAVE ACTED IN BAD FAITH.

17 (B) (1) SUBJECT TO SUBSECTION (C) OF THIS SECTION, THE DIRECTOR  
18 MAY EXERCISE THE POWERS AND AUTHORITY CONFERRED ON THE OFFICE ONLY IF  
19 THE DIRECTOR DETERMINES THAT AN ACTION IS IN THE BEST INTEREST OF THE  
20 STATE AND ITS CITIZENS.

21 (2) THE OBLIGATIONS OR RIGHTS OF A PARTY TO A PARTNERSHIP  
22 AGREEMENT MAY NOT BE IMPAIRED WITHOUT FAIR AND REASONABLE  
23 CONSIDERATION.

24 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
25 THE OFFICE SHALL OBTAIN APPROVAL FROM THE BOARD BEFORE BRINGING AN  
26 ACTION UNDER SUBSECTION (A)(2)(III) OF THIS SECTION.

27 (2) THE OFFICE MAY BRING AN ACTION UNDER SUBSECTION  
28 (A)(2)(III) OF THIS SECTION WITHOUT THE APPROVAL OF THE BOARD IF THE  
29 DIRECTOR DETERMINES THAT THE ACTION IS TIME-SENSITIVE AND NEEDS TO BE  
30 ADDRESSED BEFORE THE BOARD WOULD HAVE THE OPPORTUNITY TO APPROVE THE  
31 ACTION.

32 28-206.

1           **(A) (1) (I) ON OR BEFORE SEPTEMBER 1, 2020, AND ANNUALLY**  
2 **THEREAFTER, THE OFFICE SHALL SUBMIT AN OPERATING PLAN TO THE BOARD FOR**  
3 **REVIEW AND APPROVAL.**

4                   **(II) THE OPERATING PLAN SHALL DETAIL HOW THE CURRENT**  
5 **STRATEGIC PLAN APPROVED BY THE BOARD UNDER SUBSECTION (B) OF THIS**  
6 **SECTION WILL BE IMPLEMENTED OVER THE UPCOMING YEAR.**

7           **(2) (I) THE BOARD MAY REVISE AN OPERATING PLAN SUBMITTED**  
8 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

9                   **(II) IF THE BOARD REVISES AN OPERATING PLAN, THE BOARD**  
10 **SHALL RETURN THE PLAN TO THE OFFICE FOR REVIEW AND COMMENT.**

11           **(3) ON OR BEFORE OCTOBER 1, 2020, AND ANNUALLY THEREAFTER,**  
12 **THE BOARD SHALL APPROVE AN OPERATING PLAN IF THE PLAN MEETS THE**  
13 **REQUIREMENTS OF THIS SECTION.**

14           **(B) (1) (I) ON OR BEFORE DECEMBER 1, 2020, AND EVERY 5 YEARS**  
15 **THEREAFTER, THE OFFICE SHALL SUBMIT A STRATEGIC PLAN TO THE BOARD FOR**  
16 **REVIEW AND APPROVAL.**

17                   **(II) THE STRATEGIC PLAN SHALL DETAIL THE OFFICE'S GOALS**  
18 **FOR MEETING ITS STATUTORY REQUIREMENTS OVER THE NEXT 5 YEARS.**

19           **(2) (I) THE BOARD MAY REVISE A STRATEGIC PLAN SUBMITTED**  
20 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

21                   **(II) IF THE BOARD REVISES A STRATEGIC PLAN, THE BOARD**  
22 **SHALL RETURN THE PLAN TO THE OFFICE FOR REVIEW AND COMMENT.**

23           **(3) ON OR BEFORE JANUARY 1 OF THE YEAR FOLLOWING THE YEAR**  
24 **IN WHICH THE OFFICE SUBMITS A STRATEGIC PLAN TO THE BOARD, THE BOARD**  
25 **SHALL APPROVE THE STRATEGIC PLAN IF IT MEETS THE REQUIREMENTS OF THIS**  
26 **SECTION.**

27 **28-207.**

28           **(A) THE GOVERNOR SHALL APPROPRIATE AT LEAST \$20,000,000 IN THE**  
29 **ANNUAL BUDGET BILL FOR THE OPERATION OF THE OFFICE.**

30           **(B) (1) WITHIN 30 DAYS AFTER THE DIRECTOR IS APPOINTED, THE**  
31 **DIRECTOR SHALL SUBMIT AN INITIAL BUDGET TO THE BOARD THAT SPECIFIES HOW**

1 FUNDS APPROPRIATED TO THE OFFICE WILL BE ALLOCATED FOR THE CURRENT  
2 FISCAL YEAR.

3 (2) (I) THE BOARD MAY REVISE THE INITIAL BUDGET SUBMITTED  
4 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

5 (II) IF THE BOARD REVISES THE INITIAL BUDGET, THE BOARD  
6 SHALL RETURN THE BUDGET TO THE OFFICE FOR REVIEW AND COMMENT.

7 (3) THE BOARD SHALL APPROVE THE INITIAL BUDGET WITHIN 30  
8 DAYS OF RECEIPT.

9 (C) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ON  
10 OR BEFORE JANUARY 1 EACH YEAR, THE DIRECTOR SHALL SUBMIT AN ANNUAL  
11 BUDGET TO THE BOARD THAT SPECIFIES HOW FUNDS APPROPRIATED TO THE  
12 OFFICE WILL BE ALLOCATED FOR THE NEXT FISCAL YEAR.

13 (2) (I) THE BOARD MAY REVISE AN ANNUAL BUDGET SUBMITTED  
14 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

15 (II) IF THE BOARD REVISES THE ANNUAL BUDGET, THE BOARD  
16 SHALL RETURN THE BUDGET TO THE OFFICE FOR REVIEW AND COMMENT.

17 (3) THE BOARD SHALL APPROVE THE ANNUAL BUDGET ON OR  
18 BEFORE MARCH 1 OF THE YEAR IN WHICH THE BUDGET IS SUBMITTED UNDER  
19 PARAGRAPH (1) OF THIS SUBSECTION.

20 28-208.

21 THE OFFICE SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

22 28-209. RESERVED.

23 28-210. RESERVED.

24 PART II. ACTIONS.

25 28-211.

26 IN AN ACTION BROUGHT BY AN AGENCY, A LOCAL GOVERNMENT, OR A  
27 RESIDENT OF THE STATE AGAINST A PARTY TO A PARTNERSHIP AGREEMENT, OR  
28 CONTRACTORS, AGENTS, OR ENTITIES ACTING IN FURTHERANCE OF THAT  
29 AGREEMENT, FOR RELIEF AS A RESULT OF A VIOLATION OF THE PARTNERSHIP

1 AGREEMENT, MITIGATION COMMITMENT RELATED TO THE PROJECT UNDERTAKEN  
2 BY THE PARTNERSHIP, LAW, OR REGULATION, EVIDENCE THAT THE PARTY OR ITS  
3 CONTRACTOR, SUBCONTRACTORS, OR AGENTS CAUSED THE BREACH CREATES A  
4 REBUTTABLE PRESUMPTION OF A VIOLATION THAT MAY BE OVERCOME BY A  
5 PREPONDERANCE OF THE EVIDENCE THAT THE PARTY IS IN COMPLIANCE WITH THE  
6 LAW AND THE TERMS OF THE PARTNERSHIP AGREEMENT AND THAT THE PARTY HAS  
7 TAKEN EVERY REASONABLE STEP TO AVOID SUCH A BREACH.

8 **28-212.**

9 LEGAL MATTERS BROUGHT IN ACCORDANCE WITH THIS SUBTITLE SHALL BE  
10 SCHEDULED EXPEDITIOUSLY, AS PROVIDED IN THE MARYLAND RULES.

11 **SUBTITLE 3. BOARD OF DIRECTORS.**

12 **28-301.**

13 (A) THERE IS A BOARD OF DIRECTORS OF THE OFFICE OF  
14 TRANSPORTATION OVERSIGHT.

15 (B) THE BOARD SHALL MANAGE THE OFFICE.

16 (C) (1) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

17 (I) A REPRESENTATIVE OF THE OFFICE OF THE PEOPLE'S  
18 COUNSEL, SELECTED BY THE OFFICE OF THE PEOPLE'S COUNSEL; AND

19 (II) FOUR INDIVIDUALS APPOINTED BY THE GOVERNOR IN  
20 ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

21 (2) ON OR BEFORE NOVEMBER 1, 2019, THE PRESIDENT OF THE  
22 SENATE AND THE SPEAKER OF THE HOUSE SHALL EACH NOMINATE TO THE  
23 GOVERNOR TWO INDIVIDUALS FOR APPOINTMENT TO THE BOARD.

24 (D) (1) THE TERM OF AN APPOINTED MEMBER IS:

25 (I) 4 YEARS FOR THE MEMBERS NOMINATED BY THE  
26 PRESIDENT OF THE SENATE; AND

27 (II) 2 YEARS FOR THE MEMBERS NOMINATED BY THE SPEAKER  
28 OF THE HOUSE.

1           **(2) AT THE END OF A TERM, AN APPOINTED MEMBER CONTINUES TO**  
2 **SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.**

3           **(3) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES**  
4 **ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND**  
5 **QUALIFIES.**

6           **(E) THE BOARD SHALL SELECT A CHAIR FROM AMONG ITS MEMBERS.**

7 **28-302.**

8           **(A) THE BOARD MAY ACT WITH AN AFFIRMATIVE VOTE OF THREE BOARD**  
9 **MEMBERS.**

10          **(B) THE BOARD MAY:**

11           **(1) REMOVE THE DIRECTOR AT ANY TIME;**

12           **(2) APPROVE AN ACTION BROUGHT BY THE OFFICE AGAINST A PARTY**  
13 **TO A PARTNERSHIP AGREEMENT, OR CONTRACTORS, AGENTS, OR ENTITIES ACTING**  
14 **IN FURTHERANCE OF THE PARTNERSHIP AGREEMENT UNDER § 28-205(A)(2) OF**  
15 **THIS TITLE;**

16           **(3) APPROVE THE OFFICE'S REPRESENTATION OF AN AGENCY, A**  
17 **LOCAL GOVERNMENT, OR A RESIDENT OF THE STATE IN AN ACTION AGAINST A**  
18 **PARTY TO A PARTNERSHIP AGREEMENT UNDER § 28-205(A)(2) OF THIS TITLE; AND**

19           **(4) TAKE ANY OTHER ACTIONS NECESSARY TO FULFILL THE DUTIES**  
20 **OF THE BOARD.**

21          **(C) THE BOARD SHALL:**

22           **(1) REVIEW, REVISE, AND APPROVE THE BUDGET OF THE OFFICE;**

23           **(2) REVIEW, REVISE, AND APPROVE THE OFFICE'S 5-YEAR**  
24 **STRATEGIC PLAN AND ANNUAL OPERATING PLAN; AND**

25           **(3) MEET AT LEAST ONCE EVERY 4 MONTHS.**

26           **SUBTITLE 4. STATEWIDE TRANSPORTATION PLAN.**

27 **28-401.**

1           **(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON OR**  
2 **BEFORE OCTOBER 1, 2020, THE SECRETARY AND THE DIRECTOR, IN COORDINATION**  
3 **WITH THE HEAD OF TRANSPORTATION FOR EACH LOCAL GOVERNMENT, WMATA,**  
4 **AND THE ADMINISTRATION, SHALL DEVELOP A STATEWIDE TRANSPORTATION**  
5 **PLAN TO GUIDE THE SELECTION OF AND INVESTMENT IN TRANSPORTATION MODES**  
6 **AND HIGHWAY ROUTES THROUGHOUT THE STATE, MAXIMIZING THE PERFORMANCE**  
7 **AND SYNERGY OF THE STATE'S TRANSPORTATION SERVICES.**

8           **(2) THE SECRETARY AND THE DIRECTOR, IN COORDINATION WITH**  
9 **THE HEAD OF TRANSPORTATION FOR EACH LOCAL GOVERNMENT, WMATA, AND**  
10 **THE ADMINISTRATION, SHALL CONSULT WITH THE PENNSYLVANIA DEPARTMENT**  
11 **OF TRANSPORTATION, THE DELAWARE DEPARTMENT OF TRANSPORTATION, THE**  
12 **VIRGINIA DEPARTMENT OF TRANSPORTATION, THE WEST VIRGINIA DEPARTMENT**  
13 **OF TRANSPORTATION, AND THE DISTRICT OF COLUMBIA DEPARTMENT OF**  
14 **TRANSPORTATION ON THE DEVELOPMENT OF A STATEWIDE TRANSPORTATION**  
15 **PLAN.**

16           **(B) THE SECRETARY AND THE DIRECTOR, IN COORDINATION WITH THE**  
17 **HEAD OF TRANSPORTATION FOR EACH LOCAL GOVERNMENT, WMATA, AND THE**  
18 **ADMINISTRATION, SHALL UPDATE THE PLAN AT LEAST ONCE EVERY 5 YEARS.**

19 **28-402.**

20           **(A) (1) ON OR BEFORE NOVEMBER 1, 2019, ALL WORK ASSOCIATED WITH**  
21 **A PARTNERSHIP AGREEMENT FOR THE PLANNING OR CONSTRUCTION OF NEW**  
22 **RAIL-BASED TRANSPORTATION MODES OR NEW STATE OR FEDERAL HIGHWAYS IN**  
23 **THE STATE SHALL BE PLACED ON HOLD WHILE THE DIRECTOR REVIEWS THE**  
24 **PARTNERSHIP AGREEMENT FOR COMPLIANCE WITH THIS SUBTITLE.**

25           **(2) A PERSON MAY NOT CUT TREES, DREDGE WATERS OR WETLANDS,**  
26 **HARM PARKS OR TRAILS, OR OTHERWISE ALTER THE ENVIRONMENT IN**  
27 **FURTHERANCE OF A PARTNERSHIP AGREEMENT WHILE THE PARTNERSHIP**  
28 **AGREEMENT IS ON HOLD.**

29           **(3) THE DIRECTOR MAY SUSPEND THE HOLD ON A PARTNERSHIP**  
30 **AGREEMENT ONE TIME FOR A PERIOD OF UP TO 6 MONTHS WHILE THE DIRECTOR**  
31 **REVIEWS THE PARTNERSHIP AGREEMENT FOR COMPLIANCE WITH THIS SUBTITLE IF**  
32 **THE DIRECTOR MAKES A PRELIMINARY FINDING THAT:**

33           **(I) THE PARTNERSHIP AGREEMENT IS LIKELY TO BE IN**  
34 **COMPLIANCE WITHOUT SIGNIFICANT ALTERATIONS; OR**

1                   **(II) DURING THE TIME IN WHICH THE HOLD IS SUSPENDED, THE**  
2 **PARTNERSHIP AGREEMENT WILL COME INTO COMPLIANCE WITH THIS SUBTITLE.**

3           **(B) THE DIRECTOR SHALL:**

4                   **(1) PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT AND REVIEW**  
5 **OF A PARTNERSHIP AGREEMENT THAT HAS BEEN PLACED ON HOLD; AND**

6                   **(2) USE PUBLIC COMMENTS RECEIVED UNDER ITEM (1) OF THIS**  
7 **SUBSECTION TO DETERMINE WHETHER A PARTNERSHIP AGREEMENT COMPLIES**  
8 **WITH THIS SUBTITLE.**

9           **(C) WHILE A PARTNERSHIP AGREEMENT IS ON HOLD OR HAS HAD ITS HOLD**  
10 **SUSPENDED, THE SECRETARY AND THE DIRECTOR SHALL USE THE PUBLIC**  
11 **COMMENTS RECEIVED UNDER SUBSECTION (B)(1) TO ENSURE THAT:**

12                   **(1) THE RAIL-BASED TRANSPORTATION SYSTEMS SERVING THE**  
13 **STATE:**

14                   **(I) ARE REPAIRED SO THAT THE SYSTEM IS SAFE AND**  
15 **RELIABLE, WITH NO INTERRUPTION IN SERVICE FOR RIDERS OF THE SYSTEM;**

16                   **(II) HAVE A DEDICATED FUNDING SOURCE FOR MAINTENANCE**  
17 **AND OPERATION; AND**

18                   **(III) HAVE QUALIFIED MANAGEMENT AND STAFF CAPABLE OF**  
19 **ENSURING THAT THE OPERATION AND DECOMMISSIONING OF THE SYSTEM**  
20 **COMPLIES WITH THE PLAN;**

21           **(2) STATE AND FEDERAL HIGHWAYS AND BRIDGES IN THE STATE:**

22                   **(I) ARE REPAIRED SO THAT THE HIGHWAYS AND BRIDGES ARE**  
23 **SAFE;**

24                   **(II) RECEIVE SUFFICIENT FUNDING FOR REPAIR AND**  
25 **MAINTENANCE;**

26                   **(III) ARE EQUIPPED WITH MODERN TRANSIT SYSTEM**  
27 **MANAGEMENT HARDWARE AND SOFTWARE, INCLUDING CONGESTION-SENSING AND**  
28 **TRANSIT-SENSING RADIO-CONTROLLED TRAFFIC CONTROL SIGNALS; AND**





1                   1.     **AUTONOMOUS VEHICLES;**

2                   2.     **ELECTRIC VEHICLES;**

3                   3.     **HYBRID VEHICLES; AND**

4                   4.     **HYDROGEN-POWERED VEHICLES;**

5                   **(VII) VEHICLES THAT OPERATE IN THE WATER; AND**

6                   **(VIII) VEHICLES THAT OPERATE IN THE AIR; AND**

7                   **(2)     EXCEPT FOR A PROJECT FOR THE REPAIR OR MAINTENANCE OF**  
8 **AN EXISTING TRANSPORTATION MODE OR HIGHWAY, REQUIRE THAT EACH PROJECT**  
9 **THE STATE IMPLEMENTS, FUNDS, OR PERMITS DEMONSTRATES THAT THE PROJECT:**

10                  **(I)     IS THE MOST COST-EFFECTIVE:**

11                   1.     **IN TERMS OF CONGESTION RELIEF;**

12                   2.     **IN TERMS OF MILES PROVIDED AND TIME SAVED PER**  
13 **RIDER, PEDESTRIAN, OR BICYCLIST; AND**

14                   3.     **OF ANY SAFE, RELIABLE, COMFORTABLE, AND**  
15 **SECURE OPTION THAT IS LIKELY TO BE AVAILABLE AT THE PROJECT'S PROJECTED**  
16 **DATE OF SERVICE;**

17                  **(II)    IS THE MOST LIKELY TO EXPEDITE AN INCREASE IN:**

18                   1.     **ENERGY EFFICIENCY; AND**

19                   2.     **THE STATE'S PRODUCTION AND USE OF RENEWABLE**  
20 **ENERGY;**

21                  **(III)  IS THE MOST ENVIRONMENTALLY SENSITIVE IN TERMS OF**  
22 **THE FULL RANGE OF ENVIRONMENTAL AND HEALTH EFFECTS, INCLUDING NOISE,**  
23 **VIBRATION, AIR POLLUTION, AND OTHER TYPES OF POLLUTION, THAT WILL IMPACT**  
24 **PASSENGERS AND OTHER INDIVIDUALS, WITH PARTICULAR REGARD TO**  
25 **ENVIRONMENTAL AND HEALTH EFFECTS IN RESIDENTIAL AREAS AND SCHOOLS;**

26                  **(IV)  DOES NOT HARM HISTORIC SITES, PARKS, OR TRAILS;**

1 (V) WILL RESULT IN A POSITIVE AND DEMONSTRABLE  
2 REDUCTION IN POLLUTION;

3 (VI) PROVIDES MORE BENEFITS THAN HARM TO:

4 1. LOCAL AND STATE AIR QUALITY AND WATER  
5 QUALITY; AND

6 2. STATE AND FEDERAL WATERS AND WETLANDS;

7 (VII) ADDRESSES ANY POTENTIAL ENVIRONMENTAL JUSTICE  
8 ISSUES AND DOES NOT CAUSE ENVIRONMENTAL INEQUITIES; AND

9 (VIII) IS THE MOST EFFECTIVE AT ACHIEVING A COMBINATION OF  
10 THE FACTORS SPECIFIED IN ITEMS (I) THROUGH (VII) OF THIS ITEM, AS  
11 DETERMINED USING A METHOD THAT ASSIGNS COMPARABLE VALUES TO EACH  
12 FACTOR.

13 (B) THE DIRECTOR, IN COORDINATION WITH THE HEAD OF  
14 TRANSPORTATION FOR EACH LOCAL GOVERNMENT, WMATA, AND THE  
15 ADMINISTRATION, SHALL DEVELOP A METHOD FOR ASSIGNING A VALUE TO THE  
16 FACTORS SPECIFIED IN SUBSECTION (A) OF THIS SECTION.

17 28-404.

18 FOR FISCAL YEARS 2021 THROUGH 2026, THE GOVERNOR SHALL  
19 APPROPRIATE IN THE STATE BUDGET \$5,000,000 FROM THE TRANSPORTATION  
20 TRUST FUND FOR THE DEPARTMENT FOR THE DEVELOPMENT OF THE PLAN AND  
21 IMPLEMENTATION OF THIS SUBTITLE.

22 28-405.

23 THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall ensure  
25 that Executive Branch staff, including legal counsel, engineers, financial experts, and other  
26 professional and clerical staff, are available in a timely manner to establish the Office of  
27 Transportation Oversight in accordance with Title 28 of the Transportation Article as  
28 enacted by Section 1 of this Act, with the cost of their services to be reimbursed from the  
29 Transportation Trust Fund if an appropriation is pending or has not been made.

30 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General  
31 Assembly that funds in the Transportation Trust Fund be used to assist the Office of

1 Transportation Oversight in carrying out its duties, including the payment of attorney's  
2 fees and expert witness's fees for a legal or administrative proceeding.

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