

HOUSE BILL 1201

P2, P1
HB 485/21 – ENT & APP

3lr2839

By: **Delegate Solomon**

Introduced and read first time: February 10, 2023

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Public–Private Partnerships**

3 FOR the purpose of establishing the Public–Private Partnership Oversight Review Board;
4 requiring the Board to study and make recommendations regarding certain matters;
5 authorizing the Board to request technical assistance from certain persons, when
6 appropriate; requiring a reporting agency to submit certain presolicitation reports to
7 the Board; requiring a reporting agency to submit a separate presolicitation report
8 for each phase of a project that will develop in phases; providing that the total value
9 of a public–private partnership developed in phases is equal to the sum of the total
10 value of each phase of the project; requiring a certain reporting agency to include in
11 presolicitation reports for certain public–private partnerships presolicitation reports
12 of certain contracts; requiring the Board, within a certain number of days after
13 receiving a presolicitation report, to report and make certain recommendations to
14 the Board of Public Works and certain budget committees; requiring that before the
15 Board of Public Works may make a certain designation certain budget committees
16 have a certain number of days to review and comment on a certain report; requiring
17 certain proposed public–private partnership agreements to be submitted to the
18 Legislative Policy Committee and the Public–Private Partnership Oversight Review
19 Board; prohibiting the Board of Public Works from approving a proposed agreement
20 until the Legislative Policy Committee has reviewed and commented on the
21 public–private partnership if a certain review and comment period is during a
22 certain time and until certain independent assessments of the impact on the State’s
23 credit rating and certain risk analyses are completed under certain circumstances;
24 requiring a certain risk analysis to include certain information; requiring the
25 proposed agreement to include certain financial information; requiring approval of
26 the General Assembly for certain public–private partnership agreements; requiring
27 a reporting agency to notify the Legislative Policy Committee on receiving a certain
28 unsolicited proposal; requiring a reporting agency to consult with the Public–Private
29 Partnership Oversight Review Board in reviewing a certain unsolicited proposal;
30 requiring certain terms in a public–private partnership agreement; requiring, under
31 certain circumstances, the terms of a public–private partnership to contain certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 provisions; extending a certain prohibition on noncompete clauses in certain
2 public-private partnership agreements to all transit or road maintenance projects
3 regardless of funding source; and generally relating to public-private partnerships.

4 BY repealing and reenacting, without amendments,
5 Article – State Finance and Procurement
6 Section 10A-101(a)
7 Annotated Code of Maryland
8 (2021 Replacement Volume and 2022 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article – State Finance and Procurement
11 Section 10A-101(b), 10A-201(a), 10A-203(a), 10A-301, and 10A-401(a) and (c)
12 Annotated Code of Maryland
13 (2021 Replacement Volume and 2022 Supplement)

14 BY adding to
15 Article – State Finance and Procurement
16 Section 10A-101(i), 10A-106, and 10A-203(c)
17 Annotated Code of Maryland
18 (2021 Replacement Volume and 2022 Supplement)

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

21 **Article – State Finance and Procurement**

22 10A-101.

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

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

27 (I) **“TRANSPORTATION FACILITIES PROJECT” HAS THE MEANING STATED**
28 **IN § 4-101 OF THE TRANSPORTATION ARTICLE.**

29 **10A-106.**

30 (A) **THERE IS A PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW**
31 **BOARD.**

32 (B) **THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:**

33 (1) **TWO MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY**

1 THE PRESIDENT OF THE SENATE;

2 (2) TWO MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY
3 THE SPEAKER OF THE HOUSE; AND

4 (3) THREE MEMBERS, APPOINTED BY THE GOVERNOR, WHO SHALL
5 HAVE EXPERIENCE IN THE FIELDS OF TRANSPORTATION LAW, PUBLIC POLICY,
6 FINANCE, OR MANAGEMENT CONSULTING.

7 (C) THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE
8 SHALL JOINTLY DESIGNATE THE CHAIR OF THE BOARD.

9 (D) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE STAFF
10 FOR THE BOARD.

11 (E) THE BOARD SHALL:

12 (1) REVIEW PUBLIC-PRIVATE PARTNERSHIP PRESOLICITATION
13 REPORTS;

14 (2) MAKE RECOMMENDATIONS REGARDING THE DESIGNATION OF A
15 PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP;

16 (3) CONSULT WITH A REPORTING AGENCY IN REVIEWING ANY
17 UNSOLICITED PROPOSALS FOR A PUBLIC-PRIVATE PARTNERSHIP;

18 (4) REVIEW BEST PRACTICES REGARDING PUBLIC-PRIVATE
19 PARTNERSHIPS FROM OTHER STATES AND INTERNATIONALLY; AND

20 (5) MONITOR THE IMPLEMENTATION AND OPERATION OF EXISTING
21 PUBLIC-PRIVATE PARTNERSHIPS.

22 (F) THE BOARD MAY REQUEST TECHNICAL ASSISTANCE FROM THE STATE
23 TREASURER, THE COMPTROLLER, OR THE APPROPRIATE ADMINISTRATIVE
24 AGENCY, WHEN APPROPRIATE.

25 10A-201.

26 (a) (1) (i) Except as provided in subparagraph (ii) of this paragraph AND
27 SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH AND PARAGRAPH (3) OF
28 THIS SUBSECTION, a reporting agency may not issue a public notice of solicitation for a
29 public-private partnership until a presolicitation report concerning the proposed
30 public-private partnership is submitted to the Comptroller, the State Treasurer, the
31 budget committees, and the Department of Legislative Services, in accordance with §
32 2-1257 of the State Government Article.

1 (ii) 1. A reporting agency may not issue a public notice of
2 solicitation for a public-private partnership for a transportation facilities project[, as
3 defined in § 4-101(h) of the Transportation Article,] until a presolicitation report
4 concerning the proposed public-private partnership is submitted to the budget committees
5 and the Department of Legislative Services, in accordance with § 2-1257 of the State
6 Government Article.

7 2. **FOR A TRANSPORTATION FACILITIES PROJECT WITH**
8 **A TOTAL VALUE THAT EXCEEDS \$500,000,000, THE REPORTING AGENCY SHALL**
9 **SUBMIT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE,**
10 **THE PRESOLICITATION REPORT TO THE PUBLIC-PRIVATE PARTNERSHIP**
11 **OVERSIGHT REVIEW BOARD.**

12 (iii) 1. **IF A REPORTING AGENCY HAS DETERMINED THAT A**
13 **PROJECT THAT IS SUBJECT TO A PUBLIC-PRIVATE PARTNERSHIP WILL BE**
14 **DEVELOPED IN SEPARATE PHASES, THE REPORTING AGENCY SHALL SUBMIT A**
15 **SEPARATE PRESOLICITATION REPORT IN ACCORDANCE WITH THIS SECTION FOR**
16 **EACH PHASE OF THE PROJECT.**

17 2. **FOR THE PURPOSES OF DETERMINING THE TOTAL**
18 **VALUE OF A PUBLIC-PRIVATE PARTNERSHIP FOR A PROJECT THAT WILL BE**
19 **DEVELOPED IN PHASES, THE TOTAL VALUE OF THE PUBLIC-PRIVATE PARTNERSHIP**
20 **SHALL BE EQUAL TO THE SUM OF THE TOTAL VALUE OF EACH PHASE OF THE**
21 **PROJECT.**

22 (2) (i) **[The] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
23 **SUBSECTION, THE** budget committees may not have more than 45 days to review and
24 comment on the presolicitation report submitted in accordance with paragraph (1) of this
25 subsection.

26 (ii) 1. If the total value of a proposed public-private partnership
27 reported in the presolicitation report under paragraph (b)(1) of this subsection exceeds
28 \$500,000,000, the budget committees [may request] **SHALL, AFTER MAKING A REQUEST**
29 **SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, BE GRANTED** an
30 additional 15 days to review and comment on the presolicitation report.

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

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

35 B. include the reason for the request and any preliminary
36 issues the budget committees have.

1 **(3) FOR A PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL VALUE**
2 **THAT EXCEEDS \$500,000,000, THE REPORTING AGENCY SHALL INCLUDE IN THE**
3 **PRESOLICITATION REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
4 **A PRESOLICITATION REPORT OF EACH CONTRACT UNDER THE PUBLIC-PRIVATE**
5 **PARTNERSHIP.**

6 **(4) (I) WITHIN 60 DAYS AFTER RECEIVING A PRESOLICITATION**
7 **REPORT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PUBLIC-PRIVATE**
8 **PARTNERSHIP OVERSIGHT REVIEW BOARD SHALL REPORT AND MAKE**
9 **RECOMMENDATIONS ON THE PRESOLICITATION REPORT TO THE BOARD OF PUBLIC**
10 **WORKS AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT**
11 **ARTICLE, THE BUDGET COMMITTEES OF THE GENERAL ASSEMBLY.**

12 **(II) THE BUDGET COMMITTEES, IN CONSULTATION WITH THE**
13 **APPROPRIATE POLICY COMMITTEES, SHALL HAVE 60 DAYS TO REVIEW AND**
14 **COMMENT ON THE REPORT AND RECOMMENDATIONS OF THE**
15 **PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD BEFORE THE BOARD**
16 **OF PUBLIC WORKS MAY DESIGNATE THE PUBLIC INFRASTRUCTURE ASSET AS A**
17 **PUBLIC-PRIVATE PARTNERSHIP UNDER SUBSECTION (C) OF THIS SECTION.**

18 10A-203.

19 (a) (1) Except as provided in [paragraph (2)] **PARAGRAPHS (2) AND (5)** of
20 this subsection, the Board of Public Works may not approve a public-private partnership
21 agreement until:

22 (i) a copy of the proposed agreement is submitted simultaneously
23 to:

24 1. the Comptroller, the State Treasurer, the budget
25 committees, and the Department of Legislative Services, in accordance with § 2-1257 of
26 the State Government Article; AND

27 2. **FOR A PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL**
28 **VALUE THAT EXCEEDS \$500,000,000, THE LEGISLATIVE POLICY COMMITTEE, IN**
29 **ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, AND THE**
30 **PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD;**

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

34 (iii) the State Treasurer submits the analysis to the budget
35 committees and the Department of Legislative Services, in accordance with § 2-1257 of the

1 State Government Article; [and]

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

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

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

10 2. INDEPENDENT ASSESSMENTS OF THE IMPACT ON THE
11 STATE'S CREDIT RATING ARE COMPLETED FOR EACH CONTRACT UNDER THE
12 PUBLIC-PRIVATE PARTNERSHIP BY A FINANCIAL ADVISOR CHOSEN BY THE STATE
13 TREASURER; AND

14 3. IN ACCORDANCE WITH PARAGRAPH (4) OF THIS
15 SUBSECTION, A RISK ANALYSIS IS COMPLETED FOR EACH CONTRACT UNDER THE
16 PUBLIC-PRIVATE PARTNERSHIP BY A FINANCIAL ADVISOR CHOSEN BY THE STATE
17 TREASURER.

18 (2) The Board of Public Works may not approve a public-private
19 partnership agreement for a transportation facilities project[, as defined in § 4-101(h) of
20 the Transportation Article,] until the proposed agreement is submitted to the budget
21 committees and the Department of Legislative Services, in accordance with § 2-1257 of the
22 State Government Article.

23 (3) (i) The period for review, analysis, and comment under paragraphs
24 (1) and (2) of this subsection may not exceed a total of 30 days from the date the proposed
25 public-private partnership agreement is submitted simultaneously to the State Treasurer,
26 the Comptroller, the budget committees, and the Department of Legislative Services.

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

31 (4) THE RISK ANALYSIS REQUIRED UNDER PARAGRAPH (1) OF THIS
32 SUBSECTION SHALL INCLUDE:

33 (I) AN ASSESSMENT OF THE RISKS TO THE STATE POSED BY THE
34 PROPOSED AGREEMENT, INCLUDING ECONOMIC, LEGAL, AND TECHNOLOGICAL
35 RISKS; AND

1 **(II) AN EVALUATION OF THE SECURITY PACKAGE PROVIDED BY**
2 **THE PRIVATE ENTITY AND PRIVATE FUNDING SOURCE, INCLUDING ANY PAYMENT**
3 **AND PERFORMANCE BONDS, LETTERS OF CREDIT, PARENT COMPANY GUARANTEES,**
4 **AND LENDER OR EQUITY PARTNER GUARANTEES.**

5 **(5) (I) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WITH A**
6 **TOTAL VALUE THAT EXCEEDS \$1,000,000,000 REQUIRES AN AFFIRMATIVE VOTE OF**
7 **THE GENERAL ASSEMBLY BEFORE THE BOARD OF PUBLIC WORKS MAY ACT TO**
8 **APPROVE THE AGREEMENT.**

9 **(II) A VOTE OF THE GENERAL ASSEMBLY TO APPROVE A**
10 **PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL VALUE THAT EXCEEDS**
11 **\$1,000,000,000 SHALL OCCUR AFTER COMPLETION OF THE PERIOD FOR REVIEW,**
12 **ANALYSIS, AND COMMENT REQUIRED UNDER PARAGRAPHS (1) AND (2) OF THIS**
13 **SUBSECTION.**

14 **(C) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL**
15 **INCLUDE FINANCIAL INFORMATION REGARDING EACH CONTRACTOR AND ANY**
16 **SUBCONTRACTOR THAT WILL PROVIDE PRODUCTS OR SERVICES UNDER THE**
17 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.**

18 10A-301.

19 (a) A reporting agency may accept, reject, or evaluate an unsolicited proposal for
20 a public-private partnership that will assist the reporting agency in implementing its
21 functions in a manner consistent with State policy.

22 (b) **A REPORTING AGENCY SHALL NOTIFY THE LEGISLATIVE POLICY**
23 **COMMITTEE ON RECEIVING AN UNSOLICITED PROPOSAL.**

24 (c) (1) A reporting agency shall establish the process for determining whether
25 an unsolicited proposal meets a need of the reporting agency or is otherwise advantageous
26 to the reporting agency.

27 **(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, A**
28 **REPORTING AGENCY SHALL CONSULT WITH THE PUBLIC-PRIVATE PARTNERSHIP**
29 **OVERSIGHT REVIEW BOARD IN REVIEWING AN UNSOLICITED PROPOSAL.**

30 [(c)] (d) (1) A reporting agency may establish by regulation an application
31 fee for submitting an unsolicited proposal.

32 (2) For an unsolicited proposal that does not address a project already in
33 the State's Capital Improvement Program or Consolidated Transportation Program
34 planning documents, a reporting agency may require a higher application fee.

1 **[(d)] (E)** If a reporting agency determines that an unsolicited proposal meets a
2 need of the reporting agency or is otherwise advantageous to the reporting agency, the
3 reporting agency shall:

4 (1) conduct a competitive solicitation process as described under Subtitle 2
5 of this title;

6 (2) protect proprietary information included in the unsolicited proposal to
7 the same extent proprietary information is protected under § 10A–203(b) of this title; and

8 (3) comply with all of the other procedural requirements set forth in this
9 title.

10 **[(e)] (F)** An individual or firm that has submitted an unsolicited proposal under
11 this title may participate in any subsequent competitive solicitation process.

12 10A–401.

13 (a) **(1)** Whenever applicable, a public–private partnership agreement shall
14 include the following provisions:

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

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

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

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

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

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

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

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

30 **[(9)] (IX)** the terms and conditions under which the reporting agency

1 originating the public-private partnership shall be responsible for ongoing oversight;

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

4 [(11)] **(XI)** the terms and conditions under which the public infrastructure
5 assets shall be returned to the State at the expiration or termination of the agreement; 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) IF NEGOTIATED AS AN ELEMENT OF THE PUBLIC-PRIVATE**
17 **PARTNERSHIP, THE TERMS ESTABLISHING A GUARANTEED RATE OF RETURN FOR**
18 **THE PRIVATE ENTITY.**

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 THE**
30 **REIMBURSEMENT OF THE STATE FOR ADVANCED PROJECT EXPENSES.**

31 (c) A public-private partnership agreement for a project involving road, highway,
32 or bridge assets may not include a noncompete clause that would inhibit the planning,
33 construction, or implementation of [State-funded] transit **OR ROAD MAINTENANCE**
34 projects.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July

1 1, 2023.