

HOUSE BILL 1424

P2, P1

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By: **Delegates Solomon, Barron, Carr, Dumais, Feldmark, Korman, Love, and Stein**

Introduced and read first time: February 7, 2020

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Public-Private Partnerships – Process and Oversight**

3 FOR the purpose of establishing the Public-Private Partnership Oversight Review Board;
4 providing for the composition, chair, and staffing of the Review Board; requiring the
5 Review Board to study and make recommendations regarding certain matters;
6 requiring a reporting agency to submit certain presolicitation reports to the Review
7 Board; requiring a certain reporting agency to include in presolicitation reports for
8 certain public-private partnerships presolicitation reports of certain contracts and a
9 certain environmental impact statement under certain circumstances; requiring the
10 Review Board, within a certain number of days after receiving a presolicitation
11 report, to report and make certain recommendations to the Board of Public Works
12 and certain budget committees; requiring that before the Board of Public Works may
13 make a certain designation certain budget committees have a certain number of days
14 to review and comment on a certain report; requiring that after the Board of Public
15 Works makes a certain designation certain budget committees have a certain period
16 of review and comment before a reporting agency issues a certain notice; requiring
17 certain proposed public-private partnership agreements to be submitted to the
18 Legislative Policy Committee; prohibiting the Board of Public Works from approving
19 a proposed agreement until the Legislative Policy Committee has reviewed and
20 commented on the public-private partnership if a certain review and comment
21 period is during a certain time and until a certain independent rating assessment
22 survey is completed under certain circumstances; requiring a certain independent
23 rating assessment survey to include certain information; requiring the proposed
24 agreement to include certain financial information; requiring that a certain
25 public-private partnership agreement include the minimum credit rating to be
26 maintained by a certain entity and funding source; requiring, under certain
27 circumstances, the terms of a public-private partnership to contain certain
28 provisions; extending a certain prohibition on noncompete clauses in certain
29 public-private partnership agreements to all transit or road maintenance projects

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



regardless of funding source; altering a certain definition; defining a certain term; making conforming changes; and generally relating to public-private partnerships.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 10A–101(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 10A–101(b), 10A–201(a) and (c), 10A–203(a), and 10A–401(a) and (c)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – State Finance and Procurement
Section 10A–101(i), 10A–106, and 10A–203(c)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

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

Article – State Finance and Procurement

10A–101.

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

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

(i) **“TRANSPORTATION FACILITIES PROJECT” HAS THE MEANING STATED IN § 4–101 OF THE TRANSPORTATION ARTICLE.**

10A–106.

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

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

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

1 **(2) TWO MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY**
2 **THE SPEAKER OF THE HOUSE;**

3 **(3) THE COMPTROLLER, OR THE COMPTROLLER'S DESIGNEE;**

4 **(4) THE STATE TREASURER, OR THE STATE TREASURER'S DESIGNEE;**
5 **AND**

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

9 **(C) THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE**
10 **SHALL JOINTLY DESIGNATE THE CHAIR OF THE BOARD.**

11 **(D) THE COMPTROLLER SHALL PROVIDE STAFF FOR THE BOARD.**

12 **(E) THE BOARD SHALL:**

13 **(1) REVIEW PUBLIC-PRIVATE PARTNERSHIP PRESOLICITATION**
14 **REPORTS; AND**

15 **(2) MAKE RECOMMENDATIONS REGARDING THE DESIGNATION OF A**
16 **PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP.**

17 10A-201.

18 (a) (1) (i) Except as provided in subparagraph (ii) of this paragraph **AND**
19 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION**, a reporting agency may not issue a
20 public notice of solicitation for a public-private partnership until a presolicitation report
21 concerning the proposed public-private partnership is submitted to the Comptroller, the
22 State Treasurer, the budget committees, and the Department of Legislative Services, in
23 accordance with § 2-1257 of the State Government Article.

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

30 **2. FOR A TRANSPORTATION FACILITIES PROJECT WITH**
31 **A TOTAL VALUE THAT EXCEEDS \$500,000,000, THE REPORTING AGENCY SHALL**

SUBMIT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE PRESOLICITATION REPORT TO THE PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD.

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

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

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

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

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

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

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

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

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

(II) THE BUDGET COMMITTEES SHALL HAVE 60 DAYS TO REVIEW AND COMMENT ON THE REPORT AND RECOMMENDATIONS OF THE

PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD BEFORE THE BOARD OF PUBLIC WORKS MAY DESIGNATE THE PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP UNDER SUBSECTION (C) OF THIS SECTION.

(c) (1) [After] **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AFTER** the budget committees' review and comment period on the presolicitation report and before issuing a public notice of solicitation, a reporting agency shall seek the official designation by the Board of Public Works of the public infrastructure asset as a public-private partnership and approval of the solicitation method.

(2) The request for official designation and approval shall:

(i) include a copy of the presolicitation report required under subsection (a) of this section;

(ii) describe the process for soliciting, evaluating, selecting, and awarding the public-private partnership;

(iii) include a preliminary solicitation schedule;

(iv) outline the organization and contents of the public notice of solicitation;

(v) provide a summary of the key terms of the proposed public-private partnership agreement; and

(vi) include any other information or requests determined to be relevant by the reporting agency.

(3) FOR A TRANSPORTATION FACILITIES PROJECT WITH A TOTAL VALUE THAT EXCEEDS \$500,000,000, BEFORE THE REPORTING AGENCY ISSUES A PUBLIC NOTICE OF SOLICITATION, THE BUDGET COMMITTEES SHALL HAVE 1 YEAR TO REVIEW AND COMMENT ON THE DESIGNATION BY THE BOARD OF PUBLIC WORKS UNDER PARAGRAPH (1) OF THIS SUBSECTION.

10A-203.

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

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

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

1 **2. FOR A PUBLIC–PRIVATE PARTNERSHIP WITH A TOTAL**
2 **VALUE THAT EXCEEDS \$500,000,000, THE LEGISLATIVE POLICY COMMITTEE, IN**
3 **ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE;**

4 (ii) the State Treasurer, in coordination with the Comptroller,
5 analyzes the impact on the State’s capital debt affordability limits of the proposed
6 public–private partnership agreement;

7 (iii) the State Treasurer submits the analysis to the budget
8 committees and the Department of Legislative Services, in accordance with § 2–1257 of the
9 State Government Article; [and]

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

12 **(V) FOR A PUBLIC–PRIVATE PARTNERSHIP WITH A TOTAL**
13 **VALUE THAT EXCEEDS \$500,000,000:**

14 **1. IF THE REVIEW AND COMMENT PERIOD FOR THE**
15 **BUDGET COMMITTEES IS DURING A PERIOD WHEN THE GENERAL ASSEMBLY IS NOT**
16 **IN SESSION, THE LEGISLATIVE POLICY COMMITTEE HAS REVIEWED AND**
17 **COMMENTED ON THE PUBLIC–PRIVATE PARTNERSHIP; AND**

18 **2. AN INDEPENDENT RATING ASSESSMENT SURVEY IS**
19 **COMPLETED FOR EACH CONTRACT UNDER THE PUBLIC–PRIVATE PARTNERSHIP, IN**
20 **ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION, BY AN INDEPENDENT**
21 **AUDITOR OR A CREDIT RATING AGENCY SELECTED BY THE STATE TREASURER.**

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

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

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

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

3 **(I) THE CREDIT STRENGTH OF THE PRIVATE ENTITY AND**
4 **PRIVATE FUNDING SOURCE;**

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

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

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

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

16 10A-401.

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

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

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

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

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

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

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

31 **[(7)] (VII)** the terms and conditions under which the reporting agency may

1 provide services for a fee sufficient to cover both direct and indirect costs;

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

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

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

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

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

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

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

20 (XIII) THE MINIMUM CREDIT RATING TO BE MAINTAINED BY THE
21 PRIVATE ENTITY AND PRIVATE FUNDING SOURCE RECOMMENDED UNDER §
22 10A-203(A) OF THIS TITLE.

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

30 (3) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
31 PROVIDING FOR REVENUE-SHARING OR OTHER SHARING IN FEES OR CHARGES IN
32 WHICH THE PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET
33 PERFORMANCE OF THE PUBLIC INFRASTRUCTURE ASSET SHALL REQUIRE THE
34 REIMBURSEMENT OF THE STATE FOR ADVANCED PROJECT EXPENSES.

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
6 1, 2020.