

SENATE BILL 361

P2, P1
HB 1424/20 – ENT & APP

11r2011
CF HB 485

By: **Senator Rosapepe**

Introduced and read first time: January 15, 2021

Assigned to: Education, Health, and Environmental Affairs and Budget and Taxation

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 Board; requiring the Board
5 to study and make recommendations regarding certain matters; authorizing the
6 Board to request technical assistance from certain persons, when appropriate;
7 requiring a reporting agency to submit certain presolicitation reports to the Board;
8 requiring a certain reporting agency to include in presolicitation reports for certain
9 public–private partnerships presolicitation reports of certain contracts and a certain
10 environmental impact statement under certain circumstances; requiring the Board,
11 within a certain number of days after receiving a presolicitation report, to report and
12 make certain recommendations to the Board of Public Works and certain budget
13 committees; requiring that before the Board of Public Works may make a certain
14 designation certain budget committees have a certain number of days to review and
15 comment on a certain report; requiring certain proposed public–private partnership
16 agreements to be submitted to the Legislative Policy Committee; prohibiting the
17 Board of Public Works from approving a proposed agreement until the Legislative
18 Policy Committee has reviewed and commented on the public–private partnership if
19 a certain review and comment period is during a certain time and until certain
20 independent assessments of the impact on the State’s credit rating and certain risk
21 analyses are completed under certain circumstances; requiring a certain risk
22 analysis to include certain information; requiring the proposed agreement to include
23 certain financial information; requiring a reporting agency to notify the Legislative
24 Policy Committee on receiving a certain unsolicited proposal; requiring a reporting
25 agency to consult with the Public–Private Partnership Oversight Review Board in
26 reviewing a certain unsolicited proposal; requiring, under certain circumstances, the
27 terms of a public–private partnership to contain certain provisions; extending a
28 certain prohibition on noncompete clauses in certain public–private partnership
29 agreements to all transit or road maintenance projects regardless of funding source;
30 requiring the Public–Private Partnership Oversight Review Board to conduct a
31 certain study and report its findings and recommendations to the General Assembly

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 on or before a certain date; prohibiting the State or a reporting agency from
 2 transferring certain ownership, operation, or management of a certain existing
 3 transportation facilities project to a certain entity or issuing a certain notice of
 4 solicitation under certain circumstances; providing for the intent of the General
 5 Assembly with regard to the reimbursement of certain costs and expenses; altering
 6 a certain definition; defining certain terms; providing for the termination of certain
 7 provisions of this Act; making conforming changes; and generally relating to
 8 public-private partnerships.

9 BY repealing and reenacting, without amendments,
 10 Article – State Finance and Procurement
 11 Section 10A–101(a)
 12 Annotated Code of Maryland
 13 (2015 Replacement Volume and 2020 Supplement)

14 BY repealing and reenacting, with amendments,
 15 Article – State Finance and Procurement
 16 Section 10A–101(b), 10A–201(a), 10A–203(a), 10A–301, and 10A–401(a) and (c)
 17 Annotated Code of Maryland
 18 (2015 Replacement Volume and 2020 Supplement)

19 BY adding to
 20 Article – State Finance and Procurement
 21 Section 10A–101(i), 10A–106, and 10A–203(c)
 22 Annotated Code of Maryland
 23 (2015 Replacement Volume and 2020 Supplement)

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

26 **Article – State Finance and Procurement**

27 10A–101.

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

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

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

34 **10A–106.**

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

1 **BOARD.**

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

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

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

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

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

12 **(D) THE BALTIMORE METROPOLITAN COUNCIL, THE METROPOLITAN**
13 **WASHINGTON COUNCIL OF GOVERNMENTS, OR AN APPROPRIATE METROPOLITAN**
14 **PLANNING ORGANIZATION, AND THE DEPARTMENT OF LEGISLATIVE SERVICES**
15 **SHALL PROVIDE STAFF FOR THE BOARD.**

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

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

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

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

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

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

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

30 10A-201.

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

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

13 2. **FOR A TRANSPORTATION FACILITIES PROJECT WITH**
 14 **A TOTAL VALUE THAT EXCEEDS \$500,000,000, THE REPORTING AGENCY SHALL**
 15 **SUBMIT, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE,**
 16 **THE PRESOLICITATION REPORT TO THE PUBLIC-PRIVATE PARTNERSHIP**
 17 **OVERSIGHT REVIEW BOARD.**

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

22 (ii) 1. If the total value of a proposed public-private partnership
 23 reported in the presolicitation report under paragraph (b)(1) of this subsection exceeds
 24 \$500,000,000, the budget committees may request an additional 15 days to review and
 25 comment on the presolicitation report.

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

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

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

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

36 (1) **A PRESOLICITATION REPORT OF EACH CONTRACT UNDER**

1 THE PUBLIC-PRIVATE PARTNERSHIP; AND

2 (II) IF A PROJECT REQUIRES AN ENVIRONMENTAL IMPACT
3 STATEMENT UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, A FINAL
4 ENVIRONMENTAL IMPACT STATEMENT THAT COMPLIES WITH THE NATIONAL
5 ENVIRONMENTAL POLICY ACT.

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

12 (II) THE BUDGET COMMITTEES, IN CONSULTATION WITH THE
13 APPROPRIATE POLICY COMMITTEES, SHALL HAVE 60 DAYS TO REVIEW AND
14 COMMENT ON THE REPORT AND RECOMMENDATIONS OF THE
15 PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT REVIEW BOARD BEFORE THE BOARD
16 OF PUBLIC WORKS MAY DESIGNATE THE PUBLIC INFRASTRUCTURE ASSET AS A
17 PUBLIC-PRIVATE PARTNERSHIP UNDER SUBSECTION (C) OF THIS SECTION.

18 10A-203.

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

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

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

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

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

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

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

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

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

9 2. INDEPENDENT ASSESSMENTS OF THE IMPACT ON THE
10 STATE'S CREDIT RATING ARE COMPLETED FOR EACH CONTRACT UNDER THE
11 PUBLIC-PRIVATE PARTNERSHIP BY ALL CREDIT RATING AGENCIES THAT RATE THE
12 STATE'S GENERAL OBLIGATION BONDS; AND

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

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

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

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

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

32 (I) AN ASSESSMENT OF THE RISKS TO THE STATE POSED BY THE
33 PROPOSED AGREEMENT, INCLUDING ECONOMIC, LEGAL, AND TECHNOLOGICAL
34 RISKS; AND

35 (II) AN EVALUATION OF THE SECURITY PACKAGE PROVIDED BY

1 THE PRIVATE ENTITY AND PRIVATE FUNDING SOURCE, INCLUDING ANY PAYMENT
2 AND PERFORMANCE BONDS, LETTERS OF CREDIT, PARENT COMPANY GUARANTEES,
3 AND LENDER OR EQUITY PARTNER GUARANTEES.

4 (C) THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT SHALL
5 INCLUDE FINANCIAL INFORMATION REGARDING EACH CONTRACTOR AND ANY
6 SUBCONTRACTOR THAT WILL PROVIDE PRODUCTS OR SERVICES UNDER THE
7 PUBLIC-PRIVATE PARTNERSHIP AGREEMENT.

8 10A-301.

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

12 (b) A REPORTING AGENCY SHALL NOTIFY THE LEGISLATIVE POLICY
13 COMMITTEE ON RECEIVING AN UNSOLICITED PROPOSAL.

14 (C) (1) A reporting agency shall establish the process for determining whether
15 an unsolicited proposal meets a need of the reporting agency or is otherwise advantageous
16 to the reporting agency.

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

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

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

25 [(d)] (E) If a reporting agency determines that an unsolicited proposal meets a
26 need of the reporting agency or is otherwise advantageous to the reporting agency, the
27 reporting agency shall:

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

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

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

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

3 10A-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **(3) THE TERMS OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**
14 **PROVIDING FOR REVENUE-SHARING OR OTHER SHARING IN FEES OR CHARGES IN**
15 **WHICH THE PUBLIC PARTICIPATES IN THE FINANCIAL UPSIDE OF ASSET**
16 **PERFORMANCE OF THE PUBLIC INFRASTRUCTURE ASSET SHALL REQUIRE THE**
17 **REIMBURSEMENT OF THE STATE FOR ADVANCED PROJECT EXPENSES.**

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Public-Private
23 Partnership Oversight Review Board, as established in Section 1 of this Act, shall:

24 (1) study issues related to the transfer by sale, lease, or other agreement
25 of the full or partial ownership, operation, or management of an existing transportation
26 facilities project to a private entity and using the proceeds to pay for building or
27 maintaining other infrastructure, including:

28 (i) advantages;

29 (ii) costs; and

30 (iii) other transition issues; and

31 (2) on or before January 15, 2022, report its findings and recommendations
32 to the General Assembly, in accordance with § 2-1257 of the State Government Article.

33 SECTION 3. AND BE IT FURTHER ENACTED, That:

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

1 (2) "Other agreement" includes a public-private partnership as defined in
2 § 10A-101 of the State Finance and Procurement Article.

3 (3) "Private entity" has the meaning stated in § 10A-101 of the State
4 Finance and Procurement Article.

5 (4) "Public-private partnership" has the meaning stated in § 10A-101 of
6 the State Finance and Procurement Article.

7 (5) "Reporting agency" has the meaning stated in § 10A-101 of the State
8 Finance and Procurement Article.

9 (6) (i) "Transportation facilities project" has the meaning indicated in §
10 4-101 of the Transportation Article.

11 (ii) "Transportation facilities project" includes the Thomas J. Hatem
12 Bridge.

13 (iii) "Transportation facilities project" does not include the I- 495 and
14 I-270 P3 Program.

15 (b) Notwithstanding any other provision of law, the State or a reporting agency
16 may not:

17 (1) transfer by sale, lease, or other agreement the full or partial ownership,
18 operation, or management of an existing transportation facilities project to a private entity;
19 or

20 (2) issue a public notice of solicitation for a public-private partnership for
21 an existing transportation facilities project.

22 SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the General
23 Assembly that a metropolitan planning organization that provides staff for the
24 Public-Private Partnership Oversight Review Board shall be reimbursed for the costs and
25 expenses incurred for services rendered under this Act.

26 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June
27 1, 2021. Section 3 of this Act shall remain effective for a period of 9 months and, at the end
28 of February 28, 2022, Section 3 of this Act, with no further action required by the General
29 Assembly, shall be abrogated and of no further force and effect.