

# HOUSE BILL 605

P1, P2, C8  
HB 576/12 – ENV & APP

3lr0902

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By: **Delegate Clagett**

Introduced and read first time: January 31, 2013

Assigned to: Environmental Matters and Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public–Private Partnerships**

3 FOR the purpose of establishing the policy of the State on public–private partnerships;  
4 altering provisions of law relating to public–private partnerships; establishing  
5 that the Court of Special Appeals has jurisdiction over certain immediate  
6 appeals related to certain public–private partnerships; establishing certain time  
7 limits related to certain appeals; authorizing a certain agency to establish a  
8 public–private partnership and execute an agreement in connection with any  
9 public infrastructure asset; providing that an agreement executed under a  
10 certain provision of law may include certain provisions; prohibiting certain  
11 units of State government from establishing a public–private partnership;  
12 requiring a certain agency to adopt certain regulations and establish certain  
13 processes for the development, solicitation, evaluation, award, and delivery of  
14 public–private partnerships; requiring certain legislative committees to review  
15 and comment on certain processes and regulations; requiring certain agencies to  
16 submit, on or before a certain date each year, certain reports to certain  
17 legislative committees; establishing certain requirements for certain reports;  
18 establishing deadlines for the review of certain presolicitation reports; requiring  
19 certain projects to comply with certain provisions of law; requiring a reporting  
20 agency to issue a public notice of solicitation for a public–private partnership  
21 under certain circumstances; requiring certain agencies to comply with certain  
22 requirements before issuing a solicitation for a public–private partnership;  
23 requiring a certain agency to make a certain responsibility determination  
24 concerning certain entities; authorizing a reporting agency to reimburse a  
25 private entity for certain costs and pay a certain entity for the right to use a  
26 certain work product; requiring a reporting agency to adopt certain regulations  
27 that establish the process for the reimbursement of a private entity; prohibiting  
28 a reporting agency from reimbursing a private entity under certain  
29 circumstances; requiring a certain agency to submit certain reports to certain  
30 officials and committees; requiring the Board of Public Works to approve or  
31 disapprove each partnership agreement; prohibiting the Board of Public Works

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 from approving a public–private partnership agreement until the completion of  
2 certain review by certain officials and committees; establishing deadlines for the  
3 review of public–private partnership agreements; requiring a certain agency to  
4 post a certain agreement on a certain Web site; requiring certain entities to  
5 provide performance bonds; prohibiting a public–private partnership agreement  
6 from exceeding a certain number of years, with certain exceptions; prohibiting  
7 noncompete agreements for certain assets; authorizing the award of certain  
8 compensation under certain circumstances; establishing certain requirements  
9 for a final public–private partnership agreement; requiring certain proceeds to  
10 accrue to certain funds; requiring a certain agency to post on the Internet a  
11 certain final agreement; authorizing a certain agency to establish by regulation  
12 certain application fees for certain unsolicited proposals; establishing certain  
13 requirements for certain unsolicited proposals; providing that certain provisions  
14 of the State ethics law do not preclude a certain individual or firm from entering  
15 into a certain agreement; specifying the provisions that a public–private  
16 partnership agreement must, may, and may not include; authorizing the Board  
17 of Public Works to grant a waiver from a certain time limitation under certain  
18 circumstances; providing, under certain circumstances, that the provisions of  
19 the Minority Business Enterprise Program apply to public–private  
20 partnerships; prohibiting the Board of Public Works from approving a  
21 public–private partnership agreement until the reporting agency, in  
22 consultation with certain entities, establishes certain minority business  
23 enterprise goals and procedures; requiring that certain goals and procedures be  
24 based on the requirements of certain provisions of law; requiring a circuit court  
25 to decide a certain motion within a certain period of time; exempting  
26 public–private partnerships from certain requirements of the State  
27 procurement law; altering the requirement that the Maryland Transportation  
28 Authority provide certain information to certain entities before entering into a  
29 certain contract or agreement; repealing a certain obsolete provision; defining  
30 certain terms; altering certain definitions; providing for the application of  
31 certain provisions of this Act; providing for the termination of certain provisions  
32 of this Act; and generally relating to public–private partnerships.

33 BY adding to  
34 Article – Courts and Judicial Proceedings  
35 Section 12–310  
36 Annotated Code of Maryland  
37 (2006 Replacement Volume and 2012 Supplement)

38 BY repealing and reenacting, with amendments,  
39 Article – State Finance and Procurement  
40 Section 10A–101  
41 Annotated Code of Maryland  
42 (2009 Replacement Volume and 2012 Supplement)

43 BY repealing  
44 Article – State Finance and Procurement

1 Section 10A–102  
2 Annotated Code of Maryland  
3 (2009 Replacement Volume and 2012 Supplement)

4 BY adding to  
5 Article – State Finance and Procurement  
6 Section 10A–102 through 10A–105 to be under the new subtitle “Subtitle 1.  
7 Definitions; General Provisions”; 10A–201 through 10A–204 to be under  
8 the new subtitle “Subtitle 2. Solicited Proposals”; 10A–301 to be under  
9 the new subtitle “Subtitle 3. Unsolicited Proposals”; 10A–401 through  
10 10A–404 to be under the new subtitle “Subtitle 4. Public–Private  
11 Partnership Agreements”; and 11–203(h)  
12 Annotated Code of Maryland  
13 (2009 Replacement Volume and 2012 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Transportation  
16 Section 4–205  
17 Annotated Code of Maryland  
18 (2008 Replacement Volume and 2012 Supplement)

19 BY repealing  
20 Article – Transportation  
21 Section 4–406  
22 Annotated Code of Maryland  
23 (2008 Replacement Volume and 2012 Supplement)

24 Preamble

25 WHEREAS, Sufficient quality public infrastructure and related services are  
26 vital to the State’s economic, social, and environmental well-being; and

27 WHEREAS, Traditional methods for infrastructure finance, development,  
28 construction, operation, and maintenance are not sufficient to meet the current and  
29 future infrastructure needs of the State, and it is therefore necessary to promote  
30 innovative measures and nontraditional vehicles of infrastructure delivery; and

31 WHEREAS, The establishment of public–private partnerships by and between  
32 the State and the private sector is one mechanism to deliver infrastructure projects,  
33 increase private investment in public infrastructure, and create jobs in Maryland; and

34 WHEREAS, Expanding the private sector role will allow public agencies in  
35 Maryland to tap private sector technical, management, operational, and financial  
36 resources and expertise in new ways to achieve public objectives, such as greater cost  
37 and schedule certainty, innovative technology applications, specialized expertise, and  
38 access to private capital; and

1 WHEREAS, For Maryland to achieve the greatest benefits from public–private  
2 partnerships, the process needs to be authorized, transparent, predictable, and  
3 expedited; and

4 WHEREAS, The State recognizes the importance of community benefit  
5 agreements and encourages agencies to consider their use for all public–private  
6 partnerships; and

7 WHEREAS, Minority business participation is an important State policy and its  
8 use, if not required, should be encouraged for all public asset delivery initiatives; and

9 WHEREAS, The Governor of Maryland intends to establish by executive order a  
10 process to improve the management and coordination of future public–private  
11 partnership projects to include all of the responsibilities laid out in the final report of  
12 the Joint Legislative and Executive Commission on Oversight of Public–Private  
13 Partnerships; now, therefore,

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

16 **Article – Courts and Judicial Proceedings**

17 **12–310.**

18 **(A) THE COURT OF SPECIAL APPEALS HAS JURISDICTION TO HEAR AN**  
19 **IMMEDIATE APPEAL OF A MOTION TO DISMISS, MOTION FOR SUMMARY**  
20 **JUDGMENT THAT DISPOSES OF THE ENTIRE ACTION, OR FINAL ORDER OF A**  
21 **CIRCUIT COURT THAT AFFECTS THE VALIDITY OF A PUBLIC–PRIVATE**  
22 **PARTNERSHIP, AS DEFINED UNDER § 10A–101 OF THE STATE FINANCE AND**  
23 **PROCUREMENT ARTICLE.**

24 **(B) BRIEFING FOR AN APPEAL UNDER SUBSECTION (A) OF THIS**  
25 **SECTION SHALL BE COMPLETED WITHIN 60 DAYS AFTER THE FILING OF THE**  
26 **APPEAL.**

27 **(C) THE COURT OF SPECIAL APPEALS SHALL ISSUE A DECISION ON AN**  
28 **APPEAL UNDER SUBSECTION (A) OF THIS SECTION WITHIN 90 DAYS AFTER THE**  
29 **FILING OF THE APPEAL.**

30 **(D) IF ANY PARTY SEEKS REVIEW OF A DECISION ISSUED BY THE COURT**  
31 **OF SPECIAL APPEALS UNDER SUBSECTION (C) OF THIS SECTION BY THE COURT**  
32 **OF APPEALS, THE COURT OF APPEALS SHALL:**

33 **(1) ACT EXPEDITIOUSLY TO CONSIDER THE PETITION FOR A WRIT**  
34 **OF CERTIORARI; AND**

1           **(2) IF THE WRIT IS GRANTED:**

2                   **(I) ESTABLISH AN EXPEDITIOUS BRIEFING SCHEDULE; AND**

3                   **(II) ISSUE A DECISION AS EXPEDITIOUSLY AS POSSIBLE.**

4           SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
5 read as follows:

6                           **Article – State Finance and Procurement**

7                           **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

8           10A–101.

9           (a)   **[(1)]** In this title the following words have the meanings indicated.

10                   **[(2)] (B)** “Budget committees” means the Senate Budget and  
11 Taxation Committee, the House Committee on Ways and Means, and the House  
12 Appropriations Committee.

13                   **[(3)] (C)** “Private entity” means an individual, a corporation, a  
14 general or limited partnership, a limited liability company, a joint venture, a statutory  
15 trust, a public benefit corporation, a nonprofit entity, or another business entity.

16                   **(D) “PUBLIC INFRASTRUCTURE ASSET” MEANS A CAPITAL FACILITY OR**  
17 **STRUCTURE, INCLUDING SYSTEMS AND EQUIPMENT RELATED TO THE FACILITY**  
18 **OR STRUCTURE, INTENDED FOR PUBLIC USE.**

19                   **[(4)] (E)** “Public notice of solicitation” includes **A REQUEST FOR**  
20 **QUALIFICATIONS**, a request for expressions of interest, **OR** a request for proposals[, a  
21 memorandum of understanding, an interim development agreement, a letter of intent,  
22 or a preliminary development plan].

23                   **[(5)] (F) [(i)] (1)** “Public–private partnership” means [a sale or  
24 lease agreement between a unit of State government and a private entity under which:

25                           1. the private entity assumes control of the operation  
26 and maintenance of an existing State facility; or

27                           2. the private entity constructs, reconstructs, finances,  
28 or operates a State facility or a facility for State use and will collect fees, charges,  
29 rents, or tolls for the use of the facility]:

1                   **(I) A METHOD FOR DELIVERING ASSETS USING A**  
 2 **LONG-TERM, PERFORMANCE-BASED AGREEMENT BETWEEN A REPORTING**  
 3 **AGENCY AND A PRIVATE ENTITY WHERE APPROPRIATE RISKS AND BENEFITS**  
 4 **CAN BE ALLOCATED IN A COST-EFFECTIVE MANNER BETWEEN THE**  
 5 **CONTRACTUAL PARTNERS;**

6                   **(II) AN AGREEMENT IN WHICH A PRIVATE ENTITY**  
 7 **PERFORMS FUNCTIONS NORMALLY UNDERTAKEN BY THE GOVERNMENT, BUT**  
 8 **THE REPORTING AGENCY REMAINS ULTIMATELY ACCOUNTABLE FOR THE ASSET**  
 9 **AND ITS PUBLIC FUNCTION; AND**

10                   **(III) THE STATE MAY RETAIN OWNERSHIP IN THE ASSET AND**  
 11 **THE PRIVATE ENTITY MAY BE GIVEN ADDITIONAL DECISION-MAKING RIGHTS IN**  
 12 **DETERMINING HOW THE ASSET IS FINANCED, DEVELOPED, CONSTRUCTED,**  
 13 **OPERATED, AND MAINTAINED OVER ITS LIFECYCLE.**

14                   **[(ii)] (2) “Public-private partnership” does not include:**

15                                 **[1.] (I)** a short-term operating space lease entered into  
 16 in the ordinary course of business by a unit of State government and a private entity  
 17 and approved under § 4-321 **OR § 12-204** of this article;

18                                 **[2.] (II)** a procurement governed by Division II of this  
 19 article; or

20                                 **[3.] (III)** public-private partnership agreements entered  
 21 into by the University System of Maryland, **ST. MARY’S COLLEGE OF MARYLAND,**  
 22 **MORGAN STATE UNIVERSITY, OR BALTIMORE CITY COMMUNITY COLLEGE,**  
 23 where no State funds are used to fund or finance any portion of a capital project.

24                   **[(6)] (G) “Reporting agency” means:**

25                                 **[(i)] (1)** the Department of General Services;

26                                 **[(ii)] (2)** the Maryland Department of Transportation, **FOR**  
 27 **ASSETS OF ANY OF ITS MODAL ADMINISTRATIONS;**

28                   **(3) THE MARYLAND TRANSPORTATION AUTHORITY;**

29                                 **[(iii)] (4)** the University System of Maryland;

30                                 **[(iv)] (5)** Morgan State University;

31                                 **[(v)] (6)** St. Mary’s College of Maryland; and

1                                    [(vi)] (7)        the Baltimore City Community College.

2                    [(b)    The requirements of this title do not apply to the Maryland  
3    Transportation Authority or to a public-private partnership proposed or entered into  
4    by the Maryland Transportation Authority.

5                    (c)    (1)    The reports provided by the Department of General Services under  
6    this section shall include information concerning all public-private partnerships  
7    involving units within the Executive Branch of State government, except for those  
8    units that are also reporting agencies.

9                    (2)    Following the submission of each of the reports required under this  
10   section, the budget committees shall have 45 days to review and comment on the  
11   reports.

12                   (d)    (1)    Not less than 45 days before issuing a public notice of solicitation  
13   for a public-private partnership, a reporting agency shall submit to the State  
14   Treasurer and the budget committees, in accordance with § 2-1246 of the State  
15   Government Article, a report concerning the proposed public-private partnership.

16                   (2)    By January 1 of each year, each reporting agency shall submit to  
17   the budget committees, in accordance with § 2-1246 of the State Government Article,  
18   a report concerning each public-private partnership under consideration at that time  
19   by the reporting agency that has not been reviewed or approved previously by the  
20   General Assembly.

21                   (3)    By January 1 of each year, each reporting agency shall submit to  
22   the budget committees, in accordance with § 2-1246 of the State Government Article,  
23   a status report concerning each existing public-private partnership in which the  
24   reporting agency is involved.

25                   (e)    By January 1 of each year, a unit of State government that provides  
26   conduit financing for a public-private partnership shall submit to the budget  
27   committees, in accordance with § 2-1246 of the State Government Article, a report  
28   concerning each public-private partnership for which the unit is providing conduit  
29   financing.]

30                   (H)    **“RESPONSIBILITY DETERMINATION” MEANS THE DETERMINATION**  
31   **BY A REPORTING AGENCY THAT A PRIVATE ENTITY THAT RESPONDS TO A**  
32   **SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP:**

33                   (1)    **HAS THE CAPABILITY IN ALL RESPECTS TO PERFORM FULLY**  
34   **THE REQUIREMENTS OF A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT; AND**

35                   (2)    **POSSESSES THE INTEGRITY AND RELIABILITY THAT WILL**  
36   **ENSURE GOOD FAITH PERFORMANCE.**

1 [10A-102.

2 (a) The State Treasurer shall analyze the impact of each public-private  
3 partnership agreement proposed by a unit of State government on the State's capital  
4 debt affordability limits.

5 (b) The State Treasurer shall submit to the budget committees, in  
6 accordance with § 2-1246 of the State Government Article, each analysis required  
7 under subsection (a) of this section within 30 days after the State Treasurer receives a  
8 proposed public-private partnership agreement from a unit of State government.

9 (c) The Board of Public Works may not approve a public-private partnership  
10 agreement under § 10-305 or § 12-204 of this article until the budget committees have  
11 had 30 days to review and comment on the State Treasurer's analysis of the  
12 agreement required under subsection (a) of this section.

13 (d) The annual report of the Capital Debt Affordability Committee required  
14 under § 8-112 of this article shall include an analysis of the aggregate impact of  
15 public-private partnership agreements on the total amount of new State debt that  
16 prudently may be authorized for the next fiscal year.]

17 **10A-102.**

18 **(A) IT IS THE PUBLIC POLICY OF THE STATE TO UTILIZE**  
19 **PUBLIC-PRIVATE PARTNERSHIPS, IF APPROPRIATE, TO:**

20 **(1) DEVELOP AND STRENGTHEN THE STATE'S PUBLIC**  
21 **INFRASTRUCTURE ASSETS;**

22 **(2) APPORTION BETWEEN THE PUBLIC AND PRIVATE SECTORS**  
23 **THE RISKS INVOLVED WITH DEVELOPING AND STRENGTHENING PUBLIC**  
24 **INFRASTRUCTURE ASSETS;**

25 **(3) FOSTER THE CREATION OF JOBS; AND**

26 **(4) PROMOTE THE SOCIOECONOMIC DEVELOPMENT AND**  
27 **COMPETITIVENESS OF MARYLAND.**

28 **(B) IT IS THE PUBLIC POLICY OF THE STATE:**

29 **(1) THAT A PRIVATE ENTITY THAT ENTERS INTO A**  
30 **PUBLIC-PRIVATE PARTNERSHIP WITH A REPORTING AGENCY COMPLY WITH THE**  
31 **LABOR AND EMPLOYMENT ARTICLE AND THE FEDERAL FAIR LABOR**  
32 **STANDARDS ACT; AND**



1           (2) TO USE STATE EMPLOYEES TO PERFORM ALL STATE  
2 FUNCTIONS IN STATE-OPERATED FACILITIES IN PREFERENCE TO  
3 CONTRACTING WITH THE PRIVATE SECTOR TO PERFORM THOSE FUNCTIONS.

4 **10A-103.**

5           (A) (1) (I) A REPORTING AGENCY MAY ESTABLISH A  
6 PUBLIC-PRIVATE PARTNERSHIP AND EXECUTE AN AGREEMENT IN CONNECTION  
7 WITH ANY PUBLIC INFRASTRUCTURE ASSET FOR WHICH THE REPORTING  
8 AGENCY IS RESPONSIBLE IN ACCORDANCE WITH THE PROVISIONS OF THE  
9 ANNOTATED CODE.

10                           (II) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
11 EXECUTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE  
12 PROVISIONS THAT ARE NECESSARY TO DEVELOP AND STRENGTHEN A PUBLIC  
13 INFRASTRUCTURE ASSET IN CONJUNCTION WITH A PUBLIC-PRIVATE  
14 PARTNERSHIP.

15           (2) A UNIT OF STATE GOVERNMENT THAT IS NOT A REPORTING  
16 AGENCY MAY NOT ESTABLISH A PUBLIC-PRIVATE PARTNERSHIP UNDER  
17 PARAGRAPH (1) OF THIS SUBSECTION.

18           (B) (1) A REPORTING AGENCY SHALL ADOPT REGULATIONS AND  
19 ESTABLISH PROCESSES FOR THE DEVELOPMENT, SOLICITATION, EVALUATION,  
20 AWARD, AND DELIVERY OF PUBLIC-PRIVATE PARTNERSHIPS.

21           (2) A REPORTING AGENCY MAY NOT ADOPT REGULATIONS UNDER  
22 PARAGRAPH (1) OF THIS SUBSECTION UNTIL:

23                           (I) THE JOINT COMMITTEE ON ADMINISTRATIVE,  
24 EXECUTIVE, AND LEGISLATIVE REVIEW REVIEWS THE REGULATIONS IN  
25 ACCORDANCE WITH § 10-110 OF THE STATE GOVERNMENT ARTICLE;

26                           (II) THE BUDGET COMMITTEES REVIEW AND COMMENT ON  
27 THE REGULATIONS; AND

28                           (III) AT LEAST 45 DAYS AFTER THE FIRST PUBLICATION OF  
29 THE REGULATIONS IN THE MARYLAND REGISTER.

30           (C) A REPORTING AGENCY MAY CREATE A SPECIFIC FUNCTION  
31 DEDICATED TO PUBLIC-PRIVATE PARTNERSHIP PROCESSES WITHIN THE  
32 EXISTING REPORTING AGENCY.

1           (D) ANY COMBINATION OF FEDERAL, STATE, OR LOCAL FUNDS,  
2 GRANTS, LOANS, OR DEBT MAY BE USED FOR A PUBLIC-PRIVATE PARTNERSHIP  
3 PROJECT.

4           (E) ANY PUBLIC PROCEEDS FROM A PUBLIC-PRIVATE PARTNERSHIP  
5 SHALL ACCRUE TO WHATEVER FUND THAT WOULD HAVE NORMALLY RECEIVED  
6 THOSE FUNDS.

7   **10A-104.**

8           (A) (1) BY JANUARY 1 OF EACH YEAR, EACH REPORTING AGENCY  
9 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246  
10 OF THE STATE GOVERNMENT ARTICLE:

11                   (I) A REPORT CONCERNING EACH PUBLIC-PRIVATE  
12 PARTNERSHIP UNDER CONSIDERATION THAT THE GENERAL ASSEMBLY HAS  
13 NOT PREVIOUSLY REVIEWED OR APPROVED; AND

14                   (II) A STATUS REPORT CONCERNING EACH EXISTING  
15 PUBLIC-PRIVATE PARTNERSHIP IN WHICH THE REPORTING AGENCY IS  
16 INVOLVED.

17           (2) THE REPORTS SUBMITTED BY THE DEPARTMENT OF  
18 GENERAL SERVICES UNDER THIS SUBSECTION SHALL INCLUDE INFORMATION  
19 CONCERNING ALL PUBLIC-PRIVATE PARTNERSHIPS INVOLVING UNITS WITHIN  
20 THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT FOR THOSE UNITS  
21 THAT ARE ALSO REPORTING AGENCIES.

22           (B) BY JANUARY 1 OF EACH YEAR, A UNIT OF STATE GOVERNMENT  
23 THAT PROVIDES CONDUIT FINANCING FOR A PUBLIC-PRIVATE PARTNERSHIP  
24 SHALL SUBMIT TO THE BUDGET COMMITTEES, IN ACCORDANCE WITH § 2-1246  
25 OF THE STATE GOVERNMENT ARTICLE, A LIST THAT INCLUDES EACH  
26 PUBLIC-PRIVATE PARTNERSHIP FOR WHICH THE UNIT IS PROVIDING CONDUIT  
27 FINANCING.

28           (C) THE ANNUAL REPORT OF THE CAPITAL DEBT AFFORDABILITY  
29 COMMITTEE REQUIRED UNDER § 8-112 OF THIS ARTICLE SHALL INCLUDE AN  
30 ANALYSIS OF THE AGGREGATE IMPACT OF PUBLIC-PRIVATE PARTNERSHIP  
31 AGREEMENTS ON THE TOTAL AMOUNT OF NEW STATE DEBT THAT PRUDENTLY  
32 MAY BE AUTHORIZED FOR THE NEXT FISCAL YEAR.

33   **10A-105.**

1           A PROJECT UNDERTAKEN BY A REPORTING AGENCY THROUGH A  
2 PUBLIC-PRIVATE PARTNERSHIP SHALL COMPLY WITH THE FOLLOWING  
3 PROVISIONS, TO THE EXTENT THAT THE PROVISIONS ARE APPLICABLE TO THE  
4 PROJECT:

5           (1)   § 3-602.1 OF THIS ARTICLE; AND

6           (2)   THE ENVIRONMENT ARTICLE.

7                               SUBTITLE 2. SOLICITED PROPOSALS.

8   10A-201.

9           (A)   (1)   (I)   EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
10 PARAGRAPH, A REPORTING AGENCY MAY NOT ISSUE A PUBLIC NOTICE OF  
11 SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP UNTIL A  
12 PRESOLICITATION REPORT CONCERNING THE PROPOSED PUBLIC-PRIVATE  
13 PARTNERSHIP IS SUBMITTED TO THE COMPTROLLER, THE STATE TREASURER,  
14 THE BUDGET COMMITTEES, AND THE DEPARTMENT OF LEGISLATIVE SERVICES,  
15 IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

16                               (II)   A REPORTING AGENCY MAY NOT ISSUE A PUBLIC  
17 NOTICE OF SOLICITATION FOR A PUBLIC-PRIVATE PARTNERSHIP FOR A  
18 TRANSPORTATION FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE  
19 TRANSPORTATION ARTICLE, UNTIL A PRESOLICITATION REPORT CONCERNING  
20 THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP IS SUBMITTED TO THE BUDGET  
21 COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN  
22 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

23           (2)   THE BUDGET COMMITTEES MAY NOT HAVE MORE THAN 45  
24 DAYS TO REVIEW AND COMMENT ON THE PRESOLICITATION REPORT SUBMITTED  
25 IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION.

26           (B)   (1)   A PRESOLICITATION REPORT SHALL:

27                               (I)   STATE THE SPECIFIC POLICY, OPERATIONAL, AND  
28 FINANCIAL REASONS FOR PURSUING A PUBLIC-PRIVATE PARTNERSHIP;

29                               (II)   IDENTIFY THE ANTICIPATED RISKS AND BENEFITS TO  
30 THE STATE AND ANY POTENTIAL WORKFORCE, ECONOMIC DEVELOPMENT, OR  
31 ENVIRONMENTAL IMPLICATIONS;

32                               (III)   EVALUATE, IF RELEVANT AND TO THE EXTENT  
33 NECESSARY, THE RISKS AND BENEFITS OF A PUBLIC-PRIVATE PARTNERSHIP,

1 INCLUDING BENEFITS SUCH AS EXPEDITED ASSET DELIVERY, COST SAVINGS,  
2 RISK TRANSFER, NET NEW REVENUE, STATE-OF-THE-ART TECHNIQUES FOR  
3 ASSET DEVELOPMENT OR OPERATIONS, EFFICIENCY OF OPERATIONS, AND  
4 MAINTENANCE VIA INNOVATIVE MANAGEMENT TECHNIQUES, OR EXPERTISE IN  
5 ACCESSING AND ORGANIZING THE WIDEST RANGE OF FINANCIAL RESOURCES;

6 (IV) INCLUDE, IF RELEVANT AND TO THE EXTENT POSSIBLE,  
7 A PRELIMINARY ANALYSIS ON DEBT AFFORDABILITY AND A STATEMENT OF  
8 INTENTION TO USE THE EXEMPTION FROM THE REQUIREMENTS OF DIVISION II  
9 OF THIS ARTICLE SET FORTH IN § 11-203 OF THIS ARTICLE;

10 (V) WITHHOLD A PRIVATE ENTITY'S PROPRIETARY  
11 INFORMATION IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT  
12 ARTICLE, RELATING TO:

- 13 1. CONFIDENTIAL COMMERCIAL INFORMATION;
- 14 2. CONFIDENTIAL FINANCIAL INFORMATION; AND
- 15 3. TRADE SECRETS; AND

16 (VI) BE POSTED ONLINE BY THE REPORTING AGENCY  
17 DURING THE 45-DAY REVIEW PERIOD IN ACCORDANCE WITH PARAGRAPH (2) OF  
18 THIS SUBSECTION.

19 (2) THE ONLINE LOCATION OF THE PRESOLICITATION REPORT  
20 SHALL BE:

- 21 (I) ON THE WEB SITE OF THE REPORTING AGENCY; OR
- 22 (II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE  
23 HAS BEEN ESTABLISHED.

24 (3) THE REPORTING AGENCY SHALL INCLUDE IN THE MARYLAND  
25 REGISTER A BRIEF SYNOPSIS OF, AND A LINK TO, THE PRESOLICITATION  
26 REPORT.

27 10A-202.

28 (A) IF A REPORTING AGENCY INTENDS TO ESTABLISH A  
29 PUBLIC-PRIVATE PARTNERSHIP UNDER § 10A-103 OF THIS TITLE, THE  
30 REPORTING AGENCY SHALL ISSUE A PUBLIC NOTICE OF SOLICITATION FOR THE  
31 PUBLIC-PRIVATE PARTNERSHIP.

1           **(B) A REPORTING AGENCY SHALL MAKE A RESPONSIBILITY**  
2 **DETERMINATION FOR ANY PRIVATE ENTITY THAT RESPONDS TO THE**  
3 **SOLICITATION.**

4           **(C) IF A PRIVATE ENTITY IS COMPRISED OF MULTIPLE SUBENTITIES OR**  
5 **PARTNERS, THE REPORTING AGENCY SHALL MAKE A RESPONSIBILITY**  
6 **DETERMINATION FOR EACH SUBENTITY OR PARTNER OWNING 20% OR MORE OF**  
7 **THE ENTITY.**

8           **(D) ANY CHANGES IN THE OWNERSHIP COMPOSITION OF A**  
9 **PUBLIC-PRIVATE PARTNERSHIP, AS DESCRIBED IN SUBSECTION (C) OF THIS**  
10 **SECTION, REQUIRE:**

11                   **(1) A RESPONSIBILITY DETERMINATION;**

12                   **(2) 45 DAYS' NOTICE TO THE BUDGET COMMITTEES; AND**

13                   **(3) APPROVAL BY THE BOARD OF PUBLIC WORKS.**

14           **(E) (1) A REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY**  
15 **FOR THE PORTION OF THE ENTITY'S COSTS USED TO DEVELOP A RESPONSE TO A**  
16 **PUBLIC NOTICE OF A SOLICITATION.**

17                   **(2) A REPORTING AGENCY SHALL ADOPT REGULATIONS THAT**  
18 **ESTABLISH THE PROCESS FOR REIMBURSING A PRIVATE ENTITY UNDER**  
19 **PARAGRAPH (1) OF THIS SUBSECTION.**

20                   **(3) REGULATIONS ADOPTED UNDER PARAGRAPH (2) OF THIS**  
21 **SUBSECTION SHALL:**

22                           **(I) PROVIDE FOR THE REIMBURSEMENT OF A PRIVATE**  
23 **ENTITY BASED ON THE DOLLAR VALUE OF A PROJECT; AND**

24                           **(II) SPECIFY A MAXIMUM DOLLAR AMOUNT THAT A**  
25 **REPORTING AGENCY MAY REIMBURSE A PRIVATE ENTITY FOR COSTS INCURRED**  
26 **UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

27                   **(4) A REPORTING AGENCY MAY PAY AN ENTITY THAT SUBMITS AN**  
28 **UNSUCCESSFUL PROPOSAL FOR THE RIGHT TO USE THE ENTITY'S WORK**  
29 **PRODUCT.**

30                   **(5) A REPORTING AGENCY MAY NOT REIMBURSE A PRIVATE**  
31 **ENTITY FOR ANY PORTION OF THE COSTS INCURRED TO DEVELOP A**  
32 **SOLICITATION IF:**

1                   **(I) THE PRIVATE ENTITY ENTERS INTO A PARTNERSHIP**  
2 **AGREEMENT WITH THE REPORTING AGENCY;**

3                   **(II) THE PARTNERSHIP AGREEMENT ENTERED INTO UNDER**  
4 **ITEM (I) OF THIS PARAGRAPH IS APPROVED BY THE BOARD OF PUBLIC WORKS;**  
5 **AND**

6                   **(III) THE SOLICITATION IS THE SUBJECT OF THE**  
7 **PARTNERSHIP AGREEMENT APPROVED BY THE BOARD OF PUBLIC WORKS**  
8 **UNDER ITEM (II) OF THIS PARAGRAPH.**

9                   **(F) A REPORTING AGENCY SHALL SUBMIT A COPY OF THE PROPOSED**  
10 **AGREEMENT SIMULTANEOUSLY TO THE COMPTROLLER, THE STATE**  
11 **TREASURER, THE BUDGET COMMITTEES, AND THE DEPARTMENT OF**  
12 **LEGISLATIVE SERVICES, IN ACCORDANCE WITH § 2-1246 OF THE STATE**  
13 **GOVERNMENT ARTICLE.**

14 **10A-203.**

15                   **(A) THE BOARD OF PUBLIC WORKS SHALL APPROVE OR DISAPPROVE**  
16 **EACH PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.**

17                   **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
18 **SUBSECTION, THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**  
19 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNTIL:**

20                   **(I) A COPY OF THE PROPOSED AGREEMENT IS SUBMITTED**  
21 **TO THE COMPTROLLER, THE STATE TREASURER, THE BUDGET COMMITTEES,**  
22 **AND THE DEPARTMENT OF LEGISLATIVE SERVICES AS REQUIRED BY §**  
23 **10A-202(F) OF THIS SUBTITLE;**

24                   **(II) THE STATE TREASURER, IN COORDINATION WITH THE**  
25 **COMPTROLLER, ANALYZES THE IMPACT ON THE STATE'S CAPITAL DEBT**  
26 **AFFORDABILITY LIMITS OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP**  
27 **AGREEMENT;**

28                   **(III) THE STATE TREASURER SUBMITS THE ANALYSIS TO THE**  
29 **BUDGET COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES, IN**  
30 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE; AND**

31                   **(IV) THE BUDGET COMMITTEES HAVE REVIEWED AND**  
32 **COMMENTED ON THE AGREEMENT IN ACCORDANCE WITH PARAGRAPH (3) OF**  
33 **THIS SUBSECTION.**

1           **(2) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**  
2 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR A TRANSPORTATION**  
3 **FACILITIES PROJECT, AS DEFINED IN § 4-101(H) OF THE TRANSPORTATION**  
4 **ARTICLE, UNTIL THE PROPOSED AGREEMENT IS SUBMITTED TO THE BUDGET**  
5 **COMMITTEES AND THE DEPARTMENT OF LEGISLATIVE SERVICES IN**  
6 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.**

7           **(3) (I) THE PERIOD FOR REVIEW, ANALYSIS, AND COMMENT**  
8 **UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION MAY NOT EXCEED A**  
9 **TOTAL OF 30 DAYS FROM THE DATE THE PROPOSED AGREEMENT IS SUBMITTED**  
10 **TO THE STATE TREASURER, COMPTROLLER, BUDGET COMMITTEES, AND THE**  
11 **DEPARTMENT OF LEGISLATIVE SERVICES.**

12           **(II) THE BUDGET COMMITTEES MAY FACILITATE A FASTER**  
13 **REVIEW AND COMMENT PERIOD BY SENDING A LETTER TO THE BOARD OF**  
14 **PUBLIC WORKS SUPPORTING A PROPOSED AGREEMENT IN ADVANCE OF THE**  
15 **EXPIRATION OF THE 30-DAY REVIEW PERIOD.**

16           **(C) (1) THE PROPOSED AGREEMENT:**

17           **(I) MAY WITHHOLD A PRIVATE ENTITY'S PROPRIETARY**  
18 **INFORMATION IN ACCORDANCE WITH § 10-617(D) OF THE STATE GOVERNMENT**  
19 **ARTICLE, RELATING TO:**

- 20                   1.    **CONFIDENTIAL COMMERCIAL INFORMATION;**
- 21                   2.    **CONFIDENTIAL FINANCIAL INFORMATION; AND**
- 22                   3.    **TRADE SECRETS; AND**

23           **(II) SHALL BE POSTED ONLINE BY THE REPORTING AGENCY**  
24 **DURING THE 30-DAY REVIEW PERIOD IN ACCORDANCE WITH PARAGRAPH (2) OF**  
25 **THIS SUBSECTION.**

26           **(2) THE ONLINE LOCATION OF THE PROPOSED AGREEMENT**  
27 **SHALL BE:**

- 28                   **(I) ON THE WEB SITE OF THE REPORTING AGENCY; OR**
- 29                   **(II) ON THE WEB SITE OF THE SPECIFIC PROJECT IF ONE**  
30 **HAS BEEN ESTABLISHED.**

31 **10A-204.**

1           **(A) THE REPORTING AGENCY SHALL POST THE FINAL AGREEMENT OF A**  
2 **PUBLIC-PRIVATE PARTNERSHIP ON THE WEB SITE OF THE REPORTING AGENCY**  
3 **OR THE WEB SITE OF THE SPECIFIC PROJECT IF ONE HAS BEEN ESTABLISHED.**

4           **(B) PROPRIETARY INFORMATION MAY BE WITHHELD FROM THE POSTED**  
5 **VERSION OF THE FINAL AGREEMENT.**

6                           **SUBTITLE 3. UNSOLICITED PROPOSALS.**

7           **10A-301.**

8           **(A) A REPORTING AGENCY MAY ACCEPT, REJECT, OR EVALUATE AN**  
9 **UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE PARTNERSHIP THAT WILL**  
10 **ASSIST THE AGENCY IN IMPLEMENTING ITS FUNCTIONS IN A MANNER**  
11 **CONSISTENT WITH STATE POLICY.**

12           **(B) A REPORTING AGENCY SHALL ESTABLISH THE PROCESS FOR**  
13 **DETERMINING WHETHER AN UNSOLICITED PROPOSAL MEETS A NEED OF THE**  
14 **REPORTING AGENCY OR IS OTHERWISE ADVANTAGEOUS TO THE REPORTING**  
15 **AGENCY.**

16           **(C) (1) A REPORTING AGENCY MAY ESTABLISH BY REGULATION AN**  
17 **APPLICATION FEE FOR SUBMITTING AN UNSOLICITED PROPOSAL.**

18                           **(2) FOR AN UNSOLICITED PROPOSAL THAT DOES NOT ADDRESS A**  
19 **PROJECT ALREADY IN THE STATE'S CAPITAL IMPROVEMENT PROGRAM OR**  
20 **CONSOLIDATED TRANSPORTATION PROGRAM PLANNING DOCUMENTS, A**  
21 **REPORTING AGENCY MAY REQUIRE A HIGHER PROPOSAL FEE.**

22           **(D) IF A REPORTING AGENCY DETERMINES THAT AN UNSOLICITED**  
23 **PROPOSAL MEETS A NEED OF THE REPORTING AGENCY OR IS OTHERWISE**  
24 **ADVANTAGEOUS TO THE REPORTING AGENCY, THE REPORTING AGENCY SHALL:**

25                           **(1) CONDUCT A COMPETITIVE BIDDING SOLICITATION PROCESS;**

26                           **(2) PROTECT PROPRIETARY INFORMATION INCLUDED IN THE**  
27 **UNSOLICITED PROPOSAL TO THE SAME EXTENT PROPRIETARY INFORMATION IS**  
28 **PROTECTED UNDER § 10A-201(B) OF THIS TITLE; AND**

29                           **(3) COMPLY WITH ALL OF THE OTHER PROCEDURAL**  
30 **REQUIREMENTS SET FORTH IN THIS TITLE.**



1           **(E) THE PROVISIONS OF § 15-508 OF THE STATE GOVERNMENT**  
2 **ARTICLE MAY NOT PRECLUDE AN INDIVIDUAL OR FIRM THAT HAS SUBMITTED**  
3 **AN UNSOLICITED PROPOSAL UNDER THIS TITLE FROM SUBMITTING AND**  
4 **PARTICIPATING IN THE COMPETITIVE BIDDING PROCESS.**

5           **SUBTITLE 4. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.**

6           **10A-401.**

7           **(A) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL INCLUDE**  
8 **THE FOLLOWING PROVISIONS:**

9                   **(1) THE METHOD FOR APPROVAL OF ANY REASSIGNMENT OF ANY**  
10 **LEASE, SUBLEASE, OR SALE, STATING WHETHER THE STATE RESERVES THE**  
11 **RIGHT OF FIRST REFUSAL AND REQUIRING THE REPORTING AGENCY**  
12 **OVERSEEING THE AGREEMENT TO NOTIFY THE BUDGET COMMITTEES OF ANY OF**  
13 **THESE ACTIONS;**

14                   **(2) THE METHODS FOR FUTURE INCREASES IN TOLLS, FEES, AND**  
15 **OTHER CHARGES RELATED TO THE ASSET;**

16                   **(3) WHENEVER APPLICABLE, REVENUE-SHARING, IN WHICH THE**  
17 **PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET PERFORMANCE,**  
18 **SHALL BE UTILIZED;**

19                   **(4) MINIMUM QUALITY STANDARDS, PERFORMANCE CRITERIA,**  
20 **INCENTIVES, AND DISINCENTIVES;**

21                   **(5) OPERATIONS AND MAINTENANCE STANDARDS;**

22                   **(6) ALLOW FOR INSPECTION BY THE STATE;**

23                   **(7) THE REPORTING AGENCY MAY PROVIDE SERVICES, AS**  
24 **APPLICABLE, FOR A FEE SUFFICIENT TO COVER BOTH DIRECT AND INDIRECT**  
25 **COSTS;**

26                   **(8) PROVISIONS FOR AGREEMENT OVERSIGHT AND REMEDIES**  
27 **AND PENALTIES FOR DEFAULT;**

28                   **(9) THE REPORTING AGENCY ORIGINATING THE**  
29 **PUBLIC-PRIVATE PARTNERSHIP SHALL BE RESPONSIBLE FOR ONGOING**  
30 **OVERSIGHT;**

1           **(10) AGREEMENTS, FINANCIAL RECORDS, AND PERFORMANCE**  
2 **RELATED TO THE PUBLIC-PRIVATE PARTNERSHIP ARE SUBJECT TO AUDIT BY**  
3 **THE STATE, INCLUDING THE OFFICE OF LEGISLATIVE AUDITS;**

4           **(11) ASSETS SHALL BE RETURNED TO THE STATE AT THE**  
5 **EXPIRATION OR TERMINATION OF THE AGREEMENT IN AN ACCEPTABLE**  
6 **CONDITION;**

7           **(12) THE PRIVATE ENTITY SHALL PROVIDE, IF APPLICABLE, A**  
8 **PERFORMANCE BOND OR A LETTER OF CREDIT; AND**

9           **(13) THE PRIVATE ENTITY AND ANY CONTRACTORS OR**  
10 **SUBCONTRACTORS CONSTRUCTING A PUBLIC INFRASTRUCTURE ASSET SHALL**  
11 **BE SUBJECT TO TITLE 17, SUBTITLE 2 OF THIS ARTICLE REGARDLESS OF**  
12 **WHETHER THE CONTRACT QUALIFIES AS A PUBLIC WORKS CONTRACT.**

13           **(B) (1) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY INCLUDE**  
14 **A PROVISION THAT, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
15 **SUBSECTION, COMPENSATION MAY BE PROVIDED FOR COMPETING**  
16 **INFRASTRUCTURE DEVELOPMENTS THAT RESULT IN A DOCUMENTED REVENUE**  
17 **LOSS FOR THE PRIVATE ENTITY IN A PUBLIC-PRIVATE PARTNERSHIP.**

18           **(2) COMPENSATION MAY NOT BE PROVIDED AS A RESULT OF**  
19 **STATE INFRASTRUCTURE DEVELOPMENTS ALREADY IN THE STATE'S CAPITAL**  
20 **IMPROVEMENT PROGRAM OR CONSOLIDATED TRANSPORTATION PROGRAM**  
21 **PLANNING DOCUMENTS AT THE TIME THE PUBLIC-PRIVATE PARTNERSHIP**  
22 **AGREEMENT IS EXECUTED, SAFETY INITIATIVES, INFRASTRUCTURE**  
23 **IMPROVEMENTS WITH MINIMAL CAPACITY INCREASES, OR INFRASTRUCTURE**  
24 **FOR OTHER TRANSPORTATION MODES.**

25           **(C) A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT INCLUDE**  
26 **A NONCOMPETE CLAUSE FOR PUBLIC-PRIVATE PARTNERSHIP PROJECTS**  
27 **INVOLVING ROAD, HIGHWAY, OR BRIDGE ASSETS.**

28 **10A-402.**

29           **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**  
30 **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT MAY NOT EXCEED 50 YEARS,**  
31 **INCLUDING ALL RENEWALS AND EXTENSIONS.**

32           **(B) THE BOARD OF PUBLIC WORKS MAY:**

33           **(1) WAIVE THE PROHIBITION SET FORTH IN SUBSECTION (A) OF**  
34 **THIS SECTION IF THE BOARD DETERMINES THAT THE REPORTING AGENCY HAS**

1 DEMONSTRATED SUFFICIENT REASON FOR THE AGREEMENT TO HAVE A LONGER  
2 TERM; AND

3 (2) WAIVE THE PROHIBITION SET FORTH IN SUBSECTION (A) OF  
4 THIS SECTION AT ANY POINT DURING THE PRESOLICITATION, PROPOSAL  
5 REVIEW, OR AGREEMENT NEGOTIATIONS PROCESS.

6 10A-403.

7 IN AN ACTION RELATED TO A PUBLIC-PRIVATE PARTNERSHIP, THE  
8 CIRCUIT COURT SHALL DECIDE A MOTION TO DISMISS OR MOTION FOR  
9 SUMMARY JUDGMENT AFFECTING THE VALIDITY OF THE PUBLIC-PRIVATE  
10 PARTNERSHIP WITHIN 120 DAYS AFTER THE FILING OF THE MOTION.

11 11-203.

12 (H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
13 SUBSECTION, THIS DIVISION DOES NOT APPLY TO A PUBLIC-PRIVATE  
14 PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE.

15 (2) THE FOLLOWING PROVISIONS OF THIS DIVISION APPLY TO A  
16 PUBLIC-PRIVATE PARTNERSHIP UNDER TITLE 10A OF THIS ARTICLE:

17 (I) § 11-205 OF THIS SUBTITLE (“COLLUSION”);

18 (II) § 11-205.1 OF THIS SUBTITLE (“FALSIFICATION,  
19 CONCEALMENT, ETC., OF MATERIAL FACTS”);

20 (III) TITLE 12, SUBTITLE 4 OF THIS ARTICLE (“POLICIES  
21 AND PROCEDURES FOR EXEMPT UNITS”);

22 (IV) § 13-219 OF THIS ARTICLE (“REQUIRED CLAUSES –  
23 NONDISCRIMINATION CLAUSE”);

24 (V) TITLE 17, SUBTITLE 2 OF THIS ARTICLE (“PREVAILING  
25 WAGE RATES – PUBLIC WORK CONTRACTS”); AND

26 (VI) TITLE 18 OF THIS ARTICLE (“LIVING WAGE”).

27 Article – Transportation

28 4-205.

29 (a) Subject to § 4-306 of this title and in addition to the powers otherwise  
30 specifically granted by law, the Authority has the powers described in this section.

1 (b) The Authority may acquire, hold, and dispose of property in the exercise  
2 of its powers and performance of its duties.

3 (c) (1) Subject to the limitations described in paragraph (2) of this  
4 subsection, the Authority may make any contracts and agreements necessary or  
5 incidental to the exercise of its powers and performance of its duties.

6 (2) Not less than [45] **30** days before entering into any contract or  
7 agreement to acquire or construct a revenue-producing transportation facilities  
8 project, subject to § 2-1246 of the State Government Article, the Authority shall  
9 provide, to the Senate Budget and Taxation Committee, the House Committee on  
10 Ways and Means, and the House Appropriations Committee, for review and comment,  
11 and to the Department of Legislative Services, a description of the proposed project, a  
12 summary of the contract or agreement, and a financing plan that details:

13 (i) The estimated annual revenue from the issuance of bonds to  
14 finance the project; and

15 (ii) The estimated impact of the issuance of bonds to finance the  
16 project on the bonding capacity of the Authority.

17 (d) (1) Subject to paragraph (2) of this subsection, the Authority may  
18 employ and fix the compensation of attorneys, consulting engineers, accountants,  
19 construction and financial experts, superintendents, managers, and any other agents  
20 and employees that it considers necessary to exercise its powers and perform its  
21 duties. The compensation established by the Authority for executive management  
22 positions shall be consistent with the compensation of comparable positions in the  
23 Department of Transportation. The compensation established by the Authority shall  
24 be reported to the General Assembly each year as part of the Authority's presentation  
25 of its budget.

26 (2) The expense of employing these persons may be paid only from  
27 revenues or from the proceeds of revenue bonds issued by the Authority.

28 (e) The Authority may apply for and receive grants from any federal agency  
29 for the planning, construction, operation, or financing of any transportation facilities  
30 project and may receive aid or contributions of money, property, labor, or other things  
31 of value from any source, to be held, used, and applied for the purposes for which the  
32 grants, aid, and contributions are made.

33 (f) The Authority may adopt rules and regulations to carry out the  
34 provisions of this title.

35 (g) The Authority may do anything else necessary or convenient to carry out  
36 the powers granted in this title.

1 [4-406.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) “Budget committees” means the Senate Budget and Taxation  
4 Committee, the House Committee on Ways and Means, and the House Appropriations  
5 Committee.

6 (3) “Private entity” means an individual, a corporation, a general or  
7 limited partnership, a limited liability company, a joint venture, a business trust, a  
8 public benefit corporation, a nonprofit entity, or another business entity.

9 (4) “Public notice of solicitation” includes a request for expressions of  
10 interest, a request for proposals, a memorandum of understanding, an interim  
11 development agreement, a letter of intent, or a preliminary development plan.

12 (5) (i) “Public-private partnership” means a sale or lease  
13 agreement between the Authority and a private entity under which:

14 1. The private entity assumes control of the operation  
15 and maintenance of an existing State facility; or

16 2. The private entity constructs, reconstructs, finances,  
17 or operates a State facility or a facility for State use and will collect fees, charges,  
18 rents, or tolls for the use of the facility.

19 (ii) “Public-private partnership” does not include:

20 1. A short-term operating space lease entered into in the  
21 ordinary course of business by the Authority and a private entity; or

22 2. A procurement governed by Division II of the State  
23 Finance and Procurement Article.

24 (b) Following the submission of each of the reports required under this  
25 section, the budget committees shall have 45 days to review and comment on the  
26 reports.

27 (c) (1) Not less than 45 days before issuing a public notice of solicitation  
28 for a public-private partnership, the Authority shall submit to the budget committees,  
29 in accordance with § 2-1246 of the State Government Article, a report concerning the  
30 proposed public-private partnership.

31 (2) By January 1 of each year, the Authority shall submit to the  
32 budget committees, in accordance with § 2-1246 of the State Government Article, a  
33 report concerning each public-private partnership under consideration at that time by

1 the Authority that has not been reviewed or approved previously by the General  
2 Assembly.

3 (3) By January 1 of each year, the Authority shall submit to the  
4 budget committees, in accordance with § 2–1246 of the State Government Article, a  
5 status report concerning each existing public–private partnership in which the  
6 Authority is involved.

7 (d) By January 1 of each year, the Authority shall submit to the budget  
8 committees, in accordance with § 2–1246 of the State Government Article, a report  
9 concerning each public–private partnership for which the Authority is providing  
10 conduit financing.

11 (e) Not less than 30 days before entering into a public–private partnership  
12 agreement, the Authority shall submit to the budget committees, in accordance with §  
13 2–1246 of the State Government Article, an analysis of the impact of the proposed  
14 public–private partnership agreement on the Authority’s financing plan, including the  
15 Authority’s operating and capital budgets and debt capacity.

16 (f) The Board of Public Works may not approve a public–private partnership  
17 agreement under § 10–305 or § 12–204 of the State Finance and Procurement Article  
18 that the Authority proposes to enter into until the budget committees have had 30  
19 days to review and comment on the Authority’s analysis of the agreement required  
20 under subsection (e) of this section.]

21 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
22 read as follows:

23 **Article – State Finance and Procurement**

24 **10A–404.**

25 **(A) THE FINDINGS AND EVIDENCE RELIED ON BY THE GENERAL**  
26 **ASSEMBLY FOR THE CONTINUATION OF THE MINORITY BUSINESS ENTERPRISE**  
27 **PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE, AS ENACTED BY**  
28 **CHAPTER 253 OF THE ACTS OF 2011 AND CHAPTER 154 OF THE ACTS OF 2012,**  
29 **ARE HEREBY INCORPORATED.**

30 **(B) TO THE EXTENT PRACTICABLE AND PERMITTED BY THE UNITED**  
31 **STATES CONSTITUTION, THE PROVISIONS OF THE MINORITY BUSINESS**  
32 **ENTERPRISE PROGRAM UNDER TITLE 14, SUBTITLE 3 OF THIS ARTICLE SHALL**  
33 **APPLY TO PUBLIC–PRIVATE PARTNERSHIPS ESTABLISHED UNDER THIS TITLE.**

34 **(C) (1) THE BOARD OF PUBLIC WORKS MAY NOT APPROVE A**  
35 **PUBLIC–PRIVATE PARTNERSHIP AGREEMENT UNDER § 10A–203 OF THIS TITLE**  
36 **UNTIL THE REPORTING AGENCY, IN CONSULTATION WITH THE GOVERNOR’S**

1 OFFICE OF MINORITY AFFAIRS, THE OFFICE OF THE ATTORNEY GENERAL, AND  
2 THE PRIVATE ENTITY, ESTABLISHES REASONABLE AND APPROPRIATE MINORITY  
3 BUSINESS ENTERPRISE PARTICIPATION GOALS AND PROCEDURES FOR THE  
4 PROJECT.

5 (2) TO THE EXTENT PRACTICABLE, GOALS AND PROCEDURES  
6 ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED  
7 ON THE REQUIREMENTS OF:

8 (I) TITLE 14, SUBTITLE 3 OF THIS ARTICLE, INCLUDING  
9 THE IMPLEMENTING OF REGULATIONS ADOPTED UNDER § 14-303 OF THIS  
10 ARTICLE; AND

11 (II) REGULATIONS ADOPTED SPECIFICALLY TO IMPLEMENT  
12 THIS SECTION.

13 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
14 apply to a public-private partnership established before, on, or after the effective date  
15 of this Act.

16 SECTION 5. AND BE IT FURTHER ENACTED, That on or before July 31,  
17 2013, a party may appeal an order of a circuit court issued before the effective date of  
18 this Act to the Court of Special Appeals under Section 1 of this Act.

19 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in  
20 Section 4 of this Act, this Act shall apply only to public-private partnerships  
21 established on or after the effective date of this Act.

22 SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall  
23 take effect July 1, 2013. It shall remain effective for a period of 4 years and, at the end  
24 of June 30, 2017, with no further action required by the General Assembly, Section 3  
25 of this Act shall be abrogated and of no further force and effect.

26 SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 July 1, 2013.