

HOUSE BILL 1091

P2, P1

9lr1206

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

Introduced and read first time: February 8, 2019

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Public-Private Partnerships – Reforms**

3 FOR the purpose of prohibiting the Board of Public Works from approving a public-private
4 partnership agreement until a certain independent rating assessment survey is
5 completed; requiring the independent rating assessment survey to include certain
6 information; requiring that a public-private partnership agreement include the
7 minimum credit rating to be maintained by a certain entity and funding source;
8 requiring, under certain circumstances, the terms of a public-private partnership to
9 contain certain provisions; extending a certain prohibition on noncompete clauses in
10 certain public-private partnership agreements to all transit projects regardless of
11 funding source; and generally relating to public-private partnerships.

12 BY repealing and reenacting, with amendments,
13 Article – State Finance and Procurement
14 Section 10A-203(a) and 10A-401(a) and (c)
15 Annotated Code of Maryland
16 (2015 Replacement Volume and 2018 Supplement)

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

19 **Article – State Finance and Procurement**

20 10A-203.

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

23 (i) a copy of the proposed agreement is submitted simultaneously to
24 the Comptroller, the State Treasurer, the budget committees, and the Department of
25 Legislative Services, in accordance with § 2-1246 of the State Government Article;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9 (v) AN INDEPENDENT RATING ASSESSMENT SURVEY IS
10 COMPLETED, IN ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION, BY AN
11 INDEPENDENT AUDITOR OR A CREDIT RATING AGENCY SELECTED BY THE STATE
12 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 a total of 30 days from the date the proposed
20 public-private partnership agreement is submitted simultaneously to the State Treasurer,
21 the Comptroller, the budget committees, and the Department of Legislative Services.

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

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

28 (I) THE CREDIT STRENGTH OF THE PRIVATE ENTITY AND
29 PRIVATE FUNDING SOURCE;

30 (II) THE IMPACT OF THE PROPOSED AGREEMENT ON THE
31 STATE'S CREDIT RATING;

32 (III) THE IMPACT OF THE PROPOSED AGREEMENT ON ANY LOCAL
33 GOVERNMENT'S CREDIT RATING; AND

1 (IV) A RECOMMENDATION, TO BE INCLUDED IN THE
2 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT, OF THE MINIMUM CREDIT RATING TO
3 BE MAINTAINED BY THE PRIVATE ENTITY AND PRIVATE FUNDING SOURCE.

4 10A-401.

5 (a) (1) Whenever applicable, a public-private partnership agreement shall
6 include the following provisions:

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

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

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

15 [(4)] (IV) minimum quality standards, performance criteria, incentives,
16 and disincentives;

17 [(5)] (V) operations and maintenance standards;

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

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

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

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

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

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

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

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

3 [(ii)] 2. requirements for the amount of the payment security and
4 any performance security in the form of a performance bond for a construction contract
5 shall be based on the value of the respective construction elements of the public-private
6 partnership agreement and not on the total value of the public-private partnership
7 agreement; AND

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

11 (2) IF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT REQUIRES
12 THE STATE OR A SUCCESSOR ENTITY TO TAKE OVER OPERATIONS AND
13 MAINTENANCE OF A PROJECT, THE TERMS FOR APPROVAL OF ANY ASSIGNMENT,
14 REASSIGNMENT, OR OTHER TRANSFER OF INTERESTS IN THE PROJECT SHALL
15 INCLUDE A REQUIREMENT THAT ALL TOLL REVENUE OR OTHER CHARGES RELATED
16 TO THE PROJECT BE ASSIGNED TO THE STATE OR A SUCCESSOR ENTITY TO APPLY
17 TO THE OPERATIONS AND MAINTENANCE OF THE PROJECT.

18 (3) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT
19 PROVIDING FOR REVENUE-SHARING OR OTHER SHARING IN FEES OR CHARGES, IN
20 WHICH THE PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET
21 PERFORMANCE OF THE PUBLIC INFRASTRUCTURE ASSET SHALL REQUIRE:

22 (I) THE REIMBURSEMENT OF THE STATE FOR ADVANCED
23 PROJECT EXPENSES; AND

24 (II) AN ANNUAL SUBSIDY TO LOCAL GOVERNMENTS IMPACTED
25 BY THE PROJECT.

26 (c) A public-private partnership agreement for a project involving road, highway,
27 or bridge assets may not include a noncompete clause that would inhibit the planning,
28 construction, or implementation of [State-funded] transit projects.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
30 1, 2019.