

HOUSE BILL 956

P2, P1
HB 1201/23 – ENT & APP

4lr3082

By: **Delegate Solomon**

Introduced and read first time: February 2, 2024

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Public–Private Partnership (P3) Oversight and Accountability Act**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



a certain unsolicited proposal; requiring certain terms in a public-private partnership agreement; requiring, under certain circumstances, the terms of a public-private partnership to contain certain provisions; extending a certain prohibition on noncompete clauses in certain public-private partnership agreements to all transit or road maintenance projects regardless of funding source; 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
(2021 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 10A–101(b), 10A–201(a), 10A–203(a), 10A–301, and 10A–401(a) and (c)
Annotated Code of Maryland
(2021 Replacement Volume and 2023 Supplement)

BY adding to
Article – State Finance and Procurement
Section 10A–101(i), 10A–106, and 10A–203(c)
Annotated Code of Maryland
(2021 Replacement Volume and 2023 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) IN THIS SECTION, **“BOARD” MEANS THE PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD.**

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

3 **(C) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:**

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

6 **(2) TWO MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY**
7 **THE SPEAKER OF THE HOUSE; AND**

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

11 **(D) THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE**
12 **SHALL JOINTLY DESIGNATE THE CHAIR OF THE BOARD.**

13 **(E) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE STAFF**
14 **FOR THE BOARD.**

15 **(F) THE BOARD SHALL:**

16 **(1) REVIEW PUBLIC-PRIVATE PARTNERSHIP PRESOLICITATION**
17 **REPORTS;**

18 **(2) MAKE RECOMMENDATIONS REGARDING THE DESIGNATION OF A**
19 **PUBLIC INFRASTRUCTURE ASSET AS A PUBLIC-PRIVATE PARTNERSHIP;**

20 **(3) CONSULT WITH A REPORTING AGENCY IN REVIEWING ANY**
21 **UNSOLICITED PROPOSALS FOR A PUBLIC-PRIVATE PARTNERSHIP;**

22 **(4) REVIEW BEST PRACTICES REGARDING PUBLIC-PRIVATE**
23 **PARTNERSHIPS FROM OTHER STATES AND INTERNATIONALLY; AND**

24 **(5) MONITOR THE IMPLEMENTATION AND OPERATION OF EXISTING**
25 **PUBLIC-PRIVATE PARTNERSHIPS.**

26 **(G) THE BOARD MAY REQUEST TECHNICAL ASSISTANCE FROM THE STATE**
27 **TREASURER, THE COMPTROLLER, OR THE APPROPRIATE ADMINISTRATIVE**
28 **AGENCY, WHEN APPROPRIATE.**

29 10A-201.

30 (a) (1) (i) Except as provided in subparagraph (ii) of this paragraph AND

SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH AND PARAGRAPH (3) OF THIS SUBSECTION, a reporting agency may not issue a public notice of solicitation for a public-private partnership until a presolicitation report concerning the proposed public-private partnership is submitted to the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services, in accordance with § 2-1257 of the State Government Article.

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

2. FOR A TRANSPORTATION FACILITIES PROJECT WITH 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.

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

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

(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] **SHALL, AFTER MAKING A REQUEST SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, BE GRANTED** 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 A PRESOLICITATION REPORT OF EACH CONTRACT UNDER THE PUBLIC-PRIVATE PARTNERSHIP.

(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 OF THE GENERAL ASSEMBLY.

(II) THE BUDGET COMMITTEES, IN CONSULTATION WITH THE APPROPRIATE POLICY 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.

10A-203.

(a) (1) Except as provided in [paragraph (2)] PARAGRAPHS (2) AND (5) 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

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

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

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

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

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

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

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

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

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

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

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

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

3 **(I) AN ASSESSMENT OF THE RISKS TO THE STATE POSED BY THE**
4 **PROPOSED AGREEMENT, INCLUDING ECONOMIC, LEGAL, AND TECHNOLOGICAL**
5 **RISKS; AND**

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

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

14 **(II) A VOTE OF THE GENERAL ASSEMBLY TO APPROVE A**
15 **PUBLIC-PRIVATE PARTNERSHIP WITH A TOTAL VALUE THAT EXCEEDS**
16 **\$1,000,000,000 SHALL OCCUR AFTER COMPLETION OF THE PERIOD FOR REVIEW,**
17 **ANALYSIS, AND COMMENT REQUIRED UNDER PARAGRAPHS (1) AND (2) OF THIS**
18 **SUBSECTION.**

19 **(C) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL**
20 **INCLUDE FINANCIAL INFORMATION REGARDING EACH CONTRACTOR AND ANY**
21 **SUBCONTRACTOR THAT WILL PROVIDE PRODUCTS OR SERVICES UNDER THE**
22 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.**

23 10A-301.

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

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

29 **(C) (1) A reporting agency shall establish the process for determining whether**
30 **an unsolicited proposal meets a need of the reporting agency or is otherwise advantageous**
31 **to the reporting agency.**

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

1 **[(c)] (D)** (1) A reporting agency may establish by regulation an application
2 fee for submitting an unsolicited proposal.

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

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

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

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

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

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

17 10A–401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (XIII) IF NEGOTIATED AS AN ELEMENT OF THE PUBLIC-PRIVATE
22 PARTNERSHIP, THE TERMS ESTABLISHING A GUARANTEED RATE OF RETURN FOR
23 THE PRIVATE ENTITY.

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

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

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

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
7 1, 2024.