

SENATE BILL 788

P1, R2

9lr2532
CF 9lr1590

By: **Senators Rosapepe, Guzzone, Lam, and Young**

Introduced and read first time: February 4, 2019

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Transportation Climate Accountability Act of 2019**

3 FOR the purpose of requiring the Department of the Environment, in conjunction with a
4 reporting agency, to conduct a comprehensive study regarding the environmental
5 impact of certain public–private partnership projects under certain circumstances;
6 prohibiting a reporting agency for certain proposed public–private partnerships from
7 submitting a certain presolicitation report before the submission of the study;
8 requiring that the study inventory and estimate certain environmental impacts at
9 certain intervals; specifying certain items that the Department must consider in
10 conducting the study; requiring the study to make certain recommendations under
11 certain circumstances and be submitted in a certain manner; authorizing the
12 Department to summarize certain other studies in lieu of certain study requirements
13 under certain circumstances; specifying that the Department shall be reimbursed for
14 the study by a private entity; requiring a public–private partnership agreement to
15 include a certain provision regarding reimbursement for the study; providing that
16 certain provisions of this Act apply to a certain public–private project whose
17 presolicitation report was submitted before a certain date; specifying certain details
18 regarding the submission of a certain study; and generally relating to requiring an
19 environmental impact study of public–private partnership projects.

20 BY repealing and reenacting, with amendments,
21 Article – State Finance and Procurement
22 Section 10A–201(a) and 10A–401(a)(11) and (12)
23 Annotated Code of Maryland
24 (2015 Replacement Volume and 2018 Supplement)

25 BY adding to
26 Article – State Finance and Procurement
27 Section 10A–201.1 and 10A–401(a)(13)
28 Annotated Code of Maryland
29 (2015 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – State Finance and Procurement**

4 10A–201.

5 (a) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a
6 reporting agency may not issue a public notice of solicitation for a public–private
7 partnership until a presolicitation report concerning the proposed public–private
8 partnership is submitted to the Comptroller, the State Treasurer, the budget committees,
9 and the Department of Legislative Services, in accordance with § 2–1246 of the State
10 Government Article.

11 (ii) A reporting agency may not issue a public notice of solicitation
12 for a public–private partnership for a transportation facilities project, as defined in §
13 4–101(h) of the Transportation Article, until a presolicitation report concerning the
14 proposed public–private partnership is submitted to the budget committees and the
15 Department of Legislative Services, in accordance with § 2–1246 of the State Government
16 Article.

17 (2) **IF A PROJECT REQUIRES AN ENVIRONMENTAL IMPACT**
18 **STATEMENT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, THE**
19 **REPORTING AGENCY MAY NOT SUBMIT THE PRESOLICITATION REPORT REQUIRED**
20 **UNDER PARAGRAPH (1) OF THIS SUBSECTION UNTIL THE STUDY REQUIRED UNDER**
21 **§ 10A–201.1 OF THIS SUBTITLE IS SUBMITTED.**

22 (3) (i) The budget committees may not have more than 45 days to
23 review and comment on the presolicitation report submitted in accordance with paragraph
24 (1) of this subsection.

25 (ii) 1. If the total value of a proposed public–private partnership
26 reported in the presolicitation report under paragraph (b)(1) of this subsection exceeds
27 \$500,000,000, the budget committees may request an additional 15 days to review and
28 comment on the presolicitation report.

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

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

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

1 **10A-201.1.**

2 (A) (1) THE DEPARTMENT OF THE ENVIRONMENT, IN CONJUNCTION
3 WITH THE REPORTING AGENCY, SHALL CONDUCT A COMPREHENSIVE STUDY
4 REGARDING THE ENVIRONMENTAL IMPACT OF EACH PUBLIC-PRIVATE
5 PARTNERSHIP PROJECT.

6 (2) THE STUDY REQUIRED UNDER THIS SUBSECTION SHALL
7 INVENTORY AND ESTIMATE THE PROJECT'S IMPACT ON AIR AND WATER POLLUTION
8 DURING THE PROJECT'S CONSTRUCTION PHASE AND AT 3, 6, AND 9 YEARS AFTER
9 THE PROJECT'S COMPLETION.

10 (B) IN CONDUCTING A STUDY UNDER THIS SECTION, THE DEPARTMENT OF
11 THE ENVIRONMENT SHALL:

12 (1) ANALYZE THE PROJECT'S IMPACT ON THE STATE'S ABILITY TO
13 COMPLY WITH THE GOALS, POLICIES, AND REQUIREMENTS SPECIFIED IN:

14 (I) THE GREENHOUSE GAS EMISSIONS REDUCTION ACT;

15 (II) THE MARYLAND HEALTHY AIR ACT; AND

16 (III) THE FEDERAL CLEAN WATER ACT;

17 (2) CONSIDER THE POTENTIAL:

18 (I) IMPACT OF ELECTRIC VEHICLES AND AUTONOMOUS
19 VEHICLES ON PROJECTED AIR EMISSIONS;

20 (II) COSTS AND BENEFITS OF INCLUDING ELECTRIC VEHICLE
21 INFRASTRUCTURE IN THE PROJECT TO MITIGATE POLLUTION; AND

22 (III) ENVIRONMENTAL IMPACT ON LOW-INCOME COMMUNITIES
23 AND STATE-IDENTIFIED ENVIRONMENTAL JUSTICE COMMUNITIES WITH EXISTING
24 ENVIRONMENTAL ISSUES; AND

25 (3) REVIEW THE POTENTIAL INCREASE IN GREENHOUSE GAS
26 EMISSIONS, AIR POLLUTION, AND CHESAPEAKE BAY DEGRADATION AS A RESULT OF:

27 (I) ROAD CONSTRUCTION AND MAINTENANCE;

28 (II) THE NET CONGESTION EFFECT OF THE PROJECT;

1 (III) THE ADDITIONAL TRAFFIC GENERATED DIRECTLY BY THE
2 PROJECT; AND

3 (IV) THE ADDITIONAL TRAFFIC ADDED TO ARTERIAL ROADS
4 ALONG THE PROJECT CORRIDOR.

5 (C) IF A STUDY UNDER THIS SECTION CONCLUDES THAT A PROJECT
6 NEGATIVELY IMPACTS ANY OF THE GOALS, POLICIES, OR REQUIREMENTS
7 IDENTIFIED UNDER SUBSECTION (B)(1) OF THIS SECTION, THE STUDY SHALL
8 RECOMMEND:

9 (1) ALTERATIONS OR ALTERNATIVES TO THE PROJECT; OR

10 (2) FUNDING SOURCES TO OFFSET THE PROJECT'S NEGATIVE
11 IMPACTS.

12 (E) IF ANY OF A STUDY'S REQUIREMENTS UNDER THIS SECTION DUPLICATE
13 A REQUIREMENT OF A STUDY CONDUCTED IN ACCORDANCE WITH THE NATIONAL
14 ENVIRONMENTAL POLICY ACT OR ANY OTHER PROVISION OF LAW, THE
15 DEPARTMENT OF THE ENVIRONMENT MAY SUMMARIZE, IN LIEU OF THE
16 DUPLICATIVE REQUIREMENT, THE FINDINGS OF THOSE STUDIES IN ITS STUDY.

17 (F) THE PRIVATE ENTITY SHALL REIMBURSE THE STATE FOR THE COST OF
18 A STUDY IN ACCORDANCE WITH THE PROVISION IN THE PUBLIC-PRIVATE
19 PARTNERSHIP AGREEMENT REQUIRED UNDER § 10A-401(A)(13) OF THIS TITLE.

20 (G) THE STUDY SHALL BE:

21 (1) SUBMITTED TO THE COMPTROLLER, THE STATE TREASURER, THE
22 MARYLAND CLIMATE COMMISSION, THE DEPARTMENT OF LEGISLATIVE SERVICES,
23 AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE
24 HOUSE ENVIRONMENT AND TRANSPORTATION COMMITTEE AND THE SENATE
25 EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE; AND

26 (2) POSTED TO A PUBLICLY ACCESSIBLE WEBPAGE ON THE
27 DEPARTMENT OF THE ENVIRONMENT'S WEBSITE AND THE REPORTING AGENCY'S
28 WEBSITE.

29 10A-401.

30 (a) Whenever applicable, a public-private partnership agreement shall include
31 the following provisions:

32 (11) the terms and conditions under which the public infrastructure assets

1 shall be returned to the State at the expiration or termination of the agreement; [and]

2 (12) requirements for the private entity to provide performance security and
3 payment security in a form and in an amount determined by the responsible public entity,
4 except that:

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

7 (ii) requirements for the amount of the payment security and any
8 performance security in the form of a performance bond for a construction contract shall be
9 based on the value of the respective construction elements of the public-private partnership
10 agreement and not on the total value of the public-private partnership agreement; AND

11 **(13) A REQUIREMENT THAT THE PRIVATE ENTITY REIMBURSE THE**
12 **STATE FOR THE COSTS ASSOCIATED WITH THE STUDY REQUIRED UNDER §**
13 **10A-201.1 OF THIS TITLE.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That:

15 (a) Notwithstanding § 10A-201(a)(2) of the State Finance and Procurement
16 Article, as enacted by Section 1 of this Act, and subject to subsections (b) and (c) of this
17 section, the Department of the Environment, in conjunction with the reporting agency,
18 shall conduct the study required under § 10A-201.1 of the State Finance and Procurement
19 Article, as enacted by Section 1 of this Act, for a public-private partnership whose:

20 (1) presolicitation report was submitted before the effective date of this Act;
21 and

22 (2) project plan includes the addition of toll lanes to I-495 or I-270.

23 (b) Within 6 months after the draft environmental impact statement is adopted
24 in accordance with the National Environmental Policy Act the study shall be submitted.

25 (c) (1) A private entity shall reimburse the Department of the Environment
26 for the study required under subsection (a) of this section in accordance with § 10A-201.1(f)
27 of the State Finance and Procurement Article, as enacted by Section 1 of this Act.

28 (2) A public-private partnership agreement for a project described under
29 subsection (a) of this section shall comply with § 10A-401 of the State Finance and
30 Procurement Article, as enacted by Section 1 of this Act.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
32 1, 2019.